



**GENERAL TERMS AND CONDITIONS OF SALE, DELIVERY AND PAYMENT (BUSINESS TO BUSINESS)**  
[WWW.JOYSTOVE.COM](http://WWW.JOYSTOVE.COM)

**Company data**

Name: Joyful Trading v.o.f.

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**1. Article 1: General provisions**

- 1.1. These General Terms and Conditions of Sale, Delivery and Payment (“**Terms and Conditions**”) apply to all offers made by and agreements entered into with Joyful Trading v.o.f., a general partnership (*vennootschap onder firma*) with registered office at Jacob van Lennepstraat 375 C, 1053JM Amsterdam (hereinafter referred to as “**JOYFUL TRADING**”), registered in the Dutch Chamber of Commerce in Amsterdam under number 63868199, relating to the supply of goods by JOYFUL TRADING to the party to whom the offer is made or the other party to the agreement, respectively (hereinafter: the “**Buyer**”).
- 1.2. The applicability of the Buyer’s general terms and conditions is hereby expressly rejected.
- 1.3. Any provisions that vary from these Terms and Conditions will only apply if and in so far as they are accepted by JOYFUL TRADING in writing.

**2. Article 2. Offer**

- 2.1. All offers made by JOYFUL TRADING are without commitment even if the offer includes a term for acceptance, unless the contrary is expressly provided in writing.

**3. Article 3. Agreement**

- 3.1. An agreement, which in this article is understood to include any changes or additions made to the agreement, only becomes binding after it has been agreed in writing, unless JOYFUL TRADING has already commenced performance before that time.
- 3.2. An agreement is concluded in writing when the contract has been signed by JOYFUL TRADING’s Management and by the Buyer, or on the date on which JOYFUL TRADING (by post or telefax) sends the written order confirmation, which must be signed by the Management of JOYFUL TRADING, or the invoice. Any promises made by or arrangements made with JOYFUL TRADING employees will not bind JOYFUL TRADING unless they have been confirmed in writing by JOYFUL TRADING’s Management.
- 3.3. The contract is a full and accurate representation of the agreement drawn up between the parties. JOYFUL TRADING’s order confirmation or invoice is considered to be an accurate reflection of the contents of the agreement unless the Buyer objects to these contents immediately in writing, stating the reasons.
- 3.4. Minor variations within the customary bounds shall be permitted in the performance of the agreement.
- 3.5. Unilateral termination of the agreement by the Buyer is invalid unless JOYFUL TRADING agrees to such termination in writing.



#### **4. Article 4. Notices, data, statements, samples**

- 4.1. Notices, data, statements and samples made or provided by JOYFUL TRADING, in whatever form or of whatever nature, are only indicative and shall never bind JOYFUL TRADING unless the agreement expressly provides the contrary.

#### **5. Article 5. Confidentiality**

- 5.1. The Buyer shall maintain the confidentiality of any business information which relates to JOYFUL TRADING and not disclose it to any third party; business information is to be interpreted in the broadest sense and includes any information which is disclosed to the Buyer by JOYFUL TRADING or which comes to the Buyer's knowledge in the context of the agreement.

#### **6. Article 6. Prices**

- 6.1. The prices quoted and/or agreed upon by JOYFUL TRADING shall be exclusive of taxes – including Value Added Tax (“B.T.W.”, Dutch VAT) – and levies, and shall be based on the terms and conditions (of delivery) stated in the following clauses of this article.
- 6.2. If no Value Added Tax or other taxes or levies are due because the goods are destined for delivery within the European market, these taxes will nevertheless be charged, but will be credited if the Buyer proves that a delivery of the sort referred to here has indeed taken place.
- 6.3. When the stated and/or agreed prices are based on the weight of the goods, the weight shall be determined by the weighing which JOYFUL TRADING carries out before the delivery using calibrated weighing equipment. The Buyer may, at its own initiative, witness the weighing as long as this does not delay the delivery.
- 6.4. JOYFUL TRADING has the right to increase the quoted or agreed prices in the event of an increase in the price of items, raw materials or parts obtained from third parties or an increase in wages, national insurance contributions, freight, insurance premiums or other cost components (including fluctuations in foreign exchange rates) and charges (including import and transit duties). If a price increase takes place within three months after the conclusion of the agreement, a Buyer who is also a consumer shall be entitled to dissolve the agreement.
- 6.5. If the quoted or agreed prices are (partly) based on the refunding of levies and/or subsidies and these are not obtained for whatever reason, JOYFUL TRADING may adjust its prices accordingly.

#### **7. Article 7. Delivery; term of delivery**

- 7.1. Unless expressly otherwise agreed, delivery shall be made “Ex Works” (EXW) from the premises of JOYFUL TRADING. The interpretation of the terms and conditions of delivery shall be governed by the edition of the Incoterms issued by the International Chamber of Commerce that was the most recent at the time the agreement was entered into.
- 7.2. The delivery period shall commence on the latest of the following dates:
- the date on which the agreement is entered into;
  - the date on which JOYFUL TRADING has at its disposal all the documents, information, permits, exemptions, approvals, allocations, etc., required for the supply of the goods;
  - the date on which JOYFUL TRADING receives an advance payment or security deposit to which it is entitled under the agreement.
- 7.3. The delivery period shall be based on the circumstances that apply at the time the agreement is concluded and on the timely delivery of the materials and goods ordered by JOYFUL TRADING for the execution of the agreement. If any delay arises as a result of changes in these circumstances or because



materials and/or goods which have been ordered in time for the execution of the agreement are not delivered in time, the delivery period shall be extended by a reasonable period taking all the circumstances into consideration.

- 7.4. The delivery date of the goods shall be the time at which the goods, disregarding minor items, are ready for shipment and JOYFUL TRADING has informed the Buyer accordingly, or the time at which the goods have left the premises of the Company to be forwarded to the Customer.
- 7.5. JOYFUL TRADING shall at all times be entitled to make partial deliveries unless expressly agreed otherwise.
- 7.6. The delivery date is not of the essence unless expressly agreed otherwise. In the event of late delivery due to the fault of JOYFUL TRADING, notice of default shall always be required. The Buyer cannot derive any rights from late delivery due to JOYFUL TRADING's fault if the delay does not exceed a period of three (3) months.
- 7.7. If JOYFUL TRADING is in default with regard to the delivery date, the Buyer's only remedy is to dissolve the agreement. In this case, advance payments will be refunded, however, without any compensation of interest.

#### **8. Article 8. Transportation**

- 8.1. In all cases, irrespective of the terms and conditions of delivery agreed, JOYFUL TRADING shall be entitled to transport the goods or cause them to be transported at the expense and risk of the Buyer, including unloading, in a manner to be determined by JOYFUL TRADING and using a mode of transport chosen by the Company.
- 8.2. JOYFUL TRADING shall not be responsible for documents (or their use by the Buyer) which are provided by JOYFUL TRADING for the transport of the goods to the destination.
- 8.3. At the request of JOYFUL TRADING, the Buyer shall immediately provide all the necessary security for the documents which are required for the transport of the goods to the destination.
- 8.4. In the event that circumstances beyond JOYFUL TRADING's control occur which make transport to or delivery at the agreed place impossible, or if the Buyer does not take delivery of the goods, JOYFUL TRADING shall have the right – at its option – to take the goods back or to store them or cause them to be stored at the expense and risk of the Customer. The costs of return shipment and storage shall be payable by the Buyer, and the Buyer shall furthermore be obliged to fulfil its obligations to JOYFUL TRADING as if delivery has taken place. JOYFUL TRADING and the Buyer shall determine the costs referred to here in advance with a minimum of 15 per cent of the agreed price, without prejudice to JOYFUL TRADING's right to compensation of the actual costs should these be higher.

#### **9. Article 9. Packaging**

- 9.1. JOYFUL TRADING will not take back single-use packaging. It is at JOYFUL TRADING's discretion whether to take back multi-use packaging or not.
- 9.2. JOYFUL TRADING is entitled to make a separate charge for packaging on the Buyer invoice for the goods supplied.
- 9.3. In the case referred to in 9.2, JOYFUL TRADING shall, soon after the Buyer has returned the packaging at its expense, send the Buyer a credit note for the invoiced amount, unless the returned packaging is in a worse condition than it was in at the time the Buyer received it, in which case the credited amount will be reduced proportionately.



- 9.4. The Buyer may not deduct the amount invoiced for the returned packaging – up to the credited amount – from the total amount that the Buyer owes JOYFUL TRADING unless and until the Buyer has received the credit note.
- 9.5. Damage to goods caused by destruction of or damage to the packaging shall at all times be at the Buyer's risk.

#### **10. Article 10. Risk; transfer of property**

- 10.1. The Buyer shall bear the risk of any direct or indirect damage that may be caused to the goods from the time they are deemed to have been delivered.
- 10.2. JOYFUL TRADING shall retain ownership of all the goods delivered until the Buyer has made full payment of everything it owes JOYFUL TRADING for goods delivered or to be delivered to it by JOYFUL TRADING under an agreement, or for failure to fulfil such an agreement.
- 10.3. The Buyer shall store goods which are delivered under retention of title with due care and ensure that they are identifiable as JOYFUL TRADING's property. The Buyer shall also insure the goods against damage or loss from whatever cause during the period in which JOYFUL TRADING retains title to the goods; the insurance policy must designate JOYFUL TRADING as a (co-)insured having an independent right of action against the insurer(s), and the Buyer must make the policy or policies available for inspection to JOYFUL TRADING upon request. At JOYFUL TRADING's request, all claims of the Buyer against the insurers pursuant to these insurances shall be assigned to JOYFUL TRADING or a right of pledge be granted to JOYFUL TRADING.
- 10.4. If the Buyer fails to meet its obligations, JOYFUL TRADING shall be entitled forthwith without prior notice of default being required, to repossess goods which have been delivered under retention of title and which are still at the Buyer's premises. In so far as necessary, the Buyer irrevocably authorizes JOYFUL TRADING to exercise this right of repossession.
- 10.5. In the event, and to the extent to which JOYFUL TRADING has exercised the right of repossession referred to in the preceding sub-clause, the agreement shall be dissolved in whole or for a proportionate part without judicial intervention being required, and without prejudice to JOYFUL TRADING's right to compensation of damage and costs. The Buyer shall in this case be credited with the market value (which on no account can be higher than the original purchase price), reduced by the damage and costs incurred by JOYFUL TRADING.
- 10.6. A Buyer acting in a professional or business capacity shall, in the course of its business operations, be entitled to sell and deliver the goods delivered to it to third parties under retention of title. For sales such as these, the amount payable by the Buyer to JOYFUL TRADING for the goods resold by the Buyer shall, if it is not already due and payable, become due and payable in full immediately.
- 10.7. The Buyer shall always inform third parties of JOYFUL TRADING's retention of title. The Buyer is also obliged, at JOYFUL TRADING's request, to inform JOYFUL TRADING of the location of the goods and, if applicable, to whom they were sold.

#### **11. Article 11. Payment and set-off**

- 11.1. Unless expressly agreed upon otherwise in writing, payment of the agreed price shall be made at the time the agreement is entered into.
- 11.2. All payments shall be made without any deduction or set-off in the currency stated on the invoice. If the Buyer believes it has a rightful claim on JOYFUL TRADING with regard to the performance of the agreement, this will not release the Buyer from its obligation to pay in the agreed manner.



- 11.3. If JOYFUL TRADING has good reason to believe that the Buyer will not fulfil its obligations, JOYFUL TRADING shall have the right to require the Buyer to provide an amount as security for its payment obligations which JOYFUL TRADING deems sufficient, before JOYFUL TRADING commences or continues performance of the agreement. JOYFUL TRADING has the right to suspend performance of its obligations until the Buyer has given such security.
- 11.4. If the Buyer has not paid at the time or within the period specified in 11.1, it shall be in default by operation of law without prior notice of default being required, and shall owe statutory interest on the amount due and payable from the latest date on which payment should have been made, without prejudice to any other rights of JOYFUL TRADING (including, specifically, the right to compensation of foreign exchange losses).
- 11.5. JOYFUL TRADING has the right to offset any amounts which the Buyer or any company affiliated with the Buyer owes JOYFUL TRADING (or any party affiliated with JOYFUL TRADING), by any amounts which JOYFUL TRADING owes the Buyer or any company affiliated with it, regardless of whether these payments are due or not.
- 11.6. The Buyer shall compensate JOYFUL TRADING for any judicial or extrajudicial costs, including extrajudicial collection costs and costs of legal assistance which JOYFUL TRADING incurs as a result of the Buyer's non-fulfilment or late or inadequate fulfilment of its obligations. JOYFUL TRADING and the Buyer shall agree in advance that the costs of extrajudicial collection will be 15 per cent of the principal sum due, without prejudice to the right of JOYFUL TRADING to compensation of the actual costs should these be higher.

## **12. Article 12. Return shipments**

- 12.1. It is not permitted to return goods supplied by JOYFUL TRADING without JOYFUL TRADING's prior written consent. Any return shipments shall always be at the expense and risk of the shipper.

## **13. Article 13. Returns and warranty**

- 13.1. JOYFUL TRADING will only accept claims for return that relate to the quantity, weight or specifications of the goods, or if the goods do not conform to the sample(s) made available by JOYFUL TRADING.
- 13.2. The Buyer must inspect the goods immediately upon delivery.
- 13.3. Claims for return concerning relevant defects that are apparent during the inspection of the goods, and claims for return in connection with the quantity, weight or specifications must be made in writing within twenty-four (24) hours of the delivery and include a full description of the alleged defects, in default of which any right to make a claim in these respects will lapse.
- 13.4. Claims for return relating to other relevant defects must be made in writing within 24 hours of their discovery and include a full description of the alleged defects. No claims in this respect can be made when three (3) months have passed after delivery.
- 13.5. Any claim made by the Buyer with regard to delivered goods shall also be extinguished if:
  - a. the agreement concerns the delivery of used or damaged goods;
  - b. the goods have been processed or for some other reason are (no longer) identifiable as originating from JOYFUL TRADING;
  - c. the defects were (partly) caused by normal wear and tear or by improper or incorrect handling, use, storage or maintenance of the goods;
  - d. the Buyer has not immediately given JOYFUL TRADING the opportunity to investigate the claim for return and to fulfil its obligations;



- e. the Buyer has failed to comply with an obligation resting upon it or has failed to comply with it properly or in time.
- 13.6. In respect of parts or goods obtained from third parties that have not been processed by JOYFUL TRADING, the Buyer can only enforce rights against JOYFUL TRADING to the extent to which JOYFUL TRADING can, in turn, enforce rights against its supplier. In any such case, JOYFUL TRADING will be discharged with respect to the Buyer by assigning to the Buyer the rights it has against its supplier.
- 13.7. The Buyer may not enforce any rights relating to defects against JOYFUL TRADING if it can also enforce rights relating to these defects directly against the manufacturer.
- 13.8. Without prejudice to the provisions of the preceding sub-clauses, in the event of a timely and justified claim for return, JOYFUL TRADING shall only be obliged, at its option, to repair the goods, to replace them or to credit the Buyer for the defective goods. These Terms and Conditions shall apply in full to replacements.
- 13.9. The technical specifications of the relevant brand of goods, and the catalogues, lists, dimensions and other information relating to the goods provided and/or used by JOYFUL TRADING and JOYFUL TRADING's suppliers have been drawn up by JOYFUL TRADING and its suppliers in good faith, but nonetheless are only approximations or estimates.
- 13.10. JOYFUL TRADING gives the Buyer the same warranties in respect of the goods as are given by JOYFUL TRADING's suppliers.
- 13.11. If the Buyer fails to meet or is late in meeting any of its obligations under the agreement, the Buyer shall no longer be entitled to any warranty on the goods concerned.

#### **14. Article 14. Marketing materials**

- 14.1. At the Buyer's request, JOYFUL TRADING may provide the Buyer with marketing materials of JOYFUL TRADING. If JOYFUL TRADING distributes such marketing materials to the Buyer, the Buyer shall in all events act in accordance with this clause 15. In particular: (i) The Buyer shall adhere to all the instructions given by JOYFUL TRADING with regard to the marketing materials; (ii) At JOYFUL TRADING's written request, the Buyer shall immediately cease the use of the marketing materials; (iii) The Buyer shall use the marketing materials solely for its own use and not allow any third party to use the materials; (iv) The Buyer is not entitled to make copies of the marketing materials unless with the prior consent of JOYFUL TRADING.

#### **15. Article 15. Liability**

- 15.1. JOYFUL TRADING's liability under the agreement shall be limited to the fulfilment of the obligations described in the agreement, in particular, the obligations described in the preceding clause.
- 15.2. JOYFUL TRADING shall never be liable for trading loss, consequential loss or any other indirect loss.
- 15.3. Except in case of gross negligence or intent on its part, JOYFUL TRADING shall never be liable for direct or indirect loss including trading loss which results from the infringement of any intellectual or industrial property right, license or any other right of third parties.
- 15.4. If JOYFUL TRADING is held liable by a third party for a loss for which JOYFUL TRADING is not liable under these Terms and Conditions or otherwise, then the Buyer shall be obliged to indemnify JOYFUL TRADING against such loss and liability and to compensate it for all damages, interest and costs incurred by the Company on this account.
- 15.5. The limitations and exclusions of liability and the indemnity stipulated by JOYFUL TRADING for itself in the sub-clauses above are also stipulated for and on behalf of its employees, any other parties used by



it in the context of the agreement, and for any parties from whom JOYFUL TRADING obtains goods or parts supplied under the agreement.

**16. Article 16. Force majeure**

- 16.1. In these Terms and Conditions, force majeure means any circumstance beyond JOYFUL TRADING's control, even it was foreseeable when the agreement was entered into, which permanently or temporarily prevents fulfilment of the contract, including war, threat of war, civil war, riot, strike, lockout, transport restrictions, fire, weather conditions that prevent working and any other interruption of the operations of JOYFUL TRADING or its suppliers, and default of JOYFUL TRADING's suppliers.
- 16.2. If performance of the agreement is impeded due to force majeure, JOYFUL TRADING shall have the right without judicial intervention either to suspend the execution of the agreement for a maximum of three (3) months or to wholly or partially dissolve the agreement, without JOYFUL TRADING being obliged to pay any compensation.

**17. Clause 17. (Anticipatory) breach**

- 17.1. In the cases provided for by law, or in the event of the Buyer's non-performance, defective performance or delay in performance of one or more of its obligations under the agreement, including the provisions of these Terms and Conditions, or if there is serious doubt as to whether the Buyer will be able to comply with its contractual obligations to JOYFUL TRADING, or in the event of the Buyer's insolvency, suspension of payments, complete or partial stoppage of work, liquidation or the transfer or encumbrance of its business, including the transfer or pledging of an important part of its accounts receivable, or if any items of property belonging to the Buyer are seized by way of provisional seizure or in execution of judgment, JOYFUL TRADING shall have the right, without notice of default or judicial intervention, either to suspend the execution of the agreement for a maximum of three (3) months or to partially or wholly dissolve the agreement, such without JOYFUL TRADING being liable to any compensation or guarantee, and without prejudice to any of its other rights.

**18. Article 18. Suspension and dissolution; consequences**

- 18.1. In the event that JOYFUL TRADING suspends fulfilment of its obligations, it shall have the right or, at the end of the suspension period, shall be obliged to decide whether to perform the agreement or to wholly or partially dissolve it.
- 18.2. In case of suspension or dissolution pursuant to the provisions of the preceding sub-clause, the agreed price shall be due and payable forthwith under deduction of the costs saved by JOYFUL TRADING because of the suspension. In case of dissolution, the Buyer shall furthermore be obliged, after payment of the amount that is due pursuant to the preceding sentence, to take possession of the goods to which the payment relates, failing which JOYFUL TRADING shall have the right to cause the goods to be stored at the risk and expense of the Buyer, or to sell them at the expense of the Buyer.
- 18.3. In the event that the Buyer returns the goods it has received from JOYFUL TRADING after the agreement has been dissolved, the return shall at all times be at the risk and expense of the Buyer until JOYFUL TRADING has taken possession of the goods.

**19. Article 19. General**

- 19.1. If any of the provisions of the agreement, including the provisions of these Terms and Conditions, is null or proves to be legally invalid or unenforceable, this will not affect the validity of the other



provisions of the agreement. Parties shall consult with each other about provisions that are null, invalid or unenforceable in order to make an alternative arrangement.

- 19.2. If a competent authority determines that any provision of the agreement, including these Terms and Conditions, violates any mandatory provision of law, the latter provision shall be deemed to have replaced it.

**20. Clause 20. Disputes; applicable law**

- 20.1. The agreement and any agreements arising out of, resulting from or relating to the agreement shall be governed by the laws of The Netherlands. The applicability of the provisions of the Vienna Sales Convention is excluded, as is the applicability of any other future international regulations on the purchase of movable and corporeal goods whose applicability may be excluded by parties.
- 20.2. Any disputes in connection with the agreement or any agreements arising out of, resulting from or relating to it shall, in the first instance, be submitted to the exclusive jurisdiction of the district court in Amsterdam (The Netherlands) unless JOYFUL TRADING expressly chooses the court in whose jurisdiction the Buyer has its residence or place of business to decide the matter.
- 20.3. If, however, the Buyer is resident in or has its place of business in a country outside the EU with which the Netherlands have no convention for the enforcement of Dutch judgments, then, notwithstanding 21.2, all disputes relating to the agreement or any further agreements arising from it will be exclusively settled by arbitration in accordance with the Arbitration Rules of the Netherlands Arbitration Institute (NAI). In such cases, arbitration will take place in Amsterdam and the proceedings will be conducted in the Dutch language. The arbitral tribunal will be composed of one or three arbitrators at the discretion of JOYFUL TRADING.

Amsterdam, October 2018.