

# THE | TIDES

## WELLNESS

### THE|TIDES WELLNESS GENERAL TERMS & CONDITIONS

Effective date: 1st of January 2019

#### DEFINITIONS

The|Tides Wellness : Trade name of the private company with limited liability MadebyStudiokA B.V. with its registered offices in Amsterdam, the Netherlands, registered with the Trade Register of the Dutch Chamber of Commerce under number 61076236, or any of its group companies. (hereafter "TTW").

Partners: Any party which has or will have a contractual relationship of any nature with The|Tides Wellness

The Parties: TTW and the Partner jointly.

The Products and Services: Each and any product or/and accessories, treatments/retreats, trainings, treatment manuals, protocols, videos, images manufactured, sold, distributed and/or supplied by TTW.

#### GENERAL

These General Terms and Conditions apply to all legal relationships between the TTW and Partners, including all agreements, offers, quotations, and other legal acts relating to the Products and Services.

TTW reserves the right to change these terms and conditions at any time.

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#### 1. HOW TO ORDER

Partners can order through TTW Pro website. This direct line of order can only be accessed by Partners approved by TTW. When experiencing difficulty login or accessing the wholesale web shop, please contact TTW.

#### 2. RETAIL WHOLESale ORDERS

Minimum Spend: There is a minimum spend for the initial wholesale opening order

Minimum Quantity: For the initial opening order, a minimum quantity of 3 SKU of each product on the order is required.

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Repeat Orders: Repeat wholesale orders have a minimum spend amount. Please note minimum spend amounts do not include shipping costs.

### 3. PROFESSIONAL USE ORDERS

Minimum Spend: There is a minimum spend for the initial opening order.

Repeat Orders: Repeat orders have a minimum spend amount Please note minimum spend amounts do not include shipping costs.

### 4. SHIPPING | INSURANCE | CLEARANCE, IMPORT AND VAT

Shipping costs are dependent on weight and vary depending on the delivery address for the order. Shipping will be charged on checkout.

TTW works with the most trusted and cost-effective couriers to ensure shipping costs are kept as low as possible.

Shipping costs will be complimentary above an order of € 500 ex. VAT for Partners located within the Benelux.

Shipping costs for Partners outside the Benelux will be charged in full unless otherwise agreed in writing by both parties.

Orders shipped shall be delivered “ex works”. The term “ex works” as used in this Agreement refers to Incoterms 2000.

Orders shipped to countries outside the European Union may be subject to import taxes, local VAT, customs duties and fees levied by the destination country. Any such additional charges must be borne by the Partner. These fees remain the sole responsibility of the Partner and are not included in TTW’s international shipping fees.

Please note that when shipping orders outside the European Union, cross border shipments may be subject to opening and inspection by customs authorities. In respect of all orders dispatched to the Partner to an address outside the European Union, the Partner is deemed to be the importer of the goods and must therefore comply with all the laws and regulations of the country into which the goods are being delivered.

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TTW shall provide the Partner at its request with all the adequate transport insurance details required upon the request of the other party. The Partner acknowledges and accepts that TTW will not transport orders without adequate transport insurance. The costs in relation to (arranging for) transport insurance shall always remain the sole responsibility of the Partner.

Partners are registered as a VAT vendor for purposes of the VAT Act and registered at the local chamber of commerce.

### 5. PAYMENT AND DELIVERY

In the absence of written agreement to the contrary, payment shall be due in advance by bank transfer. The costs of payment transactions shall be borne by the Partner.

For Opening Orders: Once payment has been received the Opening Order will be distributed to the Partner. Due to production schedules, it may take up 3 to 4 weeks once payment has been received to ship the order.

For Repeat Orders: Once payment has been received the Repeat Order will be distributed to the Partner. Due to production schedules, it may take up 2 to 3 weeks once payment has been received to ship the order.

Orders will be delivered to the address nominated by the Partner at the time of ordering.

Orders shipped to an address in the Netherlands should arrive within two days of dispatch. Most European addresses arrive within five days of dispatch but can take up to 10 days. Delivery times outside the EU can vary depending on the region of the address. TTW is not responsible for any shipping delays incurred by any third-party courier, including but not limited to weather or storm delays.

Preferred Payment Terms : to be eligible for an account with preferred payment terms, the Partner must be approved by TTW.

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An invoice will be issued to the Partner upon dispatch of the products, services and/or, trainings. Value Added Tax will be added to all orders placed within the Netherlands, which is payable by the Partner.

Any variations on TTW payment terms will be stated on individual invoices and agreed to prior to order fulfilment.

Failure to pay on time will result in late payment charges which shall be calculated in accordance with statutory commercial interest of Section 6:119a of the Dutch Civil Code (as amended) from the date the payment was originally due until the date of actual payment. TTW reserves the right to add interest at the current legal rate to all TTW invoices that are not paid within 14 days (or within an alternative timescale agreed prior to order confirmation).

Failure to pay may result in TTW taking further action which includes but is not limited to further charges and/or details being passed to debt collection agencies.

TTW reserves the right to charge an administration fee for any late payment notices which TTW sends to the Partner in the event of late payment. TTW also reserves the right to cancel any discount that TTW may have offered to the Partner, to alter payment terms and/or to suspend or cancel future deliveries in the case of late payment.

Payments should be made by wire transfer to the account as detailed on TTW invoice.

## 6. CANCELLATION

TTW reserves the right to cancel or suspend the order at any time if the Partner becomes bankrupt or insolvent, enters into any arrangement with their creditors, or becomes a company that goes into liquidation or is being wound-up, or becomes a partnership which is being dissolved or if, in TTW reasonable opinion, one of the aforementioned events is likely to occur. The Partner must notify TTW in writing immediately if any one of the aforementioned events occurs.

In such cases the Partner shall become liable to pay the total value of the order if the product has been dispatched or a restocking charge of 5% of the order value.

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If TTW's reputation and/or company standards are being damaged while continuing a business relationship, TTW also reserves the right to terminate the relationship with 30 days' notice.

### 7. RRP AND DISCOUNTS

Wholesale and recommended retail prices may fluctuate due to market forces and TTW reserves the right to alter them periodically. 30-day notice will be given to all Partners prior to any price changes.

Discounts cannot be applied by the Partner to TTW products without TTW prior written consent.

### 8. REFUND POLICY

TTW does not provide refunds or exchange for change of mind, so please choose carefully.

The Partner must notify TTW immediately if the Partner finds any of TTW products supplied to be defective in any way (which must be no later than 48 hours of receipt of the order) and allow TTW an opportunity to investigate.

Where TTW has agreed that the products are defective then TTW will supply suitable replacement products free of charge and arrange for the return of defective products.

TTW does not accept the return of faulty items that have been opened or used.

### 9. SELLING

The Partner is permitted to resell the retail products to consumers only at specified locations or store branded websites. Any changes to such locations will require TTW prior written consent or permission thereof. If approved, the Partner must ensure the overall look and feel of its web shop on which the retail products are sold reflects a premium quality image.

The Partner is not allowed to sell stock, designed for professional use.

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### 10. THIRD PARTY PARTNERS/MARKETPLACES

TTW reserves the right to protect its brand and determine where TTW products and treatments/retreats are sold. TTW must be notified prior to products being advertised through/on third party partners. TTW retail and professional use products cannot be sold in marketplaces such as eBay, AliExpress, Amazon, Bol.com, etc. and TTW reserves the right to block any of TTW products from being advertised on such sites. Failure to notify TTW and obtain prior agreement will result in sanctions placed on product availability, future order cancellation and/or further legal action being taken to have these items removed from third party sellers/marketplaces.

The Partner agrees that TTW retail products will be sold by the Partner direct to consumers and not in bulk to entities for the purposes of reselling.

Where TTW has reasonable grounds to believe that the Partner has acted in breach of these Terms and Conditions TTW may forthwith withdraw TTW permission for the Partner to sell TTW products and the Partner will no longer be entitled to sell TTW products and to use TTW logo.

### 11. COPYRIGHT AND INTELLECTUAL PROPERTY RIGHTS

International property rights mean all patents, registered and unregistered designs, copyright, trademarks, know-how and all other forms of intellectual property anywhere in the world.

#### COPYRIGHT

All materials on any of TTW websites, training- and social media platforms, treatment and training manuals and protocols, product guides and brochures are copyright of TTW and may not be shared or reproduced without TTW prior written permission.

All designs are protected by international rights of copyright. Any use of copyrighted material without prior notice and agreement from TTW will be considered a breach of copyright and legal action will be taken.

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The Partner will not, without TTW prior written consent, allow any of TTW logos or trademarks or other words or marks applied to TTW products to be obliterated, covered, obscured or omitted. Similarly, the Partner may not add any additional words or marks to the original wording or content.

No delay or failure on TTW part to enforce TTW rights or remedies under these terms and conditions shall constitute a waiver on TTW part of such rights and remedies unless such waiver is confirmed in writing.

TTW ask that the Partners do not include TTW in their Google AdWords without permission.

### TRADEMARK & BRANDNAME

TTW is the owner of all Intellectual Property Rights in the mark “TTW” and in the individually styled letter/symbol “ | ” between The and Tides including any derivation thereof. The Partner hereby acknowledge such ownership rights and agree that the Partner has no right or claim to the mark and brand name. The Partner acknowledges that TTW places significant value on the Intellectual Property Rights in the “TTW” mark and brand name and hereby undertakes that it shall not at any time use the “TTW” mark and brand name or any derivation of the same other than as expressly agreed with TTW and in accordance with these terms and conditions. The Partner agrees not to use any trademarks, names or logos which are the same or confusingly similar to or infringe the “TTW” mark. The Partner must promptly notify TTW in writing of any breach of this clause.

All advertising of TTW products requires the prior written consent of TTW. The Partner is hereby granted a non-exclusive, revocable, royalty free license to use the mark “TTW” on advertisements which have been approved by TTW only for the duration of the particular advertising campaign.

### PHOTOS OF PRODUCTS

TTW provides a wholesale account login for its website, inside which the Partner can access a library of high-resolution photos that the Partner can use to promote TTW products and treatments/retreats on the Partner websites and/or any social media. Please note that these images remain the sole property of TTW and that TTW has final say on the usage of images. Except for TTW images available in the

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above-mentioned library on TTW' website, it is not permitted to copy, reproduce, share, publish or distribute any other images from TTW websites.

All images published on social media channels featuring TTW threads must include tags @thetideswellness and #thetideswellness. Failure to continually not tag the TTW brand may result in TTW cancelling the Partner's wholesale account. Images taken from TTW social media channels must also include @thetideswellness and #thetideswellness tags and permission from customers posting them. TTW takes no responsibility for the images the Partner shares on social media.

### TREATMENTS | RETREATS

TTW brand name in combination with treatment and retreat names will be mentioned in spa/wellness menu written descriptions on both web and printed material. TTW treatment/retreats descriptions in all property collateral will have written approval from TTW before being published.

## 12. TRAINING

TTW offers its TTW treatment training programs to its partners who wish to add TTW treatments/retreats to their menu. Partners are welcome to participate in TTW online program and training courses in the Netherlands, including regular refresher updates. For dates and costs, please contact TTW. On-site training is also available as per clients' request. Complimentary Training is offered but depends on the value of the opening and/ or annual order.

Any therapist who will be working with the products and the treatment protocols of TTW treatments/retreats must be trained accordingly and demonstrate sufficient brand knowledge for successful implementation thereof. The Partner will ensure that its therapists understand the commitment needed from them to learn the techniques and ensure that they attend the whole training. The therapist is expected to have an excellent knowledge of muscle and skeletal anatomy. The specific training of the techniques and performing of the treatment, the application and use of the product and knowledge of the products, brand as well as both benefits of treatments/retreats and products are vital tools for everyone involved. From reception to therapists, TTW recommends that everyone understands the full story behind the brand.



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### 13. PARTNERSHIP PROGRAM

Testers. TTW will provide testers (with exception of the accessories and Bath Soaks as the ingredients in the soaks are highly hygroscopic) for free, depending on the minimum opening order.

Collateral Allocation. Thereafter, in appreciation of each repeat retail order, TTW shall offer a selection of free of charge point of sales (brochures/flyers); and product testers to the value of 4% of the total net value of the repeat retail order. If unused, collateral allocation cannot be accrued; carried over to another order; or placed as a credit.

TTW will provide merchandising guidelines, to be followed at all times. Point of Sales material will also be made available, charges to be discussed with TTW depending on the turnover achieved.

### 14. MISCONDUCT

TTW has the right to refuse a Partner or cancel a Partner's order if a Partner is misleading information in any way or form. TTW may do this at any time if TTW brand is being represented in the wrong way.

### 15. CONFIDENTIALITY AND INTELLECTUAL PROPERTY

The Partner undertakes and agrees with TTW that the Partner will keep secret and confidential all pricing and other confidential information provided by TTW and/or to which the Partner is permitted to have access.

The Partner may not disclose to any third-party confidential information including, but not limited to, technical, commercial, financial or operational data (i.e., agreement, pricing, product formulae, treatments/retreats including treatment protocols) whether written (including information contained in electronic format) or oral. The Partner may only use the information solely in connection with the implementation of the agreement and not for its own benefit or that of a third party.

TTW will retain exclusive interest in, and ownership of its training, products, treatments/retreats manuals and protocols and all intellectual property related thereto. An agreement transfers none of TTW's right, title or interest in and to the services and confidential information (as defined above). TTW hereby grant to the Partner a non-

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exclusive, non-transferable, non-sublicensable, and royalty-free license to use the services and related intellectual property solely during the term and within the scope of the specific underlying agreement and for the purpose to make use of the services.

The Partner hereby represents and warrants that it will not use or sell at the Spa any products that compete with the TTW brand products under any circumstance. The Partner hereby represents and warrants that it will not manufacture, sell any fake or counterfeit products, or any other products infringing the IPR of TTW and the manufacturer of the products.

During the term of the agreement, The Partner will ensure that its employees involved in the use of the services comply with all obligations arising from the agreement. The Partner makes appropriate agreements with employees who leave employment during the term of the agreement, specifically with regard to the use of TTW's intellectual property and its confidential information.

#### 16. LIMITATION OF LIABILITY

TTW shall not be liable for any failure to deliver or delay in delivery of the Products arising from circumstances outside its control, including but not limited to lockouts, fire, accidents, defective materials, delays in receipt of raw materials or bought-in goods or components.

TTW shall not be held liable for any failure or delay in delivering the Products where such failure arises as a result of any act or omission which is outside or beyond the reasonable control of TTW or those of a third party.

TTW shall not be held liable for third party misrepresentations of TTW products and treatments/retreats or third-party fraudulent misrepresentations.

If TTW fails to comply with the agreement, then TTW 's liability is limited to what has been arranged in this provision.

TTW is not liable for damage, of whatever nature, caused by TTW based on incorrect and/or incomplete data provided by or on behalf of the Partner and for damage suffered because the Partner does not adhere to the storage conditions, good hygiene, applicable instructions, and/or protocols while using the products and/or services.

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The Partner is responsible for (demonstrably) informing the customer prior to treatment or the application of the products, in order to assess and ensure that there are no medical or other reasons (such as allergies) that could lead to damage resulting from the treatment and/or use of the products.

TTW 's total liability is in all cases limited to a maximum of the invoice value of the part of the order to which the liability relates.

The liability of TTW is in any case always limited to the amount paid out by the insurer, where appropriate.

TTW is only liable for direct damage. Direct damage is exclusively understood to mean the reasonable costs to determine the cause and extent of the damage, insofar as the determination relates to damage within the meaning of these terms and conditions, any reasonable costs incurred to ensure the defective performance of TTW comply with the agreement, insofar as these can be attributed to TTW and reasonable costs incurred to prevent or limit damage, insofar as the Partner demonstrates that these costs have led to limitation of direct damage as referred to in these General Terms and Conditions.

TTW shall never be liable for indirect damages, including incidental, special or consequential damages of the Partner howsoever caused, regardless of whether these claims are based on breach of contract, tort or any other ground, including but not limited to lost profits, loss of goodwill, reputation, trade or contracts, lost savings and damage due to business interruption.

Liability for damage against which the Partner is already insured is at all times excluded by TTW.

The limitation or exclusion of TTW 's liability as set out in this article does not apply if the damage is the result of intent, gross negligence or willful recklessness on the part of TTW.

#### 17. BY LAW

TTW agreement and these terms and conditions shall be governed by, and construed in all respects in accordance with, the laws of the Netherlands and all disputes, actions and other

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matters relating thereto shall be determined in accordance with such laws. All disputes arising out of these General Terms and Conditions shall be resolved informally by way of mutual consultation between the parties. If the parties cannot reach an agreement by consultation, the dispute shall be referred for independent arbitration by the parties. The award of the arbitrator shall be final and binding on both parties.

### 18. MISCELLANEOUS

In the event of a breach of any of the provisions of articles 10 and 15 the Partner shall be liable to TTW for an immediately due and payable penalty of EUR 10.000 per breach and EUR 5.000 for each day on which the breach continues, without prejudice to any other rights provided for by law or under these terms and conditions and underlying agreements such as the right to specific performance, the right to an injunction or the right to claim damages in lieu of this penalty.

Any variation on the general terms and conditions will form part of the commercial terms, as outlined in the Trade Agreement, provided by the TTW and shall only be binding where it is agreed in writing by both parties.

### 19. AMENDMENTS

These are the trading terms and conditions of The|Tides Wellness, and no amendments may be made by the Partner to this document.