
BERBEN DESIGN TERMS AND CONDITIONS

ARTICLE 1. | DEFINITIONS

In these terms and conditions the following terms, including those conjugated in plural or singular, will be used in the following meaning, in so far as the nature or purport of the provisions does not result otherwise.

1. Berben Design: the user of these terms and conditions, located at Van Anrooylaan 88, 5012HL in Tilburg, registered in the trade register of the Chamber of Commerce under the number 55014143.
2. Counterparty: every natural or legal person with whom Berben Design has concluded or tends to conclude an agreement.
3. Consumer: a counterparty as referred to in definition 2, natural person, not acting in the exercise of a profession or a business.
4. Parties: Berben Design and the counterparty jointly.
5. Web store: www.berbendesign.com/webstore, or any other web shop used by Berben Design for the offering and selling of their products.
6. Agreement: any agreement established between parties by which Berben Design has committed itself to the delivery of products to the other party.
7. Products: the goods to be delivered to the counterparty by or on behalf of Berben Design within the context of the agreement, including although not limited to, whether or not manufactured according to the specifications of the counterparty, lamps and tables.
8. Written or in writing: communication in writing, communication via email or any other manner of communication which, considering the state of the art and the prevailing views in society, can be equated with this.
9. Right of rescission: the opportunity offered to the consumer to terminate the agreement until 14 days after receipt of the goods by or on behalf of the consumer.

ARTICLE 2. | GENERAL PROVISIONS

1. These terms and conditions apply to every offer by Berben Design and every concluded agreement.
2. The potential or alternative terms and conditions of the counterparty, are not applicable to the agreement.
3. The provisioned in these terms and conditions can exclusively be deviated from explicitly or in writing. If and in so far as which the parties involved have agreed explicitly and in writing, deviates from the provisioned in these terms and conditions, that which the parties have agreed explicitly and in writing applies.
4. Destruction or nullity of one or more of the provisions from these terms and conditions or the agreement as such, does not affect the validity of other stipulations. In such a case both parties are obliged to enter into mutual consultation in order to make an alternative arrangement with regard to the affected stipulation. In doing so, the purpose and intent of the original provision will be taken into account as much as possible.

ARTICLE 3. | OFFER AND REALIZATION OF THE AGREEMENT

1. Every offer from Berben Design is non-committal, also in case a period of acceptance is mentioned. Berben Design can still repeal his offer until immediately after acceptance by the counterparty. In the case of a repeal of his offer by Berben Design and the payment by the counterparty has already been made, Berben Design shall immediately arrange for repayment to the counterparty.
2. The counterparty cannot derive any rights from an offer from Berben Design which contains an apparent error or a mistake.
3. Every agreement, unabated the provisions in paragraph 1, is established by offer and agreement. If the acceptance by the counterparty should deviate from the offer of Berben Design, the agreement will not be concluded in accordance with this deviating acceptance, unless Berben Design indicates otherwise.
4. If the agreement was made by telephone and Berben Design has confirmed the agreement in writing, it is assumed that this confirmation accurately and fully reflects the agreement, unless the counterparty has filed a complaint to Berben Design immediately after receipt of the confirmation.
5. If the agreement is made via the web store, the realization of the agreement, unabated the provisions in paragraph 1, will be confirmed to the other party by e-mail as soon as possible.
6. If the counterparty concludes the agreement on behalf of another natural or legal person, they declare to be authorized to do so by entering into the agreement. The counterparty is jointly and severally accountable aside from this (legal) person for the fulfillment of the obligations arising from the agreement.

ARTICLE 4. | CUSTOMIZED ORDERS

1. If the order is assembled or manufactured to a certain extent according to specifications of the counterparty (hereafter: customized orders), the counterparty guarantees that they will provide Berben Design with all the information and possible materials reasonably relevant for the execution of the agreement, within a reasonable period, completely and in the possibly prescribed manner by Berben Design.
2. If materials need to be provided by the counterparty for the execution of a customized order, the costs associated with the delivery are at the expense of the other party.
3. Customized orders are based on the confirmed oral or written specifications by the counterparty. The counterparty guarantees the accuracy of their provided specifications for the execution of customized orders, as well as the soundness of any possible materials as referred to in the previous paragraph. Berben Design is never liable for any damage caused during the assembling or manufacturing of customized orders as a result of him utilizing incorrect or incomplete information provided by the counterparty and/or in case of the materials supplied by the counterparty being defective.

ARTICLE 5. | TOLERANCES

The features of the goods to be delivered mentioned and/or displayed in the offer, in the web store or otherwise mentioned and/or displayed by Berben Design, may deviate slightly from that which is actually delivered. Slight deviations are considered to be all deviations in features of the goods which the counterparty ought to tolerate, such as slight deviations in color, size, materials used and weight. The presence of slight deviations provides no ground for complaints for the counterparty, no grounds to suspend their obligations under the agreement, to terminate the agreement, or to collect damage claims or any other compensation.

ARTICLE 6. | RIGHT OF RESCISSION FOR CONSUMERS OF WEB STORE ORDERS

1. With the exception of the provisions in the remainder of this article and the provision in the following paragraph in particular, the consumer can terminate in its entirety or partially the agreement established directly through the web shop, until 14 days after the products have been received by or on behalf of the consumer, without giving reasons.
2. The consumer has no right of rescission in the case of:
 - a. The delivery of products manufactured according to the consumer's specifications, which have not been prefabricated and are manufactured based on an individual choice or decision by the consumer, or which are evidently intended for a specific person. For example when a consumer has specified the colors and/or imprint of the products with their order;
 - b. a delivery in respect of which the right of dissolution is otherwise excluded by virtue of Section 6.5.2B of the Dutch Civil Code.
3. The consumer who exercises the right of rescission can terminate the contract by submitting a request to Berben Design by e-mail or by using the model form for revocation offered by or on behalf of Berben Design. As soon as possible after Berben Design has been notified of the intention of the consumer to terminate the agreement and if the conditions of this article are met, Berben Design will confirm the termination of the order by e-mail.
4. During the period referred to in paragraph 1, the consumer must carefully handle the products to be returned, as well as the packaging. The consumer may only handle and inspect the products to the extent that is necessary to assess the nature and characteristics of the products. The basic principle is that the consumer may only use and inspect the products to the extent that he would be allowed to do so in a physical store.
5. If the consumer makes use of the right of rescission, they will return the products concerned undamaged, including all delivered accessories and in its original condition and packaging to the return address specified by Berben Design.
6. The consumer is liable for the value reduction of the products resulting from a manner of handling the products which exceeds what is permitted as mentioned in paragraph 4. Berben Design is entitled to charge such depreciation to the consumer, for example by settling it with the payment already received from the consumer.
7. Return of the products must take place within 14 days after the consumer has submitted the request to Berben Design to terminate the agreement.
8. If the consumer makes use of the right of rescission, the costs of returning the products are for their account.
9. Berben Design will refund the payments received from the consumer, minus any reduction in value, as soon as possible but no later than 14 days after termination of the agreement, provided that the products have been received back or if the consumer has demonstrated that the products actually are sent back. If the right of rescission is only applied in respect of a part of the order, any delivery costs paid by the consumer in the first instance will not be eligible for reimbursement. Furthermore, Berben Design is not obliged to reimburse the additional costs if the consumer has explicitly opted for a different method than the one offered by Berben Design as the least expensive method of standard delivery.

ARTICLE 7. | TERMS

1. The delivery term to which Berben Design has committed itself towards the other party concerns an indicative, non-fatal term. Berben Design may also be dependent on third parties, such as its supplier, for compliance with this period. If the late performance is the result of a circumstance not attributable to Berben Design, i.e. force majeure within the meaning of article 10, the obligations of Berben Design are suspended for the duration of the force majeure situation, without the other party claiming compensation such as damage claims or any other compensation. The provisions in the remainder of article 10 shall apply in such a case respectively.
2. If the late fulfillment is the result of a circumstance that is indeed attributable to Berben Design, the default of Berben Design shall not take effect until the other party has given Berben Design notice of default in writing, in which a reasonable term for the performance is stated, and Berben Design is still in default after the expiry of the last term.
3. Default by Berben Design as a result of a circumstance to be attributed to Berben Design, as referred to in paragraph 2, offers the other party the right of rescission for that part of the agreement to which the default relates, though never entitlement to additional compensation.

ARTICLE 8. | DELIVERY

1. Unless the products are delivered at the conclusion of the agreement in the personal presence of the counterparty on the one hand and Berben Design or the person acting on his behalf on the other hand, the delivery of the products, unless explicitly agreed otherwise, takes place by delivery thereof on the address specified by the counterparty. If no delivery address is stated by the counterparty, the invoice address will be regarded as the delivery address.
2. Berben Design reserves the right to deliver orders in parts. In that case, the consumer's period of reflection in connection with the right of rescission, as referred to in Article 6, does not start until the moment that the last partial delivery from the order has been received by or on behalf of the consumer.
3. The risk of loss and damage to the products shall pass to the counterparty at the moment that the products have been received by or on behalf of the counterparty.
4. In the event that the agreed delivery period is exceeded, the counterparty shall never be entitled to refuse to accept the products and / or to refuse to pay the amounts owed to Berben Design by virtue of the agreement, unabated the provisions regarding default as referred to in Article 7.
5. If the products could not be delivered as a result of a circumstance that is attributable to the counterparty, Berben Design will store the products at the expense of the counterparty, unabated the obligation of the other party to fulfill the payment of the amounts owed to Berben Design by virtue of the agreement. The costs to be incurred in connection with the non-receipt by the counterparty, such as extra delivery costs and the like, are therefore also at the expense of the counterparty.
6. In the event that the counterparty refuses the purchase of the products or is otherwise negligent to take receipt of the products, the counterparty will, at the first request of Berben Design, state the period within which the products will still be purchased, in the absence of which Berben Design is entitled to terminate the agreement and the counterparty is obliged to fulfill the payment owed to Berben Design by virtue of the agreement, including any costs as referred to in the previous paragraph.

ARTICLE 9. | RESEARCH, ADVERTISING AND CONFORMITY

1. Berben Design guarantees that the products will comply with the agreement at the time of delivery and thus have the characteristics required for their normal use. With the exception of the provisions of paragraph 4, any further form of guarantee is excluded.
2. At the time of delivery of the products, the counterparty must immediately investigate whether the nature and quantity of the delivered products correspond to the agreement. If, in the opinion of the counterparty, the nature and / or quantity of the products do not comply with the agreement, the counterparty must notify Berben Design in writing at once, at least within two working days of delivery, stating a clear description of the complaint. However, if the products have been sold in the simultaneous personal presence of the counterparty and Berben Design, the products are deemed to comply with the agreement if the counterparty has taken the products with them.
3. If the other party does not complain timely or not in accordance with the provisions of the previous paragraph, Berben Design will not incur any obligation from such a complaint by the other party.
4. Any warranty provided by Berben Design, manufacturer or importer does not affect the mandatory legal rights and claims that consumers can assert against Berben Design.
5. The provisions of paragraphs 2 and 3 are without prejudice to the mandatory legal time-limit for consumers, as regulated in Section 7:23 of the Dutch Civil Code.

6. Even if the other party complains timely and in accordance with paragraph 2, the obligation of the counterparty for timely payment persists, unabated the mandatory statutory rights of consumers in this matter.
7. Any claim of the other party in connection with the statement that the products do not comply with the agreement will lapse if the defects of the products are the result of an external cause or as a result of another circumstance not attributable to Berben Design. This includes, non-exhaustive: defects as a result of damage, natural wear, incorrect or improper treatment and use in violation of the supplied user instructions or other instructions from or on behalf of Berben Design.
8. Products can, subject to the provisions of article 6, never be returned without prior written permission from Berben Design.

ARTICLE 10. | FORCE MAJEURE

1. Berben Design is not obliged to fulfill any obligation under the agreement if and for as long as it is prevented from doing so by a circumstance that cannot be imputed to him by virtue of the law, a legal act or generally accepted views.
2. Insofar as the force majeure situation makes the fulfillment of the agreement permanently impossible, the parties are entitled to restate the agreement with immediate effect.
3. If Berben Design has already partially fulfilled its delivery obligations on the occurrence of the force majeure situation, or can only partially fulfill its delivery obligations, then he is entitled to charge separately the already executed part or executable part of the agreement as if there were an independent agreement.
4. Damage as a result of force majeure is, unabated the application of the previous paragraph, never eligible for compensation.

ARTICLE 11. | SUSPENSION AND RESCISSION

1. If the circumstances of the case reasonably justify, Berben Design is entitled to suspend performance of the agreement without judicial intervention or to terminate the agreement with immediate effect in its entirety or partially, if and insofar as the counterparty does not, not timely or not fully comply with their obligations under the agreement, or after concluding the agreement, Berben Design becomes aware of circumstances giving good reason to fear that the counterparty will not fulfill their obligations. If the fulfillment of the obligations of the other party in respect of which it falls short or threatens to fall short, is not permanently impossible, the authority to dissolve only arises after the other party has been given notice in writing by Berben Design, in which notice of default a reasonable period is stated within which the other party can (still) fulfill its obligations and the fulfillment after expiry of the last term has still not been fulfilled.
2. If the counterparty liquidates or transfers its business to a third party, is in a state of bankruptcy, has applied for a (provisional) moratorium, the Debt Management of Natural Persons Act has been declared applicable to it, any attachment has been made to its goods, as well as in cases where the counterparty cannot freely dispose of its assets, Berben Design is entitled to terminate the agreement with immediate effect and without judicial intervention, unless the counterparty has already provided sufficient security for the fulfillment of its payment obligation.
3. The other party never claims any form of compensation in connection with the suspension or termination right exercised by Berben Design on the grounds of this article.
4. The counterparty is obliged to compensate the damage that Berben Design suffers as a result of the suspension or restitution of the agreement.
5. If Berben Design terminates the agreement pursuant to this article, all claims that Berben Design has on the counterparty will be immediately due and payable.

ARTICLE 12. | PRICES, SHIPPING COSTS AND PAYMENTS

1. All prices disclosed by Berben Design are in euros, exclusive of possible shipping costs, VAT and any other government levies, with the proviso that before an agreement is concluded with a consumer, the total price including VAT and any shipping costs will be disclosed.
2. Berben Design is entitled to claim that the price due by the counterparty is paid in full or in part by means of payment in advance, with the understanding that Berben Design will not oblige a consumer to prepay more than 50% of the purchase price. However, if the consumer has opted for prepayment of more than half of the purchase price, they remain bound by this choice.
3. Berben Design is not obliged to (further) execute the agreement only until after the counterparty has fulfilled all their payment obligations towards Berben Design. In accordance with the provisions of article 11, Berben Design is therefore entitled in the event of payment default by the counterparty to suspend the execution of the agreement until the counterparty has discharged their payment default.
4. Payments must be fulfilled by means of (one of) the payment method(s) prescribed for this purpose. In case of payment by bank transfer, this must be done within the period stated on the invoice.

5. Payment must take place without any recourse to suspension or settlement, insofar as the law does not obstruct it for the benefit of the consumer.
6. Berben Design is entitled to make the invoices available to the counterparty exclusively by e-mail.
7. If the counterparty liquidates or transfers its business to a third party, is in a state of bankruptcy, has applied for a (provisional) moratorium, the Debt Management of Natural Persons Act has been declared applicable to it, any attachment has been made to its goods, as well as in cases where the counterparty cannot freely dispose of its assets, then the claims against the other party are immediately due.
8. If timely payment is not made, the counterparty's default will take effect by operation of the law. From the day that the counterparty's default takes effect, the counterparty will owe interest of 2% per month on the outstanding amount, whereby a part of a month will be considered as a full month. Notwithstanding the previous sentence, instead of the contractual interest referred to there, the statutory interest applicable at the time of the payment default applies if the counterparty acts in the capacity of consumer.
9. All reasonable costs, such as judicial, extrajudicial and execution costs incurred to obtain the amounts owed by the counterparty, are at the expense of the counterparty.

ARTICLE 13. | LIABILITY AND INDEMNITY

1. Subject to the provisions of Article 9, Berben Design is no longer liable for defects of the delivered goods after delivery. In particular, Berben Design is not liable for damage caused by a circumstance as referred to in Article 9.7, on the grounds of which the possible claim of the other party in connection with the statement that the products do not comply with the agreement, will lapse.
2. The counterparty shall bear the damage caused by inaccuracies or omissions in the information provided by them, any other shortcoming in the fulfillment of the obligations of the other party arising from the law or the agreement, as well as any other circumstances that cannot be attributed to Berben Design.
3. Berben Design is never liable for indirect damage, including loss, lost profit and damage as a result of business stagnation. Direct damage is to be exclusively understood as:
 - the reasonable costs for determining the cause and extent of the damage, insofar as the determination relates to damage that qualifies for reimbursement within the meaning of these general terms and conditions;
 - any reasonable costs incurred to have the defective performance of Berben Design comply with the agreement, to the extent that these can be attributed to Berben Design;
 - reasonable costs incurred to prevent or limit damage, insofar as the counterparty demonstrates that these costs have led to a limitation of the direct damage within the meaning of these general terms and conditions.
4. Should Berben Design be liable for any damage, then Berben Design always has the right to repair this damage. The other party must give Berben Design the opportunity to do so, failing which any liability of Berben Design will lapse in this respect.
5. The liability of Berben Design is limited to at most repair or replacement of the delivery to which the liability of Berben Design relates. If repair or replacement is not possible, the liability of Berben Design is limited to at most the invoice value of the agreement, at least that part of the agreement to which the liability of Berben Design relates.
6. If the liability of Berben Design is excessive in spite of the provisions in the remainder of these general terms and conditions, the liability of Berben Design will never exceed the amount that applies in the relevant case, by virtue of the liability insurance taken out by Berben Design, is actually paid out, plus the possible excess of Berben Design that applies under that insurance.
7. The limitation period for all legal claims against Berben Design is one year. Notwithstanding the previous sentence, legal claims arising from consumers based on facts that would justify the claim that a consumer purchase does not comply with the contract will expire after two years.
8. In the case of a consumer purchase, the restrictions in this article do not go beyond what is permitted pursuant to Section 7:24, paragraph 2 of the Dutch Civil Code.
9. The limitations of liability from these general terms and conditions do not apply if the damage is caused intentionally or by deliberate recklessness of Berben Design.

ARTICLE 14. | RESERVATION OF OWNERSHIP

1. All products delivered by Berben Design remain its property until the other party has properly fulfilled all its obligations under the agreement.
2. The other party is not permitted to sell, pledge or otherwise encumber the products on which the reservation of ownership rests.
3. If third parties confiscate the products on which the reservation of ownership rests or wish to establish or assert rights thereon, the other party is obliged to inform Berben Design of this as soon as possible.

4. The counterparty gives unconditional permission to Berben Design or third parties designated by Berben Design to enter all those places where the products on which the reservation of ownership are located. Berben Design is entitled to take back the products referred to if the counterparty fails to do so. All related reasonable costs are at the expense of the other party.

ARTICLE 15. | GENERAL COMPLAINTS POLICY

1. Complaints with regard to the execution of the agreement must be, unabated article 9, submitted fully and clearly described in writing to Berben Design within a reasonable time after the other party has submitted the grounds giving rise to the complaint.
2. Complaints submitted to Berben Design will be answered within a period of fourteen days after receipt. If a complaint requires a longer processing time, it will be answered within the period of fourteen days with an acknowledgment of receipt and an indication of when the counterparty can expect a more detailed answer.
3. If a complaint from a consumer following a web shop order cannot be resolved by mutual agreement, the consumer can submit the dispute to the disputes committee via the ODR platform (ec.europa.eu/consumers/odr/).

ARTICLE 16. | INTELLECTUAL PROPERTY

1. Insofar as these rights do not rest with third parties, Berben Design retains all intellectual property rights for the products and their designs, as well as for the image materials and other content displayed in the web shop. The counterparty is forbidden to multiply, to copy / have copied, to reproduce / have reproduced, to publish or cause to be published or distributed in any other way than from the nature or purport of the agreement.
2. A violation of the provisions of the previous paragraph attributable to the counterparty gives Berben Design the right to demand immediate cancellation of the infringement, as well as a compensation to be further determined on the basis of the nature and scope of the infringement.

ARTICLE 17. | FINAL PROVISIONS

1. Dutch law is exclusively applicable to each agreement and all legal relationships arising therefrom between parties.
2. Parties will not appeal to court before they have optimally endeavored to settle the dispute in mutual consultation.
3. Insofar as the law does not deviate from this, only the competent court within the district of Berben Design's business location is appointed to take note of any legal disputes.
4. If these general terms and conditions are available in multiple languages, the Dutch version thereof will always be decisive for the interpretation of the terms contained therein.