

# Home website Terms & Conditions UTERQÜE

## 1. INTRODUCTION

These are the terms and conditions governing use of this website and the agreement that operates between us and you (the "Terms"). These Terms set out the rights and obligations of all users ("you" / "your") and those of UTERQÜE ("us" / "our" / "we" / "the Vendor") in relation to the goods/services offered by us through this website or any of the other websites to which we may link (hereinafter collectively known as the "Uterqüe Services"). Before you click on the "Authorize payment" button to place the order, please carefully read these Terms and our Privacy Statement. By using this website or placing an order through it you are consenting to be bound by these Terms and our Privacy Statement. If you do not agree to all of the Terms and the Privacy Statement, do not place an order.

These Terms may be amended; therefore you should read them prior to placing any order.

If You have any questions about the Terms or the Privacy Policy, You may access our web site or contact us through our contact web form. FASHION RETAIL, S.A., Spanish company with registered address at Avda. de la Diputación, Edificio Inditex, 15143 Arteixo (A Coruña), registered with the Companies Registry of A Coruña, under Volume 3,425, General Section, Sheet 49, Page C-47.731, 1st entry, holder of VAT number CHE-231.652.978 MWST.

## 2. USE OF OUR WEBSITE

These Terms are the only conditions that are applicable to the use of this website and they replace all other conditions, except with the express, prior written agreement of the Vendor. These Terms are important for both you and us as they have been designed to create a legally binding agreement between us both, protecting your rights as a valued customer and our rights as a business. You agree that, by placing your order, you unreservedly accept these Terms, having read and understood them.

You agree that:

- i. You may only use the website to make legitimate enquiries or orders.
- ii. You will not make any speculative, false or fraudulent orders. If we are reasonably of the opinion that such an order has been made we shall be entitled to cancel the order and inform the relevant authorities.
- iii. You also undertake to provide your correct and accurate e-mail, address, your postal address and/or other contact details to us and acknowledge that we may use these details to contact you in the event that this should prove necessary (see our Privacy Statement).
- iv. If you do not give us all of the information that we need, we may not be able to complete your order.

By placing an order through the website, you warrant that you are at least 18 years old and are legally capable of entering into binding contracts.

### **3. SERVICE AVAILABILITY**

Items offered over this website are only available for delivery to the following Countries: Germany (except for the island of Helgoland and the town of Büsingen), Spain, France (except for the Overseas Departments), Portugal, United Kingdom (only in Mainland) and Switzerland.

### **4. HOW THE CONTRACT IS FORMED**

The information set out in the Terms and the detail contained on this website do not constitute an offer for sale but rather an invitation to treat. No contract in respect of any products shall exist between us and you until your order has been expressly accepted by us. If we do not accept your offer and funds have already been deducted, these will be fully refunded.

To place an order, you will be required to follow the shopping process online and press the "Authorize payment" button to submit the order. After this you will receive an e-mail from us acknowledging that we have received your order (the "Acknowledgement of Receipt"). Please note that this does not mean that your order has been accepted. Your order constitutes your offer to us to buy one or more products from us. All orders are subject to acceptance by us, and we will confirm such acceptance to you by sending you an e-mail that confirms that the product has been dispatched (the "Order Confirmation"). The contract for the purchase of a product between us ("Contract") will only be formed when we send you the Order Confirmation.

The Contract will relate only to those products whose dispatch we have confirmed in the Order Confirmation. We will not be obliged to supply any other products which may have been part of your order until the dispatch of such products has been confirmed in a separate Order Confirmation.

### **5. AVAILABILITY OF PRODUCTS**

All orders for products are subject to availability and in this regard, in the event of supply difficulties or because products are no longer in stock, we reserve the right to give you information about substitute products of an equal or higher quality and value which you can order. If you do not wish to order such substitute products we will reimburse any monies that you might have paid.

### **6. REFUSAL**

We reserve the right to withdraw any products from this website at any time and/or remove or edit any materials or content on this website. Whilst we will use our reasonable endeavours to process all the orders submitted to us, there may be exceptional circumstances which mean that we may need to refuse to process an order after we have received it or sent you an Acknowledgement of Receipt, which we reserve the right to do at any time, at our sole discretion.

We will not be liable to you or any other third party by reason of our withdrawing any product from this website, whether or not it has been sold, removing or editing any materials or content on this website or for refusing to process an order after we have received it or sent you an Acknowledgement of Receipt.

## **7. YOUR RIGHTS TO CANCEL "Cooling Off"**

If you are contracting as a consumer, you may cancel a Contract at any time within 30 days of the date of confirmation of dispatch of your order or, if later, within 8 working days of the date on which you receive the products ordered. In this case, you will receive a full refund of the price paid for the products in accordance with our Returns Policy (see Clause 13 below).

Your right to cancel a Contract shall apply exclusively to those products which are returned in the same conditions as you received them. You should also include all of the products' instructions, documents and wrappings when returning the products to us. No refunds will be made if the product has been used or damaged, so you should take reasonable care of the products whilst they are in your possession.

You will not have any right to cancel a Contract for the supply of any of the following products:

- i. Customised items
- ii. Music CDs/DVDs; whose original wrapping has been removed

Please take reasonable care of the products whilst they are in your possession and keep where possible all original packaging and wrapping should you need to return them.

You will find further information about this statutory right as well as the instructions on how to exercise it in clause 13 below, and you will be provided with a summary upon receiving the Order Confirmation.

This does not affect your statutory rights.

## **8. DELIVERY**

Subject to the provisions of Clause 5 above, we will endeavour to fulfil your order for product(s) listed in the Order Confirmation by the delivery date set out in the Order Confirmation or, if no estimated delivery date is specified, then within 15 days of the date of the Order Confirmation unless there are exceptional circumstances.

Reasons for delay could include:

- i. Customisation of products;
- ii. Specialist item;
- iii. Unforeseen circumstances; or
- iv. Delivery area.

If for any reason we cannot meet the delivery date you will be kept informed and offered a choice of either continuing with the extended delivery time or cancellation with a full refund. Please note however that we do not deliver on Saturdays or Sundays.

For the purpose of these Terms "delivery" or "delivered" shall be deemed to have occurred upon signing for receipt of the products at the agreed delivery address.

## **9. UNABLE TO DELIVER**

If we are unable to deliver after two attempts, we will try to find a safe secure place to leave your parcel. We will leave a note explaining where your parcel is and how you can pick it up. If you are not at the delivery location at the time agreed, please contact us again to rearrange delivery for another day.

## **10. RISK AND TITLE**

The products will be at your risk from the time of delivery.

Ownership of the products will only pass to you when we receive full payment of all sums due in respect of the products, including delivery charges, or upon delivery (as defined in clause 8), whichever is the later.

## **11. PRICE AND PAYMENT**

The price of any products will be as stipulated on our site from time to time, except in cases of obvious error. While we try to ensure that all prices on the website are accurate, errors may occur. If we discover an error in the price of products you have ordered, we will inform you as soon as possible and give you the option of reconfirming the order at the correct price or cancelling it. If we are unable to contact you, the order will be treated as cancelled and if you have already paid for the products you will receive a full refund.

We are under no obligation to provide the product(s) to you at the incorrect (lower) price (even after we have sent you an Order Confirmation) if the pricing error is obvious and unmistakable and could have reasonably been recognised by you as incorrect price.

The prices on the website include VAT but exclude delivery costs, which will be added to the total amount due as set out in our Delivery Costs Guide.

Prices are liable to change at any time, but (other than as set out above) changes will not affect orders in respect of which we have already sent you an Order Confirmation.

Once you have finished shopping all the items you wish to purchase are added to your basket, your next step will be to go the checkout process and make payment. To do this:

- i. Click the "Shopping bag" button at the top of the page.
- ii. Click on the "See shopping bag"

- iii. Click on the “Process order” button
- iv. Fill-in or check your contact details, the details of your order, the address to which you wish the order to be delivered and the invoicing address.
- v. Fill in your credit card details.
- vi. Click "Authorize Payment"

Payment can be made by Visa, Mastercard, American Express and Paypal. To minimise the possibility of unauthorised access, your credit card details will be encrypted. Upon receipt of your order, we will make a pre-authorization on your credit card to ensure there are enough funds to complete the transaction. The amount of the purchase will not be charged to your card until your order is dispatched from our warehouses.

If payment is made via PayPal the amount will be charged upon confirmation of your order.

By clicking the “Authorize Payment” button, you are representing that you are the owner of the credit card.

We use AKAMAI to ensure payment is made safely.

Credit cards are subject to validation checks and authorisation by your card issuer but if your card issuer fails to authorise payment to us, we will not be liable for any delay or non-delivery and may not be able to form a Contract with you.

## **12. VALUE ADDED TAX**

Pursuant to the prevailing rules and regulations in force, all purchases done through the web site are subject to the Value Added Tax (VAT), except for those to be supplied directly to customers in the Canary Islands, Ceuta and Melilla.

In this regard and pursuant to Chapter I of Title V of Council Directive 2006/112/EC of 28 November 2006, on the common system of value added tax, the place of supply shall be deemed to be within the Member State of the address where items shall be delivered, and applicable VAT shall be at the prevailing rate in each Member State where items are to be supplied as per the orders placed.

Pursuant to the applicable rules and regulations in each jurisdiction, the rule of the "reverse charge" (article 194 of Directive 2006/112) may apply to goods supplied in certain Member States of the European Union if the customer is or is required to be a taxable person for VAT purposes. If this is the case, no VAT would be charged by us, subject to the confirmation by the recipient that the VAT on the items supplied would be accounted for by the customer under the reverse charge procedure.

As regards orders to be supplied in the Canary Islands and Ceuta and Melilla, they would be VAT exempt as provided under article 146 of the above referred Directive, subject to the application of the relevant taxes and custom duties pursuant to the prevailing rules and regulations.

## **13. RETURNS POLICY**

### **Cooling off returns**

General policy: If you wish to cancel the Contract within the period specified in clause 7 above, you can make a return to us at any of the UTERQÜE stores in your country (should there be one), by delivering the product to a courier we will send to your home address or through the post. You should send the product in the same package received by following the directions on the “RETURNS” section of our website. You should contact us through our request for return so that we may arrange for the product to be collected at your home address. None of the options above will entail any additional cost to you. You will be responsible for the cost of returning the product to us where you are not able to do so via one of the two free options offered. Please note that if you decide to return the goods to us at our expense, we will be entitled to charge you for the direct cost we might incur as a result.

If you have any doubts you can contact us through our web form or at the telephone number 0 800 835 584.

Change or return of the product in person in a UTERQÜE physical store: If there is an UTERQÜE store located in the country where your product was delivered, you may return it to the store. You shall go in person to the store and present with the good the return document (hereinafter the purchase receipt) that you will have received on delivery of the product, fully completed.

Canary Islands, Ceuta and Melilla: if you wish to exchange or return a product to us, which has been delivered in the Canary Islands, Ceuta or Melilla, you may do so by going in person to any UTERQÜE store. If it is not possible to return the product in this way, you must contact us by telephone on 0 800 838 020 and arrange with us the collection of the product by us. In both cases, you should present with the good the return document (hereinafter the purchase receipt) that you will have received on delivery of the product, fully completed.

Please use or include with the product being returned, all original boxes, instructions/documents, seals and wrappings.

Further to the examination of the good, we will let you know if you are entitled to the full refund of the amounts paid. We will process your refund as soon as possible (and in any case, within 30 days of the day that you have given us notice of cancellation) We will refund any money received from you using the same method used to make payment.

Those products which are not in the same conditions as you received them or those products used beyond the mere opening, may not be exchanged or returned.

Exchange is limited to exchange for the same product, of a different size or colour.

### **Defective product returns**

In circumstances where you consider that the product does not conform with the Contract at the time of delivery, you should promptly contact us via our web form with details of the product and its damage, or you can contact us by telephone on 0 800 835 584, where we will instruct you on how to proceed.

You may return the good at any of our UTERQÛE stores in your country or deliver it at your home address to a courier that we will send you.

We will fully examine the returned product and will notify you of your right to a replacement or refund (if any) via e-mail within a reasonable period of time. We will usually process the refund or replacement as soon as possible and, in any case, within 30 days of the day we confirmed to you via e-mail that you are entitled to a refund or replacement of the defective product.

The amounts paid for products returned by you because of a defect, where one exists, will be refunded in full, including a refund of the delivery charges for sending the item to you. We will refund any money using the same method used to make payment.

This does not affect your statutory rights.

## **14. LIABILITY AND DISCLAIMERS**

Our liability in connection with any product purchased through our site is strictly limited to the purchase price of that product.

Nothing in these Terms shall exclude or limit in any way our liability:

- i. For death or personal injury caused by our negligence;
- ii. For fraud or fraudulent misrepresentation; or
- iii. For any matter for which it would be illegal or unlawful for us to exclude or limit, or attempt to exclude or limit, our liability.

Subject to the foregoing paragraph and to the fullest extent permitted by law, and unless otherwise stated in these Terms, we accept no liability for indirect losses which happen as a side effect of the main loss or damage however arising and whether caused by tort (including negligence), breach of contract or otherwise, even if foreseeable, including (without limit) for any:

- i. loss of income or revenue;
- ii. loss of business;
- iii. loss of profits or contracts;
- iv. loss of anticipated savings;
- v. loss of data; and
- vi. waste of management or office time.

Due to the open nature of this website and the potential for errors in the storage and transmission of digital information, we do not warrant the accuracy and security of information transmitted to or obtained from this website unless otherwise expressly set out on this website.

All product descriptions, information and materials posted on this website are provided "as is" and without warranties express, implied or otherwise howsoever arising.

To the fullest extent permissible pursuant to law, but without excluding anything that may not lawfully be excluded in the case of consumers, we disclaim all other warranties of any kind.

Nothing in this Clause will affect your statutory rights as a consumer, or your Contract cancellation rights.

## **15. INTELLECTUAL PROPERTY**

You acknowledge and agree that all copyright, trade marks and all other intellectual property rights in all material or content supplied as part of the website shall remain at all times vested in us or our licensors. You are permitted to use this material only as expressly authorised by us or our licensors. This does not prevent you using this website to the extent necessary to make a copy of any order or Contract details.

## **16. WRITTEN COMMUNICATIONS**

Applicable laws require that some of the information or communications we send to you should be in writing. When using our site, you accept that communication with us will be mainly electronic. We will contact you by e-mail or provide you with information by posting notices on our website. For contractual purposes, you agree to this electronic means of communication and you acknowledge that all contracts, notices, information and other communications that we provide to you electronically comply with any legal requirement that such communications be in writing. This condition does not affect your statutory rights.

## **17. NOTICES**

All notices given by you to us should be given to us via our web form. Subject to and as otherwise specified in clause 16 we may give notice to you at either the e-mail or postal address you provide to us when placing an order.

Notice will be deemed received and properly served immediately when posted on our website, 24 hours after an e-mail is sent, or three days after the date of posting of any letter. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an e-mail, that such e-mail was sent to the specified e-mail address of the addressee.

## **18. TRANSFER OF RIGHTS AND OBLIGATIONS**



The Contract between you and us is binding on you and us and on our respective successors and assigns.

You may not transfer, assign, charge or otherwise dispose of a Contract, or any of your rights or obligations arising under it, without our prior written consent.

We may transfer, assign, charge, sub-contract or otherwise dispose of a Contract, or any of our rights or obligations arising under it, at any time during the term of the Contract. For the avoidance of doubt, any such transfer, assignment, charge or other disposition will not affect your statutory rights as a consumer or cancel, reduce or otherwise limit any warranty or guarantee which may have been provided by us to you, whether express or implied.

## **19. EVENTS BEYOND OUR CONTROL**

We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under a Contract that is caused by events outside our reasonable control (Force Majeure Event).

A Force Majeure Event includes any act, event, non-happening, omission or accident beyond our reasonable control and includes in particular (without limitation) the following:

- i. Strikes, lock-outs or other industrial action.
- ii. Civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war.
- iii. Fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster.
- iv. Impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport.
- v. Impossibility of the use of public or private telecommunications networks.
- vi. The acts, decrees, legislation, regulations or restrictions of any government.
- vii. Any shipping, postal or other relevant transport strike, failure or accidents.

Our performance under any Contract is deemed to be suspended for the period that the Force Majeure Event continues, and we will have an extension of time for performance for the duration of that period. We will use our reasonable endeavours to bring the Force Majeure Event to a close or to find a solution by which our obligations under the Contract may be performed despite the Force Majeure Event.

## **20. WAIVER**

If we fail, at any time during the term of a Contract, to demand strict performance of any of your obligations under the Contract or any of these terms and conditions, or if we fail to exercise any of the rights or remedies to which we are entitled under the Contract, this shall not constitute a waiver of such rights or remedies and shall not relieve you from compliance with such obligations.

A waiver by us of any default shall not constitute a waiver of any subsequent default.

No waiver by us of any of these terms and conditions shall be effective unless it is expressly stated to be a waiver and is communicated to you in writing in accordance with the paragraph on Notices above.

## **21. SEVERABILITY**

If any of these Terms or any provisions of a Contract are determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision will to that extent be severed from the remaining terms, conditions and provisions which will continue to be valid to the fullest extent permitted by law.

## **22. ENTIRE AGREEMENT**

These Terms and any document expressly referred to in them represent the entire agreement between you and us in relation to the subject matter of any Contract and supersede any prior agreement, understanding or arrangement between you and us, whether oral or in writing.

Both you and us acknowledge that, in entering into a Contract, neither you nor us has relied on any representation, undertaking or promise given by the other or be implied from anything said or written in negotiations between you and us prior to such Contract except as expressly stated in these Terms.

Neither you nor us shall have any remedy in respect of any untrue statement made by the other, whether orally or in writing, prior to the date of any Contract (unless such untrue statement was made fraudulently) and the other party's only remedy shall be for breach of contract as provided in these Terms.

## **23. OUR RIGHT TO VARY THESE TERMS**

We have the right to revise and amend these Terms from time to time.

You will be subject to the policies, Terms in force at the time that You order products from us, unless any change to those policies, Terms or Privacy Statement is required to be made by law or governmental authority (in which case it will apply to orders previously placed by you).

## **24. LAW AND JURISDICTION**

Contracts for the purchase of products through our site will be governed by Irish law.

Any dispute arising from, or related to, such Contracts shall be subject to the non-exclusive jurisdiction of the Irish courts.

If you are contracting as a consumer, nothing in this clause will affect your statutory rights as such.

## **25. FEEDBACK**

We welcome your comments and feedback. Please send all feedback and comments to us via our web form.