

Terms and Conditions - version 26 March 2020 - ReShape Global

The partnership ReShape Global is registered at the Dutch Chamber of Commerce (KVK) as a "Vennootschap onder Firma" (VOF) with number 77243684 and is located on: Torenroth 6, 6039 HA Stramproy, the Netherlands.

Article 1 Terms

In these Terms and Conditions several terms are used in the following sense, unless explicitly stated otherwise:

1. Offer: Any written offer to the Buyer for the delivery of Products by the Seller where these conditions are inextricably linked to.
2. Buyer: The Natural or legal person who is acting on behalf of a company who enters into an Agreement with the Seller.
3. Agreement: a purchase agreement that extends to the sale and delivery of Products purchased by the Buyer from the Seller. This can be remote or not remote.
4. Products: The products that are offered by the Seller to the Buyer
5. Seller: The provider of products to the Buyer, hereinafter: ReShape Global
6. Written: Wherever 'written' or 'in writing' is used in these terms and conditions, correspondence by e-mail is also understood.

Article 2 Applicability

1. These Terms and Conditions apply to every offer made by ReShape Global and every agreement between ReShape Global and a Buyer and to every Product that is offered by ReShape Global.
2. Before an Agreement is made, Buyer gets access to these Terms and Conditions. If this is not possible, ReShape Global will inform Buyer how to gain access to these Terms and Conditions, which in any case can be found on the website www.ReShapeGlobal.com.
3. In extraordinary events it is possible to deviate from these Terms and Conditions, however only and explicitly with written approval from ReShape Global.
4. These Terms and Conditions also apply to additional, changed and continuation agreements with Buyer. Possible Terms and Conditions from Buyer are explicitly rejected.
5. If one or more provisions of these Terms and Conditions are partially or entirely, invalid or annulled, the other provisions of these Terms and Conditions will remain valid and the invalid/annulled provision(s) will be replaced by provisions with the same scope as the original provisions.
6. Uncertainties about the content, explanation or situations that are not regulated in this Terms and Conditions are to be assessed and explained in the spirit of these Terms and Conditions.
7. If in this Terms and Conditions is referred to "she/her", this should also be understood as a reference to "he/him/his", if and insofar applicable.

Article 3 The Offer

1. All offers from ReShape Global are made without obligation, unless explicitly stated otherwise in writing. It will be explicitly stated in the Offer, if the Offer is limited or valid under specific conditions. An Offer only exists if it is recorded in writing.
2. The by ReShape Global made offers are without obligation. ReShape Global is only bound to the offer if acceptance thereof is confirmed by Buyer in writing within 30 days. Nevertheless, ReShape Global has the right to decline an Agreement with Buyer for a reason which seems just in the eyes of ReShape Global.
3. The Offer contains an accurate and detailed description of the offered Products with corresponding prices. The description enables Buyer to make a good assessment of the Offer. Manifest errors or mistakes in the Offer cannot bind ReShape Global. Any images and specific data, like measurements, mentioned in the Offer are just an indication and cannot be grounds for any compensation or the termination of the Agreement. ReShape Global cannot guarantee that the colours in images match the real colours of the Product.
4. Delivery times and periods mentioned in an Offer from ReShape Global are only indicative and do not give Buyer the right for termination or compensation when exceeded, unless explicitly is agreed upon in writing.
5. An Offer does not oblige ReShape Global to deliver a part of the products in the Offer for a part of the quoted price.
6. If and insofar as there is an offer, this does not automatically apply to repeat orders. Offers are only valid until stock last.

Article 4 Concluding of the Agreement

1. An Agreement is concluded at the time when Buyer accepts an Offer or Agreement from ReShape Global, by means of returning a signed copy (digital or original) to ReShape Global, or by agreeing explicitly and unambiguously on the Offer, verbally or by e-mail.
2. An Offer can be made by ReShape Global through their website.
3. If Buyer has accepted the Offer and concluded the Agreement with ReShape Global, then ReShape Global shall confirm the Agreement to Buyer in an email.
4. ReShape Global is not bound to the agreement, whenever the acceptance deviates from the Offer.
5. ReShape Global is not bound to an Offer if Buyer could reasonably have expected or could have understood or should have understood, that the Offer contains an obvious mistake or error, including but not excluded to a typing error. Buyer cannot derive any rights from this mistake or error.
6. The right of withdrawal is excluded for Buyer.

Article 5 Execution of the Agreement

1. ReShape Global shall execute the Agreement to the best of its knowledge and ability.
2. If and when proper execution of the Agreement demands, ReShape Global has the right to have certain work carried out by third parties, at its own discretion.
3. Buyer ensures that all data, which ReShape Global indicates is necessary or which Buyer reasonably should understand is necessary for the execution of the Agreement, is provided to ReShape Global in a timely manner. If the for the execution of the Agreement necessary data is not provided on time, then ReShape Global has the right to suspend the Agreement.
4. During the execution of the Agreement, ReShape Global is not obliged to follow the instructions of Buyer if this changes the content or scope of the Agreement. If these instructions provide additional work for ReShape Global, then Buyer is obliged to pay for the additional or extra costs accordingly.
5. ReShape Global requires 50% of the total bill as deposit before ReShape Global proceeds to execute the Agreement. If this deposit is not paid within the indicated payment term of 14 days, then ReShape Global is entitled to suspend and/or terminate the Agreement without further ado. The consequences of the suspension and/or termination are for account and risk of Buyer.
6. ReShape Global is not liable for any damage, of any kind, which is the result of ReShape Global following incorrect and/or incomplete data received from Buyer. Unless the incorrectness or incompleteness was known to ReShape Global
7. Buyer indemnifies ReShape Global from any claims by third parties that suffer damages, related to the execution of the Agreement and which are accountable to Buyer.

Article 6 Delivery

1. If the execution, progress or delivery of the Agreement is delayed due to for example Buyer not or not in a timely manner sharing the needed data, insufficient cooperating, no deposit is paid to ReShape Global or any other circumstances beyond the control of ReShape Global, which causes a delay, ReShape Global is entitled to a reasonable extension of the delivery period. All agreed upon delivery periods are never determinative. Buyer must give ReShape Global written notice of default and give her a reasonable time to still be able to deliver. Buyer is not entitled to any form of compensation for damages occurred due to the delay.
2. Buyer is obliged to take the Products at the time on which they are delivered to her according to the Agreement. This also applies if the Products are delivered earlier or later than agreed upon.
3. If Buyer refuses to take the Products or neglects to share the right information which is needed for proper delivery, ReShape Global is entitled to store the Products for account and risk of Buyer.
4. ReShape Global is entitled to charge delivery costs to Buyer. These delivery costs will be mentioned separately on the invoice unless explicitly agreed upon differently.
5. When ReShape Global has not received data, needed for the execution of the Agreement, from Buyer, the delivery period only starts after ReShape Global has received this needed data from Buyer.
6. If ReShape Global has stated a delivery period, then this period is indicative. No claims can be made based on the delivery period. When it comes to delivery outside the Netherlands the delivery period will be longer.
7. ReShape Global is entitled to deliver the Agreement in parts, unless ReShape Global and Buyer explicitly derived from this during the concluding of the Agreement or if no independent value is attributable to the partial delivery. ReShape Global is entitled to charge for the partial delivery accordingly.
8. Deliveries are only carried out when all invoices are paid unless explicitly agreed upon otherwise. ReShape Global reserves the right to refuse delivery if there is a well-founded fear of non-payment.

Article 7 Packaging and transportation

1. ReShape Global does everything in its power to ensure that the Product is packed and secured in such a way, that when used normally, the product will reach its destination in good condition.
2. Unless agreed upon otherwise, in writing, all deliveries will be made exclusive of value-added tax (VAT) and inclusive of packaging and packaging materials.
3. Accepting the products without giving written comments on the delivery note is proof that the packaging was in good condition upon arrival.

Article 8 Examination and complaints

1. Buyer is obliged to examine the Products at the time that they are delivered or within 24 hours after receiving the delivery, but to unpack to such an extent only necessary to assess whether it retains the Products. Buyer needs to examine if the quality and quantity of the delivered Products corresponds with the Agreement and if the Products meet the requirements which apply to them in normal (trade) traffic.
2. Buyer is obliged to do research and inform herself about the way the Products should be used and for personal use, Buyer should test the Product in accordance with the instructions. ReShape Global accepts no liability for the misuse or abuse of the Product.
3. Possible visual defects or shortages are to be reported in writing to ReShape Global, s.zoetelief@ReShapeGlobal.com. Buyer has 7 days to file this report, after delivery date. Invisible defects or shortages are to be reported within 7 days of recovery, however within 6 months of delivery. Damages caused because of negligence or careless handling from Buyer, are for the liability of Buyer.
4. When Buyer files the complaint from article 8.3 on time, Buyer stays obliged to pay for the full Agreement.
5. If Buyer wishes to return defected products, then this will be paid for by Buyer and with prior written permission of ReShape Global in a way indicated by ReShape Global.
6. ReShape Global is entitled to start an official investigation towards the authenticity and the state in which the returned Products are, before any refunds will be made.
7. Refunds to Buyer will be processed as soon as possible, however the refunds can take up to 30 days after ReShape Global has received the returned Products. The refunds will be made on the previously specified account number.
8. When Buyer exercises its advertisement rights, it does not have the right to cancel or postpone its payment obligations nor suspend outstanding invoices.
9. When it occurs that a delivery is not complete, and this is due to ReShape Global, then after Buyer has made a request, ReShape Global shall deliver the missing Products or cancel the remaining order. The receipt of the delivery is leading in this matter. Any damages suffered by the Buyer caused by a deviating delivery, cannot be claimed from ReShape Global.

Article 9 Prices

1. Prices of the offered Products shall not be raised during the validity period of the Offer, unless there is a change in VAT rates.
2. All prices in the Offer are exclusive of VAT, unless specifically stated otherwise.
3. Prices stated in the Offer are based on the costs applicable during the concluding of the Agreement, like import-export costs, delivery costs, insurance, tax and other charges.

Article 10 Payment policy

1. Payment should preferably be made up front in the currency and method indicated in the Offer.
2. The buyer cannot derive any rights or expectations from a pre-issued budget, unless both parties have explicitly agreed differently.
3. Buyer must make the payments at once, to the already made known bank account from ReShape Global. Parties can only deviate from this if ReShape Global explicitly and in writing has agreed to other payment terms.
4. Claims from ReShape Global to Buyer are due and to be paid immediately in case of liquidation, bankruptcy, seizure or suspension of payment from Buyer.
5. ReShape Global is entitled to, with payments made by Buyer, firstly reduce the costs, secondly reduce the interest and lastly reduce the total amount of the Agreement. ReShape Global is entitled to, without being in default, refuse an offer of payment, if Buyer appoints a different order for the payment. ReShape Global can refuse the complete payment of the Agreement, if this does not also include the other costs and interest.
6. When Buyer does not meet its payment obligation and has not fulfilled its obligation of the aforementioned payment term of 14 days, Buyer is in default.
7. From the day that Buyer is in default, ReShape Global will, without further notice of default, claim a legal interest from the first day of default until full payments are made, including compensation of the extrajudicial costs in accordance with Section 6:96 of the Dutch Civil Code to be calculated in accordance with the scale from the decision on compensation for extrajudicial collection costs of 1 July 2012.

8. If ReShape Global has incurred more or higher costs that are reasonably necessary, then these costs will be eligible for compensation from Buyer. Additionally, the judicial and execution costs incurred are paid by the Buyer.

Article 11 Ownership provisions

1. ReShape Global keeps legal ownership of the delivered goods until Buyer has fulfilled all the obligations from all Agreements concluded with ReShape Global.
2. The buyer is not authorized to pledge the goods that are subject to the retention of title or to take them on to object in any other way if the ownership has not yet been fully transferred.
3. If a third party is about to seize the Products delivered to Buyer, while ReShape Global holds the ownership, and wants to establish or assert rights on it, Buyer is obliged to notify ReShape Global as soon as reasonably may be expected.
4. In the event that ReShape Global intends to exercise its proprietary rights identified in this section, Buyer gives unconditional and irrevocable permission and authorization to ReShape Global and by ReShape Global appointed third parties, to enter the premises where Products owned by ReShape Global are stored and to retrieve those Products.
5. ReShape Global has the right to keep the purchased Products in the possession of ReShape Global, if Buyer has not yet fully fulfilled its payment obligations, despite ReShape Global's obligation to deliver the Products. After Buyer has fully fulfilled its obligations, ReShape Global will try to deliver the purchased Products as soon as possible, but at the latest to be delivered to Buyer within 30 working days.
6. Costs and other damages as a result of keeping the purchased Products are to be paid and for risk of Buyer and shall be compensated on first request to ReShape Global by Buyer.

Article 12 Warranty

ReShape Global guarantees that the Products comply with the Agreement, the in the offer mentioned specifications, usability and/or reliability and the legal regulations at the time the Agreement was concluded. When a Product, according to the judgment of ReShape Global, does not suffice, then ReShape Global has the choice to refund the amount equal to the value of the Products that do not suffice or offer replacement products with equal value to Buyer.

Article 13 Suspension and termination

1. ReShape Global is entitled to suspend fulfilment of the obligations or terminate the Agreement, if Buyer does not or not fully fulfil its obligations of the Agreement.
2. Moreover, ReShape Global is entitled to, without judicial intervention, terminate the Agreement, for as far it has not been executed, between her and Buyer, if Buyer does not or not in a timely manner fully fulfil its obligations that arise from the Agreement.
3. Furthermore, ReShape Global is entitled to terminate the Agreement without prior notice, if circumstances arise of such a nature by standards of reasonableness and fairness that make it impossible to fulfil the Agreement. Additionally, this also applies if unchanged maintenance of the Agreement cannot reasonably be expected.
4. If the Agreement is terminated, the claims of ReShape Global to Buyer are due and to be paid immediately. When ReShape Global suspends fulfilment of the obligations, she retains her rights under the law and the Agreement.
5. ReShape Global always reserves the right to receive compensation for any damages incurred.

Article 14 Limitation of liability

1. If the execution of the Agreement by ReShape Global leads to liability of ReShape Global towards Buyer or third parties, then this liability is limited to the costs charged by ReShape Global in the Agreement, unless the damage occurred due to intent or gross negligence. In any case, the liability of ReShape Global is limited to the maximum compensation paid by the insurance company per occurrence per year.
2. ReShape Global is not liable for consequential damage, indirect damage, loss of profit, missed savings and damage as a result of the use of the delivered Products.
3. ReShape Global is not liable for and/or obliged to repair damage occurred during the use of the Product. ReShape Global gives storage and usage instructions which should be strictly adhered by Buyer. All damage to the Products as a result of wearing and using is explicitly excluded from liability (this includes but is not limited to signs of use, damage caused by use, impact damage, light and water damage, stolen and missing Products.)
4. ReShape Global is not liable for damage that is or may be the result of any action or omission in response to (incomplete and / or incorrect) information on the website or linked websites.
5. ReShape Global is not responsible for errors and/or irregularities in the functionality of the website and is not liable for malfunctions or the unavailability of the website for whatever reason possible.

6. ReShape Global does not guarantee the correct and complete transfer of the content of emails sent by/on behalf of ReShape Global, nor for its timely receipt.

7. All claims of the Buyer for failure on the part of ReShape Global will expire if these have not been reported in writing and motivated to ReShape Global within one year after the Buyer was or reasonably could be aware of the facts on which it bases its claims. All claims of the Buyer will in any case expire one year after the termination of the Agreement.

Article 15 Force majeure

1. ReShape Global is not liable when it cannot fulfil its obligations under the Agreement due to a force majeure situation nor can it be held to fulfil any obligations if it is hindered to do so as a result of a circumstance that is not due to its fault and in this case ReShape Global is not liable under law, legal act or the prevailing views in traffic.

2. Force majeure is in any case understood, but is not limited to what is understood in this respect in the law and case law, (i) force majeure of suppliers of ReShape Global, (ii) failure to properly meet obligations by suppliers recommended by Buyer to ReShape Global, (iii) inadequacy of third-party items, equipment, software or materials, (iv) government measures, (v) power failure, (vi) interference from internet, data network and telecommunication facilities (for example, because of cybercrime and hacking), (vii) natural disasters, (viii) war and terrorist attacks, (ix) general transportation problems, (x) strikes at ReShape Global or her suppliers and (xi) other situations that, in the opinion of ReShape Global, fall outside its sphere of influence that temporarily or permanently prevent the fulfilment of its obligations.

3. ReShape Global is entitled to invoke force majeure, if the circumstance, that prevents (further) fulfilment, occurs after ReShape Global should have fulfilled its obligation.

4. Parties can suspend the obligations under the Agreement during the period that the force majeure continues. If this period lasts longer than two months, each of the parties is entitled to terminate the Agreement, without the obligation to compensate damages to the other party.

5. If ReShape Global has partially fulfilled or will be able to fulfil its obligations under the Agreement at the time of the occurrence of force majeure, and this has an independent value, then ReShape Global is entitled to invoice the already fulfilled or to be fulfilled part separately. The buyer is obliged to pay this invoice as if it were a separate Agreement.

Article 16 Risk transition

The risk of loss or damage to the Products that are the subject of the Agreement passes to Buyer as a company when the goods leave the ReShape Global warehouse.

Article 17 Intellectual property rights

1. All intellectual property rights and copyrights from ReShape Global are solely owned by ReShape Global and cannot be transferred to Buyer.

2. Buyer is prohibited from disclosing, multiplying, adjusting or to make available to third parties, any items that are subject to intellectual property rights and copyrights owned by ReShape Global without explicitly and prior received written approval of ReShape Global. If Buyer wishes to make adjustments to the by ReShape Global delivered Products, then ReShape Global has to give written approval before the intended adjustments can be made.

3. Buyer is prohibited to use Products, which are subject to intellectual property rights and copyrights owned by ReShape Global, differently than is agreed upon in the Agreement.

Article 18 Privacy, data processing and security

1. ReShape Global handles the data of Buyer and visitors of the website carefully. If requested, ReShape Global will inform the person involved.

2. If ReShape Global is required to secure information under the Agreement, this security will meet the agreed specifications and a security level that, in view of the state of the art, the sensitivity of the data, and the associated costs is not unreasonable.

Article 19 Complaints

1. When Buyer is not satisfied about the Products from ReShape Global and/or has complaints about the (execution of the) Agreement, Buyer is obliged to report a complaint as soon as possible however within 14 days after the relevant reason that led to the complaint was disclosed. Complaints can be reported via a.heijmans@ReShapeGlobal.com with the subject "complaint".

2. The complaint must be sufficiently substantiated and explained by the Buyer for ReShape Global to be able to process the complaint.

3. ReShape Global shall respond to the complaint as soon as possible, but no later than 14 days after receiving the complaint.

4. Parties will try to find a solution together.

Article 20 Applicable Law

1. Dutch law applies to every Agreement between ReShape Global and Buyer. The applicability of the (CISG) Vienna Sales Convention is expressly excluded.
2. In case of explanation of the content and scope of these Terms and Conditions, the Dutch text is always decisive. ReShape Global has the right to unilaterally change these terms and conditions.
3. All disputes, arising from or as a result of the Agreement between ReShape Global and Buyer, will be settled by the competent court of the Rechtbank Oost-Brabant, location 's-Hertogenbosch unless mandatory law results in the jurisdiction of another court.

's-Hertogenbosch 26-03-2020