

GENERAL TERMS & TERMS OF SERVICE

§ 1 VALIDITY

1. For any business relationship between The Smart Spirit (represented by Claudia Hackl) and the customer starting from 01.01.2019 exclusively the following General Terms and Conditions will apply, regardless of the means of communication used.
2. The customer recognizes the exclusive validity of The Smart Spirit's General Terms and Conditions for the entire business relationship. The Smart Spirit will not recognize any different conditions of the customer unless the manager of The Smart Spirit has expressly agreed in writing to their validity. If the customer enters into a business relationship with The Smart Spirit by using the website, he/she recognises the General Terms and Conditions as the basis for the entire business relationship between the customer and The Smart Spirit.

§ 2 CLOSURE OF PURCHASE CONTRACT AND CANCELLATION

1. The presentation of products within the framework of the Online Shop does not represent a legally binding offer but rather an in-line catalogue without obligation. By clicking the button 'Buy now', you are making a binding order for the goods contained in the shopping basket. The confirmation of the receipt of the order will occur immediately after the order has been sent through an automatically generated e-mail and does not yet represent an acceptance of any contract. Such acceptance will only come into being when you receive an e-mail from us, in which we confirm the dispatch of the item or the order. We are able to accept your order within two days.
2. You may consult previous orders in your customer account, provided that you have registered with us.
3. If we cannot accept the offer or should certain products in an order not be available, then you will be informed immediately.
4. The Smart Spirit reserves the right to withdraw from the sales contract in cases of print or wording or calculation mistakes on the website.
5. All offers are valid as long as stocks last. Should our supplier despite contractual agreement not be able to deliver the ordered products then we equally have the right to cancel a contract with a customer. In this case you will be informed without delay that the ordered product cannot be delivered. The already paid purchase price will be returned within 14 business days (with Saturday not being considered a business day) of or set against other products.
6. Policy regarding the conditions for and consequences of cancellation are set out in the following section 'Cancellation Policy'.

CANCELLATION POLICY

Cancellation rights

You have the right to cancel this contract within 14 days without stating any reason. The statutory cancellation period is 14 days starting from the day when you or a third party, who is not the carrier, has taken possession of the items or, in the case of part deliveries, the final item.

This cancellation rights must be exercised by informing me (The Smart Spirit, Langedg 19/1, A-8511 Sankt Stefan, info@thesmartspirit.com Tel. +43 664 64 28 897) by means of an unequivocal declaration (e.g. by a letter sent by post or e-mail) of your decision to cancel this contract. To this end you may use the standard [cancellation form](#). However, this is not obligatory.

To observe the cancellation period it is sufficient for you to send the statement of your wish to exercise your cancellation rights before the expiry of the cancellation period.

Consequences of cancellation

If you cancel this contract, we have to return to you any payments which we have received from you,

including delivery costs (with the exception of any supplementary costs arising from your choice of any means of delivery other than our standard most inexpensive delivery option), without delay and at the latest within fourteen days from the day on which notice of your cancellation of this contract was received by us. For this repayment we shall use the same means of payment you employed for the original transaction, unless expressly agreed otherwise with you; on no account will you incur any financial charge on our part on account of this repayment.

We may refuse any repayment until we have received back the goods or until you have provided proof that you have sent back the goods depending on whichever is earlier.

You must send back or hand back the goods without delay, and in any case at the latest within fourteen days from the day you informed us of the cancellation of this contract, to:

The Smart Spirit

Langegg 19/1
A-8511 Sankt Stefan

The time limit is observed if you dispatch the goods before the end of the fourteen day period.

If you are unable to restore or return to us anything provided for service or usage (e.g. benefits of use) or can only do so in part or in a deteriorated condition, you must provide appropriate compensation. For the deterioration of the material and for usages made you must only provide compensation in as far as the usages or the deterioration are the consequence of employing the material in a way that goes beyond its tested features and functioning. By 'Tested features and functioning' we mean the testing and trying out of the particular item, as is possible or normal for example in the shop context.

The cancellation right does not exist for the delivery of products that are not pre-manufactured and the specification for the production of which is determined by the individual choice of the consumer or which are clearly customized for the individual needs of the consumer.

Please note that all cushions are not pre-manufactured and will be specified and hand-sewn in Austria depending on the individual choice of the customer. Therefore, the consumer's right to cancel the long-distance contract is excluded in accordance with §18 FAGG.

Please note that clothing products are not pre-manufactured and will be printed from shirtee.com. At Shirtee.com, printed matter is sold exclusively, which are manufactured based to customer specification. The designs at The Smart spirit are specified from The Smart Spirit for The Smart Spirit consumers. Therefore, the right to cancel the long-distance contract is excluded. For more information visit shirtee.com in accordance with § 18 FAGG.

Items that can be sent by parcel are to be sent back at our risk. You bear the direct costs of the return of goods.

§ 3 DELIVERY

1. Should nothing different be requested by the customer then the delivery address entered by the customer will be used.

2. Delivery is assigned to different delivery service providers depending on the country. The relevant individual delivery conditions and delivery costs can be found in the detailed information on the internet page.
3. If a delivery is not possible to a customer, be it because the customer was not reachable at the provided delivery address, although the time of delivery was indicated to the customer with appropriate notice or if the address provided was incorrect, then the customer will cover the costs of the unsuccessful delivery.
4. The delivery is sent from stock, the location of which is also the place of delivery. The customer takes over the risk once he/she takes possession of the item.
5. Delivery and service delays due to acts of God are not the responsibility of The Smart Spirit. Such events give The Smart Spirit the right to delay a delivery for the period of disruption and an appropriate restarting period or to withdraw entirely or in part from non completed parts of orders. Acts of God include strikes, natural disasters, war, blockades, import and export restrictions and other national interventions regardless whether they occur at The Smart Spirit or distributors of The Smart Spirit.
6. In the case of effects of acts of God which will cause a delay of a delivery, we will of course inform the customer without delay.
7. The place of delivery for company business is our company location.

§ 4 PAYMENT AND LATE PAYMENTS

1. All product prices at The Smart Spirit are without VAT. The prices stated at the time of the order including costs arising from delivery are valid until further notice.
2. The retail price is payable upon placement of an order.
3. The customer can pay the purchase price by credit card, direct bank transfer and Pay Pal regardless from which country he orders.
4. Should the customer delay in paying, The Smart Spirit has the right to charge interest on the delayed payment to the level of 5% above the annual rate set by the Austrian National Bank. If The Smart Spirit incurs a higher rate of interest for delay, The Smart Spirit has the right to pass this on.

§ 5 INVOKE A WITHHOLDING RIGHT AFTER NOTIFICATION OF DEFECTS

1. A right to withhold may be invoked by the customer only when his complaints have been recognised legally or by The Smart Spirit. The customer is only entitled to exercise his withholding right in as far as his counter claim is based on the same contractual relationship.

§ 6 PROPRIETARY RIGHTS

1. All of our deliveries and services occur under proprietary right. Until all the claims against the customer have been fully met, the delivered products remain the property of The Smart Spirit.
2. A right of compensation is only available to you, if your counterclaims are established legally or recognized or accepted by us. Additionally, you only have a right of retention, so long as your counterclaim is based on the same contract.
3. If the customer has any remaining default payments due to us, all existing receivable are due immediately.

§ 7 GUARANTEE

1. The guarantee period is based on the legal regulations. This is 2 years and begins at the time the customer receives the product.
2. Claims against The Smart Spirit which may go beyond guarantee claims based on a manufacturer's guarantee are excluded in as far as this is legally permissible. Claims arising from a manufacturer's guarantee can only be claimed by the customer against the manufacturer, who has provided the guarantee.

3. The guarantee is not valid against normal wear and tear caused by use of a product.
4. Should a defect in a purchased item be the responsibility of The Smart Spirit, then The Smart Spirit is entitled to choose either to provide a repair or remedy of the fault, or a replacement product. If The Smart Spirit is unwilling or not able to repair the problem or provide a replacement or the time taken to carry this out is longer than the appropriate time period expected for reasons that fall within the responsibility of The Smart Spirit or if the repair/replacement delivery is unsuccessful, then the customer is entitled to withdraw from his contract or to ask for an appropriate reduction of the purchase price.
5. If a warranty claim should occur on a product ordered online, the customer can return it to the contact address provided. Should it arise that the product does not have a fault that falls under warranty then The Smart Spirit will bill the customer for any expenses incurred.
6. Compensation for consequential damage (due to defects), as well as for any other damage to materials or financial loss and claims for damages by third parties against customers, are excluded, in as far as it is not a case of consumer business.

§ 8 DISCLAIMER SHOP

1. Claims by the customer other than the guarantee claims laid down in §7, especially damages claims, are excluded, in as far as this is legally permissible. Thus The Smart Spirit accepts no responsibility for damage or harm not directly linked to the delivered object itself and especially not for loss of profit or other financial loss by the customer.
2. The liability limitation defined in § 8 sec.1 does not apply in as far as the damage/harm is the result of intentionality or gross negligence or personal injury has occurred.
3. The Smart Spirit accepts no responsibility for the eventuality that the services offered from its website are not available without interruption nor for the conservation of stored data.

§ 8.1 DISCLAIMER BLOG, VIDEOS AND OTHER CONTENT

4. The other content on this website (Articles, Videos and Blogs) is not intended to provide and does not constitute medical, legal, or other professional advice. The content on The Smart Spirit is designed to support, not replace, medical or psychiatric treatment.

§ 9 LINKS AND REFERENCES

1. The links to outside pages made by The Smart Spirit are only signposts to these sites; therefore they are presented in specific browser windows by means of external links. The Smart Spirit does not identify with the content of these pages to which reference is made and accepts no responsibility for them.

§ 10 INFORMATION OBLIGATIONS

1. On ordering the customer is obliged to make truthful statements. In as far as there is a change in the customer's data, especially names, address, e-mail address, telephone number, the customer is obliged to inform The Smart Spirit of this change without delay by changing the information given. If the customer fails to give this information or provides false data from the outset, especially a false e-mail address, then The Smart Spirit may withdraw from the contract, in as far as such a contract has been made.

§ 11 APPLICABLE LAW AND JURISDICTION

1. Austrian law applies.

2. In all legal matters Austrian law, excluding any of its reference provisions and the UN sales law, applies exclusively to all legal dealings between The Smart Spirit and the customer applies, in as far as this is legally permissible.
3. For consumers as defined in Art 5 EVÜ their national obligatory consumer protection law provisions apply, unless the applicable Austrian provisions are more favourable.
4. If the customer is not subject to general legal jurisdiction in Austria, has changed residence or moved his/her normal place of residence abroad since the purchase contract was made or his/her normal residence is not fixed/known at the time of any action brought, then Deutschlandsberg will be applied as the exclusive jurisdiction for any disputes arising directly or indirectly as a result of a contract.
5. If the customer has his place of residence or is normally present or is employed in Austria, then for an action against him/her in accordance with §§88, 89, 93 Sect. 2 and 104 Para. 1 amended, any question relating to the competence of a particular court can only be determined by place of residence, normal place of presence or employment location. This is not the case with pre-existing disputes. For any legal disputes arising from the contract, the mandatory computer protection law provisions at the consumer's place of residence are also applicable to the contractual relationship.

§ 12 DATA PROTECTION

1. All data collected by us will be used and processed exclusively within the framework of the current data protection laws in accordance with our [data protection regulations](#).

§ 13 SEVERABILITY CLAUSE

1. Should certain terms of the current contract be ineffective or impracticable or after contract closure be ineffective or impracticable, then the validity of the remaining provisions of the contract still remains unchanged. Practical and effective provisions, the effects of which will come closest to fulfilling the commercial goals pursued by the contracting parties through the ineffective and/or impracticable provisions, will replace the ineffective or impracticable provisions. The provisions above also apply in the case that the contract is incomplete.

Latest update: 17.12.2018

Do you still have questions? Then just contact us via the [contact form](#).