

# **BERSHKA**

## **TERMS AND CONDITIONS**

### **1. INTRODUCTION**

This document (along with the documents mentioned herein) sets out the conditions governing the use of this website and the purchase of products on it (hereafter referred to as "Conditions").

We ask the customer to read the Terms and Conditions carefully before using this website. By using this website or by placing an order through it, the customer agrees to be bound by these Conditions. Therefore, if he or she does not agree with all of the Conditions, the customer should not use this website.

These Conditions may be changed. It is the customer's responsibility to read these Conditions regularly, as the conditions in force at the time of use of the website or the conclusion of the Agreement (as defined below) are the ones that shall be applicable.

The Agreement may be drawn up, as chosen by the customer, in any of the languages in which the Conditions are available on this website.

### **2. OUR DATA**

This website is published under the designation of BERSHKA and is owned by ITX (PORTUGAL) - CONFECÇÕES, S.A., a public limited company, with headquarters at Avenida Fontes Pereira de Melo, n.º49, 2.º esquerdo, 1050-120, Lisbon, registered at the Company Registry Office of Lisbon under number 500 718 419, which is also the legal entity identification number, possessing a share capital of € 4.800.000.00.

### **3. CUSTOMER DATA AND VISITS TO THIS WEBSITE**

The information or data provided by the customer will be treated in accordance with the provisions of the Privacy Policy. By using this website, the customer consents to the processing of the aforementioned information and data and declares that all the information or data that he or she provides to us is true and corresponds to reality.

### **4. USE OF OUR WEBSITE**

By using our website and/or placing orders through it, the customer undertakes to:

4.1 Use this website only to make legally valid inquiries or orders.

4.2 Not make any false or fraudulent orders. If we reasonably deem that an order of this kind has been made, we will be authorised to cancel it and inform the competent authorities.

4.3 Provide us with his or her email address, postal address and/or any other contact information, in a true and accurate fashion. He or she also agrees to the use of the information provided in order to contact the customer (see our Privacy Policy).

If the customer does not provide us with all the necessary information, we will not be able to track his or her order.

By placing an order through this website, the customer confirms that he or she is over 18 years of age and has the legal capacity to enter into contracts.

## **5. AVAILABILITY OF THE SERVICE**

The articles that appear on this website are only available in Portugal.

If you wish to order products from another EU member state outside of Portugal via this website you are of course welcome to do so; however, the ordered products can only be delivered to a BERSHKA shop or a delivery address within Portugal.

## **6. ENTERING INTO THE AGREEMENT**

In order to place an order, the customer should follow the online purchasing procedure and, having read and accepted these Conditions of Purchase, he or she should click on "Authorise Payment". At this point, the customer will have entered into a purchase and sale agreement with us (the "Agreement"). The customer will then receive an email acknowledging receipt of his or her order (the "Order Confirmation"). Afterwards, the customer will be notified via an order shipment confirmation email (the "Shipping Confirmation"). An electronic ticket containing the details of the customer's order must be attached to the Shipping Confirmation (the "e-ticket").

## **7. AVAILABILITY OF PRODUCTS**

All product orders will be subject to availability. In this respect, if there is any difficulty regarding the supply of products, or if there are no articles in stock, we will refund the amount that will already have been paid for the missing items within a time period of 30 days.

## **8. DELIVERY**

Without prejudice to what is provided in Clause 7 above, regarding the product availability, and unless extraordinary circumstances occur, we will attempt to send the order for the products mentioned in each Shipping Confirmation before the delivery date stated in the Shipping Confirmation in question, or alternatively, if no delivery date has been specified, within 30 days from the date of the Shipping Confirmation.

However, delays may occur for any of the following reasons:

- product personalisation;
- specialised articles;
- unforeseen circumstances; or  delivery area.

If we are unable to meet the delivery date, for reasons beyond our control, we will inform the customer of this circumstance and we will give the customer the option to proceed with his or her purchases and fix a new delivery date, or to cancel the order and receive a full reimbursement of the total amount paid, without prejudice to all other rights that may be of benefit under the terms of the legislation applicable. Regardless of the option chosen, we will not carry out deliveries on Saturdays or Sundays.

For the purposes of these Conditions, the “delivery” shall be understood as having been made, or the order as being delivered, when the delivery signature is received at the agreed address.

## **9. IMPOSSIBILITY OF DELIVERY**

If it is not possible to deliver an order to the customer, we will leave him or her a note indicating where the order is located and what must be done in order to collect it.

In the event that a product is not delivered within the time period stipulated, the User may be charged the amounts corresponding to the costs for storing the products and costs resulting from further attempts to deliver the order.

## **10. TRANSFER OF RISK AND OF PRODUCT OWNERSHIP**

Product risk will be borne by the customer from the moment of delivery.

The customer shall acquire ownership of the products when we receive full payment of the amounts due in respect thereof, including shipping costs, or at the moment of delivery (as established in Clause 9 above), whichever is later.

## **11. PRICE AND PAYMENT**

The price for each product will be the one stipulated, at all times, on our website, except in the case of a clear error. Although we make every attempt to ensure that all prices which appear on the page are correct, errors may occur. If we detect an error in the price for any of the products that the customer orders, we will inform him or her as soon as possible, as well as giving the option to reconfirm the order at the correct price or cancel it. If we are unable to contact the customer, the order will be cancelled and the amount paid will be refunded in full.

We will not be required to provide the customer with any product at an incorrect, lower price (even in cases where we have already issued the Shipment Confirmation) if the pricing error is clear and unequivocal, and could reasonably have been seen by the customer as being an incorrect price.

The prices on this website include VAT but do not include delivery fees, which will be added to the total amount due, as set out in our Shipping Guide.

Although prices may be changed at any time, any changes (except as set out above) will not affect orders for which we have already issued an Order Confirmation.

Once the customer has made his or her purchases, all the items that the customer wishes to buy shall be added to his or her shopping cart. The next steps comprise order completion and payment. In order to do this, please:

- Click on the "Shopping Cart" button at the top of the page.
- Click on the "View Cart" button.
- Click on the "Complete Order" button.
- Fill in or confirm the contact information, the order information, the shipping address to be used for the delivery and the billing address.
- Enter customer card details.
- Click on "Authorise Payment".

Payment may be made with Visa, Mastercard, American Express, Affinity Card and PayPal. Payment may also be made, fully or in part, for the cost of customer purchases with a gift card or a Bershka payment card, issued by ITX (Portugal), Confecções S.A. However, if the customer makes an on-line order using electronic devices (iPods or iPads) found in certain Bershka stores in Portugal, it may be possible in some of these to make a payment through any of the

payment methods available in those stores.

In order to reduce the risk of unauthorised access, customer card information will be encrypted. Upon receipt of an order, we will pre-authorise the customer's card in order to ensure that there are sufficient funds available to complete the transaction. We will debit the card in question as soon as the customer's order is dispatched from our warehouses.

If PayPal is the payment method used, the debit will be made at the moment that we confirm the order.

By clicking 'Authorise Payment', the customer confirms that the credit card is his or hers or that he or she is the legitimate owner of the gift card or payment card.

While credit cards are subject to checks and authorisations by the issuing entities, if they do not authorise payment, then we will not be responsible for any delays or non-delivery and neither will we be able to formalise any Agreement with the customer.

Payments for orders may be processed by Fashion Retail, an Inditex Group company, which receives and processes such payments on behalf of Bershka and which is duly authorised for this purpose. For the sake of clarity, please note that under no circumstances should Fashion Retail be considered as a party to this contract (in particular as a vendor of Bershka products).

## **12. PURCHASING AS A GUEST**

The website also permits purchases to be made using the guest purchasing feature. This purchasing method only requires the data necessary in order to effect an order. Once the purchasing process has been completed, there will be an option to register as a user or to continue in an unregistered capacity.

## **13. VALUE-ADDED TAX**

All purchases made through this website shall be subject to the rate of Portuguese Value-Added Tax (VAT) in force.

## **14. RETURNS AND EXCHANGES POLICY**

### **14.1 Right to free termination of contract**

In accordance with the regulations applicable, if you are contracting as a consumer, the customer may terminate the Agreement (except when the subject matter of the agreement involves any of the products for which the right of

withdrawal in Clause 14.3, below, is excluded) at any time within a period of 14 days from the date of delivery of the order.

In this instance, the amount paid for the products shall be reimbursed. The customer will be responsible for the costs of returning the product if he or she does not return it through any of the free methods mentioned in Clause 15.3, below.

The customer may exercise the right of withdrawal by any means admitted by law, and in all cases, this right is deemed exercised by sending the returns form which we provide or by returning the products themselves.

In order to comply with the deadline for the free termination of the agreement, it is sufficient for the User to send his or her notification of the exercising of the right of termination of the contract before the expiry period in order to exercise the aforementioned right of free termination of the agreement.

This provision does not affect other consumer rights established by legislation in force.

#### **14.2 Contractual right to return products**

In addition to the consumer's legally recognised right to freely terminate the contract mentioned in Clause 14.1 above, we shall grant the customer a time period of 30 days from the date of the Confirmation of Shipment in order to return the products (except for those mentioned in Clause 15.3 below, for which the right to return products is excluded). Returning of the gift card is governed by the Conditions of use for the gift card.

In the event of a return, the amount paid for returned products shall be refunded. The customer will be responsible for the direct product returning costs, if he or she does not make a return through any of the free methods mentioned in Clause 14.3, below.

The customer must exercise his or her right to returning products by sending the return document that we issue the customer or by returning the products themselves. In all cases, the User must inform Bershka of his or her intention to return the products and deliver the articles to Bershka within 30 days of the date of the Delivery Confirmation.

#### **14.3 Conditions for exercising the contractual right to return products**

The customer does not have the contractual right to return products in the cases of the following products:

- Personalised articles.
- Music CDs/DVDs with original packaging missing.
- Socks and stockings.

- Underwear.
- Items for hair.

The contractual right to return products applies exclusively to products that can be returned in the same condition as the customer received them. Please return the item using or including the original packaging. All instructions, labels, documents and packaging for products should also be included. In all cases, the duly completed receipt that was issued at the moment of delivery must be submitted along with the product to be returned. No refund will be made if the product has been used, over and above simple opening of the respective packaging, or if it has been damaged. As such, the customer must take due care with products when in possession of them.

Exchanges shall only be made for the same item in a different colour or size.

Exchanges may be made in any BERSHKA store in Portuguese national territory or by using a courier whom we shall send to the customer's home address.

#### **14.4 Returns to BERSHKA stores**

All items may be returned at stores in Portugal containing the same product line as that earmarked for return. In this case, the customer may go to any of these stores in order to submit both the article and the e-ticket attached to the email with a confirmation of shipment, which may be presented either in digital format using a mobile device or as a print-out copy.

#### **14.5 Returns by courier**

The customer should contact us using our disbursement request so that we can arrange collection at the customer's home. The customer must deliver the product in the same packaging in which it was received, with a print-out of the e-ticket attached to the email with the shipping confirmation.

Neither option entails additional costs for the customer.

If the customer does not wish to return products using the free options available, he or she will be responsible for the return costs. Please note that if the customer decides to return the items for collection to us, we will be entitled to charge the customer any expenses that we may incur.

Following an examination of the items, we will inform the customer as to whether he or she is entitled to a refund of the amounts paid. The return will be made as soon as possible and, in all cases, within a time period of 14 days from the

date on which the customer informed us of the intention to make a product return. The refund will always be made using the same payment method that the customer used to pay for the purchase.

If there are any questions, please contact us using our contact form or by telephone on 800 834 291.

Order returns made using electronic devices available in certain Bershka of Portugal stores and cashier payments at these stores must be performed in any event in Bershka of Portugal stores. In the event of cancellation by the customer, we will return the payments received and effect the right to a refund through the same payment means as used in the initial transaction.

Notwithstanding the limitations to the contractual right to return products, provided for in clause 16.2, this Clause should not apply to the exercising of the right of free termination of the agreement legally attributed to the consumer, in particular as regards the limitation of the inspection and handling of goods.

#### **14.6 Faulty products**

In cases where the customer deems that the product violates the provisions of the Agreement, at the time of delivery, the customer should contact us using our contact form, indicating the product information, as well as the damage caused, or by calling us on 800 834 291, within the legally established time period of two months upon which the way to proceed will be indicated.

Any product may be returned to a BERSHKA store within Portuguese national territory, by presenting the e-ticket in digital format on a mobile device or by submitting an e-ticket print-out. The customer may also return the product by delivering it, from home, to a courier dispatched by us, in which case the product must be accompanied by an e-ticket print-out, with the corresponding amount subsequently refunded. As established by law, instead of cancelling the contract (and the resultant returning of the goods and reimbursement), the customer may opt to get a product replacement.

The reimbursement of the price, or replacement of the item, will be effected as soon as possible and, in any case, within 30 days of the notification of lack of conformity of the goods by the user.

The amount paid for products returned due to a real and existing imperfection or defect will be fully refunded, including the delivery costs incurred in the delivery of the item. The refund will be made using the same payment method that the customer used to pay for the purchase.

#### **14.7 Right of withdrawal and return for orders from abroad**



If you have ordered products from outside Portugal from another EU member state via this website the above clauses 14.1, 14.2, 14.3 and 14.5 apply with the restrictions that the collection by a courier commissioned by us can only be made from the original delivery address within Portugal.

At the same time we would like to inform you that we are under no circumstances (with exception of clause 14.4 to which this clause 14.7 does not apply) obliged to pay shipping costs to destinations other than the original delivery address nor the return costs from destinations outside Portugal.

All rights recognised by the law in force shall be safeguarded.

## **15. INTELLECTUAL PROPERTY**

The customer acknowledges and agrees that all copyright, trademark and other intellectual property rights in the materials or content provided as part of the Website, belong, at all times, to us or to those who have granted us permission for its use. The customer may only use such material in the way expressly authorised by us or by the person who has granted us permission for its use. This does not prevent use of this Website in order to copy information, as necessary, about the customer's order or Contract information.

## **16. VIRUSES, PIRACY AND OTHER COMPUTER ATTACKS**

The website must not be misused by intentionally inserting viruses, Trojan horses, logic bombs, or any other technologically harmful or dangerous material onto it. The customer shall not attempt to gain unauthorised access to this Website, to the server on which this website is hosted, or to any server, computer or database related to our website. The customer undertakes not to attack this web page by means of a denial-of-service attack or a distributed denial-of-service attack.

Failure to comply with this clause could imply the committing of offences established by the applicable legislation. We will inform the competent authorities of any breach of the said legislation and cooperate with them in order to determine the identity of the attacker. In the event of a breach of this clause, the customer will also cease to be authorised to use this web page.

We will not be responsible for any data or losses resulting from a denial-of-service attack, virus or any other technologically damaging or harmful program or material that may affect the customer's computer, computing equipment, data or materials, as a result of using this website or of downloading content from this website or content to which the site may redirect the customer.

## **17.LINKS FROM OUR WEBSITE**

If our website contains links to other pages and third-party materials, these links will be provided for information purposes only, without our having any control over the content of such pages or materials. Therefore, we will not accept any responsibility for damages or losses due to their use.

## **18. WRITTEN NOTIFICATIONS**

Applicable law requires that some of the information or notifications that we send must be in writing. By using this website, the customer accepts that most of our notifications are electronic. We will contact the customer by email or provide information through notices posted on this website. For contractual purposes, the customer agrees to use this electronic means of communication and acknowledges that all contracts, notifications, information and other notifications sent electronically comply with the legal requirement that such notices be made in writing. This condition shall not affect the rights recognised by law.

## **19. NOTIFICATIONS**

Customer notifications should preferably be sent by using our contact form. In accordance with the provisions of Clause 19 above, and unless otherwise indicated, we will send the customer notices by email or the postal address provided when placing an order.

Notifications shall be considered to have been received and properly effected at the moment that the customer accesses our website, 24 hours after an email has been sent or three days after the franking date on any letter. In order to confirm that the notification was effected, it is sufficient to prove, in the case of a letter, that the address was correct, that it was properly sealed and that it was properly delivered to the post office or to a post box and, in the case of an email, that it was sent to the email address specified by the recipient.

## **20. TRANSFER OF RIGHTS AND OBLIGATIONS**

The Agreement is binding on the customer and on ourselves as well as on our respective successors, transferees and heirs.

The customer may not transfer, assign, encumber, or by any other means, transfer an Agreement or any rights and obligations arising therefrom for their or the customer's benefit, without our prior written consent.

We may transmit, assign, encumber, subcontract, or by any other means, transfer an Agreement or any rights and obligations arising therefrom to or for ourselves at any time during the term of the Agreement, to any Inditex Group

company. All other transmissions of Bershka's contractual position, rights or obligations under this agreement shall also be subject to the prior consent of the User. So as to avoid any doubt, such transmissions, assignments, charges or other transfers shall not affect the rights recognised by law which, in the case of the customer, which he or she has as a consumer, shall neither cancel, reduce or otherwise limit the express or implied guarantees that may have been granted.

## **21. GROUNDS FOR FORCE MAJEURE**

We shall not be liable for any breach or delay of any of our obligations under an Agreement which is due to events beyond our control ('Force Majeure').

Grounds for Force Majeure include any act, event, failure to exercise, omission, or accident that is beyond our control including, but not limited to, the following:

- General strikes, or other forms of protest that significantly affect the country.
- Public order disturbances, riots, invasions, terrorist attacks or threats, war (declared or not) or threats of or preparations for war.
- Fires, explosions, storms, floods, earthquakes, collapses, epidemics or any other natural disaster.
- The inability to use trains, boats, aeroplanes, motor vehicles or any other means of public or private transport.
- Inability to use public or private telecommunication systems.

Our obligations under the Agreements shall be deemed to be suspended during Force Majeure periods, and we shall be entitled to an extension of the time limit to comply with such obligations for a period of time equal to the duration of the Grounds for Force Majeure. We will use all reasonable means to put an end to the Grounds for Force Majeure or in order to find a remedy that will enable us to comply with our obligations under the Agreement, in spite of the Grounds for Force Majeure.

## **22. WAIVER**

The absence of a requirement on our part, for strict compliance, on the part of the customer with any of the obligations assumed by the customer under an Agreement or these Conditions, or the lack of the exercising of rights or actions that are due under this Agreement or these Conditions shall not in themselves signify the waiver or any limitation with regard to such rights or actions, nor shall it relieve the customer from the fulfilment of his or her obligations.

No waiver by us of a specific right or action shall result in the waiving of our rights or actions arising from the Contract or from these Conditions.

No waiver by us of any of these Conditions or the rights or actions arising from the Agreement shall take effect unless it is expressly stated that it is a waiver, there is compliance with the provisions of clause 20, above, and is formalised and communicated to the client, in writing.

### **23.PARTIAL NULLITY**

If any of these Conditions or any provision in an Agreement is declared to be null and void by means of a firm resolution issued by a competent authority, the remaining terms and conditions shall remain in force without being affected by the declaration of nullity in question.

### **24. SINGLE AGREEMENT**

The present Conditions and all of the documents to which express references are made form the entire Agreement between ourselves and the customer in connection with the subject matter of the Agreement and supersede any other covenant, agreement or commitment previously entered into, either verbally or in writing, between ourselves and the customer.

We and the Customer recognise that we have entered into the Agreement without having relied upon any representation or commitment made by the other party or that may interfere with any written statement in the negotiations entered into by either party prior to this Agreement, except as expressly stated in the present Conditions.

Neither ourselves nor the customer will act against any untrue verbal or written statement made by the other party prior to the date of the Agreement (unless the said untrue statement were made in a fraudulent fashion), and the only action that the other party will have is for breach of contract, in accordance with the provisions of these Conditions.

### **25. APPLICABLE LEGISLATION AND JURISDICTION**

Use of our Website and the purchase agreements made via this website are governed by Portuguese law.

This provision does not affect other consumer rights established by legislation in force.

### **26. COMMENTS AND SUGGESTIONS**

We welcome comments and suggestions from our customers. We ask that comments and suggestions be sent using our contact form.

If it is believed that consumer Rights have been violated, a complaint may be submitted by email to [contact@bershka.com](mailto:contact@bershka.com), in order to seek an out-of-court settlement.

In this sense, if the transaction between the consumer and our company has been completed through our website, we would like to state that, in accordance with EU Regulation No. 524/2013, there is the option of attempting to resolve any litigation in an extrajudicial fashion by accessing the online conflict resolution e-platform at <http://ec.europa.eu/consumers/odr/>

The up-to-date list of the Alternative Litigation Resolution Bodies available under Article 17 of Law No. 144/2015, of 8 September, may be consulted on the Consumer Portal at [www.consumidor.pt](http://www.consumidor.pt)

## **ANNEX**

### Model withdrawal form

(Complete and return this form only if you wish to withdraw from the contract)

To ITX PORTUGAL - CONFECÇÕES S.A, at the address Avenida Fontes Pereira de Melo, n.º49 2.º Esquerdo 1050-120 Lisboa (e-mail [contact@bershka.com](mailto:contact@bershka.com))

I hereby give notice that I withdraw from my contract of sale of the following goods:

Ordered on/received on (\*)

Name of consumer

Address of consumer

Signature of consumer (only if this form is notified on paper)

Date

(\*) Delete as appropriate