

Terms and conditions Smardly BV

Introduction

These are our General Terms and Conditions. These General Terms and Conditions always apply when you use our Website or place an order through our Website, and they contain important information for you as a buyer. Please read them carefully. We also recommend that you save or print these General Terms and Conditions so that you can consult them at a later time.

Article 1. Definitions

- 1.1. **Smardly BV**: based in Sittard and registered with the Chamber of Commerce under file number 80435602, trading as Smardly BV.
- 1.2. **Website**: the Website of Smardly BV, to be found on <https://smardly.com> and all of its subdomains.
- 1.3. **Customer**: the natural person or corporation who enters into an agreement with Smardly BV and/or is registered on the Website.
- 1.4. **Agreement**: any arrangement or agreement between Smardly BV and Customer of which the General Terms and Conditions are an integral part.
- 1.5. **General Terms and Conditions**: these General Terms and Conditions.

Article 2. Applicability of the General Terms and Conditions

- 2.1. The General Terms and Conditions apply to all offers, agreements and deliveries of Smardly BV, unless explicitly agreed otherwise in writing.
- 2.2. If Customer in his order, confirmation or any other communication alleging acceptance of the General Terms and Provisions includes any provisions that differ from, or are not included in the General Terms and Conditions, such provisions will only be binding upon Smardly BV if and in so far as Smardly BV has accepted them in writing.
- 2.3. In cases where specific product or service-related terms and conditions apply in addition to these general terms and conditions, Customer can always invoke the applicable condition that is most favorable to him in the event of incompatible general terms and conditions.

Article 3. Prices and information

- 3.1. All prices posted on the Website and in other materials originating from Smardly BV include taxes and other levies imposed by the government, unless stated otherwise on the website.
- 3.2. The prices shown include shipping costs.
- 3.3. The content of the Website is composed with the greatest care. Smardly BV cannot, however, guarantee that all information on the Website is correct and complete at all times. All prices and other information posted on the Website and in other materials originating from Smardly BV are subject to obvious programming and typing errors.
- 3.4. Smardly BV cannot be held responsible for deviations in colour that result from the quality of the colours displayed on the screen.

Article 4. Conclusion of the Agreement

- 4.1. The Agreement will be deemed to be concluded at the moment Customer accepts the offer of Smardly BV subject to the conditions laid down by Smardly BV.
- 4.2. If Customer has accepted the offer by electronic means, Smardly BV will confirm receipt of acceptance of the offer by electronic means without delay. Until such receipt of acceptance is confirmed, Customer will have the possibility to terminate the Agreement.
- 4.3. If it is found that, in accepting or otherwise entering into the Agreement, Customer has provided incorrect data, Smardly BV will have the right to postpone the Agreement until the correct data is received.

Article 1. Registration

- 1.1. To make optimal use of the Website, Consumer can register using the registration form/the account sign-in option on the Website.

- 1.2. During the registration process, Consumer will be asked to choose a user name and password with which he can log on to the Website. Consumer alone is responsible for choosing a sufficiently reliable password.
- 1.3. Consumer must keep its login credentials, user name and password strictly confidential. Smardly BV cannot be held liable for any misuse of the login credentials and is always entitled to assume that Consumer who logs on to the Website is the party that it professes to be. Consumer is responsible for and bears the full risk of any and all actions and transactions performed via Consumer's account.
- 1.4. If Consumer knows or has reason to suspect that its login details have become available to unauthorised parties, it will be required to change its password as soon as possible and/or to notify Smardly BV accordingly so as to allow Smardly BV to take appropriate measures.

Article 5. Execution of the Agreement

- 5.1. As soon as Smardly BV has received the order, it will send the products to Consumer without delay and with due regard for the provisions of paragraph 3 of this article.
- 5.2. Smardly BV is authorised to engage third parties in the fulfilment of its obligations under the Agreement.
- 5.3. Well ahead of the date on which the Agreement is signed, information will be posted on the Website which clearly describes the manner in which and the term within which the products will be delivered. If no delivery term has been agreed or stated, the products will be delivered within 30 days at the latest.
- 5.4. If Smardly BV is unable to deliver the products within the agreed term, it will notify Consumer accordingly. In that case Consumer can decide either to agree to a new delivery date or to terminate the Agreement without incurring any costs.
- 5.5. Smardly BV advises Consumer to inspect the products upon delivery and to report any defects within an appropriate period, preferably in writing or by email. For further details, see the article about guarantee and conformity.
- 5.6. The risks associated with the products will transfer to Consumer as soon as the products are delivered at the agreed delivery address.
- 5.7. If the ordered product can no longer be supplied, Smardly BV is entitled to deliver a product which is comparable in nature and quality to the ordered product. In that case, Consumer will have the right to terminate the Agreement without incurring any costs and to return the product free of charge.

Article 6. Right of withdrawal/return

- 6.1. This article only applies if Consumer is a natural person who is not acting in his or her professional or commercial capacity. Business Consumers therefore have no right of withdrawal.
- 6.2. Consumer will have the right to dissolve the distance Agreement with Smardly BV within 14 days after receiving the product, free of charge and without stating reasons.
- 6.3. The term commences on the day after the product was received by the consumer, or a third party designated by the consumer, who is not the transporting party, or:
 - if the delivery of a product involves different deliveries or parts: the day on which Consumer, or a third party designated by Consumer, received the last delivery or the last part;
 - with contracts for the regular delivery of products during a given period: the day on which Consumer, or a third party designated by Consumer, received the last product;
 - if Consumer has ordered several products: the day on which Consumer, or a third party designated by Consumer, received the last product.
- 6.4. Only the direct costs incurred for the return shipment are for Consumer's account. This means that Consumer will have to pay the costs of returning the product. Any shipping costs paid by Consumer and the purchase price paid for the product will be refunded to Consumer if the entire order is returned.
- 6.5. During the withdrawal period referred to in paragraph 1, Consumer will treat the product and its packaging with the utmost care. Consumer may not open the packaging or use the product unless this is necessary in order to determine the nature of the products, their features and their operation.
- 6.6. Consumer is only liable for the product's devaluation that is a consequence of his handling the product other than as permitted.
- 6.7. Consumer can terminate the Agreement in accordance with paragraph 1 of this article by reporting the withdrawal (digital or in other form) to Smardly BV, within the withdrawal period, by means of the model form for right of withdrawal or in some other unequivocal way. If Smardly BV makes it possible for Consumer to declare his withdrawal via electronic/digital means, then after receiving such a declaration, Smardly BV sends immediate confirmation of receipt.
- 6.8. As quickly as possible, but no later than 14 days after the day of reporting as referred to in paragraph 1, Consumer shall return the product, or hand it over to (a representative of) Smardly BV. Consumer can send the product directly to

Swardly BV without a notice of withdrawal in advance within the period as mentioned in paragraph 1. Consumer must, in this case, include a written notice of withdrawal, such as the model form.

Products can be returned to the following address:

Swardly BV
Mgr. Buxckstraat 8
6134 AP, Sittard

6.9. Any amounts already paid by Consumer (in advance) will be refunded to Consumer as soon as possible, and in any case within 14 days after dissolution of the Agreement. If Consumer chose an expensive method of delivery in preference to the cheapest standard delivery, Swardly BV does not have to refund the additional costs of the more expensive method.

Except in cases in which Swardly BV has offered to retrieve the product himself, he can postpone refunding until he has received the product or until Consumer proves he has returned the product, depending on which occurs earlier.

6.10. Information about the applicability or non-applicability of a right of withdrawal and any required procedure will be posted clearly on the Website, well before the Agreement is concluded.

6.11. The right of withdrawal does not apply to:

- Products that Swardly BV has created in accordance with the consumer's specifications;

Article 7. Right of withdrawal for Business Customers

7.1. The previous article on the right of withdrawal shall correspondingly apply to business orders, except that:

- Business Customer must dissolve the Agreement with Swardly BV within 14 days after receipt of the product.
- after receipt of the return by Swardly BV, only the purchase price will be refunded to Business Customer. Customer is responsible for returning the products and bears the costs in respect thereof.
- Business Customer must return the product to Swardly BV unused and in undamaged packaging. If Business Customer does not comply with the foregoing, Swardly BV is entitled to refuse a return or may charge the expenses for repair or damages.
- as soon as possible, but in any event within 30 days after dissolution of the Agreement and receipt of returns by Swardly BV, any (advance) payments made by Business Customer will be refunded.

Article 8. Payment

8.1. Customer shall pay the amounts due to Swardly BV in accordance with the ordering procedure and any payment methods indicated on the Website. Swardly BV is free to offer any payment method of its choice and may change these methods at any time. In cases of payment after delivery Customer will be given a term of payment of 14 days entering on the day after delivery.

8.2. If Customer does not complete his payment obligation, he will be indebted the legal interest over the belated payment. Swardly BV needs to remind Customer of the belated payment and Swardly BV has to give Customer a term of 14 days to complete the payment obligation. After failing this 14 days term Swardly BV is allowed to recover any extrajudicial debt collection costs on Customer. These debt collection costs are not higher than: 15% of the open payment with a maximum of € 2.500,-; 10% of the next € 2.500,- and 5% over the next € 5.000,- with a minimum of € 40,-. Swardly BV is allowed to deviate from the named amounts and percentages in the advantages of Customer.

Article 9. Warranty and conformity

9.1. This article only applies if Consumer is a natural person who is not acting in his or her professional or commercial capacity. If Swardly BV gives a separate warranty on the products then, without prejudice to the aforesaid, this applies to all types of Consumers.

9.2. Swardly BV guarantees that the products are in conformity with the Agreement, the specifications stated in the offer, the reasonable requirements of reliability and/or usability and with the existing statutory provisions and/or government regulations that are in force from the date of entering into the Agreement. If specifically agreed, Swardly BV also guarantees that the product is suitable for other than normal use.

9.3. If the delivered product is not in conformity with the Agreement, Consumer must inform Swardly BV within a reasonable period of time after he has discovered the defect.

9.4. If Swardly BV deems the complaint to be correct, the faulty product(s) will be repaired, replaced or refunded in consultation with Consumer. The maximum amount of compensation is, having regard to the Article on liability, equal to the price paid by Consumer for the product.

Artikel 10. Warranty on business purchases

10.1. Smarkly BV guarantees that the products are in conformity with the Agreement, the specifications stated in the offer, the reasonable requirements of reliability and/or usability and with the existing statutory provisions and/or government regulations that are in force from the date of entering into the Agreement. If specifically agreed, Smarkly BV also guarantees that the product is suitable for other than normal use. Otherwise, it applies that the product is suitable for normal use.

10.2. If the delivered product is not in conformity with the Agreement, Customer must inform Smarkly BV within a maximum period of 7 days after delivery. Should the Customer fail to do so, then the Business Consumer is no longer entitled to have the product repaired, replaced or (partially) refunded.

10.3. If Smarkly BV deems the complaint to be correct, the faulty product(s) will be repaired, replaced or (partially) refunded in consultation with the Customer.

Article 11. Complaints handling procedure

11.1. If Customer has any grievances in connection with a product (in accordance with the article on warranties and conformity) and/or about other aspects of Smarkly BV's service, it can submit a complaint by telephone, by email or by post. See the contact details at the bottom of the General Terms and Conditions.

11.2. Smarkly BV will respond to the complaint as soon as possible, and in any case within 5 days after having received it. If it is not yet possible for Smarkly BV to formulate a substantive reaction to the complaint by that time, Smarkly BV will confirm receipt of the complaint within 5 days after having received it and give an indication of the term within which it expects to be able to give a substantive or definitive reaction to Customer's complaint.

11.3. If Customer is a natural person who is not acting in his or her professional or commercial capacity, it can file a complaint through the European Online Dispute Resolution platform, available at: <http://ec.europa.eu/odr/>.

Article 12. Liability

12.1. This Article only applies if Consumer is a natural person or a legal entity who is acting in a professional or commercial capacity.

12.2. The total liability of Smarkly BV in respect of Consumer due to an attributable failure to perform the Agreement is limited to compensation not exceeding the price stipulated for that particular Agreement (including VAT).

12.3. The liability of Smarkly BV in respect of Consumer for indirect damage or loss, which in any case includes – but is explicitly not limited to – consequential damage, lost profit, lost savings, loss of data and damage due to business interruption, is excluded.

12.4. Aside from the cases referred to in the two previous paragraphs of this Article, Smarkly BV is not subject to any liability at all in respect of Consumer for damages, irrespective of the ground on which the action for damages is based. The restrictions set out in this Article, will, however, cease to apply if and insofar as the damage or loss is the result of an intentional act or gross negligence on the part of Smarkly BV.

12.5. Smarkly BV will only be liable to Consumer on account of an attributable failure in the performance of an agreement if Consumer issues a proper notice of default to Smarkly BV without delay stipulating a reasonable period of time in which to remedy the failure, and Smarkly BV also continues to fail to perform its obligations after that period. The notice of default must contain a description of the failure in as much detail as possible to enable Smarkly BV to provide an adequate response.

12.6. Any event giving right to compensation is always subject to the condition that Consumer reports the damage or loss in writing to Smarkly BV as soon as possible, but no later than within 30 days after the damage or loss has arisen.

12.7. In the event of force majeure Smarkly BV is not liable to pay compensation for any damage or loss Consumer has incurred as a result.

Article 13. Retention of title

13.1. As long as Business Consumer has not made any full payment on the total amount agreed Smarkly BV will retain ownership of all the goods delivered (including possible debt collection costs and interest).

13.2. Before the transfer of ownership, Business Consumer is not authorized to, other than corresponding to his normal company and normal destination of the goods, sell, deliver or any other way of misappropriation. Furthermore, Business Consumer is not allowed to pawn the goods or to give any rights regarding the goods to third parties as long as the transfer of ownership has not been completed.

13.3. Business Consumer is obliged to keep any goods that are delivered under reservation of ownership with care and recognizable as property of Smarkly BV.

13.4. Smarkly BV is entitled to withdraw any goods delivered under reservation of ownership and in the possession of Business Consumer, if Business Consumer has neglected to pay the invoices or has been confronted with payment difficulties.

13.5. Business Consumer shall give Smardly BV access to his goods at any time to inspect and/or to exercise the rights of Smardly BV.

Article 14. Personal details

14.1. Smardly BV will process the Consumer's personal details in accordance with the privacy statement, which can be found at <https://smardly.com/nl/privacy>.

14.2 Smardly BV will act as Data Controller according to the GDPR.

Article 15. Final provisions

15.1. This agreement is governed by the laws of the country of establishment of the webshop.

15.2. Insofar as not dictated otherwise by mandatory law, any disputes ensuing from the Agreement will be submitted to the competent Dutch court in the district where Smardly BV has its registered office.

15.3. If any provision set out in these General Terms and Conditions should prove to be void, this will not affect the validity of the General Terms and Conditions as a whole. In that case, the Parties will lay down one or more new provisions in replacement which will reflect the original provision as much as is possible under the law.

15.4. The term 'written' in these General Terms and Conditions also refers to communication by email and fax, provided that the sender's identity and the integrity of the email message have been sufficiently established.

Contact details

Should you have any questions, complaints or comments after reading these General Terms and Conditions, please contact us by email or letter.

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