



## Terms and Conditions of Sale

**THE INFORMATION CONTAINED ON THIS PAGE SETS FORTH YOUR RIGHTS AND OBLIGATIONS WITH RESPECT TO THE TRANSACTION(S) CONTEMPLATED BY THESE TERMS AND CONDITIONS. THESE TERMS AND CONDITIONS REQUIRE THE USE OF ARBITRATION (ON AN INDIVIDUAL BASIS ONLY; I.E., CASE CONSOLIDATIONS AND CLASS-ACTIONS ARE NOT PERMITTED) IN ORDER TO RESOLVE DISPUTES. PLEASE REVIEW THIS DOCUMENT IN ITS ENTIRETY BEFORE PLACING ANY ORDER AND CONFIRMING YOUR ACCEPTANCE. YOU MAY NOT ORDER OR OBTAIN PRODUCTS OR SERVICES FROM THIS WEBSITE UNLESS AND UNTIL YOU: (A) AGREE TO THESE TERMS AND CONDITIONS IN THEIR ENTIRETY; (B) ARE AT LEAST 18 YEARS OLD; AND (C) ARE NOT PROHIBITED FROM ACCESSING OR USING THIS WEBSITE OR ANY OF THIS WEBSITE'S CONTENTS, GOODS, OR SERVICES BY ANY APPLICABLE LAW, RULE, OR REGULATION.**

This page provides you information about the applicable eShopWorld company specified in Section 18.1 below ("**eShopWorld**", "**ESW**", "**we**", "**our**" and/or "**us**"), and the terms and conditions (the "**Terms**") on which we sell products in accordance with Section 2.1 below ("**Products**") through our website ("**Site**") to you. These Terms will apply to any contract between you and us for the sale of Products to you ("**Contract**"). Before using the Site, please read these Terms carefully and make sure that you understand them.

Please note that before placing an order or making a payment you will be asked to agree to these Terms. If you refuse to accept these Terms, you will not be able to order any Products from our Site or make any payments related thereto.

You should view, read and print a copy of these Terms or save them to your computer for future reference. We may amend these Terms from time to time as set out below. Every time you wish to order Products or use our Site, please check these Terms to ensure you understand the terms which will apply at that time.

If there is any discrepancy between the terms of this document in any other language and the English translated version of this document, the terms of the English version shall prevail.

If the Terms contain special provisions that only apply to consumers in certain countries, the applicability of the respective provision depends on where the consumer has his, her, or their habitual residence. This means, for example, that provisions that are intended to apply to consumers in the European Union, only apply to those consumers who have their habitual residence in a member state of the European Union.

### **1. CONTACTING US**

- 1.1 If you wish to contact us for any other reason, including because you have a complaint, please do so by e-mailing us at [info@eshopworld.com](mailto:info@eshopworld.com).
- 1.2 If we have to contact you or give you notice in writing, we will do so by e-mail or by post to the address you provide to us in your order.

### **2. HOW THE CONTRACT IS FORMED BETWEEN YOU AND US**



- 2.1 We contract with retailers worldwide pursuant to which ESW is the appointed merchant of record, which enables us to sell retailers' merchandise to you in your country.
- 2.2 By placing an order with us through our Site, you acknowledge that your transaction will be with us and not with the respective retailer. You further acknowledge that upon successful verification by us of the authenticity and sufficiency of the information you provide, we will then purchase the merchandise from the respective retailer for the sole purpose of immediately reselling it to you. We, not the retailer, will be responsible for fulfilling the order to you.
- 2.3 Our Site will guide you through the steps you need to take to place an order and make a payment with us. Our order process allows you to check and amend any errors before submitting your order to us. Please take the time to read and check your order at each page of the order process.
- 2.4 Your order constitutes an offer to us to buy a Product. We reserve the right to accept or reject any order in our own discretion. After you place an order, you will receive an e-mail from us acknowledging that we have received your order. The Contract between us will only be formed when you receive your order confirmation email ("**Order Confirmation**"). The Contract will relate only to those Products we have confirmed in the Order Confirmation.
- 2.5 We will send you an e-mail that confirms that the Products have been dispatched ("**Dispatch Confirmation**").
- 2.6 If we are unable to supply you with a Product, for example because that Product is not in stock or no longer available or because of an error in the price on our Site or the respective retailer's site, we will inform you of this by e-mail and we will not process your order. If you have already paid for the Product, we will refund you the full amount including any shipping and handling costs charged as soon as possible and will incur no further liability to you. Products on the Site are subject to change without notice. Errors will be corrected when discovered. For customers other than those located in the European Union (whose withdrawal rights are set forth in Section 8 below), you have the option of cancelling your order (in its entirety only) at any time prior to our having sent to you the Order Confirmation.
- 2.7 Although we take steps to ensure the accuracy and completeness of Product descriptions posted on the Site, we do not warrant that Product descriptions or other Content on the Site are accurate, complete, reliable, current, or error free. The Product descriptions are provided by a network of independent affiliates, subsidiaries, agents, third-party product providers, third-party Content providers, vendors, suppliers, designers, contractors, distributors, merchants, sponsors, licensors and the like (collectively, "**Associates**") who supply the Products advertised on the Site. Please refer to the manufacturer or applicable Associate for further details about Products (including any applicable warranties).
- 2.8 You acknowledge that we shall be permitted to verify the authenticity and sufficiency of the information you provide, and if we are unable to verify the information automatically, our representatives may contact you and/or your debit or credit card issuing bank to confirm your identity and/or your intent to place the order. You agree that credit cards and debit cards may



be charged on the date of inventory reservation for the order, as opposed to the date of shipping.

- 2.9 Please note that any Products made available through our site are intended for personal, non-commercial use, and purchase of any Products for resale purposes is strictly prohibited. As such, you assume the risk when purchasing products for a commercial or business use or application.
- 2.10 By placing an order or making a payment through our site, you warrant that you are legally capable of entering into binding contracts. Your credit/debit card or other payment method will be billed by us and charges on your statement will be accompanied by the description "eShopWorld", "eSW", or similar. You warrant that all the information provided to us for the purpose of processing payments is correct and you are authorized to utilize the proffered payment method. You acknowledge that we will be entitled to verify the authenticity and sufficiency of the payment information you provide. ESW reserves the right to cancel your order at any stage, in the event that we are unable to verify the information you provide, where there has been an obvious error in price, where the product is no longer available, or the payment method that you have selected. In the event of a cancellation by ESW, we will refund you the full amount that you have paid.
- 2.11 You acknowledge and agree that we may conduct pre-payment screening on you and the information you have provided. These checks are designed to prevent eShopWorld from conducting business with a sanctioned individual, entity or country in violation of any applicable laws and regulatory requirements in the territories we operate (including without limitation all customs laws and regulations and export and import controls administered by the U.S. government (including, but not limited to, the Export Administration Regulations under the U.S. Department of Commerce), the European Union and any other applicable jurisdiction). You may not order any Products if you are the subject of U.S. sanctions or of sanctions consistent with U.S. law imposed by the governments of the country where your Products are to be delivered. You must comply with all U.S. or other export and re-export restrictions that may apply to the Products.
- 2.12 We provide the service of determining the appropriate taxes and duties to be applied to the importation of the Product by you, and to collect, report and remit these taxes and duties, as applicable, on your behalf, to the appropriate tax authority. For imports into the European Union and the United Kingdom, the resulting taxes and duties are included in your payment and are paid by eShopWorld and there are no additional costs. By accepting these Terms, you authorize eShopWorld to accept any additional claims for levies (additional assessment) from the relevant customs authorities. For certain non-European imports, you will be responsible for the remittance of taxes and duties to the appropriate tax authority. All Products purchased from us are made pursuant to a shipment contract. Risk of loss in the Products passes to you when the Products are delivered to you. Title to the Products transfers to you: (i) prior to importation of the Products, if the Products are imported into the United States; or (ii) upon delivery of the Products to you, if the Products are sourced from within the United States; or (iii) upon the delivery of the Products to you, in the case of exceptional circumstances where ESW acts as importer of record on your behalf.



- 2.13 By ordering Products from us, you hereby authorize a licensed customs broker chosen by us to act as your agent and transact business with foreign revenue authorities to clear your Products, account for duties and taxes on your behalf, if applicable return your Products and if applicable, prepare and submit refund claims on your behalf for any merchandise that you return. Please note that this Section 2.13 excludes customers in Canada; customers in Canada should refer to Section 6.10.
- 2.14 The price of your order will be quoted including or excluding taxes depending on the delivery address: (a) Products delivered within the United States and Canada will be quoted exclusive of sales or seller's use tax; and (b) Products delivered within Europe will be quoted inclusive of value added tax. You will be responsible for all associated shipping and handling charges; these will be added at the checkout and will be indicated as a separate charge on your order form (except, in circumstances where free shipping is offered). Pricing may differ from the prices offered elsewhere (online or offline) by us or our Associates for the same goods. Such prices are subject to change at any time by us in our sole discretion. You will be responsible for the prices stated at the time of your transaction.
- 2.15 For consumers in the United States, we collect sales and seller's use tax on sales made to all state and local jurisdictions. We use reasonable commercial efforts to calculate and remit the correct amount of tax required on each taxable purchase, but we do not guarantee the accuracy of the amount of the tax we represent to you as the tax owed. As a result of any error, we may over-collect or under-collect your tax. In consideration of our allowing you access to and use of the Site, and in collecting and remitting taxes required on your purchases, you hereby waive your right to claim that the tax collected on any purchase is incorrect in any respect and agree to hold harmless us and our officers, directors, employees, agents and representatives from any harm or other damages you may incur as a result of our error in calculating the taxes you owe for your purchases. Some states may require us to provide you notice regarding state use tax at the time of purchase, an annual purchase summary, and/or report your annual untaxed sales to that state. We provide this data as a reference to assist you in determining any applicable use tax. Our calculations may not match the data in your records and may not reflect gifts or shared accounts.
- 2.16 By placing an order with us through our site, you acknowledge that you are entering into an international transaction with us and not with the respective retailer. Further, you acknowledge that some banks may charge an international transaction fee according to their policies. We do not charge this fee or control when your bank will charge it.

### **3. TERMS OF USE OF OUR SITE**

- 3.1 Please read these Terms of Use carefully before you start to use this Site. By using our Site, you indicate that you accept these Terms of Use and that you accept and agree to abide by them. If you do not agree to the Terms of Use, please immediately cease all usage of this Site.
- 3.2 We do not guarantee that our Site or any Content on it will always be available or be uninterrupted. Access to our site is permitted on a temporary basis, and we reserve the right to withdraw, discontinue or change all or any part of the Site without notice. We will not be



liable to you if for any reason all or any of our sites are unavailable at any time or for any period.

- 3.3 You are responsible for making all the necessary arrangements for you to have access to our Site. You are also responsible for ensuring that all persons who access our Site through your internet connection are aware of these Terms, and that they comply with them.
- 3.4 Access to certain areas of our Site is restricted. We reserve the right to restrict access to other areas of our Site, or indeed the whole Site, at our discretion.
- 3.5 The use of our Sites may not be used by anyone under the age of 13 in the United States. An individual older than 13 but under 18 years of age (a minor) is subject to the consent of their parent or guardian and our Contract is with the parent or guardian, who is responsible for the minor's compliance. We advise parents or guardians who permit minors to use the Site that it is important that they communicate with minors about their safety online, as moderation or vetting of advertisements is not guaranteed or fool-proof. Minors who are using any interactive service should be made aware of the potential risks to them.
- 3.6 You must not use our Site in any way that causes, or may cause, damage to the site or impairment of the availability or accessibility of the Site; or in any way which is unlawful, illegal, fraudulent or harmful, or in connection with any unlawful, illegal, fraudulent or harmful purpose or activity including but not limited to using our Site to copy, store, host, transmit, send, use, publish or distribute any material; gaining unauthorized access to our Site; collecting data from our Site (including through the use of robot, spider, or other automated device, process, or means); sending unsolicited commercial communications via our Site; to introduce any viruses, Trojan horses, worms, logic bombs, or other material that is malicious or technologically harmful; and/or without limitation performing any act that is inconsistent with the purpose of this Site: to take in and fulfil consumer orders.
- 3.7 Where necessary we will report any breach of these Terms to the relevant law enforcement authorities and if and to the extent allowed under applicable data protection law, we will cooperate with those authorities by disclosing your identity and/or your personal information to them. In the event of such a breach, your right to use our Site will cease immediately.
- 3.8 You acknowledge that the Site contains information, data, software, photographs, graphs, videos, typefaces, graphics, music, sounds, and other material (collectively "**Content**") that are protected by copyrights, trademarks, trade secrets, rights in databases and/or other proprietary rights, and that these rights are valid and protected in all forms, media and technologies existing now or hereinafter developed. All Content is copyrighted as a collective work under copyright laws, and we (or our licensors) own a copyright and/or database right in the selection, coordination, arrangement, presentment and enhancement of such Content. You may not modify, remove, delete, augment, add to, publish, transmit, participate in the transfer or sale of, create derivative works from or adaptations of, or in any way exploit any of the Content, in whole or in part. Nothing contained on the Site should be construed as granting, by implication, estoppel, or otherwise, any license or right to use the Site or any information displayed on the Site, through the use of framing, deep linking or otherwise, except (a) as expressly permitted by these Terms; or (b) with our prior written permission or



the prior written permission from such third party that may own the trademark or copyright information displayed on the Site

#### **4. WHAT YOU AUTHORISE US TO DO**

- 4.1 By using our Site, you authorise us to process payments, refunds and adjustments for your transactions, remit funds to your bank account where applicable, charge your credit card or debit the account linked to your debit card, as applicable, and pay us and our affiliates any amounts you owe in accordance with these Terms.
- 4.2 We may at any time require you to provide financial, business or personal information we request to verify your identity. You will not impersonate any person or use a name which you are not legally authorised to use. You authorise us to verify your information (including any updated information) and to obtain an initial credit authorisation from your credit card issuer.
- 4.3 You consent to receive communications from us electronically, such as e-mails, texts, mobile push notices, or notices and messages on this Site, and you can retain copies of these communications for your records. You agree that all agreements, notices, disclosures, and other communications that we provide to you electronically satisfy any legal requirement that such communications be in writing. Without limiting the generality of the foregoing, when you join and provide us with your mobile phone number, you agree that we may send you text messages (including SMS and MMS) to your phone number. Carriers are not liable for delivered or undelivered messages. Texts may be sent through an automatic telephone dialling system. Your phone carrier may prohibit or restrict certain mobile features, and they may be incompatible with your carrier or mobile device. Contact your carrier with questions regarding these issues. You agree to notify us of any changes to your mobile number and update your account(s) with us to reflect this change. You also agree that we will not be liable for any delays in the receipt of any messages as delivery is subject to effective transmission from your network operator. Data obtained from you may include your mobile phone number, your carrier's name, your opt-out status, and the date, time, and content of your messages. We may use this information to contact you and to provide you with the SMS services. All data collected is subject to our 'Privacy Statement'.

#### **5. SHIPPING AND DELIVERY**

- 5.1 Your Dispatch Confirmation will contain delivery information which will allow you to track the delivery of your Products (where such service is made available). Occasionally our delivery to you may be affected by an Event Outside Our Control. See Section 10 for our responsibilities when this happens.
- 5.2 If no one is available at your address to take delivery, the carrier may leave a delivery attempt notice to advise that the merchandise has been returned to their local depot. If this occurs, please contact the carrier at the number listed on the delivery attempt notice. If you have further issues, please contact eShopWorld on [info@eshopworld.com](mailto:info@eshopworld.com).
- 5.3 Delivery of an order shall be completed when we deliver the Products to the address you gave us, or you collect such Products from us.



- 5.4 Occasionally, part of an order may be out of stock or backordered by the respective retailer. If not agreed otherwise in these Terms (particularly under Section 10), we are not responsible for delays in your order due to backorder situations or delays caused by the retailer, and shipments of your Products will only be made after the Products have arrived at the depot.
- 5.5 Products are shipped to you based on the information which you provide to us and you are responsible for the accuracy of such information. If any regulations are breached (including but not exclusively export/import regulations) due to inaccurate information provided by you then you are responsible for such breach.
- 5.6 Our carrier may contact you to arrange deliveries, confirm delivery details and rearrange deliveries (where applicable) from time to time.
- 5.7 If you have chosen cash on delivery as your preferred method of delivery and payment (where such option is available):
  - 5.7.1 we have discretion to reject certain modes of payment;
  - 5.7.2 we only accept payments in the local currency; and/or
  - 5.7.3 should you not accept the order or make full payment at the time of delivery, we reserve the right to refuse to deliver the Products.

## 6. RETURNS

Except as otherwise provided in Section 8 below, the following sections apply with respect to standard returns. Please see below for more information regarding Faulty Merchandise and your Right of Withdrawal:

- 6.1 Details on how you can cancel your order or return your Products (where permissible) including the address to which Products must be returned and the time limits for returns, will be provided in the FAQs (Frequently Asked Questions), on the checkout page, in your order confirmation e-mail and/or your Dispatch Confirmation via the link to the returns portal (the “**Return Merchandise Portal**”).
- 6.2 Returns must only be sent to the address indicated on the Return Merchandise Portal. These details will be provided with the delivery package containing your order or in the Dispatch Confirmation email (which will contain a link to the Return Merchandise Portal).
- 6.3 Returned Products must be in new condition with tags attached and must be accompanied by the original receipt or invoice. All returned Products are sent at your own risk. If you have received a return label, you must use the return label provided to you via the Return Merchandise Portal.
- 6.4 All refunds are subject to inspection and verification within our return centres. If the returned Products are not fully resaleable, whether through a damage of the Product or the packaging, we reserve the right to refuse a refund partly or in total.





- 6.5 Only in cases where the details of the returned Products have been provided within the Return Merchandise Portal will we reimburse you. At our discretion, a refund may be issued without requiring a return.
- 6.6 You will be refunded by us to the credit/debit card or other payment method provided by you when the order was originally placed. The refund will be processed as soon as practicable but within fourteen (14) working days of the Product arriving to the return centre in a perfect resalable condition.
- 6.7 Deductions may be made from refunds where such returned Products are returned in an unacceptable condition.
- 6.8 We acknowledge that any Products returned on the basis of being faulty shall not be subject to this section and no provisions within these Terms shall affect your statutory consumer rights. All returns of faulty Products sold outside the United States will be governed under the Sale of Goods and Services Act 1980. Returns for faulty Products sold in the United States will be governed by the Uniform Commercial Code, as implemented in the state in which you are a resident.
- 6.9 Certain goods may not be suitable for return. In the event that a Product is not suitable for returning, please refer to your order confirmation email and you will be advised as to how your refund may be processed in accordance with the policies and procedures set out therein.

#### **For Consumers in Canada**

- 6.10 Canada consumers agree as follows: U.S. Direct E-Commerce Limited (dba eShopWorld) is an approved CREDITS participant with the Canada Border Services Agency (CBSA). By ordering Products from U.S. Direct E-Commerce Limited (dba eShopWorld), I hereby authorize Livingston International an approved customs broker in CREDITS, to act as my agent, and to transact business with the CBSA to obtain release of my merchandise, account for duties and taxes, return merchandise to U.S. Direct E-Commerce Limited (dba eShopWorld), and electronically submit refund claims on my behalf. Under the CREDITS program, I understand that the CBSA will send any refund of duties and taxes that were paid on the returned merchandise to the customs broker, and that I will obtain the refund directly from U.S. Direct E-Commerce Limited (dba eShopWorld). Further, I also authorize Livingston International to forward any refund issued by the CBSA in my name, so that U.S. Direct E-Commerce Limited (dba eShopWorld) can be reimbursed.

### **7. FAULTY MERCHANDISE**

- 7.1 If you wish to return merchandise which is faulty or non-conforming, you can email us.
- 7.2 If you choose to return your faulty or non-conforming merchandise, we will first need to confirm that it is faulty, damaged, or does not correspond to the description on our Site. Once confirmed, we will refund the cost of the merchandise and the original shipping and handling charges paid by you. If we determine the merchandise is not faulty, you will not be entitled to a refund and we will return the merchandise to you at your cost. Please see the "Returns" section above for more information regarding on how you can complete your return.





7.3 We will usually credit the refund back to the form of payment that you used to pay for the merchandise within approximately fourteen (14) days from the date that we receive the merchandise. Please note, it may take longer for the refund to appear on your payment card statement.

## **8. RIGHT OF WITHDRAWAL (CONSUMERS IN THE EUROPEAN UNION)**

8.1 Subject to Section 8.2 below, you may cancel your order for any reason without penalty for up to fourteen (14) days after the order has been received.

8.2 Your right of cancellation shall only apply in circumstances where we are legally obliged to provide such a right to you in your respective jurisdiction. The right to return (or exchange) Products under this section does not apply to Products (i) made to your specification; or (ii) which have been personalised; or (iii) which by reason of their nature cannot be returned or are liable to deteriorate or expire rapidly; or (iv) where sealed Products have been supplied which are not suitable for return due to health protection or hygiene reasons, if they become unsealed after delivery.

### **8.3 Withdrawal Policy**

Note to Consumers in Germany: In the event of conflict between the German and the English translations of Section 8.3, the German version shall prevail for consumers in Germany.

#### **Right of withdrawal**

You have the right to withdraw this Contract within fourteen days without giving any reason.

The withdrawal period is fourteen days from the date on which you or a third party named by you, who is not the carrier, have taken or has taken possession of the goods.

To exercise your right of withdrawal, you must inform us (eShopWorld c/o U.S. Direct E-Commerce Limited, 3rd Floor, The Concourse Building, 100-115 Airside Business Park, Swords, County Dublin, K67 NY94 Ireland, email [info@eshopworld.com](mailto:info@eshopworld.com)) of your decision to withdraw from this Contract. For this purpose, you may use the enclosed model withdrawal form, which is, however, not mandatory. You may also electronically fill in and submit the model withdrawal form or another clear statement on our website (a link to the Return Merchandise Cancellation Form will be included in your order confirmation e-mail and/or your Dispatch Confirmation email]. If you make use of this option, we will send you confirmation of receipt of such revocation without delay (e.g. by e-mail).

In order to comply with the withdrawal period, it is sufficient that you send the notification of the exercise of the right of withdrawal before the expiry of the withdrawal period.

#### **Consequences of the withdrawal**



If you withdraw this Contract, we shall reimburse you all payments we have received from you, including delivery costs (with the exception of additional costs resulting from the fact that you have chosen a type of delivery other than the most favourable standard delivery offered by us), without undue delay and no later than within fourteen days from the day on which we received the notification of your revocation of this Contract. For this repayment, we will use the same means of payment that you used in the original transaction, unless expressly agreed otherwise with you; in no case will you be charged any fees because of this repayment.

We may refuse to refund you until we have received the goods back or until you have provided proof that you have returned the goods, whichever is the earlier.

You must return or hand over the goods immediately and in any case no later than within fourteen days from the day on which you notify us of the revocation of this contract to us. The deadline is met if you send the goods before the expiry of the period of fourteen days.

You shall bear the direct costs of returning the goods, except if you have received an eShopWorld nominated or prepaid label.

You must pay for any loss in value of the goods only if such loss in value is due to handling of the goods that is not necessary for testing the quality, characteristics and functioning of the goods.

#### 8.4 Model Withdrawal Form

If you wish to withdraw the Contract, please complete and return this form.

- To eShopWorld c/o U.S. Direct E-Commerce Limited, 3rd Floor, The Concourse Building, 100-115 Airside Business Park, Swords, County Dublin, K67 NY94 Ireland, email [info@eshopworld.com](mailto:info@eshopworld.com).
- I/We (\*) hereby give notice that I/We (\*) cancel my/our (\*) contract of sale of the following goods (\*).
- Ordered on (\*)/received on (\*).
- Name of consumer(s).
- Address of consumer(s).
- Signature of consumer(s) (only if this form is notified on paper):
- Date

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(\*) Delete as applicable.



## 9. PRODUCT WARRANTIES AND OUR LIABILITY

Subject to deviating provisions under Sections 9.10 and 9.11 for Consumers in Germany (for which solely the provisions in these Sections 9.10 and 9.11 shall apply), the following applies with regard to Product warranties and our liability:

- 9.1 **We do not manufacture (or direct the manufacture of) any of the Products offered on our Site in any way. The availability on our Site of Products does not constitute an affiliation with or endorsement of any of the Products or their manufacturer or retailer. To the extent a Product is covered by the manufacturer's or retailer's warranty (as detailed in an applicable Product's description on our Site and included with our delivery of the Product), you can avail yourself of any of such warranties by following the instructions provided in the applicable warranty agreement(s). You acknowledge and agree that under no circumstances shall we be liable for any breach of the manufacturer's or retailer's warranty claims and/or for any loss or damages that may arise out of the manufacturer's or retailer's failure to honor its warranty obligations to you. Any warranty related issues arising in respect of a Product should be communicated to the respective manufacturer's or retailer's customer support team. In these circumstances, we will provide a refund or replace the product as appropriate and solely upon instruction from the retailer or manufacturer, as the case may be.**
- 9.2 ALL PRODUCT DESCRIPTIONS AND SPECIFICATIONS ARE PROVIDED TO US BY THE RETAILER, AND ALL PRODUCTS HAVE BEEN MANUFACTURED AND LABELED BY THE MANUFACTURER. WE DO NOT WARRANT THE LEGALITY, ACCURACY, RELIABILITY, OR COMPLETENESS OF SUCH DESCRIPTION, SPECIFICATION, OR LABELING OR ANY OTHER CONTENT ON THE SITE. AS SUCH, THE PRODUCTS ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, UNLESS OTHERWISE SPECIFIED IN WRITING, AND WE PROVIDE NO WARRANTIES, GUARANTEES OR COVENANTS OF ANY KIND RELATING TO ANY PRODUCT PURCHASED BY YOU, INCLUDING ITS FITNESS, QUALITY, SAFETY, OR INABILITY TO USE SUCH PRODUCT, OR INABILITY TO HAVE SUCH PRODUCT REPAIRED OR SERVICED. TO THE MAXIMUM EXTENT ALLOWED BY LAW, WE DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, RELATING TO FITNESS, QUALITY, OR SAFETY OF THE PRODUCT, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
- 9.3 TO THE FULLEST EXTENT PERMITTED AT LAW, WE WILL NOT BE LIABLE (WHETHER IN CONTRACT, TORT (INCLUDING, BUT NOT LIMITED TO NEGLIGENCE), OR UNDER ANY STATUTORY IMPLIED TERM) FOR ANY DAMAGES OF ANY KIND INCLUDING WITHOUT LIMITATION DIRECT, INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL AND CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF USE, DATA, BUSINESS, GOODWILL, REPUTATION, OR REVENUE) ARISING OUT OF OR IN CONNECTION WITH ANY PRODUCTS PURCHASED OR OBTAINED, WHETHER OR NOT WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. OUR MAXIMUM LIABILITY TO YOU IS THE AMOUNT CHARGED TO YOUR CREDIT CARD OR OTHER FORM OF PAYMENT. DESPITE ANYTHING ELSE CONTAINED IN THESE TERMS. NEITHER PARTY EXCLUDES ANY LIABILITY FOR DEATH OR PERSONAL INJURY TO THE EXTENT ONLY THAT IT ARISES AS A RESULT OF THE NEGLIGENCE OF THAT PARTY, ITS EMPLOYEES, AGENTS OR AUTHORISED REPRESENTATIVES.



- 9.4 **To the extent permitted by law, we exclude all conditions, warranties, representations or other terms which may apply to our Site or any Content on it, whether express or implied.**
- 9.5 **We will not be liable to any user for any loss or damage arising under or in connection with:**
  - 9.5.1 **use of, or inability to use, our Site; or**
  - 9.5.2 **use of or reliance on any Content displayed on our Site.**
- 9.6 **We will not be liable for any loss or damage caused by a virus, distributed denial-of-service attack, or other technologically harmful material that may infect your computer equipment, computer programs, data or other proprietary material due to your use of our Sites or to your downloading of any Content on it, or on any third party website linked to it.**
- 9.7 **We assume no responsibility for the content of third party websites linked on our Sites. Such links should not be interpreted as endorsement by us of those linked websites. We will not be liable for any loss or damage that may arise from your use of them.**
- 9.8 **In no event may you bring any claim or cause of action under these Terms or any Contract more than one (1) year after such claim or cause of action arises.**
- 9.9 **You acknowledge and agree that the remedies provided for in this Section 9 (along with the remedies set forth in Section 7 above) will be your sole and exclusive remedies, and our sole and exclusive liabilities, arising out of the Products or your use of (or inability to use) the Products.**

#### **For Consumers in Germany**

- 9.10 **Regardless of deviating provisions in this Section 9, the German consumer's statutory warranty rights for defects of goods remain unrestricted and can thus be asserted by them within the scope of the legally mandatory scope to be granted by us.**
- 9.11 **Regardless of deviating provisions in this Section 9, the following applies with respect to liability provisions and limitations (both in manner and amount) for consumers in Germany:**
  - 9.11.1 **We shall be liable without limitation to the extent that the cause of the damage is based on an intentional or grossly negligent breach of duty by eShopWorld or a legal representative or vicarious agent of eShopWorld.**
  - 9.11.2 **Furthermore, we are liable for the slightly negligent breach of material obligations. Material obligations are obligations whose breach jeopardizes the achievement of the purpose of the contract or whose fulfilment makes the proper performance of the contract possible in the first place and on whose compliance you regularly rely. In this case, however, eShopWorld shall only be liable for the foreseeable damage typical for this type of contract. eShopWorld shall not be liable for the slightly negligent breach of obligations other than those specified in the preceding sentences.**



9.11.3 No limitation of liability shall apply in the event of injury to life, limb or health, for a defect following the assumption of a guarantee for the quality of the Product and for fraudulently concealed defects. Liability under the German Product Liability Act shall remain unaffected.

9.11.4 Insofar as our liability is excluded or limited, this shall also apply to the personal liability of our employees, representatives and vicarious agents.

## 10. EVENTS OUTSIDE OUR CONTROL

10.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under a Contract that is caused by an Event Outside Our Control. An Event Outside Our Control is defined below in Section 10.2.

10.2 An "**Event Outside Our Control**" means any act or event beyond our reasonable control, including without limitation strikes, lock-outs or other industrial action by third parties, civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war, fire, explosion, storm, flood, earthquake, subsidence, epidemic, pandemic, health crisis or other natural disaster, or failure of public or private telecommunications networks, backorder situations or delays caused by the retailer or impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport.

10.3 If an Event Outside Our Control takes place that affects the performance of our obligations under a Contract:

10.3.1 you will be contacted as soon as reasonably possible to notify you;

10.3.2 our obligations under a Contract will be suspended and the time for performance of our obligations will be extended for the duration of the Event Outside Our Control. Where the Event Outside Our Control affects our delivery of Products to you, we will arrange a new delivery date with you after the Event Outside Our Control is over; and

10.3.3 you may cancel a Contract affected by an Event Outside Our Control which has continued for more than 30 days from the date of order. To cancel please contact us. If you opt to cancel, you will have to return any relevant Products you have already received (where applicable in accordance with these terms and conditions), and we will refund the price you have paid, including any delivery charges (where applicable).

## 11. DANGEROUS GOODS (PERFUME AND FRAGRANCES)

11.1 International authorities such as UNECE and the IATA Dangerous Goods Regulations classify Products containing fragrances and perfumes as dangerous goods ("**Dangerous Goods**") and as such these Dangerous Goods are subject to strict shipment requirements. The returns process for Dangerous Goods differs from the returns process for non-Dangerous Goods.



### **For Consumers in the United Kingdom**

- 11.2 If you make your purchase in the United Kingdom and wish to return your fragrance(s) or other Dangerous Goods (if applicable), all shipping and handling charges are prepaid, and no subsequent payment will be payable by you for the returns service. The Dangerous Good you are returning must be in a fully resaleable condition i.e. unopened and unused and the packing must not be damaged.
- 11.3 To return your Dangerous Goods, you should log on to our Return Merchandise Portal, select the Dangerous Goods to return and generate your returns label. eShopWorld will notify you when the returned Dangerous Goods are received into the eShopWorld returns facility. The returned Dangerous Goods will be inspected at the eShopWorld returns facility for confirmation and we will refund any amounts due to you. Deductions may be made from refunds where any such returned Dangerous Goods are returned in an unacceptable condition. If the returned Dangerous Goods are not fully resaleable or the packaging is damaged, we reserve the right to refuse a refund.

### **For Consumers in the European Union**

- 11.4 If you make your purchase in the European Union (excluding United Kingdom) eShopWorld will provide you with an online returns label through the Return Merchandise Portal, which will include the applicable eShopWorld return address. You shall pay all shipping and handling charges from your address to the eShopWorld return address. The Dangerous Good you are returning must be in a fully resaleable condition i.e. unopened and unused and the packing must not be damaged.
- 11.5 You are required to inform the carrier that the returns package contains fragrances and or perfumes, and this will also be notified to you on the Return Merchandise Portal. Once the Dangerous Goods are returned to the eShopWorld returns address, we will inspect the returned Dangerous Goods and we will refund any amounts due to you. Deductions may be made from refunds where any such returned Dangerous Goods are returned in an unacceptable condition. If the returned Dangerous Goods are not fully resaleable or the packaging is damaged, we reserve the right to refuse a refund.

### **For Consumers in Japan**

- 11.6 You should contact eShopWorld's customer support services at [support@eshopworld.zendesk.com](mailto:support@eshopworld.zendesk.com).

### **Faulty Dangerous Goods**

- 11.7 Further to Section 6.9, to return your damaged or faulty Dangerous Goods, you should contact eShopWorld's customer support services at [support@eshopworld.zendesk.com](mailto:support@eshopworld.zendesk.com).

## **12. PERSONALISED PRODUCTS**

- 12.1 The ability of eShopWorld to fulfil any personalised order is subject to availability of:



12.1.1 the Product/stock; and

12.1.2 the materials requested/required.

12.2 The manufacturing time and/or the shipping time of any such Products may be affected due to Product or material constraints.

### **13. INDEMNITY**

13.1 To the greatest extent permitted by law, you hereby indemnify us and our affiliates, and our and their respective officers, directors, employees, agents, successors, and assigns, and undertake to keep any and all of the foregoing indemnified against any losses, damages, costs, liabilities and expenses (including without limitation legal expenses and any amounts paid by us to a third party in settlement of a claim or dispute on the advice of our legal advisers) incurred or suffered by us arising out of any breach by you of any provision of these Terms or violated any law, or arising out of any claim that you have breached any provision of these Terms or violated any law.

#### **For Consumers in Germany**

13.2 The foregoing indemnification provision in Section 13.1 shall not apply if you are not responsible for the breach. In addition, the foregoing indemnification provision shall not apply if it is merely an allegation that you have breached a provision of these Terms, but a culpable breach on your part cannot be established.

### **14. BREACHES OF THESE TERMS OF USE**

14.1 Without prejudice to our other rights under these Terms, if you breach these Terms in any way, we may take such action as we deem appropriate to deal with the breach, including suspending your access to our Site, prohibiting you from accessing our Site, blocking computers using your IP address from accessing our Site, contacting your internet service provider to request that they block your access to our Site if and to the extent allowed under applicable data protection law and/or bringing court proceedings against you.

### **15. ONLINE DISPUTE RESOLUTION**

15.1 The EU (Online Dispute Resolution for Consumer Disputes) Regulations 2015 requires all traders established in the European Union, who engage in online sales or services contracts, and all online marketplaces established within the European Union to provide:

15.1.1 an electronic link to the ODR Platform which is available at <http://ec.europa.eu/consumers/odr/>.

15.1.2 If you wish to contact eShopWorld directly regarding your Online Dispute you can do so at [Compliance@eshopworld.com](mailto:Compliance@eshopworld.com).

#### **For Consumers in Germany**





- 15.2 To comply with our information obligation according to Section 36 of the Act on Alternative Dispute Resolution in Consumer Matters (VSBG), we hereby declare that we are neither obligated nor willing to participate in dispute resolution proceedings at a consumer arbitration board.

## **16. INTELLECTUAL PROPERTY INFRINGEMENT**

- 16.1 We rely on Associates who supply the goods advertised on the Site and, in some cases, drop ship them directly to our customers. In accordance with the Digital Millennium Copyright Act of the United States, we are not liable for any infringement of copyrights, trademarks, trade dress or other proprietary or intellectual property rights arising out of Content posted on or transmitted through the Site, or items advertised on the Site, by our Associates. If you believe that your rights under intellectual property laws are being violated by any Content posted on or transmitted through the Site, or items advertised on the Site, please contact us promptly so that we may investigate the situation and, if appropriate, block or remove the offending Content and/or advertisements. It is our policy to disable access to infringing materials, and to terminate access of repeat infringers to the Site. In order for us to investigate your claim of infringement, you must provide us with the following information:

16.1.1 An electronic or physical signature of the person authorized to act on behalf of the owner of the copyright or other intellectual property interest;

16.1.2 A description of the copyrighted work or other intellectual property right(s) that you believe has been infringed;

16.1.3 A description of where the material that you claim is infringing is located or identified on the Site;

16.1.4 Your name, address, telephone number, and e-mail address;

16.1.5 A statement by you that you have a good faith belief that the disputed use is not authorized by the copyright or intellectual property owner, its agent, or the law; and

16.1.6 A statement by you, made under penalty of perjury, that the information submitted to us is accurate and that you are the owner of the copyright or intellectual property or authorized to act on behalf of the owner of the copyright or intellectual property.

## **17. OTHER IMPORTANT TERMS**

- 17.1 These Terms, along with the Order Confirmation, any instructions that we provide you with relating to any Product you obtain from us through the Site, any terms and conditions that may be provided in connection with any promotion or other sale, and our Site's 'Terms of Use' and 'Privacy Statement,' shall, collectively, be deemed a final and integrated agreement between you and us with respect to the subject matter hereof.

- 17.2 We reserve the right to make changes to our Site, policies, and/or these Terms at any time. Please check this page from time to time to take notice of any changes we made, as they are binding on you. Your continued use of the Site after any posting of updated Terms (which shall



be dated as of their most recent update) shall constitute your acceptance of and agreement to any changes therein made. Modifications will not apply to any orders we have already accepted unless the law requires otherwise.

- 17.3 **Note to Consumers in Germany.** Section 17.2 shall only apply to the extent any changes do not unreasonably disadvantage you. If changes are made, we will notify you within a reasonable period and inform you of your rights. You have the option to close your customer account at any time. Revisions to these Terms shall not impact this *“Note to Consumers in Germany.”*
- 17.4 We may assign or transfer our rights and obligations under these Terms or any Contract to another organisation, but this will not affect your rights or our obligations under these Terms or the applicable Contract. You may not assign any of your rights or delegate any of your duties hereunder at any time without our prior written consent in each instance, and any attempt to do so shall be null and void.
- 17.5 We only use your personal information in accordance with our Privacy Statement. Please take the time to read our Privacy Statement carefully, as it includes important terms which may apply to you. To the extent permitted under applicable data protection law, particularly for the purpose of performance of the Contract, the retailer may also use your personal information, in accordance with their own separate Privacy Statement which can be found on their website.
- 17.6 Each of the paragraphs of these Terms operates separately. If any of these conditions shall be deemed invalid, void, or for any reason unenforceable, that condition shall be deemed severable and shall not affect the validity and enforceability of any remaining condition.
- 17.7 Nothing expressed or mentioned in or implied from these Terms is intended or shall be construed to give to any person other than the parties hereto any legal or equitable right, remedy or claim under or in respect to these Terms. These Terms and all of the representations, warranties, covenants, conditions and provisions hereof are intended to be and are for the sole and exclusive benefit of us, our affiliates and you.
- 17.8 If we fail to insist that you perform any of your obligations under these Terms, or if we do not enforce our rights against you, or if we delay in doing so, that will not mean that we have waived our rights against you and will not mean that you do not have to comply with those obligations.
- 18. GOVERNING LAW AND ESW ENTITY**
- 18.1 The eShopWorld entity entering into these Terms and each Contract, and the law governing these Terms, each applicable Contract, and its and their interpretation and any legal dispute arising out of or in connection with these Terms or any Contract, as well as the applicable venue and dispute resolution rules are as follows:



<u>If Products are delivered to:</u>	<u>You are contracting with:</u>	<u>The governing Law is (without regard to conflict of laws provisions):</u>	<u>Dispute resolution and applicable dispute resolution rules and procedures:</u>
The United States of America	U.S. Direct E-Commerce (USA), Inc., a Delaware corporation	State of Delaware and controlling United States federal Law	Arbitration in New York, New York, USA pursuant to Section 18.5 below
Any other country (different from the USA)	U.S. Direct E-Commerce Limited trading as eShopWorld, a company registered in Ireland under company registered number 479237 and with our registered office at South Block, The Concourse Building, 110-115 Airside Business Park, Swords, County Dublin, Ireland	Irish Law	The courts of Ireland will have non-exclusive jurisdiction

18.2 Neither these Terms, nor any Contract, will be governed by the United Nations Convention on the International Sale of Goods.

18.3 As a consumer, you will benefit from any mandatory provisions of the law of the country in which you are resident. Nothing in these terms and conditions, including Section 18.1, affects your rights as a consumer to rely on such mandatory provisions of local law.

**For Consumers in the European Union**

18.4 If you are a consumer habitually resident in the European Union, you also enjoy the protection of the mandatory provisions of the law of your country of residence. In that case, you may choose to bring claims relating to these Terms arising from consumer protection standards in both Ireland and the member state of the European Union in which you have your habitual residence.

**For Consumers in the United States**

18.5 Subject to Section 18.8 below and all applicable laws, any dispute relating to the Site, to these Terms, to our Site’s ‘Terms of Use’ and ‘Privacy Statement,’ to our advertising or solicitation practices or to Products you purchase through the Site that is not resolved through good faith negotiation will be settled by final and binding arbitration pursuant to the consumer arbitration rules of the American Arbitration Association (“AAA”). The arbitration will be conducted by one neutral arbitrator, in accordance with this Section 18.5 and the then current Consumer Arbitration Rules of the AAA at a location agreed to by the parties. The parties will appoint an arbitrator pursuant to the AAA’s procedure for appointment from AAA’s panel. Each party will pay its own expenses, and ESW will pay the filing and any other administrative fees of the AAA and the arbitrator’s fees and expenses. This arbitration agreement is made pursuant to a transaction involving interstate commerce, and will be governed and enforced



under the Federal Arbitration Act, 9 U.S.C. § 1-16 (“**FAA**”). The arbitrator must apply applicable substantive law consistent with the FAA and must honor claims of privilege recognized at law. Either party may seek a temporary injunction in any court of competent jurisdiction to the extent necessary to preserve the status quo during the pendency of final resolution of a dispute in accordance with this Section 18.5. Except as provided below in Section 18.7, if any portion of the arbitration agreement in this Section 18.5 is deemed invalid or unenforceable under the FAA, it will not invalidate the remaining portions of the arbitration agreement. An award may be confirmed and judgment entered by any court having competent jurisdiction. The decision and award of the arbitrator is not subject to review except as expressly authorized by applicable law. The arbitrator may award injunctive relief if permitted by law – but the injunctive relief awarded by the arbitrator may not extend beyond the dealings between us. Any question of the arbitrability of any Dispute, including questions of the enforceability of this Section 18.5, the applicability of statutes of limitation or questions of issue preclusion, will be determined solely by the arbitrator. The parties, their representatives and participants and the arbitrator will hold the existence, disclosures, content and result of any arbitration proceeding in confidence for all purposes and may not use anything disclosed or stated in an arbitration for any purpose (including impeachment) other than to enforce a final settlement agreement or to obtain or enforce a judgment on an arbitration award or decision.

- 18.6 THIS ARBITRATION PROVISION MEANS THAT YOUR CLAIMS AGAINST ESW WILL BE RESOLVED THROUGH ARBITRATION RATHER THAN LITIGATION IN COURT. YOU MAY OPT OUT OF THIS ARBITRATION AGREEMENT (SECTION 18.5 ONLY) FOR ANY FUTURE BUSINESS WITH ESW AND DOING SO WILL NOT IN ANY WAY PREJUDICE OR AFFECT YOUR DEALINGS WITH ESW. TO EXERCISE THIS OPT OUT RIGHT, YOU MUST PROVIDE US WRITTEN NOTICE OF YOUR ELECTION TO OPT OUT NO LATER THAN 30 DAYS AFTER EFFECTIVE DATE OF THE CONTRACT BETWEEN US. THE PROCEDURE SPELLED OUT HEREIN IS THE ONLY WAY TO OPT OUT OF THIS ARBITRATION AGREEMENT, AND ANY ATTEMPTS TO OPT OUT AFTER THE DEADLINE SET FORTH HEREIN WILL BE INEFFECTIVE.
- 18.7 **CLASS ACTION WAIVER. ANY ARBITRATION PROCEEDING UNDER THIS SECTION WILL TAKE PLACE ON AN INDIVIDUAL BASIS. CLASS ARBITRATIONS AND CLASS OR REPRESENTATIVE PROCEEDINGS OF ANY KIND ARE NOT PERMITTED AND YOU EXPRESSLY WAIVE YOUR ABILITY TO PARTICIPATE IN A CLASS OR REPRESENTATIVE PROCEEDING AGAINST ESW OR ITS AFFILIATES. TO THE EXTENT THAT YOU OPT OUT OF ARBITRATION FOLLOWING THE PROCEDURE SET FORTH IN THE PRECEDING PARAGRAPH, OR IF THIS ARBITRATION AGREEMENT IS FOUND INAPPLICABLE TO YOUR DISPUTE WITH ESW, THIS CLASS ACTION WAIVER WILL CONTINUE TO APPLY IN LITIGATION. YOU AGREES THAT THIS CLASS ACTION WAIVER IS AN ESSENTIAL ELEMENT OF THIS AGREEMENT AND THAT IT MAY NOT BE SEVERED. IN THE EVENT THAT THIS CLASS ACTION WAIVER IS DEEMED INVALID OR UNENFORCEABLE, THEN THE ENTIRE AGREEMENT TO ARBITRATE IN THIS SECTION WILL BE NULL AND VOID.**
- 18.8 Notwithstanding the foregoing, you may elect to pursue a breach of warranty claim in small-claims court rather than submit to binding arbitration, but only if you provide us with written notice of your desire to do so within 90 days of your purchase transaction. Any small-claims court proceeding initiated hereunder will be subject to the class action waiver in Section 18.7 above.



18.9 IF FOR ANY REASON A CLAIM PROCEEDS IN COURT RATHER THAN IN ARBITRATION, TO THE GREATEST EXTENT PERMITTED BY LAW, YOU HEREBY WAIVE ANY RIGHT TO A JURY TRIAL.