



## GENERAL TERMS AND CONDITIONS ----- ERKENS THE MOOD MAKERS B.V.

### Article 1 – General

In these general terms and conditions the following general terms will have the following meaning:

1. Erkens: Erkens the mood makers B.V. Luikerweg 27  
5554 NA Valkenswaard, the Netherlands  
+31 (0)40-2073833  
Chamber of Commerce no.: 17218521  
RSIN: 819115782  
OB number: 8191.15.782.B02  
IBAN: NL54 RABO 0134785045
2. Customer: any contracting party, i.e. any legal entity or natural person acting in the course of a profession or business that or who has a contractual relationship with Erkens the mood makers B.V. (hereinafter referred to as: Erkens) under a purchase agreement entered into with Erkens, as well as any contracting party that wishes to enter into any other agreement with Erkens.

### Article 2 – Applicability

1. These general terms and conditions are applicable to all offers, quotations, agreements and all undertakings arising therefrom between Erkens and a Customer.
2. All clauses in these general terms and conditions and any additional agreements stipulated for the benefit of Erkens are also stipulated for the benefit of agents and other third parties called in by Erkens.
3. Any derogations of these general terms and conditions will only be valid if expressly agreed in writing by Erkens and the customer and will only apply with respect to the specific agreement the derogations relate to.
4. Any general terms and conditions the Customer refers to or declares applicable to an agreement with Erkens are not accepted by Erkens and the general terms and conditions of Erkens prevail, unless expressly otherwise agreed earlier.
5. The Customer was informed of the general terms and conditions and their applicability in advance and these can be found on the Erkens website and downloaded as a pdf file. Upon request the general terms and conditions will also be sent by post free of charge.
6. In the event of any uncertainty over the interpretation of one or more provisions of these general terms and conditions, interpretation should take place on the basis of the purport and nature of these provisions.
7. Any situation that is not arranged for in these general terms and conditions should be assessed on the basis of the purport and nature of these provisions.
8. If Erkens should not insist on strict observance of these general terms and conditions each time, this does not imply that the provisions hereof do not apply nor that Erkens will in any way lose the right to require strict observance of the provisions of these general terms and conditions in other cases.
9. In the event one or several provisions of these general terms and conditions should at any time be entirely or partly void or should be declared void, the provisions of these general terms and conditions will continue to apply as much as possible. Erkens and the Customer will in that case confer on new provisions to replace the void or voided provisions, having regard for the nature and purport of the original provisions as much as possible.

### Article 3 – Quotations and offers

1. All quotations/offers from Erkens are free of engagement and can be withdrawn by Erkens at any time, even if such quotations/offers contain a term for acceptance.
2. Quotations/offers can be accepted in writing only (including acceptance by fax or electronically). Erkens is nevertheless entitled to accept a verbal acceptance as if it had been made in writing. If the Customer places an order on the website of Erkens, such order will be final for the Customer once the Customer presses the 'ORDER NOW' ('NU BESTELLEN') button or receives a(n) order confirmation by email and a binding agreement is therefore effected between the parties.
3. Any data listed in advertising material, in the broadest sense of the word (e.g. catalogues, price lists, brochures, third-party websites, etc.) is never binding upon Erkens.
4. Erkens applies a minimum order amount for all quotations/offers which is stated in the quotation/offer. If the Customer does not reach this minimum order amount, no agreement will be reached between the parties, unless the parties expressly agree otherwise in writing.
5. Each agreement is entered into on the condition precedent that the goods concerned are available in adequate quantities.

### Article 4 – Prices

1. All prices used by Erkens are based on price-determining factors known when the quotation/offer is made.
2. Unless expressly agreed otherwise in writing, all prices stated by Erkens are stated in euro, exclusive of VAT and exclusive of shipping and postal charges and packaging costs and any taxes, disposal contributions and other charges.
3. In the event Erkens agrees a fixed price with the Customer, Erkens will nevertheless be entitled to increase or otherwise amend such price for any goods or services not yet supplied and/or not yet paid, without the Customer being entitled to terminate the agreement on this account, if the price increase arises from a statutory or regulatory entitlement or obligation or is caused by a price increase of raw materials, wages, taxes, manufacturing costs, exchange rates, etc., or for other reasons that could not be reasonably anticipated when the agreement was entered into.
4. If the price increase, other than arising from an amendment of the agreement, exceeds 10% and takes place within three months of entering into the agreement, only a Customer who invokes Title 5 Section 3 of Book 6 Dutch Civil Code will be entitled to terminate the agreement through a written notification, unless the price increase arises from a statutory entitlement or obligation of Erkens or if the parties stipulated that delivery would take place more than three months after the purchase, unless Erkens is still willing to perform the agreement on the basis of the original arrangements between the parties.

### Article 5 – Payment(s)

1. Erkens is at all times entitled to require security for the proper and timely discharge of its payment obligations.
2. In the event of partial deliveries Erkens may render invoices for each partial delivery unless the parties expressly agree otherwise in writing.
3. Unless otherwise agreed, the payment terms are net cash within fourteen days.

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Erkens the mood makers bv

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4. In the event the Customer fails to pay within the payment term agreed upon, the Customer will be in default by law and it will owe interest at a rate of 1% per (part of a) month on the outstanding amount with a minimum of 50%, without a notice of default being required and without subject to Erkens' other rights.
5. In the event the Customer is in default of payment, all actual judicial costs as well as extrajudicial collection costs incurred by Erkens in order to effect discharge of the Customer's obligation(s) will be charged to the Customer.  
The extrajudicial collection charges total at least 15% of the amount owed by the other party inclusive of the interest referred to above, with a minimum of € 250. Alternatively, extrajudicial collection costs calculated in accordance with the Extrajudicial Collection Costs (Standards) Act (Wet Incassokosten (WIK)) will at least be owed.
6. In the event the Customer is in default of payment Erkens will be entitled to suspend performance of the agreement and all related agreements or to dissolve such agreements. Erkens will also be entitled to suspend the discharge of obligations under other agreements entered into with the Customer.
7. All payments must be made by transfer to a bank account in the Netherlands designated by Erkens and in a currency determined by Erkens and payments will in principle have to be made in Euro.
8. Payments made by the Customer will always be used first to meet all interest and costs owed and subsequently for the settlement of due and payable invoices that have remained outstanding for the longest period of time, even when the Customer specifies that the payment relates to a later invoice.
9. The Customer may not set off amounts, unless Erkens has explicitly and unconditionally acknowledged the claim in full and has agreed to the set off.
10. Electronic payments by the Customer to Erkens, including internet and credit card payments are effected at the Customer's risk. Erkens is not liable for any losses suffered by the Customer relating to or arising from electronic payments, through the Internet or credit cards. The Customer also bears the risk for providing credit card details to Erkens over the Internet or otherwise.
11. Erkens reserves the right to require a (down) payment of 50% to 100% in case of newly registered companies.
12. The Customer is not entitled to refuse or suspend the discharge of its payment obligations on account of an alleged breach of contract or on any other account whatsoever.

#### Article 6 – Retention of title

1. All products supplied by Erkens remain Erkens' property until such time all claims, including interest and costs that Erkens should have on the Customer on any account whatsoever upon delivery are settled in full.

#### Article 7 – Performance and amendment of the agreement

1. The agreement between Erkens and the Customer is entered into for an indefinite period of time, unless the nature of the agreement dictates otherwise or the parties expressly agree otherwise in writing.
2. In the event Erkens requires data from the Customer in order to be able to perform the agreement, the completion time will not commence until the Customer provides such data correctly and in full to Erkens.
3. Erkens is entitled to instruct third parties to perform specific work.
4. Erkens is entitled to perform the agreement in different phases and, as stipulated earlier, render separate invoices for each phase thus performed.
5. In the event the agreement is performed in phases Erkens may suspend performance of part of a subsequent phase until the Customer approves the results of the preceding phase in writing.
6. If, during performance of the agreement, it turns out that the agreement should be changed or supplemented in order for it to be properly performed, the parties will amend the agreement in time and in consultation. If the nature, scope or contents of the agreement are changed, whether at the request or instructions of the Customer, competent authorities, etc., or otherwise, and the agreement is consequently changed from a qualitative and/or quantitative perspective, this may also affect the arrangements originally agreed

upon. As a result, the amount originally agreed upon may be increased. Erkens will submit a quotation in advance as much as possible. Due to an amendment of the agreement the completion term of the agreement may also change. The Customer accepts the possibility that the agreement is changed, including an amendment of the price and completion term.

7. In the event the agreement is changed or supplemented, Erkens will be entitled not to commence performance until the Erkens staff member authorised for this purpose as well as the Customer have agreed to the price and other terms stated before performance, including the completion term then set. Failure to perform the agreement or failure to immediately commence performance do not constitute a wrongful act on the part of Erkens nor grounds for the Customer to terminate the agreement. Erkens may refuse a request to amend the agreement if such amendment may have consequences from a qualitative and/or quantitative perspective, e.g. for work to be performed in this respect or goods to be supplied, without committing breach of contract.

#### Article 8 – Delivery

1. Unless otherwise communicated, in all cases the delivery time will be the time Erkens puts the goods at the disposal of the transport company for the benefit of the Customer. In all cases the goods will be transported for the Customer's account and risk. The Customer must take out insurance against theft, damage, loss, etc., during transport.
2. The Customer is under obligation to purchase.
3. Risk in the goods will pass to the Customer upon Erkens' offering the goods for transport, even if the Customer does not purchase such goods on any account whatsoever.  
If the Customer should refuse purchase or fail to provide information or instructions required for delivery, Erkens will be entitled to store the goods at the Customer's account and risk, as referred to in subsection 3 of article 9.
4. Unless otherwise arranged in writing, the place of delivery will in all cases be the Customer's actual place of business (or the place of business stated in the order) or the branch the agreement was concluded with.
5. Delivery periods stated in quotations/offers, confirmations and/or agreements are made to the best of Erkens' knowledge and will be observed as much as possible but will never be considered deadlines. Should a term be exceeded, the Customer is therefore required to give Erkens written notice of default, allowing Erkens a reasonable term to perform the agreement.
6. The Customer must check whether the goods supplied or the services rendered conform to the agreement upon delivery or without delay, but in any case within five days of delivery at the latest. Any questions or complaints about goods supplied or services rendered by Erkens must be submitted to Erkens, fully and clearly documented, within two weeks after the Customer has discovered or should have discovered the defects at the latest, at the risk of forfeiting all rights.
7. Goods supplied can only be returned after obtaining Erkens' permission.
8. All claims on Erkens on any account whatsoever will expire and/or lapse within one year after it has arisen or the time limit has commenced.

#### Article 9 – Guarantees by the Customer

1. The Customer undertakes to allow Erkens the opportunity to make the delivery.
2. The Customer guarantees at its own expense and risk that:
  - a. it will lend the cooperation required for the performance to Erkens;
  - b. it will purchase the goods or services ordered;
  - c. delivery can take place in normal working conditions and during normal working hours (8 AM – 6 PM);
  - d. it will observe Erkens' safety measures and safety instructions.
3. If the goods or services ordered have been offered for delivery to the Customer and delivery is not possible due to the fact that the Customer has failed to observe one of the obligations referred to in subsections 1 and 2 above, Customer will be deemed to have refused purchase. The Customer will then be in default by law without

any notice of default by Erkens being required. The day on which purchase is refused will be deemed to be the delivery date of the goods or services ordered. From this moment on the goods will be at the Customer's risk in conformity with articles 7 and 9.

- Without prejudice to its payment obligation, in the case referred to in subsection 3 the Customer must compensate Erkens for any losses suffered as a result of the refusal, including storage and transport costs incurred, the latter being linked to local customary rates.

#### **Article 10 – Liability**

- If either party fails to discharge one or more of its obligations arising from the agreement, the other party will give notice of default unless discharge of the obligation(s) concerned is permanently impossible, in which case the defaulting party will be immediately in default. The notice of default must be given in writing allowing the party in default a reasonable term to discharge its obligations. This term will be a deadline. Erkens' liability for direct damage in relation to the Customer in the event of failure to perform, or failure to perform in time or properly, will be restricted to the net invoice value of the goods or services concerned, however, up to the maximum amount communicated in the quotation/offer and restricted to the amount of the claim paid out by Erkens' insurance company under its corporate liability insurance policy.
- The restriction referred to in subsection 1 also applies if Erkens is held liable by the Customer on account of a reason other than the agreement entered into by them.
- The term "direct damage" is understood to exclusively mean:
  - all reasonable costs a party would have to incur to cause the other party's performance to conform to the agreement. This damage will not be compensated, however, if such other party terminated the agreement;
  - all reasonable costs incurred to determine the cause and scope of the damage insofar as the determination relates to direct damage within the meaning of these general terms and conditions; all reasonable costs incurred to prevent or restrict damage insofar as the party suffering the damage proves that such costs have restricted direct damage within the meaning of these general terms and conditions.
- Erkens will never be liable for indirect damage, including consequential damage, loss of profits, lost savings, losses due to business interruption and all losses that do not fall within the scope of direct damage within the meaning of these general terms and conditions.
- The restriction of liability does not apply in the event of intent or gross negligence on the part of directors and managers of Erkens.
- Erkens will never be liable for materials the Customer put at Erkens' disposal in the framework of the agreement. The Customer undertakes to take out adequate insurance for these materials.
- Subject to the foregoing Erkens will not be liable in the event the damage is due to intent and/or gross negligence and/or imputable acts or improper use or misuse of goods supplied by the Customer.

#### **Article 11 – Indemnification**

- As far as permitted by law the Customer indemnifies Erkens against liability towards one or several third parties arising from the performance of the agreement, whether or not the damage was caused or sustained by Erkens or its agent(s), auxiliary materials or services. As far as permitted by law the Customer furthermore indemnifies Erkens against all third party claims on account of any infringement of intellectual property rights owned by such third parties.
- The Customer will take out adequate insurance to cover the risks referred to above.
- The Customer must make every effort to restrict the damage at all times.

#### **Article 12 – Shipment & storage**

- Shipment & storage has to be conditioned if temperature comes above 23° C or underneath 10° C.

#### **Article 13 – Unforeseen circumstances and force majeure**

- In the event performance by Erkens or purchase by the Customer is

delayed for more than one month due to force majeure, each party will be authorised to terminate the agreement in accordance with the law, to the exclusion of further rights.

- The term "force majeure" will in any case be understood to mean:
  - the circumstance that a performance (including a performance by the Customer) required by Erkens for its performance is not effected, is not effected in time or improperly;
  - strikes;
  - traffic jams;
  - government measures preventing Erkens from discharging its obligations in time or properly;
  - riots, uprising, war, terrorism;
  - extreme weather conditions;
  - fire;
  - import, export and/or transit bans.
- In the event the principles of reasonableness and fairness dictate that the Customer cannot require performance by Erkens in view of unforeseen circumstances, the Court may fully or partly set aside the agreement at the request of either party.

#### **Article 14 – Termination**

- Either party is entitled to entirely or partly terminate the agreement without a notice of default and judicial intervention being required in the circumstances outlined below and as far as such right is granted below:
  - in the event the Customer applies for or has obtained a moratorium on payments or a court orders the compulsory winding-up of the Customer, if the Customer's business is liquidated or ownership of the Customer's business is transferred and/or the actual management is handed over;
  - in the event of other circumstances as a result of which continuation of the agreement cannot be reasonably required.
- Either party will only be authorised to terminate the agreement if the other party, following a proper notice of default in writing as detailed as possible and containing a proposal for a reasonable term to cure the breach of contract, fails imputably to discharge essential obligations under the agreement and provided this failure justifies termination.
- In the event the agreement is terminated, Erkens' claims on the Customer will be immediately due and payable. In the event Erkens suspends discharge of the obligations, it will retain its claims under the law and agreement.
- Erkens remains entitled to demand damages at all times.
- Once the parties commence performance of an agreement entered into subject to these general terms and conditions, they can no longer terminate the agreement.

#### **Article 15 – Transfer**

- Without obtaining Erkens' written permission the Customer may not transfer rights and obligations under the agreement to third parties. In addition, it is impossible for the Customer from a property law perspective to transfer rights and obligations acquired from Erkens to third parties.

#### **Article 16 – Disputes and applicable law**

- All agreements and disputes between the parties will be governed by Dutch law to the exclusion of any other applicable legal systems. The provisions of the Vienna Sales Convention do not apply, nor will any future international regulation concerning the purchase of movable property or the rendering of services, the operation of which can be excluded by the parties.
- Neither party may disclose disputes in relation to or arising from the agreement to third parties.
- All disputes arising from quotations/offers and agreements between the parties will be submitted to the District Court Oost-Brabant location 's-Hertogenbosch in the Netherlands to the exclusion of other courts.