

## **Whoppah Conditions of Use**

### **1. Definitions**

Terms which are written with a capital in these Conditions (as defined below), have the following meaning:

- 1.1. **Whoppah:** the private limited company Whoppah B.V., with its registered office in Amsterdam and registered in the Commercial Register of the Chamber of Commerce under number 71938206.
- 1.2. **Purchaser:** each natural person or legal entity who concludes a purchase agreement with an External Seller using the Platform or in the showroom of Whoppah pertaining to the purchase of one or more Product(s).
- 1.3. **Seller:** each natural person or legal entity who/which offers one or more Product(s) using the Platform or in the showroom of Whoppah.
- 1.4. **Professional Seller:** a Seller, legal entity or natural person acting in the exercise of a profession or business.
- 1.5. **External Seller:** a (Professional) Seller, this not being Whoppah.
- 1.6. **User:** each natural person or legal entity, which also includes a Purchaser and External Seller, who visits the Platform and makes use of the Service(s) offered thereon.
- 1.7. **Account:** the personal profile of a User on the Platform with which use can be made of the Service(s) of Whoppah.
- 1.8. **Advertisement:** a promotion of a Product as posted by Seller on the Platform.
- 1.9. **Platform:** the (mobile) application(s) of Whoppah to be downloaded and the website [www.whoppah.com](http://www.whoppah.com).
- 1.10. **Third Party Provider:** a third party, not affiliated to Whoppah, who offers certain services using the Platform, such as Stripe for payment services or providers of transport services.
- 1.11. **Service(s):** the services which are offered by Whoppah, whether or not via a Third Party Provider, on the Platform or in another manner, including but not limited to, posting Advertisements on the Platform to be able to offer Products for sale, facilitating the payments related to the purchase/sale, the dispatch and delivery of (a) Product(s) and the Showroom Service.
- 1.12. **IP Rights:** all intellectual property rights, both registered and unregistered, including but not limited to, patent rights, copyrights (including rights to source and object codes of software), databank rights, trademark rights, trade name rights and rights pertaining to know-how and business secrets.
- 1.13. **Purchase Price:** the total amount which Purchaser owes to Seller for the purchased Product, including VAT and excluding Transaction Costs and any dispatch costs.
- 1.14. **Stripe:** the payment platform of the payment service Stripe with the payment methods offered thereon.
- 1.15. **Product:** a (second-hand, showroom, or used) product in a certain, available (sub)category which can be offered on the Platform by a Seller.
- 1.16. **Showroom Service:** Service concerning to the storage of a Product of an External Seller by Whoppah in the showroom of Whoppah to offer the Product there. In the case of the Showroom Service, Whoppah also creates an advertisement for the Product in question in order to also offer the Product on the Platform on behalf of the External Seller.
- 1.17. **Transaction Costs:** the costs owed by Purchaser to Whoppah of € 1.99 to effect the purchase transaction with Seller.
- 1.18. **Seller Commission:** the reimbursement owed by an External Seller to Whoppah for making use of the rendered Service(s), which is deducted by Whoppah from the payment of the Purchase Price to External Seller. These are 15% excluding VAT for Professional External Sellers and 12% including VAT for External Sellers, natural persons not acting in the capacity of exercising a profession or business.
- 1.19. **Conditions:** these conditions of use.

### **2. Applicability**

- 2.1 These Conditions apply to each use by a User of the Platform and/or the Services, as well as to the provision and maintenance of the Services by Whoppah. To the extent that Whoppah makes use of Third Party Providers in the context of its Services, the general conditions (of delivery) of the Third Party Provider in question may also apply.
- 2.2 For creating an Account, User states to be obligated to these Conditions towards Whoppah.
- 2.3 Deviations, additions or other changes to these Conditions are only valid if and to the extent that these have been explicitly agreed upon with Whoppah in writing.
- 2.4 Whoppah is entitled to amend these Conditions unilaterally from time to time. When applicable, the new version of the Conditions will need to be accepted by the User once more before being able to make further use of the Platform and the Services offered thereon. If User disagrees with the changes, User is required not to make further use of the Platform and/or the Services offered thereon. If User continues the use of the Platform and/or the Services after amendment or addition of the Conditions, User irrevocably accepts the amended or added Conditions in doing so.
- 2.5 If any provision in these Conditions is void or voidable, the other provisions of these Conditions will remain in full force and effect. In that case, Whoppah will replace the void or voided provision, for which the purpose and scope of the void or voided provisions are taken into account as much as possible.
- 2.6 If User acts in violation with one or more provisions from these Conditions, Whoppah is entitled to (temporarily) limit or suspend the activities of User on the Platform with immediate effect, in whole or in part, in addition to any other means of recourse, which also includes the (temporary) discontinuation and/or deletion of the Account, as well as

refusing the access to the Service(s), without Whoppah being liable for this in any way or liable for compensation towards User.

### **3. The Account**

- 3.1 In order to be able to make use of the Services of Whoppah which are offered on the Platform, User needs to create an Account. For the creation of an Account, User may opt to log in using another social media platform account of User. Users who are younger than 18 years old, require permission from their legal representative (guardian or parent) in order to be able to make use of the Services.
- 3.2 User is responsible for the careful confidentiality of user name and password. In that context, User is also liable for each use of the Services using the Account, which includes all (legal) actions which are performed under the Account.
- 3.3 User is personally responsible for the completeness and correctness of the information in the Account and updating it in the event of changes.
- 3.4 User is not allowed to have multiple Accounts which are directly or indirectly of the same User.
- 3.5 To be able to make use of online payment service Stripe, User needs to have a payment account with a Dutch/European bank. Every Professional External Seller is obligated to identify themselves as such and provide further information upon request when creating the Account. Whoppah has the right to change the status of an Account of an External Seller if there is reasonable cause to do so, for example if a Professional External Seller did not register as such.
- 3.6 Whoppah has the right to refuse the creation of an Account at all times, or to (temporarily) block or delete an already created Account. This may be the case, for example, if User lives in a country or resides where the Services are/cannot be provided, if there is a case of (a suspicion of) fraud or the (suspicion of) acting in violation with these Conditions or applicable laws or regulations, such as with regard to offering products that contain protected plant or animal species. Such a refusal, blocking or deletion never results in a right to compensation for User.
- 3.7 User may request Whoppah by email to delete the Account. In that case: (i) User can no longer make use of the Services which are offered on the Platform and (ii) Whoppah will delete the data in the Account no later than within one month after receiving such a request, subject to what is stipulated in the following sentence. If Whoppah receives a request to delete the Account from User, while payment and/or delivery obligations are still outstanding, User first needs to comply to these before the Account can be deleted.

### **4. Showroom Service**

- 4.1 In the event that an External Seller makes use of the Showroom Service, the Product is to be delivered to Whoppah on one's own account and risk. Sale from the showroom of Whoppah takes place on behalf of the External Seller; Whoppah only acts as a mediator in the matter; Whoppah is not a party to such a purchase agreement and not liable for any errors or shortcomings of the Purchaser or External Seller.
- 4.2 External Seller safeguards and guarantees, in the context of the Showroom Service, that:
  - (i) External Seller does not also offer the Product in question on the Platform by means of an Advertisement;
  - (ii) External Seller legitimately disposes of the Product to be offered and is entitled to sell it;
  - (iii) the condition of the offered Product is at least 'good'.
- 4.3 The External Seller is not allowed to also offer the Product, which is offered in the context of the Showroom Service, by other means.
- 4.4 For the Showroom Service, the External Seller owes 25% commission on the sale price of the Product to Whoppah, unless expressly and in writing agreed upon otherwise, also if the Product is sold through an advertisement created by Whoppah on the Platform on behalf of the External Seller.
- 4.5 An item must be sold through the showroom within 6 months. If the item is not sold after one month, Whoppah will lower the asking price by 9% for 5 consecutive months. We will send a notification with the price reduction to everyone who has saved the item as a favourite. This way, we try to sell your item as quickly as possible at the best price. If the item is still not sold after 6 months, Whoppah is authorized to remove the product from the showroom and the platform. You will need to pick it up or we will work with you to find an alternative destination. This is to keep our showroom inventory diverse and appealing to buyers. The external seller is required to take back the product at their own expense within 14 days after Whoppah has requested it. Of course, we will do everything we can to achieve a successful sale before that time. During the time the item is in the Whoppah showroom, it may not be sold through another platform or channel. If you pick up the item, we will charge a storage fee of € 75. The Showroom service offer explicitly mentions the one-time fee that the external seller owes to Whoppah if the product is not sold through the Showroom service and the external seller takes back the product.
- 4.6 When an External Seller uses the Showroom Service, costs will be charged for the pick up, photographing and placing of the item in the showroom. An External Seller may also bring the item to the showroom themselves, Whoppah will then photograph the item and place it online.
- 4.7 Whoppah has a right of retention to the Product of the External Seller which Whoppah has in possession in relation to the Showroom Service, towards any person who requests delivery thereof. Whoppah may also exercise the right

of retention towards the External Seller for what is still owed to Whoppah in relation to any previous obligations between Whoppah and the External Seller.

- 4.8 All Products of the External Seller which Whoppah has in possession in relation to the Showroom Service, also serve as a pledge for all receivables which Whoppah has on the External Seller.

## **5. Posting of an Advertisement**

- 5.1 An External Seller can post one or more Advertisement(s) on the Platform with an Account.
- 5.2 By posting an Advertisement, External Seller provides a free of charge, perpetual, irrevocable, non-exclusive right to Whoppah to use that Advertisement (or parts thereof), reproduce it and/or disclose it for marketing, promotion and/or publicity purposes of Whoppah.
- 5.3 External Seller safeguards and guarantees that:
- (i) there are no multiple identical Advertisements on the Platform at the same time;
  - (ii) External Seller has legitimate disposal of the Product offered in the Advertisement;
  - (iii) the condition of a Product offered in the Advertisement is at least 'good';
  - (iv) the content of the Advertisement (including titles, descriptions, prices and photos of the Product) is not misleading, inaccurate, incomplete or incorrect;
  - (v) the content of the Advertisement does not violate (intellectual property) rights of third parties;
  - (vi) the content of the Advertisement does not contain discriminatory, pornographic, offensive or otherwise illegal or unlawful content;
  - (vii) the content of the Advertisement is not in violation with applicable laws or legislation;
  - (viii) the Product which is offered in the Advertisement for is available as long as the Advertisement is online. If the Product of the External Seller is not available, it is the responsibility of the External Seller to take the Advertisement offline.
- 5.4 A posted Advertisement is active for an undetermined period. Whoppah may delete the Advertisement from the Platform at all times.
- 5.5 External Seller indemnifies Whoppah for any claims for compensation from Purchaser, as a result of or related to not complying with the guarantees as set out in 5.3.
- 5.6 The Purchase Price specified in an Advertisement is in euros, including VAT (to the extent applicable) and excluding Transaction Costs and any dispatch costs. The External Seller determines the amount of the dispatch costs in advance, unless the Purchaser opts for dispatch by the courier service of Whoppah.
- 5.7 Advertisements are posted within an existing (sub)category. Whoppah is entitled to delete existing (sub)categories, therefore possibly also deleting Advertisements, or moving them to a different (sub)category. This never results in a right to compensation for User.
- 5.8 After posting an Advertisement, the Product offered therein is assessed by (stylists and experts of) Whoppah. Whoppah is entitled to refuse (the content of) a certain Advertisement (or parts thereof), or to delete it. This may, for example, be the case if there is (a suspicion of) violation of (intellectual property) rights of third parties or the (suspicion of) acting in violation of these Conditions, such as the guarantees from article 5.3. In such a case, a right to compensation also never arises for External Seller.

## **6. Acceptance and payment**

- 6.1 There is a valid sale of a Product in the following cases: (i) if Buyer clicks on the Buy Now button and makes payment of the asking price, (ii) if Buyer has made a bid for a Product which has been accepted by Seller within 48 hours of the bid being placed and paid for by Buyer thereafter or (iii) if Buyer closes the sale in Whoppah's showroom.
- 6.2 In the event that the Buyer clicks on the Buy Now button and pays the Purchase Price in accordance with Whoppah's instructions, the Seller automatically accepts this offer and agrees to sell at its Buy Now price and the Product must be delivered to the Buyer at the chosen delivery method by the Buyer. When Buyer and Seller have reached a sale (offer and acceptance) of a Product in accordance with the provisions of this article, Whoppah confirms the purchase, also containing a request for payment of the Purchase Price, supplemented by Transaction Fees, buyer protection and shipping costs, if any, in accordance with the payment instructions indicated.
- 6.3 If the sale has taken place via the Platform and the Buyer has initiated payment by paying the purchase price in the Cashier, the Product will be held for the Buyer for 20 minutes, within which time the Buyer must pay the Purchase Price and other costs in accordance with Whoppah's instructions. If Buyer does not pay the Purchase Price and other costs or does not pay them within 20 minutes, the Advertisement with the Product to be auctioned will become available again and other Buyers will have the opportunity to still make a bid on the Product or buy it directly for the Buy Now price. If a new bid is placed and accepted by the Seller within 47 hours, the Buyer in question will have one hour of exclusivity to pay the Purchase Price in accordance with Whoppah's instructions. If no new bid is placed within that hour and the Purchase Price and other costs are not paid by the first Buyer, the Advertisement will become available with the removal of all previously placed bids.
- 6.4 Except to the extent Whoppah acts as Seller, both Purchaser and External Seller acknowledge that Whoppah only has a facilitating and supporting role via the Platform by offering the Services and is or becomes in no way a party to a (purchase) agreement between Purchaser and External Seller; Purchaser and External Seller indemnify Whoppah against each claim for compensation from External Seller or Purchaser, as a result of or related to the agreement and/or execution of the (purchase) agreement between Purchaser and External Seller. Whoppah is

therefore also (among other things) not obligated to require performance by the External Seller relating to the actual delivery of the Product.

- 6.5 Purchaser and External Seller indemnify Whoppah against each claim for compensation from External Seller or Purchaser, as a result of the purchase not being able to take place due to technical reasons (such as failures or bugs) on the Platform which involve complications in the execution of the purchase.
- 6.6 Purchaser indemnifies Whoppah for any claims for compensation from Purchaser, as a result of or related to not complying with the guarantees of the External Seller as set out in the provisions 4.2 or 5.3. Such as an Advertisement which is no longer available for the Purchaser.
- 6.7 Purchaser indemnifies Whoppah for any claims for compensation from Purchaser, as a result of the purchase not being able to take place.
- 6.8 Purchaser and External Seller are prohibited to agree on direct payment of the Purchase Price and/or to accept directly made payments of the Purchase Price. Amounts received will then need to be refunded. Upon violation of this provision, Whoppah may, at its discretion, hold both the Purchaser and External Seller liable for reimbursement of all damage, loss and costs of Whoppah caused by this, which amount to at least an amount of the Transaction Costs and Seller Commission missed out on by Whoppah (to the extent applicable).

## **7. Delivery, time limit for lodging a complaint and payment**

- 7.1 External Seller guarantees that the Product complies to the specifications communicated to Whoppah in the Advertisement or in the context of the Showroom Service, that the condition is at least 'good', to the reasonable requirements of soundness and/or usability and existing legal provisions and/or government regulations. If the Product does not comply with the above, for example because of the fact that the Product does not correspond to the offer in the Advertisement in reality, the External Seller is in default.
- 7.2 As soon as Purchaser has paid the Purchase Price, Transaction Costs and any dispatch costs, External Seller receives a confirmation (of payment). Unless the Product in the context of the Showroom Service is already delivered to Whoppah and if the Product is dispatched by the External Seller by parcel post, External Seller is required to ensure the correct and timely delivery of the Product to the Purchaser no later than within three (3) working days after receiving the confirmation and instruction of Whoppah. The External Seller indicates which dispatch methods are offered when creating an Advertisement. The External Seller sees what the reimbursement is which the External Seller will receive for this, along with the proceeds of the sale after Seller Commission.
- 7.3 Sold Products needs to be dispatched with a provider who offers a Track & Trace system. External Seller bears the risk of damage and loss of the Product during dispatch. Whoppah cannot be held liable for this.
- 7.4 If Purchaser and External Seller make use of the courier services of Whoppah for the pickup and delivery of the Product which the External Seller has sold to the Purchaser, the following provisions apply.
  - 7.4.1 In addition to these Conditions, Department 2, Title 13, Book 8 of the Civil Code applicable to domestic courier services of Whoppah, to the extent that these are not deviated from in these Conditions.  
The CMR applies to cross-border courier services, as well as provisions from these Conditions which are not contrary to the CMR.
  - 7.4.2 Purchaser and External Seller are responsible for the provision of a complete and exact address for picking up and delivering the Product and for all other relevant information to facilitate the pickup and delivery. The address information needs to be filled in in the Account of the Purchaser and External Seller on the Platform.
  - 7.4.3 The pickup and delivery have to take place at an easily accessible location; the courier has to be able to park the vehicle no more than fifteen (15) metres from the indicated delivery point.
  - 7.4.4 Purchaser and External Seller indemnify Whoppah against each claim for compensation from External Seller or Purchaser, as a result of the pickup and delivery of the Product not being able to happen or not on the indicated time.
  - 7.4.5 If Purchaser and/or External Seller proves that the Product is not delivered in the same condition as the Product of the External Seller was received by the Whoppah courier, the liability of Whoppah in the matter is limited to an amount of € 3.40 per kilogram of the damaged or undelivered Product; for other damage and loss than damage and loss as a result of loss or damage to the Product, such as consequential damage, business interruption or intangible loss, Whoppah is not liable. If the Product is not delivered in the same condition as the Whoppah courier has received the Product of the External Seller and this is the result of force majeure, Whoppah is also not liable for this.
  - 7.4.6 Whoppah is not liable for any damage arisen in or around the house or (business) premises of the Purchaser or External Seller during the pickup or delivery of the Product.
- 7.5 The provisions that follow hereinafter (7.5.1, 7.5.2 and 7.5.3.), without prejudice to the provisions of Article 8.1, apply exclusively to the extent that it concerns a (purchase) agreement other than between a Professional Seller and a Purchaser (this being a consumer), in which case the provisions of article 8 apply.
  - 7.5.1 After payment of the Purchase Price, Purchaser has seven (7) days of time to indicate to External Seller whether the Product is received in good order, and that the Product complies with the provisions of Article 7.1. If the Purchaser complains in a timely manner about the failure of delivery, or failure to do so in a timely manner, or non-compliance to the provisions of Article 7.1., then the payment is (temporarily) suspended to External Seller. The dispute resolution procedure of article 9 enters into effect at that time.
  - 7.5.2 As soon as Purchaser has confirmed that the delivery has succeeded, or if the time limit for lodging a complaint of article 7.5.1 has lapsed, External Seller of Whoppah receives a confirmation of the upcoming

disbursement to External Seller by email of the Purchase Price less the Seller Commission (to the extent applicable). Disbursement will take place no later than within ten (10) days after receiving the confirmation on the bank account number indicated by External Seller.

- 7.5.3 If the Third Party Seller has already been paid while the Buyer has complained, justified in accordance with article 7.5.1, and the Buyer wishes to cancel the purchase for that reason, the Third Party Seller will be given notice of default in writing, after which the External Seller will refund the amount received from Whoppah to Whoppah's bank account within seven days. If timely refund is not done, Whoppah is entitled to hand over the claim to a collection agency. The assessment of whether a Product complies with the provisions of Article 7.1 is exclusively for Whoppah, except to the extent that the law forcibly stands in the way under the given circumstances for the case.

## **8. Dissolution, return and 'buyer protection fee'**

- 8.1 If External Seller is a consumer, dissolution and return to the External Seller of a purchased Product is only possible if the Product does not comply to the provisions of article 7.1, has visible damage, not specified and/or shown in the advertisement, turns out to be a replica while the item was designated as original or if parts are replaced or missing if this was not indicated in the Advertisement. In that case, the External Seller needs to accept the dissolution and return, is not paid and any dispatch costs/costs of the courier services of Whoppah paid by the Purchaser is at the expense of the External Seller. Article 7.5.3. applies mutatis mutandis in this case. If the Product is in line with the way in which it was offered, then the revocation right towards the External Seller does not accrue to the Purchaser. However, Whoppah does accept return of purchase if the Buyer sees another reason to do so, but only in case the Buyer has bought the 'buyer protection fee' upon purchase of the Product. This is allowed for a duration of 14 days from the day of delivery. In that case, the External Seller is paid. In that case, the Purchaser receives the Purchase Price paid by the Purchaser (excluding any dispatch cost/costs of the courier services of Whoppah and minus 4% of the Purchase Price regarding the 'buyer protection fee') of Whoppah in return, although the dispatch cost/costs of the courier services of Whoppah in relation to the return of the Product of the Purchaser back to Whoppah, are at the expense of the Purchaser.
- 8.2 When taking out a buyer protection fee, the buyer agrees that this amount cannot be refunded. The buyer protection fee is the buyer's responsibility and cannot be recovered from a seller.
- 8.3 Purchaser is obligated to examine the Product for defects immediately after receipt. Purchaser is supposed to examine the quality and/or quantity of the Product at this time.
- 8.4 If Seller is a Professional Seller, the Professional Seller acknowledges and accepts that Purchasers who are consumer and residing in a country within the European Economic Area have the right in certain cases to revoke the (purchase) agreement (without giving reasons) within the applicable legal period of 14 days after receipt of the Product. The Professional Seller will grant full cooperation to this in accordance with the applicable consumer right and the provisions in this article.
- 8.5 If the Purchaser wants to make use of the revocation right, this needs to be communicated within the time for reflection by means of the model form (offered by the Professional Seller) for revocation or in a different unambiguous way to the Professional Seller.
- 8.6 If the Product is purchased from a Professional External Seller, the Purchaser will inform Whoppah of this, to promote the handling of a return dispatch, prior to the return dispatch of a Product. The payment of the Purchase Price is suspended after this notification until the return dispatch is dealt with.
- 8.7 Purchaser is obligated to handle the Product and the packaging carefully during the time for reflection of 14 days. Purchaser will only unpack or use the Product to the degree necessary to ascertain its nature, characteristics and functioning.
- 8.8 Purchaser returns the Product with all delivered appurtenances, to the extent reasonably possible in original condition and packaging, as soon as possible, but within a period of 14 days after notification of the revocation in consultation with Whoppah to the Professional Seller. The costs for returning the Product are at the expense of Purchaser, unless Purchaser has agreed upon otherwise with Professional Seller.
- 8.9 Unless the Professional Seller offers to pick up the Product with Purchaser, Whoppah is allowed to wait with the refund of the Purchase Price to Purchaser until the Professional Seller has received the Product or until Purchaser shows that the Product has been sent back, depending on which moment comes earlier. The refund is free of charge for Purchaser.
- 8.10 If, for any reason whatsoever, the Purchase Price is already paid to Professional External Seller, then Professional External Seller is obligated to reimburse the Purchase Price, including any dispatch costs and return costs (to the extent agreed upon) to Purchaser. This refund by the Professional External Seller needs to take place within 14 days after the notification of revocation. However, Professional External Seller is allowed to postpone the refund until the moment the Product has been received back, or the Purchaser has shown that the Product is sent back.
- 8.11 The risk and the burden of proof for the correct and timely exercise of the revocation right lies with Purchaser. If the Purchaser has made use of the revocation right in the prescribed manner, then no more than the return costs will be borne by the Purchaser.
- 8.12 In the event of a purchase between a Professional External Seller and a Purchaser, Whoppah is not a party to the (purchase) agreement and not obligated to reimburse any amount – including the Transaction Costs and Seller Commission – to Purchaser or Professional External Seller, as a result of a valid revocation of the (purchase) agreement. In the event that Whoppah acts as Seller and the Purchaser revokes the purchase in a legally valid manner, Whoppah will refund all amounts received from the Purchaser in relation to the purchase.

## **9. Dispute resolution procedure**

- 9.1 For questions and/or complaints, Purchaser is required to address the Seller in question directly. Seller guarantees that received questions or complaints of Purchasers are answered within forty-eight (48) hours. In the event of a purchase between an External Seller and a Purchaser, both Purchaser and External Seller acknowledge that Whoppah is not liable in any way in these cases, including but not limited to any unsoundness of the purchased Product.
- 9.2 In the event of a dispute between External Seller and Purchaser about the quality, whether a Product is sent or returned or not, External Seller and Purchaser are required to attempt to solve this between each other. If External Seller and Purchaser do not arrive at a solution, then Whoppah will make an effort to find a solution, to which External Seller is obligated to grant cooperation. If Purchaser and External Seller do not arrive at a solution, then Whoppah will take a decision, if requested, (which may provide for a reasonable compensation for the Purchaser) to which External Seller and Purchaser accept to be obligated to. Any payments are suspended by Whoppah during the duration of a dispute.
- 9.3 If External Seller is able to show a certificate of posting and Purchaser is not able to show that there is a case of non-conformity, payment will take place. If External Seller is not able to show a certificate of posting and/or Purchaser makes it plausible that there is a case of non-conformity, then the dispute resolution procedure follows and the payment is suspended during the duration of the dispute. In the event of any dispute regarding the (timely) dispatch/delivery of a Product, the Track & Trace code of the carrier is the guiding principle, subject to the possibility of evidence to the contrary. Purchaser and External Seller comply to the dispute resolution of Whoppah when applicable.

## **10. Intellectual property**

- 10.1 All IP Rights pertaining to the Platform, including further developments thereof, and the databank with Advertisements, reside solely with Whoppah or its licensors.
- 10.2 User only acquires a limited, non-exclusive, non-(sub)licensable and non-transferable right to use the Services offered on the Platform under these Conditions. User acknowledges that all IP Rights pertaining to the Platform, the collection Advertisements, the design of and content on the Platform are and remain property of Whoppah and cannot be (re)used by the User in any way whatsoever - without explicit, prior written permission to this from Whoppah.
- 10.3 The User is not allowed to change the Platform, decompile it, reproduce it (the code), translate it or otherwise subject it to reverse engineering.
- 10.4 User will also otherwise refrain from the following in relation to the use of the Platform:
  - (i) the direct or indirect copying, reuse or reproduction of (parts of) the Platform;
  - (ii) the direct or indirect copying, reusing or reproducing of Advertisements, which includes Advertisements or third parties, with the exception of RSS feeds for personal use and/or news items up to a maximum number of 100 Advertisements or 100 hyperlinks to Advertisements;
  - (iii) changing or removing any indication or reference in the Platform to Whoppah, the IP Rights of Whoppah, its confidential nature, or any other change made by Whoppah;
  - (iv) spreading viruses, worms, Trojan horses, rootkits, spyware, hoaxes or other types of malware;
  - (v) other actions which are in violation with these Conditions and/or applicable laws or legislation.
- 10.5 Nothing in these Conditions is intended to transfer any IP right to User. User will refrain from actions which (may) violate the IP Rights of Whoppah or third parties.

## **11. Maintenance Platform**

- 11.1 Despite the Platform being composed with great care, Whoppah does not guarantee that the Platform works flawlessly or has no (technical) defects. The Platform and all functionalities that apply to it are offered 'as is'.
- 11.2 Whoppah continuously strives to solve any defects in the Platform as soon as possible in order for the Platform to be optimally available. Whoppah has the right at all times to (temporarily) decommission the access to the Platform without prior notification, or to limit its use, to the extent that this is necessary in the context of maintenance, or to be able to implement updates, releases, adjustments or improvements in the Platform. This never involves a right to compensation for User towards Whoppah.
- 11.3 Whoppah offers no guarantee whatsoever pertaining to the preservation or maintenance of certain functionalities or Services of the Platform, after an update or new release.

## **12. Protection of personal information**

- 12.1 To create an Account and make use of the Services, Whoppah will process personal information of User. The processing of personal information takes place in accordance with the Privacy Statement of Whoppah and applicable laws and legislation in the field of the processing of personal information.
- 12.2 To the extent that Whoppah also makes use of Third Party Providers for the provision of the Services, certain personal information is shared with those Third Party Providers – to the extent necessary for the execution of the Service. The privacy statement of the Third Party Provider in question will then (also) apply to that processing.
- 12.3 If and to the extent User receives certain personal information of another User from Whoppah, User guarantees to only process that personal information for the execution of or in conjunction with the (purchase) agreement with the

other User, as such with due observance of the applicable laws and legislation in the field of the protection of personal information.

### **13. Communication and assessments**

- 13.1 External Seller and Purchaser can communicate with each other on the Platform using a chat service. Whoppah can look at these chat messages and involve itself in the communication in order to help. This applies without prejudice to what is stipulated in article 9.1.
- 13.2 Whoppah saves all communication messages and can look at these and use them to (i) support Purchaser and External Seller in the event of questions or complaints in the context of a dispute resolution procedure, (ii) assess whether External Seller or Purchaser has complied with the requirements of the (purchase) agreement and/or these Conditions, (iii) to analyse (the use of) the chat service and to be able to improve it.
- 13.3 Communication messages of the chat service will be stored for the duration of answering the question or complaint, or until there is a solution for a dispute. The data is then deleted, or stored in anonymised form, for which the latter is solely for the purpose of analysis, improvement and optimisation of the chat service.
- 13.4 External Seller and Purchaser will refrain from the use of discriminatory, offensive, suggestive and/or objectionable language in their communication.

### **14. Liability**

- 14.1 To the extent legally allowed and without prejudice to what is stipulated in article 7.4.5, Whoppah does not accept any liability of or for any damage, loss and/or costs following from the use of the Platform and/or the Services. In the context of the Showroom Service, loss or damage to the stored Product (direct damage within the meaning of Article 14.3) is eligible for compensation is and insofar as Whoppah's goods insurance, under the given circumstances of the case, actually paid out. Only Whoppah can invoke this insurance; the User cannot derive any rights from this vis-à-vis the insurer.
- 14.2 Whoppah is otherwise never liable for the execution of (one of the) Services by Third Party Providers, or for any disputes between a User and a Third Party Provider. For the use of Third Party Providers, the terms and conditions (of delivery) of the Third Party Provider in question (also) applies.
- 14.3 To the extent that Whoppah would be liable for any damage, loss or costs pursuant to any reason whatsoever, this liability is limited to the reimbursement of the direct damage and loss, without prejudice to the provisions regarding the Showroom in article 14.1, as such also up to an amount of no more than the reimbursement which the User owed to Whoppah pursuant to the obligation to which the liability of Whoppah relates. Direct damage and loss is exclusively meant to be understood as: material damage to things, reasonable costs incurred to prevent or limit direct damage and loss and reasonable costs incurred to determine the cause of damage and loss, the liability, the direct damage and the method of repair.
- 14.4 The limitations of liability as referred to in articles 14.1 and 14.3 are to lapse if the damage and loss is the result of intent or deliberate recklessness on the side of Whoppah.
- 14.5 In the event of a consumer purchase in the context of which Whoppah is Seller, the limitations from this article also do not extent further than allowed pursuant to article 7:24 paragraph 2 of the Dutch Civil Code.
- 14.6 Any liability of Whoppah towards User only arises if and to the extent that User puts Whoppah immediately in default in writing, for which a period of at least 14 days is set for the rectification of the shortcoming, and Whoppah has also remained persistently in default after that period pertaining to its obligations. The notice of default needs to comprise a description of the shortcoming as complete and detailed as possible to ensure that Whoppah is given the opportunity to respond adequately.
- 14.7 The possibility of User to claim compensation lapses if legal proceedings have not been instituted for this claim within 12 months after the damage or loss has taken place. In deviation of the previous sentence, legal claims that accrue to consumers which are based on facts which would justify the contention that a consumer purchase in the context of which Whoppah acted as Seller, did not comply to the Agreement, expire by the lapse of two years.

### **15. Final provisions**

- 15.1 Whoppah is entitled, if the circumstances of the case reasonably justify this, to suspend the execution of an obligation between Whoppah and the User, or to, in whole or in part, dissolve this agreement with immediate effect, if and to the extent that the User did not comply with the obligations from that agreement (also including what is stipulated in these Conditions), or did not do so in a timely manner or completely, or if circumstances Whoppah has learned of after the formation of that agreement give reason to fear that the User will not perform the obligations. If the performance of the obligations of the User pertaining to which the User fails or threatens to fail, is and will remain impossible, the power of dissolution only arises after the User is put in default in writing by Whoppah, and a reasonable period is noted in this notice of default in which the User may (still) perform the obligations and the performance has still failed to materialize after the lapse of the latter period.
- 15.2 These Conditions are solely governed by Dutch law.
- 15.3 Any disputes between User and Whoppah following from or related to these Conditions are submitted to the competent court within the district of the business location of Whoppah, unless provisions of mandatory rules of law designate a different competent court for this.

*Amsterdam, February 2023*