

## General Terms and Conditions of Sale and Delivery Foil Surf Curacao

### Article 1. Definitions

The terms used in these General Terms and Conditions are defined as follows:

<b>Agreement:</b>	any Agreement concluded between Foil Surf Curacao and the Customer, including any alterations or additions to said agreement, as well as all (legal) acts for the preparation or execution of the Agreement;
<b>Consumer:</b>	the natural person not acting in the course of a profession and/or the operation of a business, who enters into an agreement or intends to enter into an agreement with Foil Surf Curacao. Not allowed to rent out or teach with a Foil Surf Curacao product/ eFoil for a fee.
<b>Consumer-Customer:</b>	a customer, being a Consumer;
<b>Customer:</b>	The legal entity or natural person acting in the course of a profession and/or the operation of a business, not being a Consumer, that enters into an agreement or intends to enter into an agreement with Foil Surf Curacao.
<b>Distance Contract:</b>	The Agreement between Foil Surf Curacao and a Consumer-Customer that is entered into online (e.g. via email foilsurfcuracao@gmail.com or the Website (www.foilsurfcuracao.com) or by telephone; +59995228317
<b>Foil Surf Curacao.,</b>	With its registered office and business address Caracasbaaiweg z/n 447 Willemstad, Curacao registered in the trade register of the Chamber of Commerce in Curacao under number 155008 the user of the General Terms and Conditions;
<b>General Terms and Conditions:</b>	These General Terms and Conditions of Sale and Delivery of Foil Surf Curacao including the annexes and any amendments thereto
<b>In writing/ Written:</b>	made out in writing, also including per email;
<b>Model Withdrawal</b>	<b>Form</b> the model form for withdrawal made available by Foil Surf Curacao, which can be used by a Consumer-Customer who wishes to exercise its Right of Withdrawal;
<b>Offer:</b>	every written offer made by Foil Surf Curacao to Customer/Consumer-Customer so as to enter into an Agreement;
<b>Order:</b>	an order placed with Foil Surf Curacao by Customer/Consumer-Customer for the delivery of Products,

either verbally, per email, through the Website, per telephone.

**Products:** all moveable products to be delivered to Customer/Consumer Customer by Foil Surf Curacao under an Agreement.

**Right of Withdrawal:** the option for the Consumer-Customer to rescind ('ontbinden') the Agreement within the statutory cooling-off period;

**Website:** the Website of Foil Surf Curacao currently [www.foilsurfcuracao.com](http://www.foilsurfcuracao.com);

## **Article 2. Applicability**

- 2.1. These General Terms and Conditions apply to any Offer, Order and Agreement to which Foil Surf Curacao is party. These General Terms and Conditions also apply to any further or subsequent Agreements between Foil Surf Curacao and the Customer, not being the Consumer-Customer, irrespective of whether these were explicitly declared applicable. The Customer is considered to have agreed to this.
- 2.2. Derogations from these General Terms and Conditions are effective only if they have been expressly agreed between Parties In writing. In that event, the expressly agreed on derogations shall prevail. Should Foil Surf Curacao deviate from these General Terms and Conditions in one or more Agreements with Customer/Consumer-Customer, this deviation does not apply to any previous or future Agreements between Foil Surf Curacao and the Customer.
- 2.3. The applicability of the General Terms and Conditions on the side of Customer/ Consumer-Customer and/or third parties are explicitly rejected, unless Parties expressly agree otherwise In writing.
- 2.4. These General Terms and Conditions apply both within and outside of the Netherlands irrespective of the place of residence or location of any party involved in the Agreement, irrespective also of the location where the Agreement is effected or should have been affected.
- 2.5. Should one or more articles in these General Terms and Conditions be fully or partially null and void or voided at any time, all other articles in these General Terms and Conditions shall remain fully in effect. In the event of a null and void or voided article, Parties will agree to a new article that shall replace the null and void or voided articles in such a way that the new article will be in accordance with the purpose and scope of the original article. Moreover the remaining articles will be interpreted in accordance with the article that was held fully or partially null void and/or void voided.
- 2.6. Should Foil Surf Curacao not require strict observance of these General Terms and Conditions at all times, this does not mean that the articles of the General Terms and Conditions are in any way not applicable, or that Foil Surf Curacao would in any way forfeit its right to demand strict observance of the articles in the future and/or with respect to any other situation and/or third parties.
- 2.7. The General Terms and Conditions shall apply to the provision of services of third parties that are engaged by Foil Surf Curacao with respect to the full or partial execution of the performance of the Agreement. This article constitutes a third-party clause as stated in the article.

- 2.8. Foil Surf Curacao has the right to unilaterally amend the General Terms and Conditions from time to time during the term of the Agreement. These amendments will take effect at the announced time. Foil Surf Curacao will send the amended General Terms and Conditions of Delivery to the Customer in a timely manner. If no time of entry into force has been announced, the changes will enter into force with regard to the Customer as soon as the amended General Terms and Conditions of Delivery have been sent to the Customer. In the case of a Consumer-Customer, this article will only apply if and when an Agreement is entered into with a Consumer Customer and the Consumer-Customer has accepted the new General Terms and Conditions.

### **Article 3. Offers, Orders and Formation of the Contract**

- 3.1. All Offers made by Foil Surf Curacao are without obligation and may be withdrawn at any time (for instance - although not limited to - when the Products are out of stock), also when the Offer contains a period for acceptance. Should the Offer not contain a period for acceptance, the Offer automatically lapses after 8 (eight) calendar days and the Customer/Consumer-Customer can no longer appeal to it. An Offer accepted by Customer can always be withdrawn by Foil Surf Curacao within 45(forty-five) business days after acceptance by Customer/Consumer-Customer by sending a notice to that end In writing to Customer/Consumer-Customer.
- 3.2. Offers do not automatically apply to repeat orders and/or subsequent Agreements and Foil Surf Curacao reserves the right to amend the prices and other terms of successive Offers.
- 3.3. Foil Surf Curacao cannot be held to its Offer in case Customer/Consumer-Customer may reasonably assume that the Offer, or part thereof, includes an obvious mistake or typo.
- 3.4. Any documents which are part of the Offer such as price lists, brochures, catalogs, leaflets and such were made with the utmost care but are without obligation. These are only used to provide a description to the Customer and shall not bind Foil Surf Curacao in any way. Furthermore, the aforementioned materials are and remain Foil Surf Curacao's (intellectual) property.

### **Article 4. Orders**

- 4.1. The Customer/Consumer-Customer can place Orders for the Products with Foil Surf Curacao :
- a. through the Website of Foil Surf Curacao; and
  - b. with Foil Surf Curacao by telephone, In writing and in person.
- 4.2. Should Foil Surf Curacao have good grounds, Foil Surf Curacao is entitled to refuse an Order or part of an Order without giving reason or to attach special conditions to the Agreement, for instance (but not limited to) requiring additional security before accepting the Offer. In the aforementioned case, Foil Surf Curacao shall inform Customer of the reason why the Order was not accepted.

### **Article 5. Formation of the Agreement**

- 5.1. The Order by the Customer/Consumer-Customer will be considered an offer to enter into an Agreement.

- 5.2. An Agreement is concluded when:
- a. Foil Surf Curacao confirms the Order of the Customer/Consumer-Customer In writing; or
  - b. a contract, signed by both Parties, is concluded between Parties; or
  - c. Foil Surf Curacao sends an Offer to Customer/Consumer-Customer and the Offer is accepted by the Customer/Consumer-Customer In writing, with the exception of a withdrawal by Foil Surf Curacao within the term of article 3.1. 5.3. The (email) message received by the Customer/Consumer-Customer after he/she placed the order through the Website, containing a copy of the Order In writing as confirmation of a purchase, is not a confirmation of the Order In writing as described in sub b of article 5.2 (b). In that event, the Agreement is only concluded after the Order is confirmed by means of an order confirmation by Foil Surf Curacao. 5.4. Any Order or Agreement shall be considered an individual Order or Agreement and individual Orders/Agreements shall never be considered a continuing performance contract.
- 5.5. Should a natural person conclude an Agreement, on behalf of or at the expense of the Customer, they declare – by signing the Agreement – that they are authorized to do so.

#### **Article 6. Changing an Order**

- 6.1. Any additions or changes to the Order, after its conclusion, shall only bind Foil Surf Curacao after and to the extent in which they are accepted by Foil Surf Curacao and confirmed In writing. Should a Customer/Consumer-Customer request to change the Order and these changes would result in higher costs than those taken into account in the quotation of the original Order, Foil Surf Curacao will charge these extra costs to the Customer/Consumer-Customer. Should Customer/Consumer-Customer not be willing to pay these extra costs, Foil Surf Curacao may, at its discretion, suspend the delivery or terminate the Agreement.
- 6.2. Additions and/or changes to the Order may result in an exceeding of the previously agreed on delivery time. Such an exceeding of the delivery time shall never entitle the Customer/Consumer-Customer to compensation (damages) and/or termination of the Agreement.

#### **Article 7. Prices and Costs**

- 7.1. Unless otherwise stated, the prices listed in an Offer are in euros, exclusive of VAT, shipping and administrative costs and exclusive of other import or government levies. These costs and levies will separately be charged to the Customer/Consumer-Customer. All prices listed by Foil Surf Curacao are based on the price-determining factors known at the time the Offer was made or the Agreement was entered into. In the case of a Consumer-Customer Foil Surf Curacao will state price inclusive VAT and will also explicitly state which additional costs will be charged to the Consumer-Customer pursuant to the Agreement.
- 7.2. The prices stated in an Offer or Agreement for the Products to be delivered by Foil Surf Curacao are based on delivery ex works, as defined in the ICC Incoterms, to the address of the warehouse of Foil Surf Curacao, unless the Parties agree that Foil Surf Curacao shall arrange for the further shipping of the Products from the warehouse of Foil Surf Curacao to the Customer/Consumer-Customer, in which case the costs of further shipping shall be for the account and at the risk of the

Customer/Consumer-Customer.

- 7.3. After the Agreement has been entered into, Foil Surf Curacao is entitled to change the prices, or parts thereof, of Products that have not yet been delivered and/or have not been paid should one or more cost factors be subject to a change which directly influences the price of the deliverable Products. Furthermore, Foil Surf Curacao is always authorized to adjust the prices should a statutory pricing factor give rise to such an adjustment.
- 7.4. Should the delivery of (a part of) the Products fail to occur or be delayed at the request the Customer/Consumer-Customer, or due to a lack of details/instructions provided or other causes at the side of Customer/Consumer-Customer, any subsequent costs arising from this delay shall be at the expense of the Customer/Consumer-Customer.
- 7.5. When making Offers, Foil Surf Curacao assumes that it will be able to carry out its obligations under normal and usual circumstances. In the event that special circumstances arise as a result of which Foil Surf Curacao incurs subsequent costs, Foil Surf Curacao shall notify the Customer of this and Foil Surf Curacao shall be entitled to charge these subsequent costs to the Customer. In the event of a Consumer-Customer Foil, Surf Curacao shall only exercise the right of 7.5 after three months of the conclusion of the Agreement and by giving the Consumer-Customer the right to rescind (*'ontbinden'*) the Agreement.

#### **Article 8. Performance of the Agreement and Delivery**

- 8.1. Upon the effectuation of the Agreement, Foil Surf Curacao shall proceed with the delivery of the Products as recorded in the Agreement.
- 8.2. Any delivery dates given (verbally or In writing) are based on information and circumstances known to Foil Surf Curacao at the conclusion of the Agreement. Those delivery dates are always target dates. These dates do therefore not bind Foil Surf Curacao, have an indicative nature, are in no event of the essence (*'niet wezenlijk'*), and are never considered final deadlines, unless Parties explicitly agree otherwise In writing. Foil Surf Curacao shall endeavor to observe the delivery date where possible, but the mere exceeding of a delivery date shall not constitute a failure in the performance at the side of Foil Surf Curacao. Delays shall never entitle the Customer/Consumer-Customer to terminate or rescind (*'ontbinden'*) the Agreement nor to any damages. However, a Consumer-Customer is authorized to rescind the Agreement if delivery has not taken place within 30 (thirty) calendar days after the agreed delivery date.
- 8.3. Foil Surf Curacao shall deliver the Products to the warehouse of Foil Surf Curacao. Should the Customer/Consumer-Customer wish to have further shipping from the warehouse to another delivery address, the Parties will state those further arrangements in the Agreement. The costs of further shipping and delivery from the warehouse of Foil Surf Curacao at the expense of Customer/Consumer-Customer, barring other arrangements made between Parties In writing. All risks in regard to the (transportation of the) Products to be delivered by Foil Surf Curacao transfer to the Customer/Consumer-Customer at the time that the Products are transferred from Foil Surf Curacao' warehouse to a third-party for further shipping. However, the Products shall remain the property of Foil Surf Curacao until the full price is paid by the Customer/Consumer-Customer, as determined in article 16 of these General Terms and Conditions.
- 8.4. The Customer/Consumer-Customer is obligated to provide Foil Surf Curacao with any relevant information Foil Surf Curacao requires for the correct and timely

delivery of the Products at the time of the conclusion of the Agreement and always *before* Foil Surf Curacao affects the delivery of the Products.

- 8.5. Foil Surf Curacao is entitled to perform the Agreement in separate phases and individually invoice the performed phases.
- 8.6. The Customer/Consumer-Customer must take immediate possession of the Products at the agreed on time and place of delivery.
- 8.7. Should the Customer/Consumer-Customer refuse take possession of the ordered Products, any and all claims Foil Surf Curacao has on the Customer/Consumer Customer become immediately due and payable and Foil Surf Curacao shall be entitled to:
  - a. deliver the Products by means of a notification In writing, in which case Foil Surf Curacao is entitled to store the Products itself or at a third party from the moment of the notification made In writing, such at the expense and risk of Customer/Consumer-Customer, including the risk of loss of quality; or
  - b. proceed to full or partial termination of the Agreement and sell or deliver the Products to a third party or parties, such at its discretion.
- 8.8. Should Foil Surf Curacao, in any way, suffer damages or incur costs resulting from the fact that the Customer/Consumer-Customer gives wrong information regarding the delivery and/or the Customer refuses to take possession of the ordered Products, the Customer/Consumer-Customer shall be liable for these damages and/or costs.

#### **Article 9. Suspension**

- 9.1. Without prejudice to article 10, Foil Surf Curacao is entitled to suspend its obligations should Customer not or not fully comply with its obligations arising from the Agreement and/or when Customer was required to provide surety for its performance of the Agreement and this surety fails to materialize or is insufficient.
- 9.2. The right to suspend its obligations of performance also applies should Foil Surf Curacao learn of any circumstances which give reasonable ground to fear that Customer will not, not timely or not fully comply with its obligations. If there is good ground to fear that Customer cannot fully or not adequately perform its obligations, the suspension must reasonably match the extent of the failure.
- 9.3. Should Foil Surf Curacao postpone the performance of its obligations, its rights under the law and the Agreement remain in full force.
- 9.4. Articles 9.1 up to and including 9.3 shall not apply in case of a Consumer-Customer.

#### **Article 10. Termination**

- 10.1. All Agreements effected between Foil Surf Curacao and the Customer may be suspended (*'opgeschort'*), terminated early (*'(voortijdig) opgezegd'*) and with immediate effect or – at Foil Surf Curacao' discretion – be (partially) rescinded (*'ontbonden'*) by Foil Surf Curacao without having to go to court through a notification In writing, without Foil Surf Curacao being obligated to pay any (financial) damages and while retaining all of Foil Surf Curacao s rights, in any of the following circumstances:

- a. when the Customer/Consumer-Customer is declared bankrupt or when suspension of payment is granted; or
  - b. when a petition for bankruptcy is lodged against the Customer/Consumer Customer or when a request for suspension of payment is lodged; or
  - c. when the Customer/Consumer-Customer offers its creditors a voluntary arrangement; or
  - d. when the company of the Customer ceases its business or is at the risk of ceasing its business; or
  - e. when circumstances brought to the attention of Foil Surf Curacao after the effectuation of the Agreement give good ground to fear that the Customer/Consumer-Customer cannot meet its obligations and/or when Foil Surf Curacao finds that the current or future claims cannot be secured;
  - f. the Customer/Consumer-Customer does not, not fully or not timely fulfil any of its obligations pursuant to the Agreement between the Parties, or fails in any of its obligations by law, and is therefore in default; or
  - g. when delays on the part of Customer/Consumer-Customer mean that Foil Surf Curacao can no longer reasonably be expected to fulfil the Agreement under the original conditions;
  - h. when circumstances arise which render the fulfilment of the Agreement impossible or if any other circumstances arise which render an unaltered continuation of the Agreement on the side of Foil Surf Curacao unreasonable.
- 10.2. On termination of the Agreement, all claims Foil Surf Curacao has against the Customer/Consumer-Customer become immediately due and payable.
- 10.3. Should the suspension/termination and/or rescission be attributable to the Customer/Consumer-Customer, Foil Surf Curacao shall be entitled to compensation of the damages Foil Surf Curacao suffers as a result of the suspension/termination/rescission, including, but not limited to, any costs arising directly and indirectly from the occurrence.
- 10.4. Without prejudice to the terms of this article 10, Foil Surf Curacao always has the right to terminate an Agreement, or at least the (long-term) relationship between Parties which (also) qualifies as a (continuing performance) Agreement, with due observance of a notice period of (a maximum of) 1 (one) month by and through a Written notice to Customer, without obligation of payment of any (compensation (for damages) to Customer. This article 10.4 does not apply in case of a Consumer Customer.

#### **Article 11. Duty of Examination of the Products / Obligation to complain**

- 11.1. The Customer/Consumer-Customer is obligated to examine the Products directly upon delivery, or ultimately within 2 (two) calendar days (or have a third party perform the examination). In doing so, the Customer must examine whether the quality and/or quantity of the delivered items conform with the Agreement.
- 11.2. In the event that Customer/Consumer-Customer is of the opinion that there is defect in the quantity and/or quality of the delivered Products, it must inform Foil Surf Curacao of the alleged defect In Writing within a reasonable period of time after discovery, or after it should have been discovered (with due observance of Article 11.1). The Customer, not being a Consumer-Customer, must notify Foil Surf Curacao immediately In Writing after discovery of the alleged defect and always within 5 (five) calendar days after delivery of the Products. If the Customer/Consumer Customer can demonstrate that it could not have reasonably discovered the defect within the aforementioned term (hidden defect), the Customer/Consumer-Customer

must report the defect to Foil Surf Curacao In writing within 5 (five) days of its discovery, or within 5 (five) days of reasonably having been able to discover the defect. The Written notification must include a description of the defect containing as much details as possible. In addition to this, the Customer must include the invoice number and - if applicable - the packing slip of the delivery, allowing Foil Surf Curacao to respond to the complaint as adequately as possible.

- 11.3. Should Customer/Consumer-Customer not lodge its complaints with Foil Surf Curacao within the deadlines stated or should the complaints not meet the requirements, as both stated in articles 11.1 and 11.2, all rights of the Customer/Consumer-Customer has with respect to the discovered defect shall lapse by operation of law.
- 11.4. In case of a Consumer-Customer the periods of time listed in articles 11.1 and 11.2 are those listed in sections 7:23 and 6:89 of the Dutch Civil Code.
- 11.5. The Consumer-Customer is entitled to reject the Products within seven calendar days after the delivery at the Foil Surf Curacao warehouse due to demonstrable non-conformity of the Products.

## **Article 12. Warranty / non-conformity of Products**

- 12.1. Foil Surf Curacao gives the following warranties with respect to the Products:
  - a. eFoils (excluding the battery/batteries): twelve months starting from delivery to the warehouse of Foil Surf Curacao;
  - b. the battery: 400 cycles, whereby a cycle shall mean the process of complete charging and complete discharging of the battery.These warranties are the same warranties given by the manufacturer. Any warranty shall always be limited to design, manufacturing faults or faults in the material. In the case of a Consumer-Customer, the Consumer-Customer is entitled to the statutory warranty as described in article 7:18 of the Dutch Civil Code.
- 12.2. In the event a Customer/Consumer-Customer lodges a complaint regarding (defective) Products falling under the scope of article 11.2 and/or claims the warranty pursuant to 12.1 and such complaint has been accepted by Foil Surf Curacao, article 12.3 up to and including 12.19 shall apply.
- 12.3. Statements made by or on behalf of Foil Surf Curacao with respect to the quality, composition, possibilities of application and characteristics in the broadest sense of the word et cetera of the delivered Products will only be considered warranties when these have been confirmed as a warranty by Foil Surf Curacao explicitly and In writing. The applicability of any warranty is explicitly excluded for normal wear and tear and any damages inflicted by the Customer/Consumer-Customer itself or any third party to which the Products were delivered, unless otherwise covered for in these General Terms and Conditions and except in so far it would be against statutory European consumer law.
- 12.4. Any warranty that is mandatory pursuant to European statutory consumer law will only apply to a Consumer-Customer that is considered a consumer within those laws and regulations.
- 12.5. The warrantee referred to in article 12.1, any other warranties, and a claim regarding the non-conformity of goods, shall lapse if:
  - a. the Customer/Consumer-Customer has not met the terms of articles 11.1 and 11.2; and/or
  - b. it is reasonably plausible that the defect in the Product has been caused by incorrect and/or careless handling of the Product; and/or
  - c. the Product has not been used in accordance with normal use; and/or d. it is

reasonably plausible that the defect in the Product has been caused by incorrect and/or careless handling of the Product; and/or

e. the Product has been used contrary to the (safety) instructions with respect to the Product; and/or

f. it is reasonably plausible that a defect resulted or arisen from improper or spurious use incorrect storage or maintenance by Customer/Consumer Customer and/or third parties; and/or

g. it is reasonably plausible that the defect resulted or arose from adjustments made – or attempted – to the Product by Customer/Consumer-Customer and/or third parties without Foil Surf Curacao' Written permission, or the attachment of other products to the Products which were not intended for attachment or any processing or adaption of the Product.

12.6. If the Customer/Consumer-Customer has used, altered, processed or delivered the Products delivered by Foil Surf Curacao to a third party, the performance of the Agreement is deemed to have been adequate. The time limit for lodging a complaint as referred to in articles 11.1, 11.2 and 12.1 shall then expire, or no longer apply, exceptif such would be in violation of statutory EU consumer law.

12.7. Customer/Consumer-Customer can only claim a warranty and/or exercise of Foil Surf Curacao and/or exercise its rights with respect to non-conformity of the Goods after it has met all its obligations arising from the Agreement between Parties. In particular, but not limited to that situation, a complaint shall never release the Customer/Consumer Customer of its payment obligations.

12.8. Should a complaint regarding a non-conformity and/or warranty be found justified either by Foil Surf Curacao, Foil Surf Curacao, can at its discretion decide how to deal with the complaint. Foil Surf Curacao shall in principle first improve/repair the (relevant part of the) Product(s), and if such is not possible thereafter provide (a) replacement Product(s) to Customer/Consumer-Customer, and if such is not possible, Foil Surf Curacao shall send a credit note to the Customer/Consumer Customer for the relevant part of the Product(s), which is then considered to have been cancelled. In the event of a repair of the (relevant part of the) Products a period of 30 (thirty) calendar days shall be deemed reasonable. A Consumer-Customer shall only be deprived of the right to have the (relevant part of the) Product repaired or replaced if such is impossible or cannot be demanded of Foil Surf Curacao.

12.9. The Customer/Consumer-Customer may only return Products to Foil Surf Curacao because of the alleged non-conformity of the Products/claim under a warranty after prior Written consent from Foil Surf Curacao. Return shipments which were not preceded by a complaint including the relevant details and were not subsequently followed by a declaration that the complaint is well-founded including a Written permission from Foil Surf Curacao to be returned, are not allowed. In the event that the Customer/Consumer-Customer returns the Products in spite of the above mentioned terms, or returns the Products without due cause, Foil Surf Curacao shall hold any Products it does not refuse for Customer/Consumer-Customer, such at the expense and risk of Customer. Foil Surf Curacao shall keep these Products without any acknowledgement of the validity of Customer's claim regarding the non conformity of the Products and/or under a warranty. The costs of any return shipments pursuant to this article are at the expense of the Customer. Furthermore, the Customer remains obligated to pay for these Products. In case of a Consumer Customer the costs of return shall be reimbursed by Foil Surf Curacao.

12.10. Should a complaint be found justified, Customer/Consumer-Customer shall not be entitled to any other form of compensation, either in the form of replacement

Products or for damages (for loss of enjoyment of the Products), or a lowering of the price, or terminate the Agreement (including rescission (*'ontbinding'*)). The limitation to rescind the agreement shall not apply to a Consumer-Customer.

- 12.11. Should a complaint be unfounded, any costs arising from the complaint on the part of Foil Surf Curacao, including the research costs, shall be fully at the expense of the Customer, except if the complaint was lodged by a Consumer-Customer.
- 12.12. Without prejudice to articles 12.9 and 12.10, the Customer/Consumer-Customer may only demand replacement of the Products or rescission (*'ontbinding'*) of the Agreement in respect of the defective Products if:
  - a. Foil Surf Curacao has twice attempted to repair the same defect, these efforts have been fruitless and the defect is sufficiently serious to justify replacement or rescission, or;
  - b. if the Customer/Consumer-Customer demonstrates that the item shows, or has shown, so many defects that it does not comply with the Agreement and that these defects justify replacement or rescission.
- 12.13. Should Customer/Consumer-Customer have been shown a model of the Products, this model shall only serve as an indication without having to conform to or match the Product. Small deviations in color, structure and execution will be taken into account by Parties, unless it is expressly agreed on In writing that the Product will match the model.
- 12.14. Small deviations with respect to the quality, color, size, weight, finishing, design etc., which are commonly considered acceptable or cannot be prevented, as well as normal wear and tear of the delivered Products, shall never constitute ground for failure and/or a defect on the part of Foil Surf Curacao.
- 12.15. The Products are intended for normal use. Foil Surf Curacao is not obligated to research the purpose for which the Customer/Consumer-Customer and/or, in the event of a Customer, its customers, buy the Products. Should the delivered Products be in accordance with the Agreement, yet turn out to be unsuitable for the purpose of the Customer (and its customers)/Consumer-Customer, this is at the risk of the Customer/Consumer-Customer. This does not constitute failure on the part of Foil Surf Curacao.
- 12.16. The Customer shall provide its customers with the (safety) instructions in relation to (a normal and safe use of) the Products, including but not limited to the safety instructions provided by Foil Surf Curacao.
- 12.17. The Customer shall comply with all local laws, orders, regulations, directions, restrictions, or limitations relating to the (re)sale of the Products, to product liability and with any safety standards recommended by the government agencies in the place of (re)sale by the Customer.
- 12.18. The Customer/Consumer-Customer shall bear the burden of proof that the Products have become defective within the warranty period and have been reported to Foil Surf Curacao in a timely manner. In the case of a Consumer- Customer, contrary to the provisions of this article 12.18, a possible defect shall be presumed to have been present at the time of delivery of the Products if the defect becomes apparent within 6 (six) months after delivery of the Products.
- 12.19. In the case of a Consumer-Customer, the Consumer-Customer shall fully enjoy the rights set out in (and subject to the conditions of) articles 7:22 and 7:24 of the Dutch Civil Code. If and to the extent that within the subject matter of non-conformity of the Goods and/or a warranty, the provisions of Articles 7:22 and 7:24 of the Dutch Civil Code conflict with Articles 11, 12 and 14, the statutory (European) (Consumer) law shall take precedence over the provisions of these General Terms and Conditions.

**Article 13. Invoice, deposit, payment and collection charges**

- 13.1. Except where explicitly agreed otherwise In writing, payments must be made within 14 (fourteen) days of the invoice date to a bank account number indicated by Foil Surf Curacao, or in any other manner indicated by Foil Surf Curacao, such without deduction of any discounts not explicitly agreed to by Foil Surf Curacao and without any right to suspension and/or setoff. The value date on the bank statement determines the date of payment.
- 13.2. In the event that Foil Surf Curacao has requested the Customer to make (a) deposit(s) for the Products, the deposit must be paid (in full) on the respective due date(s). In principle the deposit (payment) will be 30% of the net value of the invoice. Upon delivery of the Products to the warehouse of Foil Surf Curacao, and, if applicable, before further shipping from / leaving the warehouse, the Customer/Consumer-Customer must settle the outstanding sum of the invoice.
- 13.3. Should the Customer/Consumer-Customer be in default of any payment obligation (including with respect to a deposit payment), Foil Surf Curacao shall be entitled, in derogation of the agreed on payment arrangements, to demand full or partial payment in advance or demand a security for the payment obligations of the Customer after the Agreement was concluded, including but not limited to a bank guarantee. The Customer shall adhere to Foil Surf Curacao' request immediately. Should the Customer not adhere to the terms of this article 13.3, Foil Surf Curacao may suspend its obligations under the Agreement.
- 13.4. Should the Customer have objections to the invoice it receives, the Customer must make these objections known to Foil Surf Curacao In writing no later than 8 (eight) business days after the invoice date, in the absence of which the invoice shall be considered correct. In case of a Consumer-Customer the aforementioned period is extended to 30 (thirty) calendar days.
- 13.5. Customers shall never be entitled to suspend its obligations ('*opschorten*') towards Foil Surf Curacao and/or settle ('*verrekenen*') any amount with its own claim on Foil Surf Curacao. Any objections to the invoice amount or in regard to the delivered Products (claim) shall never constitute grounds for Customer to suspend and/or settle its payments.
- 13.6. If the payment term is exceeded, the Customer shall be in default by operation of law, therefore without any demand or notice of default being required. Starting on the date of default, the Customer owes a contractual interest of 1,5% on the amount it owes for each month or part of a month, unless the statutory (commercial) interest rate is higher, in which case the statutory (commercial) interest rate applies. The interest due on the payable amount shall be calculated from the time that Customer is in default to the time that the amount is settled in full.
- 13.7. Foil Surf Curacao is entitled to change any costs of a credit analysis to Customer.
- 13.8. Payments made by the Customer are applied firstly to settle the costs, then to the interest that has fallen due and finally to the principal sum and the current interest.
- 13.9. All costs, legal and extrajudicial costs, both in and out of court, incurred by Foil Surf Curacao with respect to effectuation of its rights, are at the expense of the Customer.
- 13.10. In case of non or late payment, the outstanding claim shall be increased with extrajudicial collection costs, including the costs of legal assistance. In deviation of the statutory regulations on this subject, the extrajudicial costs are determined at

- 15% of the relevant amount with a minimum of € 200,- (in words: two hundred euro) excluding VAT. The Customer also owes interest on the collection charges.
- 13.11. Should the Agreement be concluded with more than one Customer, all Customers shall be jointly and severally liable for the payment obligations arising from the Agreement (irrespective of the name on the invoice).
- 13.12. Should the Customer not comply with articles 13.1 and 13.2, Foil Surf Curacao, without prejudice to its other rights, shall be authorized to:
- a. fully or partially terminate the Agreement with Customer without a notice of default being required and sell or deliver the Products to (a) third party (parties). The Customer is then liable for any damages and costs incurred by Foil Surf Curacao as a result of this nonpayment, and must reimburse Foil Surf Curacao accordingly; or
  - b. fully or partially suspend its obligations towards the Customer arising from the Agreement.
- 13.13. In the event of a cancellation or termination or suspension of the Agreement, Foil Surf Curacao can never be held to any payment of damages to the Customer, unless Foil Surf Curacao can be held accountable for the facts and circumstances giving rise to the cancellation or termination or suspension.
- 13.14. In case of a Consumer-Customer articles 13.3, 13.5, 13.6, 13.7, 13.9, 13.10, 13.12 do not apply. If the Consumer-Customer fails to (timely) fulfil his payment obligation(s), the Consumer/Customer shall owe the statutory interest on the amount(s) still owed after Foil Surf Curacao has pointed out the late payment and Foil Surf Curacao has given the Consumer-Customer a period of 14 calendar days to fulfil the payment obligations. Should Consumer-Customer fail to pay within this period, and Foil Surf Curacao shall be entitled to charge the extrajudicial collection costs incurred by Foil Surf Curacao. These collection costs will amount to a maximum of: 15% on outstanding amounts up to € 2,500; 10% on the next € 2,500; 5% on the next € 5,000; 1% on the next € 190,000 and above € 200,000; 0.5% with a minimum of € 40 and a maximum of € 6,775.

#### **Article 14. Liability**

- 14.1. Should it be established – at law or otherwise – that Foil Surf Curacao is liable to the Customer/Consumer-Customer for damages suffered in connection with the Agreement, or arising from a wrongful act, or on any other basis, this liability, including any payment obligation pursuant to article 6:230 Dutch Civil Code and/or article 6:271 Dutch Civil Code, shall be limited to a total as stated in these provisions:
- a. Foil Surf Curacao shall never be liable for damages arising from Foil Surf Curacao' use of any incorrect details/files/materials/devices and information provided by or on behalf of Customer/Consumer-Customer;
  - b. Foil Surf Curacao shall never be liable for any lost profits, lost income, lost turnover, lost savings, consequential loss, stagnation of commercial activities and reputational damages caused to the Customer/Consumer-Customer or third parties;
  - c. Foil Surf Curacao shall not be liable towards Customer/Consumer-Customer for any direct or indirect damages or any disadvantage arising from or in connection with the delivery of the Products or the method of delivery;
  - d. without prejudice to the provisions in this article, Foil Surf Curacao shall never be liable for any higher amount than the agreed on price of the delivered Products which gave rise to the damages;
  - e. Foil Surf Curacao shall never be liable for damages arising from incorrect use

- of the Product(s), use not in accordance with the user manual or usage other in any way other than the intended use;
- f. Foil Surf Curacao shall never be liable for the deterioration of the Product(s) as a result of faulty storage, operation, use or maintenance by the Customer/Consumer-Customer or a third party;
  - g. Foil Surf Curacao shall never be liable for damages arising from advice given. Advice shall always be provided on the basis of the facts and circumstances known to Foil Surf Curacao and in mutual consultation, for which the intention of the Customer/Consumer-Customer shall always serve as a starting point;
  - h. Foil Surf Curacao' liability, including any payment obligation under an obligation to undo and any payment obligation under article 6:230 Dutch Civil Code, to Customer/Consumer-Customer is at all times limited to the amount covered by Foil Surf Curacao' liability insurance in a particular case;
  - i. in the event that Foil Surf Curacao' liability insurance does not cover a claim – for whatever reason – Foil Surf Curacao' liability, including any payment obligation under article 6:230 Dutch Civil Code and/or article 6:271 Dutch Civil Code, shall be limited to the net amount paid by Customer/Consumer-Customer in its last three invoices within the last year up to an amount of € 15.000 (in words: fifteen thousand euro), per year, irrespective of the number of events giving rise to the damages.
- 14.2. The limitation of liability of clause 14.1 does not apply in case of intent or deliberate recklessness of Foil Surf Curacao and/or its (statutory) director(s).
  - 14.3. The liability for damages, of any nature, always ends when the Customer/Consumer Customer sells the delivered Products on to a third party, except if the Customer sells the Products to a Consumer-Customer and European statutory consumer law applies to the second sale.
  - 14.4. The Customer/Consumer-Customer must determine in advance whether the Product is suitable for the intended use. Should the purchased item turn out not to be suitable for the intended use, Customer/Consumer-Customer cannot hold Foil Surf Curacao liable for any damages arising as a result of that.
  - 14.5. Damages for which Foil Surf Curacao can be held liable should be reported to Foil Surf Curacao in writing and without delay but always within 8 calendar days after the occurrence of said damages, at the risk of such a claim lapsing (*'verval van recht'*). In the case of a Consumer-Customer, the expiry period is extended to 30 calendar days. The expiry period does not apply when the Customer/Consumer-Customer can demonstrate that the damages could not be reported sooner for good reason.
  - 14.6. Without prejudice to the other articles in these General Terms and Conditions, any liability claim against Foil Surf Curacao lapses within 12 (twelve) months upon the Customer becoming aware of or should reasonably be assumed to have become aware of the fact from which the damage arises. This article 14.6 does not apply in case of a Consumer-Customer.
  - 14.7. Contrary to article 14.6 any claim against Foil Surf Curacao with respect to product. liability will lapse within the time limit stated in article 6:191 DCC.

## **Article 15. Indemnification**

- 15.1. The Customer/Consumer-Customer is liable for all damages, losses, costs and expenses which Foil Surf Curacao or any third party may suffer resulting from or in connection with Customer's/Consumer-Customer's failing in the performance of the Agreement, irrespective of whether the damages were caused by Customer, its staff or another (legal) person or object for which Customer/Consumer-Customer is liable

by law. The Customer/Consumer-Customer shall at its own expense fully indemnify and hold harmless Foil Surf Curacao, its affiliated companies and any third party, against the damages, losses, costs and expenses as stated in this article, 15.2. Notwithstanding article 15.1, the Customer shall at its own expense fully indemnify and hold harmless Foil Surf Curacao, its affiliated companies and any third party, against all third party claims in regard to damages, losses, costs and expenses resulting from a lodged claim, pending or impending legal proceedings brought against Foil Surf Curacao by the Customer's customers, being consumers pursuant to EU statutory consumer law, and/or third parties with respect to, but explicitly not limited to: (i) claims with regard to product liability insofar as it concerns defects and / or damages as described in article 7:24 (2) a-c DCC and / or (ii) claims related to damages with regard to a defective Product ('non-conform' Product) which has been modified or altered by Customer and/or (iii) claims related to damages that have occurred where Customer did not provide its customer with the (safety) instructions. The indemnification will include, without limitation, legal costs of Foil Surf Curacao and/or third parties, including, but not limited to attorney's fees, court costs, and the costs of any third party, such as a bailiff or an expert, as well as any award of damages and/or the cost of any settlement.

- 15.3. In the event that Foil Surf Curacao is confronted with a claim and/or litigation as stated in articles 15.1 and/or 15.2, it shall have the right to defend the matter through counsel of its own and at the entire cost of the Customer, for which the reimbursement rules of article 15.4 shall apply.
- 15.4. In the event that Foil Surf Curacao has to pay and/or incur the damages, expenses, losses and/or legal costs, as stated in article 15.1 and 15.2, Foil Surf Curacao shall have the right to demand that any and all invoices be sent to Customer directly and paid by Customer and/or to have Customer pay an advance to Foil Surf Curacao, and/or to implead Customer in court proceedings.
- 15.5. Foil Surf Curacao shall have the right, at its sole discretion, to settle any charge, claim or litigation brought against Foil Surf Curacao and/or third parties.
- 15.6. The Parties shall each provide to the other all available information as may be reasonably necessary to defend a charge, claim or litigation. Should Foil Surf Curacao be addressed by third parties in relation to this article, Customer/Consumer Customer shall be obligated to assist Foil Surf Curacao both in legal and other proceedings and promptly do all that may be expected of it in such a situation and in the event of claims brought with respect to articles 15.1 and 15.2.
- 15.7. Customer will provide adequate insurance to cover for its performance under this article. The Customer is obligated to demonstrate its compliance with this obligation immediately on request of Foil Surf Curacao. The Customer shall always bear the cost of any policy excess. Should the Customer be able to claim insurance coverage of its liability towards Foil Surf Curacao, Customer must ensure that any insurance payments be made out to Foil Surf Curacao directly. Any insurance payment to Foil Surf Curacao based on an insurance agreement taken out by Customer does not impair Foil Surf Curacao' right to claim damages from Customer, to the extent that these exceed the insurance payment.
- 15.8. Customer/Consumer-Customer is obligated to make every effort to limit the damages.
- 15.9. Should the Customer/Consumer-Customer fail to take adequate measures to limit the damages, Foil Surf Curacao is entitled, without notice of default, to take these measures itself. Any subsequent costs and damages arising on the part of Foil Surf Curacao and third parties, will be wholly at expense and risks of the Customer/Consumer-Customer.

- 15.10. Articles 15.2, 15.3 (except so far as is permitted by statutory EU/Dutch consumer law), 15.4, 15.7 shall not apply in case of a Consumer-Customer. Article 15.1 shall apply to the extent that is permitted by statutory EU and Dutch consumer law.

**Article 16. Retention of Title**

- 16.1. The title of the Products delivered by Foil Surf Curacao to Customer/Consumer Customer only transfers to the Customer/Consumer-Customer upon complete fulfilment of all Customer's/Consumer-Customer's obligations towards Foil Surf Curacao under the Agreements and fulfilment of all else required pursuant to the delivered Products, such within the scope of article 3:92 Dutch Civil Code.
- 16.2. Should Foil Surf Curacao deliver the Products to a Customer/Consumer-Customer outside of the Netherlands and should the law in the country of destination offer more extensive options with regard to a retention of title than those stated in article 16.1, the Parties shall make a choice of law for the country of entry of the Products (for the purposes of article 10:128 paragraph 2 Dutch Civil Code), with the understanding that this choice exclusively relates to the property-law consequences of the retention of title of the Products. When no objective determination can be made as to which country has the most extensive rights relating to the retention of title, the provisions of article 16.1 and the rest of this article will remain in full force.
- 16.3. Foil Surf Curacao will not lose its (retention) of title when and/or as a result of the Customer's/Consumer-Customer processing or adaptation of the Products received from Foil Surf Curacao. In that event, the Customer/Consumer-Customer will automatically retain said Products on behalf of Foil Surf Curacao.
- 16.4. The Customer/Consumer-Customer is obligated to insure, and keep insured, the Products subject to the retention of title against fire, explosion damages and water damages as well as against theft and to provide the policy of this insurance to Foil Surf Curacao for inspection immediately upon request. Foil Surf Curacao is entitled to any payout by the insurance. The Customer/Consumer-Customer agrees in advance to provide to Foil Surf Curacao with its full cooperation with all required or desirable actions in that regard.
- 16.5. The Customer/Consumer-Customer is obligated to transfer to Foil Surf Curacao any rights to claims which the Customer may have on any third parties in regard to the Products delivered by Foil Surf Curacao by means of assignment, such immediately on request, and to notify third parties that the Products delivered by Foil Surf Curacao to the Customer/Consumer-Customer were delivered subject to a retention of title which applies for as long as the Customer has not (fully) settled its obligations.
- 16.6. Should Foil Surf Curacao wish to exercise its property rights as referred to in this article, Customer/Consumer-Customer gives its prior unconditional and irrevocable permission to Foil Surf Curacao and to any third parties appointed by Foil Surf Curacao to enter any and all locations where Foil Surf Curacao' property is situated and to repossess said property.
- 16.7. Should third parties institute garnishee proceedings on the Products delivered subject to a retention of title or seek to encumber these Products or to seize these Products, the Customer/Consumer-Customer is obligated to inform Foil Surf Curacao of this immediately.
- 16.8. If the Customer/Consumer-Customer is in default of its obligations or if there is a reasonable fear that it will not fulfil these obligations, Foil Surf Curacao is entitled to retrieve, or have retrieved, the Products subject to the aforementioned retention of title from the Customer/Consumer-Customer or from any third parties holding the

Products for the Customer/Consumer-Customer. The Customer/Consumer-Customer is obligated to provide full cooperation subject to an immediately due and payable penalty of 10% of the full amount it owes to Foil Surf Curacao for each day or half-day that the Customer/Consumer-Customer remains in default, such without prejudice to Foil Surf Curacao' right to claim performance of the obligations in the previous sentence and/or claim damages.

- 16.9. Any Products repossessed under this article will be credited to the Customer/Consumer-Customer for the (purchase) price as paid by Customer/Consumer-Customer for the repossessed Products minus 10%.
- 16.10. Furthermore, Customer/Consumer-Customer shall provide Foil Surf Curacao with an undisclosed pledge on the delivered Products immediately on request. This pledge serves as security for payment of all present and future claims Foil Surf Curacao might have on the Customer/Consumer-Customer. The Customer/Consumer Customer shall sign a deed creating a right of pledge immediately at Foil Surf Curacao request and register this deed with the tax and customs authority (*'de Belastingdienst'*).
- 16.11. Customer/Consumer-Customer is not entitled to fully or partially dispose of, pledge or in any way encumber the Products subject to the retention of title without Foil Surf Curacao' prior Written permission, unless this is part of its normal business operations.

#### **Article 17. Force Majeure (*'overmacht'*)**

- 17.1. Foil Surf Curacao is not obligated to fulfil any obligations should it be hindered in doing so by circumstances not arising from gross negligence or intent on the part of the party claiming under these circumstances, and which are not attributable to Foil Surf Curacao by virtue of the law, legal act or according to generally accepted standards, as stated in article 6:75 of the Dutch Civil Code.
- 17.2. In these General Terms and Conditions, force majeure (*'overmacht'*) on the side of Foil Surf Curacao includes besides the contents of the statutory law and case law, all external causes, whether anticipated or not, that are beyond Foil Surf Curacao' control, yet render Foil Surf Curacao unable to fully or partially or timely fulfill its obligations, such including (but not limited to): strikes in Foil Surf Curacao' company, a pandemic, situation of war or danger thereof, government measures, transport strikes, traffic congestion, traffic circumstances, theft, fire, import/export barriers and/or trade barriers, power failures and delays in the supply of goods by third party suppliers.
- 17.3. Foil Surf Curacao is also entitled to invoke force majeure if the circumstances which prevent (further) fulfilment occur after Foil Surf Curacao should have fulfilled its obligations.
- 17.4. Foil Surf Curacao may suspend its obligations arising from the Agreement during the period that the force majeure continues. Should the force majeure exceed a period of two months, Foil Surf Curacao will be entitled to terminate the Agreement, without obligation to pay damages to the other party.
- 17.5. Foil Surf Curacao may separately invoice components of the obligations arising from the Agreement which it has fulfilled or which will be fulfilled and which represent a certain independent value at the time the force majeure occurs. The Customer is obligated to pay this invoice as if it represented a separate Agreement.

## Article 18. Right of Withdrawal

- 18.1. In the event of a Distance Contract between Foil Surf Curacao and a Consumer Customer, the Consumer-Customer shall have a right of cancellation. Pursuant to the Right of Withdrawal (*'herroepingsrecht'*), the Consumer-Customer has the option of rescinding (*'ontbinden'*) the Distance Contract without providing any reason. The cooling-off period starts from the moment the Consumer-Customer places its order and ends 14 (fourteen) calendar days from the day the Consumer-Customer has received the Products at its address or the delivery address provided by the Consumer-Customer, if the latter address is different from the address where the Consumer-Customer is domiciled. The right of cancellation may have been excluded by Foil Surf Curacao for certain Products, if such is stated in articles 18.2 up to and including 18.8.
- 18.2. During the cooling-off period, the Consumer-Customer shall handle the Products and packaging with care. Consumer-Customer shall only unpack or use the Products to the extent necessary to assess whether he/she wishes to keep the Products. In the event that the Consumer-Customer exercises its Right of Withdrawal, the Consumer Customer shall return the Products to Foil Surf Curacao with all accessories that have been delivered and – if reasonably possible – in their original condition and packaging, in accordance with the reasonable and clear instructions provided by Foil Surf Curacao.
- 18.3. If the Consumer-Customer wishes to exercise the Right of Withdrawal, the Consumer-Customer shall be obliged to inform Foil Surf Curacao thereof within 14 (fourteen) calendar days after receipt of the Products. The Consumer-Customer can do so by means of the Model Withdrawal Form. After the Consumer-Customer has notified Foil Surf Curacao that it wishes to exercise the Right of Withdrawal, the Consumer-Customer must return the Products within 14 (fourteen) calendar days. The Consumer-Customer must prove that the delivered Products have been returned on time by means of a proof of dispatch.
- 18.4. If, after the expiry of the periods referred to in 18.1 up to and including 18.3, the Consumer-Customer has not exercised the Right of Withdrawal and/or has not returned the Products to Foil Surf Curacao, the purchase of the Products under the Distance Contract will be irrevocable (*'onherroepelijk'*).
- 18.5. If the Consumer-Customer exercises the Right of Withdrawal, the Consumer Customer shall bear no other costs than the cost of returning the Products.
- 18.6. The Consumer-Customer may only return Products to Foil Surf Curacao in order to effect the Right to Withdrawal after prior Written consent from Foil Surf Curacao. Return shipments with respect whereto the Right of Withdrawal was not exercised in accordance with this article 18 , including the Written permission from Foil Surf Curacao that the Products may be returned, are not allowed. In the event that the Consumer-Customer returns the Products in spite of the above mentioned terms Foil Surf Curacao shall hold any Products it does not refuse for Consumer Customer, such at the expense and risk of Customer. Foil Surf Curacao shall keep these Products without any acknowledgement of a potential Right of Withdrawal of the Consumer-Customer. The costs of any return shipments pursuant to this article are at the expense of the Consumer-Customer. Furthermore, the Customer Customer remains obligated to pay for these Products.

- 18.7. Foil Surf Curacao will refund the purchase price with respect where to the right of cancellation was exercised as soon as possible, but at the latest within 14 (fourteen) calendar days after Right of Withdrawal was exercised, provided that the Products have already been returned and received by Foil Surf Curacao or that conclusive proof of complete return can be provided. Refunds will be made via the same payment method used by the Consumer-Customer, unless the Consumer-Customer explicitly authorizes another payment method.
- 18.8. If the returned Products have been damaged due to careless handling by the Consumer-Customer or conduct that goes beyond the provisions of article 11.1, , the Consumer-Customer is liable for any diminution in value of the Products.
- 18.9. The Right of Withdrawal does not apply to a Distance Contract if the Products have been tailored to the specific requests of the Consumer-Customer.

#### **Article 19. Intellectual Property rights**

- 19.1. Customer/Consumer-Customer may not make alterations to the Products unless the nature of the Products indicates otherwise or otherwise agreed on In writing.
- 19.2. All intellectual and industrial property rights, including – but not limited to – any copyright, registered and unregistered trademarks and registered and unregistered design and database rights, trade name rights and patent rights, domain names, which originate from or were used for the purpose of the performance of the Agreement or which were included in the Products, including – but not limited to – products, production processes, applications, drafts, designs, drawings, inventions, models, techniques, works, procedures, outcomes, creations, presentations, computer programs, knowhow, data collection and other knowledge gained, are exclusively vested in Foil Surf Curacao and the Customer/Consumer-Customer may not use the aforementioned intellectual property rights of Foil Surf Curacao, unless otherwise explicitly agreed beforehand In writing.
- 19.3. Customer/Consumer-Customer guarantees that it will not infringe on any intellectual property rights of Foil Surf Curacao, as stated in article 18.2. and Customer/Consumer-Customer will indemnify Foil Surf Curacao and any third parties/parties for any damages, losses sustained or costs suffered in the event of an infringement of the intellectual property rights of Foil Surf Curacao and/or of third parties, the latter begin the case in the event that Foil Surf Curacao (sub)licenses intellectual property rights of third parties. Therefore, these intellectual and industrial property rights may not be copied, made public or be disclosed to third parties by Customer/Consumer-Customer without the express prior permission by Foil Surf Curacao, unless the nature of the issued documents requires otherwise. The same applies to the use of any trade name or brand of Foil Surf Curacao, nor any words, images, or symbols which to the judgement of Foil Surf Curacao Customer imply Foil Surf Curacao' involvement or consent with any Written or verbal advertising or presentation, a plan prepared by Foil Surf Curacao, advice, brochure, newsletter, instruction material and/or videos, or other published material, including that on the Website.
- 19.4. The delivery of Products by Foil Surf Curacao to Customer/Consumer-Customer pursuant an Agreement shall never imply any transfer of intellectual or industrial ownership to Customer/Consumer-Customer.
- 19.5. The Customer/Consumer-Customer is not permitted to remove or change any indication with regard to copyrights, brands, trade names or other intellectual or industrial rights of the Products delivered by Foil Surf Curacao or to remove or alter

- any of their accompanying materials.
- 19.6. The Customer/Consumer-Customer shall fully respect all intellectual and industrial property rights of Foil Surf Curacao at all times and never to lay claim to the intellectual property rights accruing to Foil Surf Curacao.
- 19.7. Foil Surf Curacao reserves the right to use the knowledge gained in the performance of the activities for other purposes, to the extent that no confidential information is disclosed to third parties.

#### **Article 20. Confidentiality**

- 20.1. Both Parties have a duty to maintain confidentiality regarding any information of which Parties know or reasonably could assume to be of a confidential nature. 20.2. Both during and after the Agreement, Parties shall treat all information they have received for the purpose of the Agreement confidentially and not disclose this information to any third parties, other than as necessary for the performance of the Agreement, nor use it for any other purposes than the performance of the aforementioned Agreement. Parties shall consistently impose the obligations arising from this article on its employees and third parties involved in the performance of the Agreement.
- 20.3. Should the Customer be in breach of the terms of article 20.2, the Customer, without any notice of default being required, will owe to Foil Surf Curacao an immediately payable penalty - not subject to mitigation and not eligible for setoff - of € 10,000,- (in words: ten thousand euro), as well as of € 250,- (in words: two hundred and fifty euro) for each day or half-day that the breach on the side of Customer continues, without prejudice to Foil Surf Curacao' right to claim compensation of its damages and/or the fulfilment of the provisions in this article.
- 20.4. Articles 20.1 up to and including 20.3 do not apply in the event of a Consumer Customer.

#### **Article 21. Product Recall**

- 21.1. In urgent cases, including when the delivered or yet to be delivered Product(s) are found to be in default of any (statutory) requirements, in which case Foil Surf Curacao shall establish whether a case constitutes as urgent, the Customer/Consumer Customer is obligated to return any delivered Products to Foil Surf Curacao immediately on request and in case the Products have already been delivered to third parties by Customer, retrieve them from these third parties. In the event that Foil Surf Curacao decides on a product recall as described above, the Customer/Consumer-Customer is obligated to take all measures Foil Surf Curacao considers necessary and adhere to any instructions given by Foil Surf Curacao relating to the product recall and the Customer/Consumer-Customer shall in turn undertake to limit any loss and make every effort to realize this. In the event that Foil Surf Curacao imposes a product recall, Foil Surf Curacao is only obligated to either replace the Products or to send a credit note to the Customer/Consumer Customer in regard to the recalled Products. In the event of a product recall, Foil Surf Curacao shall not be obligated to any payment of any damages on the part of the Customer/Consumer-Customer.

#### **Article 22. Prohibition of Online Sale to Third Parties through Internet Platforms**

- 22.1. Foil Surf Curacao seeks to protect the quality and image of its brands and Products, therefore Customers are prohibited from offering or selling Products through online platforms / market places or third party websites or to sell them to such online platforms / market places.

### **Article 23. Transfer of Rights and Obligations**

- 23.1. The Customer is not entitled to assign, subcontract, sell or transfer the rights and/or obligations arising from the Agreement to a third party. This article excludes the

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assignment or transfer of the Supplier's rights to claim (within the meaning of article 3:83(2) of the Dutch Civil Code).

- 23.2. Foil Surf Curacao is entitled to fully or partially assign, sell or transfer the rights and/or obligations arising from the Agreement to (a) third party/parties and may sell its claims to payment to a third party without prior Written consent from Customer/Consumer-Customer being required. You shall cooperate to the fullest extent possible regarding the assignment, sale or transfer of said rights and/or obligations, without being able to impose any further conditions on this transfer. By signing the Agreement, the Customer/Consumer-Customer gives its express consent to such assignment, sale or transfer of said rights and/or obligations.
- 23.3. In case of a Consumer-Customer the right of article 23.2 shall only apply in so far as is permitted by article 6:233(e) Dutch Civil Code.

### **Article 24. Applicable Law and Jurisdiction**

- 24.1. The district court of Amsterdam will have exclusive competence to deal in first instance with any and all disputes with regard to the performance and/or the execution of the General Terms and Conditions, the Agreement, the transactions contemplated hereby and thereby, (including disputes with regard to the existence and validity of the General Terms and Conditions, the Agreement and the transactions contemplated hereby and thereby), whether in contract or tort, and including any disputes relating thereto. Parties shall have the right to use legal remedies against a judgment of said court. The district court of Amsterdam will also have exclusive competence to deal with interim relief proceedings. In the case of a Consumer-Customer, the court of the country where the Consumer-Customer is domiciled shall also have jurisdiction, or if the Consumer-Customer is a defendant in the proceedings, the court of the country where the Consumer-Customer is domiciled shall have exclusive jurisdiction.
- 24.2. These General Terms and Conditions and the Agreement and any claims and/or disputes based upon, arising out of or relating to the General Terms and Conditions, the Agreement and/or transactions contemplated hereby and thereby (including disputes with regard to the validity of the General Terms and Conditions, the Agreement and the transactions contemplated hereby and thereby), shall be exclusively governed by, and construed in accordance with, Dutch law. This is the case even when the performance of an obligation is executed fully or partially outside of the Netherlands or when a party to the legal relationship resides outside of the Netherlands. The applicability of the Vienna Sales Convention 1980 (CISG) is explicitly excluded.
- 24.3. In addition to article 24.2, in the case of a Consumer-Customer, the Consumer Customer shall also be given protected by mandatory provisions of the law of the

country in which the Consumer-Customer is domiciled. If the Consumer-Customer is entitled to the protection of the law of the country in which he/she is domiciled and there is a conflict between a mandatory provision of the law of the country of the Consumer-Customer and Dutch law, the mandatory provision shall prevail.

**Article 25. Filing**

These General Terms and Conditions were filed with the Chamber of Commerce of Curacao under number 155008