

BUYER – GENERAL PAYMENT TERMS AND CONDITIONS OF NOTYD

Version: September 2022

1. Definitions

- 1.1. Capitalised terms and expressions used in these general payment terms and conditions ("**GTC**"), have the following meaning:

Affiliated Companies	any legal entity that qualifies as a 'subsidiary' as referred to in Section 2:24a of the Dutch Civil Code (" DCC ") or as a 'group company' as referred to in Section 2:24b DCC;
GTC	these general payment terms and conditions;
NOTYD	NOTYD B.V. (Trade Register number: 82724385) and all of its Affiliated Companies;
Payment Term	the payment term as agreed upon between You and the Store, or any other term that has been agreed with You in writing;
Services	all services provided by NOTYD performed on the basis of a best-efforts obligation;
Store	the (online or offline) store of the B2B-retailer/seller in which You have made your purchase;
Transaction Amount	the transaction amount charged by the Store resulting from the purchase in the Store by You;
You	the company that has made a purchase in the Store and has chosen (by submitting an application) to pay by means of the Services;

2. Applicability

- 2.1. These GTC apply to the application for the Services, the assessment of the application and all Services provided to You.
2.2. Insofar as these GTC deviate from any other terms and conditions, including but not limited to those agreed upon by you and the Store, these GTC shall prevail.

3. Assessment of application and procedure

- 3.1. In order to make use of the Services, You have submitted an application to pay the Transaction Amount via the Services.
3.2. Acceptance of this application is at the sole discretion of NOTYD. NOTYD has the right to reject your application at all times, without any reasons or explanation required.
3.3. By submitting your application to pay the Transaction Amount via the Services, You give NOTYD permission to perform a credit assessment itself and/or to have this assessment done by a third party on its behalf. Timely providing the requested information is required for the application and necessary to use the Services.
3.4. The outcome of the application procedure will be displayed to You directly online, indicating whether or not the application is conditionally accepted. This approval is conditional due to the fact that it is only the result of a just a digital data check by or on behalf of NOTYD. NOTYD shall, at all times, have the right to request more (additional) information from You, or to do more research, perform other checks and/or credit assessments, which can result in a rejection of your application at all times (thus also after your application has been conditionally accepted first).

4. Requirements and warranties

- 4.1. In order to use the Services, You represent and warrant the following:
4.1.1. You will fully fulfil (in a timely manner) the Transaction Amount, by paying NOTYD;
4.1.2. upon the request of NOTYD, You will immediately provide all information requested by NOTYD which, in its opinion, is necessary in order to carry out the Services and to collect payment from You;
4.1.3. You are not insolvent and have not ceased to pay debts in a timely manner, You have not been declared bankrupt or have applied a requested to be declared bankrupt or applied for suspension of payment;
4.1.4. the application is made by an authorised person on its behalf.
4.1.5. You have not provided any incorrect or misleading information, or have concealed circumstances of importance in any way and have ceased to pay your debts in a timely manner.

5. Payment

- 5.1. Upon acceptance of your application, your payment obligation of the Transaction Amount has been assigned and transferred to NOTYD by the Store. Therefore, You will only be discharged from this obligation by paying directly to NOTYD. Payment to the Store and/or any other third party, will not discharge You from your payment obligation for the Transaction Amount.
5.2. To the extent permitted by law, NOTYD has the right not to refund any costs of payment (e.g. the costs included in clause 5.8) and/or other costs in case You return your purchase.

- 5.3. NOTYD is authorised to exercise the same rights against You as the Store may/could exercise based on the purchase.
- 5.4. NOTYD has the right to assign, transfer and/or sell your payment obligation of the Transaction Amount (in other words the claim), which has been assigned and transferred to NOTYD by the Store, to a third party at all times.
- 5.5. Your payment must be received by NOTYD within the Payment Term. This Payment Term and all other payment terms will be a firm deadline (*fatale termijn*). Therefore, if You fail to pay within the deadline, the amount owed is immediately claimable and You will be in default by operation of law (without any further notice required).
- 5.6. In case of default as set out in clause 5.5, NOTYD is automatically entitled to the statutory interest as referred to in article 6:119a of the DCC as well as to the applicable fixed administration fees for sending payment reminders as set out in the Annex (Late Payment Fees) below.
- 5.7. In case of default as set out in clause 5.5, NOTYD is entitled, at its own discretion, to transfer your obligation to pay the Transaction Amount (in other words your debt) to an external debt collection agency. Notwithstanding the provisions of the previous sub-clauses (and thus in addition to the statutory interest and administration fees for sending reminders), in case of debt collection, NOTYD is also entitled to claim (fixed) debt collection costs of 15 % (fifteen percent) of the total invoice amount, with a minimum of EUR 40 (forty euros).
- 5.8. If You choose NOTYD combined with direct debit, You hereby explicitly authorise NOTYD for the automatic collection of (delivery) costs on your bank account number and You have freely paid as soon as the direct debit is successfully completed and the reversal period (if applicable) has expired. NOTYD will be compliant with all applicable regulations. Any (bank) processing costs are for your own account and risk. You must ensure there is a sufficient balance on the account number which You have specified, failing which will be considered late-payment, resulting in default (by operation of law).
- 5.9. To the extent permitted by law, suspension (*opschorting*) and/or offset (*verrekening*) of any payment (obligation) by You towards NOTYD is prohibited and expressly excluded.

6. Limitation of action and liability

- 6.1. NOTYD's total liability for an imputable failure in the performance of these GTC or arising from any other legal basis whatsoever, is limited to the compensation of damages as described in more detail in this clause.
- 6.2. NOTYD is only involved in handling your payment, but in no way with your purchase in the Store. Therefore, regarding your purchase in the Store, NOTYD shall never be liable, whether in contract or tort (including negligence (*onrechtmatige daad*)) for breach of statutory duty, or otherwise arising under or in connection with your purchase.
- 6.3. Direct damage is limited to the Transaction Amount. In no event does NOTYD's total liability for any direct damage, on any legal basis whatsoever, exceed EUR 5,000 (five thousand euros).
- 6.4. NOTYD is never liable for any damages caused by its employee and/or assistants it engages, nor for any consequential and/or indirect damage (*indirecte schade* or *gevolgschade*), including but not limited to loss of profits, income, revenue, turnover, anticipated savings, business, contracts, goodwill or commercial opportunities, as well as all other (forms of) consequential harm or business losses. The aforementioned also includes damages arising out – or are the result – of errors, malfunctions and/or failures in the Services.
- 6.5. The aforementioned limitations of liability do not apply in the event that the claimed damages are the result of an intentional act or omission (*opzettelijk handelen of nalaten*), gross negligence (*grove nalatigheid*) and/or willful misconduct (*bewuste roekeloosheid*).
- 6.6. Unless performance by NOTYD is permanently impossible, NOTYD is exclusively liable for an imputable failure in the performance of an agreement if You promptly serve NOTYD with a written notice of default, granting NOTYD a reasonable period of time to remedy the breach, and NOTYD should still imputably fail to meet its obligations after that reasonable term has passed. The notice of default must describe NOTYD's failure as comprehensively and in as much detail as possible so that NOTYD has the opportunity to respond adequately.
- 6.7. All your rights or rights of action (*vorderingsrechten*) will lapse (*vervallen*):
 - 6.7.1. without prejudice to sub-clause 6.7.2 and 6.7.3 below, if You have not instituted legal proceedings on the date falling 6 (six) months after the date You became aware (or should reasonably have become aware) of the damages;
 - 6.7.2. on the date falling 9 (nine) months after the event causing the damages occurred;
 - 6.7.3. on the date falling 9 (nine) months after the Services were provided.
- 6.8. The term for prescription (*verjaring*) of all claims (including the right of action) and defenses against NOTYD and/or any of its employees or assistants it has engaged, is 12 (twelve) months.

7. Data protection

- 7.1. In performing the Service, NOTYD may process your personal data ("**Personal Data**") within the meaning of the General Data Protection Regulation ("**GDPR**"). In this respect, NOTYD acts as a data controller within the meaning of the GDPR. The processing of such Personal Data by NOTYD is further described in NOTYD's privacy notice as available on <https://notyd.com/privacy-policy>.

8. General provisions

- 8.1. If, in a given case, NOTYD refrains from invoking an applicable provision in the GTC, this will not affect NOTYD's entitlement to invoke that provision or any other provision in a subsequent case.
- 8.2. NOTYD is entitled to amend these GTC unilaterally from time to time and without prior notice. The amended GTC then governs all subsequent legal relationships with You. The most recent GTC can be accessed, printed and downloaded at <https://notyd.com/buyer-terms-and-conditions>.
- 8.3. If there is a dispute regarding the interpretation or explanation of any provision of the GTC, the Dutch translation as included in several places in the text of these GTC between brackets, shall always take precedence and will be leading for the purposes of such interpretation.
- 8.4. The English language version of these GTC shall be controlling in all respects and shall prevail in case of any inconsistencies with translated versions of these GTC.

9. Applicable law, competent court and arbitration

- 9.1. These GTC, or any disputes and/or non-contractual obligations relating thereto, are governed exclusively by the laws of the Netherlands.
- 9.2. The applicability of the 'United Nations Treaty on Contracts for the International Sale of Goods' (CISG) – also known as the Vienna Sales Convention 1980 – is expressly excluded.
- 9.3. Any disputes between You and NOTYD ensuing from – or relating to – these GTC, will be submitted in the first instance exclusively – and thus to the exclusion of any other court – to the competent section of the Amsterdam District Court, unless mandatory law confers jurisdiction upon another instance.
- 9.4. Contrary to the provision of the previous sub-clause (competent court), only if and so far You are established (or have your principal place of business) in a non-EU Member State and NOTYD shall acts as plaintiff/claimant (*eiser*), NOTYD will be exclusively entitled (in the form of a discretionary authority) to choose that any dispute as referred to in the previous sub-clause shall be settled in accordance with the most recent and then-applicable version of the 'Arbitration Rules of the Netherlands Arbitration Institute' (NAI) in Rotterdam, the Netherlands. Unless the parties shall agree otherwise at that time:
 - 9.4.1. the arbitral tribunal shall be composed of one arbitrator;
 - 9.4.2. the arbitrator of the arbitral tribunal shall be appointed according to the 'list procedure' as laid down in the aforementioned Arbitration Rules;
 - 9.4.3. the proceedings shall be conducted in the Dutch language;
 - 9.4.4. the place of arbitration shall be Rotterdam;
 - 9.4.5. the arbitral tribunal shall decide as 'amiable compositeur' (*goede mannen naar billijkheid*) with due observance of the rule of law (that being Dutch law).
 - 9.4.6. consolidation of the arbitral proceedings with other arbitral proceedings, as provided for in article 1046 of the Dutch Code of Civil Procedure and article 39 of the Arbitration Rules of NAI, is excluded;
 - 9.4.7. the arbitration decision shall not be subject to appeal.

ANNEX - LATE PAYMENT FEES

NOTYD late payment fees (EUR)*			
Amount Range	Reminder 1	Reminder 2	Reminder 3
0 - 499.99	0	5	5
500 - 999.99	0	10	10
1000 - 1499.99	0	15	15
> 1500	0	20	20

NOTYD late payment fees (DKK)*			
Amount Range	Reminder 1	Reminder 2	Reminder 3
0 - 499.99	0	50	50
500 - 999.99	0	100	100
1000 - 1499.99	0	100	100
> 1500	0	100	100

NOTYD late payment fees (GBP)*			
Amount Range	Reminder 1	Reminder 2	Reminder 3
0 - 499.99	0	5	5
500 - 999.99	0	10	10
1000 - 1499.99	0	15	15
> 1500	0	20	20

* Late fees: are determined by Stores country (e.g. Store is from Denmark, DK late fees apply).

Conversion rate of late fees: If a Store offers a different currency other than the local currency, NOTYD reserves the right to convert the late payment fees to the new currency according to NOTYD's conversion rate in line with the average conversion rate of the last 6 (six) months.