

# GENERAL TERMS

## § 1 VALIDITY

1. For any business relationship between Blue Tomato and the customer starting from 27.10.2014 exclusively the following General Terms and Conditions will apply, regardless of the means of communication used.
2. The customer recognizes the exclusive validity of Blue Tomato's General Terms and Conditions for the entire business relationship. Blue Tomato will not recognize any different conditions of the customer unless the management of Blue Tomato has expressly agreed in writing to their validity. If the customer enters into a business relationship with Blue Tomato by using the website, he/she recognises the General Terms and Conditions as the basis for the entire business relationship between the customer and Blue Tomato.

## § 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 have the possibility of making the purchase contract in German or English. The ordering and transaction language may also be either German or English. We will store the text of the contract and will send you the order details by e-mail. 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. Blue Tomato 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. We may refuse repayment until we have received back the goods again or you have sent us proof of having sent back the goods, whichever occurs first.
6. Policy regarding the conditions for and consequences of cancellation are set out in the following section 'Cancellation Policy'.

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## 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.

Beyond the statutory cancellation period we voluntarily grant you an extended cancellation period amounting in total to 21 days for the articles which are also subject to the statutory cancellation right.

This cancellation rights must be exercised by informing us,

the

Blue Tomato GmbH

Hochstraße 628

A-8970 Schladming

Fax: +43 (0) 3687-24 22 355

Tel. (AT and all other countries): +43 (0) 3687 24223-33

Tel. (DE): +49 (0) 89 41614861

Tel. (CH): +41 (0) 435 082 199

Tel. (ES): +34 913 496 545

Tel. (FI): +358 (0) 942 450 010

Tel. (FR): +33 (0) 1 85 85 01 48

Tel. (NL): +31 (0) 20 49 90 369

Tel. (IT): +39 (0) 029 475 0775

Tel. (SL): +386 (0) 188 880 20

7. by means of an unequivocal declaration (e.g. by a letter sent by post, fax 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 unformed us of the cancellation of this contract, to:

Logistikcenter Blue Tomato  
Blue Tomato GmbH  
Köglerweg 50 Halle 1  
A-8042 Graz

For customers from Switzerland:  
Logistics Center Blue Tomato  
Blue Tomato Switzerland  
Postfach  
CH-9029 St. Gallen

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 in the case of the following contracts unless the parties have agreed otherwise:

- Contracts for the delivery of goods which 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.
- Contracts for the delivery of sealed goods which for reasons of health protection or hygiene are not suitable for returning if the sealing has been removed after delivery.
- Contracts for the delivery of goods if these by reason of their nature have been inseparably intermixed with other goods after delivery.
- Contracts for the delivery of audio or video recordings or computer software in sealed packaging if the sealing has been removed since delivery.
- Contracts for the delivery of newspapers, periodicals or illustrated magazines with the exception of subscription contracts.

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. For customers in Germany, Austria and Slovenia return is free if the value of the order in question exceeds 40 Euros.

The return of goods that cannot be sent by parcel (specifically Surf and Stand Up Paddle Boards) has to be done through Fed Ex Freight or other freight forwarding agencies and the cost must also be borne by the customers. The cost of returning goods by Fed Ex Freight is 140 Euros and otherwise max. 200 Euros. The costs of freight forwarding may vary according to delivery country.

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8. The place of delivery for company business is our company location.

### **§ 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 Blue Tomato. Such events give Blue Tomato 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 Blue Tomato or distributors of Blue Tomato.
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. Deliveries are made worldwide, although for certain countries special security tests have to be undertaken before the delivery can be effected. In this case this is explained to the customer in advance. Please note that products of the brand Burton cannot be shipped outside Europe.

### **§ 4 PAYMENT AND LATE PAYMENTS**

1. All product prices at Blue Tomato are gross prices, include the current rate of VAT in the particular country and are shown in the stated currency. The prices stated at the time of the order including sales tax plus all costs arising from delivery are valid until further notice. Any customs duties occurring through delivery to Switzerland are borne by Blue Tomato. Settlement is made in Euro. In some countries there may be differences of exchange rates for payments in other currencies than Euro. Blue Tomato converts currencies based on the exchange rates of [European Central Bank](#).
2. Customers from non EU countries and outside Switzerland can order at Blue Tomato minus sales tax. The payment of the land specific taxes is the responsibility of the customer and is not part of the obligations of Blue Tomato. Any customs duties that may arise have to be paid by the customer.
3. The retail price is payable upon placement of an order.
4. The customer can pay the purchase price by credit card, prepayment, Pay Pal and Pay Pal express, regardless from which country he orders. Cash on delivery payments are only possible in the countries of the European Union. In the case of payment by cash on delivery any delivery charge will be passed on without supplement. In the case of payment by Pay Pal Express, Blue Tomato will store the e-mail address and delivery address supplied to Pay Pal in order to process the order. The customer has the possibility at all times of requesting the Blue Tomato log-in data in order to follow up his/her order. The payment by sofortüberweisung is currently only available in Austria, Germany and Switzerland, iDeal only in the Netherlands and purchase on account only in Switzerland. When purchasing on the account, the amount invoiced should be transferred to the account of our

external partners [BillPay GmbH](#) by the calendar day indicated on the bill. The purchase on the account does not apply to all offers and requires a successful credit check performed by BillPay GmbH. Concluding the credit check of an order, if the customer is approved to purchase on the account, then the payment will be processed in cooperation with BillPay GmbH, to whom we transmit our payment claims to after the completion of a sales contract. As payment on the account via BillPay, we remain responsible for general customer enquiries (e. g for goods, delivery time, dispatch), returns, complaints, withdrawal statements and withdrawal submissions or crediting.

5. Should the customer delay in paying, Blue Tomato 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 Blue Tomato incurs a higher rate of interest for delay, Blue Tomato has the right to pass this on. Special case purchase on account in Switzerland: In the event that you do not fulfill your payment obligations, following the lapse of your payment period and without any further notice you will land in default and the default interest of 8% will be due. BillPay reserves the right to charge per payment reminder a reminder fee of up to CHF 30 (respectively about EUR 25) as well as additional fees, in particular the costs of a possible debt collection process. In addition, BillPay may, in the future, refuse providing payment methods for contracts of sales, including those with other merchants. The [General Terms and Conditions of Billpay GmbH](#) apply.

## **§ 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 Blue Tomato. 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 Blue Tomato.
2. If you are an entrepreneur in the midst of trade or self-employed, a legal individual under public law or public sector fund, we retain ownership of the purchased item until all outstanding claims from the business transactions with you have been settled. The relevant security rights can be transferred to third parties. Extraordinary dispositions such as pledges or chattel mortgages are inadmissible. In the event of processing, mixing or combining the goods supplied under reservation with other material, Blue Tomato acquires co-ownership of the new products created, in the ratio of the value of the goods supplied under reservation to that of the other material. In the event of seizure of the goods supplied under reservation, Blue Tomato shall be informed without delay and given assistance in securing its rights. In addition, all costs incurred in relation to this, including but not limited to those in connection with objection proceedings, shall be reimbursed.
3. 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.
4. 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 Blue Tomato 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 Blue Tomato, then Blue Tomato is entitled to choose either to provide a repair or remedy of the fault, or a replacement product. If Blue Tomato 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 Blue Tomato 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 Blue Tomato 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**

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 Blue Tomato 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. In as far as the liability of Blue Tomato is excluded or limited, this also applies for the personal liability of employees, representatives or agents.
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. Blue Tomato 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.
4. The customer expressly understands that bindings are only mounted according to their general settings. No adjustments have been made with regards to actual body weight, body size, ability or intended use. The customer understands that sets equipped with pre-mounted bindings are not ready to ride! The customer undertakes to have the settings adjusted according to industry standards by an authorized dealer (technician) and to have them regularly checked.

## **§ 9 LINKS AND REFERENCES**

1. The links to outside pages made by Blue Tomato are only signposts to these sites; therefore they are presented in specific browser windows by means of external links. Blue Tomato 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 Blue Tomato 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 Blue Tomato 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 Blue Tomato 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 Schladming 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.
6. Blue Tomato recognizes the Internet Ombudsman as an extrajudicial arbitration agency: Internet Ombudsman, Margaretenstraße 70/2/10, A-1050 Wien, Austria [www.ombudsman.at](http://www.ombudsman.at)

## **§ 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.