

**ERIC KUSTER METROPOLITAN LUXURY CREATIVE STUDIO LTD**  
General Terms & Conditions

## GENERAL TERMS & CONDITIONS

ERIC KUSTER Metropolitan Luxury  
Creative Studio LTD

These General Terms and Conditions of ERIC KUSTER Metropolitan Luxury Creative Studio LTD (hereinafter; 'ERIC KUSTER STUDIO') established at (ST J2040) St. Julians 1A Triq Wied Ghomor, registered with the Malta Company Register under no. C 55720, can also be downloaded from the website: [www.erickuster.com](http://www.erickuster.com). These General Terms and Conditions apply to any offer, quote, bid or proposal issued by ERIC KUSTER STUDIO.

### General

1. ERIC KUSTER STUDIO is a company developing a-class interior design concepts and projects.
2. These General Terms and Conditions form an integral part of any offer between ERIC KUSTER STUDIO and the Client. By accepting an offer, the Client accepts the applicability of these General Terms and Conditions.
3. These General Terms and Conditions exclusively apply to all offers, services, and/or work by or on behalf of ERIC KUSTER STUDIO. The General Terms and Conditions of the Client are explicitly rejected. In the event of product deliveries related to the Offer, the relevant General Terms & Conditions will apply.
4. Departures from these General Terms and Conditions will be valid only if and insofar as they have been expressly agreed between the parties in writing. The provisions of these General Terms and Conditions will remain fully in force insofar as no such departures have been made.

### Definitions

5. The following terms will have the following meaning as used herein:

**ERIC KUSTER STUDIO:**

Eric Kuster Metropolitan Luxury  
Creative Studio LTD

**Agreement:**

the Offer agreed by the parties for which these General Terms and Conditions will apply;

**Client:**

the customer who purchases Concept Design Services from ERIC KUSTER STUDIO;

**Offer:**

the offer of Concept Design Services made by ERIC KUSTER STUDIO to the Client;

**Order Amount:**

the total of Price(s) quoted in the Offer for Concept Design Services requested by the Client;

**Price(s):**

the price(s) to be paid by the Client to ERIC KUSTER STUDIO for Concept Design Services;

**Services:**

the Concept Design Services provided by ERIC KUSTER STUDIO to the Client as specified in the Offer;

### Offer - proposal by ERIC KUSTER STUDIO

6. An Offer is valid for 30 calendar days. After the end of this period of time the Offer by ERIC KUSTER STUDIO expires automatically and no further rights can be derived from it.
7. The Offer will be executed when the Client has signed the Offer or confirmed the Offer in writing (e-mail included) and has paid the pre-payment in accordance with these General Terms and Conditions. The Client is obliged, prior to the acceptance of an Offer, to inform ERIC KUSTER STUDIO of any facts and/or circumstances that could affect the performance of the Agreement, insofar as the Client is aware or should be aware thereof.
8. All work that is not specified in the Offer does not fall under the scope of the Agreement and could influence the total price presented in the Offer.
9. No Agreement may be cancelled or altered by the Client except upon terms and

conditions accepted by ERIC KUSTER STUDIO in writing. ERIC KUSTER STUDIO reserves the right to cancel the Agreement for whatever reason on provision of notice to the Client.

10. In case ERIC KUSTER STUDIO provides Services, the Offer in relation thereto will be based on the information provided by the Client to ERIC KUSTER STUDIO. Such information may include drawings and /or measurements. ERIC KUSTER STUDIO will not be liable for any costs which may become due because of incorrectness of information, drawings and/or measurements provided by the Client. The Client is obliged, prior to the acceptance of the Offer, to inform ERIC KUSTER STUDIO of any facts and/or circumstances that could affect the performance of the Agreement, insofar as the Client is aware or should be aware thereof.
11. If and insofar as applicable ERIC KUSTER STUDIO reserves the intellectual property rights to any designs, sketches, images, drawings, specimens, samples and models that are provided with any Offer. These items must be returned to ERIC KUSTER STUDIO immediately upon request by ERIC KUSTER STUDIO, notwithstanding other statutory measures at ERIC KUSTER STUDIO's disposal to safeguard its rights.

## **Prices & costs**

### **12. Pre-payment**

After acceptance of the Offer by the Client, ERIC KUSTER STUDIO requires from the Client a prepayment of 50% of the total Order Amount, including the value-added tax (VAT), if applicable.

### **13. Other/additional costs**

After the acceptance of the Offer, ERIC KUSTER STUDIO may charge hourly rates, call-out charges and any other relevant expenses, unless otherwise agreed.

## **Payment**

14. All Prices stated in the Offer are in euros and exclude VAT if applicable. All payment transactions must be transferred to the bank account as mentioned on the invoice. No credit card payments are accepted.
15. The remaining 50% of the total Order Amount must be paid by the Client in the

week prior to the planned or actual delivery of the final interior design concept.

16. Every Agreement, even if this includes contracting work, is made subject to the provisions as described in these General Terms and Conditions.
17. In case of contracting work, the fee consists of an agreed percentage based fee and/or a fee based on the hourly rate applicable for work done by ERIC KUSTER STUDIO or its (assigned) employees. In addition, ERIC KUSTER STUDIO will charge the Client for travel expenses and other costs incurred by ERIC KUSTER STUDIO in relation to the work contracted (excluding VAT).
18. Unless agreed otherwise, invoices are payable within five (5) business days of the respective invoice date. The Client will be in default automatically if the payment deadline expires.
19. After the expiry of the above five (5) business days, ERIC KUSTER STUDIO will be entitled, without any further notice of default, to start legal proceedings against the Client for non-performance of the Client's obligations under the Agreement.
20. If in default, the Client will owe default interest at 1% per month of the outstanding principal sum, for which purpose part of a month is regarded as a whole month.
21. If in default, the Client will owe collection charges in accordance with "het Besluit Vergoeding voor Buitengerechtelijke Incassokosten". To corporate Clients an amount will be charged based on the actual collection charges in accordance with "Rapport Voorwerk II".

## **Additional costs, contract extras and/or omissions**

22. Costs that arise because the Client has failed to perform, has made it impossible to perform or is preventing the further progress of the work, will be charged to the Client notwithstanding the total Order Amount.
23. Contract extras and/or contract variations will be charged at ERIC KUSTER STUDIO's own discretion and as it sees fit. Contract extras generally include all work that are not specified in the Agreement and are requested by the Client.

## **Cancellation**

24. If the Client no longer wishes to perform its obligations under the Agreement, before ERIC KUSTER STUDIO has performed under the Agreement, the Client will owe to ERIC KUSTER STUDIO a compensation of 50% of the pre-payment (i.e. half of the 50% prepayment), plus VAT if applicable. The latter applies notwithstanding ERIC KUSTER STUDIO's right to recover actual higher damage/loss from the Client.

### **Suspension and termination**

25. If the Client fails to comply, or fails to properly comply, with any obligation under the accepted Offer or these General Terms and Conditions, ERIC KUSTER STUDIO will be entitled to suspend all or part of the performance under the Agreement or to terminate all or part of the Agreement extra judicially.
26. If the Client is declared bankrupt or there is a petition for bankruptcy, a moratorium on the payment of debts, debt restructuring or (start of) liquidation of the Client, ERIC KUSTER STUDIO will be entitled to terminate all or part of the Agreement extra judicially and with immediate effect.
27. If it becomes apparent during the performance of the Services and/or work that full and proper performance of Agreement will be permanently impossible as a result of circumstances that ERIC KUSTER STUDIO did not know, nor should have known, at the time of entering into the Agreement, ERIC KUSTER STUDIO may use the right granted to it by the Client to amend the Agreement so that its full and proper performance is possible. If ERIC KUSTER STUDIO does not use this right, for reasons of its own, it will be free to cancel or terminate the accepted Offer extra judicially and with immediate effect. In that case, the Client will be obliged to reimburse the costs that ERIC KUSTER STUDIO has already incurred in relation to the performance of the work.

### **Complaints and liability**

28. ERIC KUSTER STUDIO's warranty commitment extends only to the obligation to warrant that the delivered Services are in accordance with the Agreement. If Services and/or other work are also

performed, ERIC KUSTER STUDIO will perform these Services to the best of its knowledge and ability.

29. The Client may enforce complaints relating to defects in the delivered Services and/or the performance of the work only if these are submitted within ten (10) business days of delivery of the work. If and insofar as the Client allows the aforementioned complaints deadline to expire without submitting a complaint, the Client accepts the forfeiture of all rights relating to repairs or due performance of Agreement.
30. If the Client wishes to perform or prevent work, or arrange for the performance or prevention of work, against ERIC KUSTER STUDIO's advice, every complaint relating to this will be excluded.
31. If the Client's complaint is valid, with due observance of the above, ERIC KUSTER STUDIO will, at its discretion and as it sees fit, and within a reasonable period of time, deliver the Services in accordance to the Offer.
32. ERIC KUSTER STUDIO and the Client agree that ERIC KUSTER STUDIO will not be liable for any damage/loss suffered or to be suffered by the Client as a result of any failure to perform/breach, tort or other unlawful act, undue payment and/or undue enrichment, unless the damage/loss is directly and solely the consequence of demonstrable gross negligence or an intentional act of ERIC KUSTER STUDIO. The Client expressly waives the right in advance to hold ERIC KUSTER STUDIO liable in the cases as set out in the first sentence of this provision.
33. Insofar as ERIC KUSTER STUDIO is obliged to pay any compensation to the Client based on delivery of defective Services and/or work, this compensation will be limited in all cases to a maximum of 50% of the accepted net Order Amount, excluding VAT. ERIC KUSTER STUDIO and the Client agree that ERIC KUSTER STUDIO will never be liable, under any circumstances, for a higher amount than is paid under its liability insurance, if applicable.
34. ERIC KUSTER STUDIO and the Client agree that ERIC KUSTER STUDIO cannot be held liable for any damage/loss that arises from the conduct of a third party hired by the Client that is not involved in the Offer or for which these General Terms and Conditions apply. When hiring third parties, ERIC KUSTER STUDIO will take

the necessary care within reasonable limits.

35. The execution of orders and/or performance of work entrusted to ERIC KUSTER STUDIO will be exclusively for the benefit of the Client. Third parties may not derive any rights from the content of the Services and/or work performed for the Client. If and insofar as the Client independently enters into a legal relationship with a third party, which overlaps in any way with the accepted Offer and/or these General Terms and Conditions, this will be entirely at the Client's expense and risk. ERIC KUSTER STUDIO is not a party to this relationship, under any circumstances, unless expressly agreed otherwise in writing. The Client undertakes to expressly and clearly bring this fact to the attention of the third party that is thus not involved in this Agreement and the General Terms and Conditions.

#### **Intellectual property rights**

36. The Client shall not infringe the intellectual property rights of ERIC KUSTER STUDIO, its shareholders or its affiliated companies, (including but not limited to trademarks, trade names, logos, images, text, designs, sketches, patents and copyrights, product descriptions or other words or symbols) and ERIC KUSTER STUDIO, its shareholders or its affiliated companies, retain all proprietary interests in these rights. The Client undertakes to do nothing which may damage, detract from or otherwise harm the ownership of ERIC KUSTER STUDIO, its shareholders or its affiliated companies, in and / or the value of such intellectual property rights.

#### **Miscellaneous**

37. The General Terms and Conditions hereof and any subsequent correspondence relating to the Agreement and Services, including without any limitation, pricing and any conflicts arising between the parties are confidential and the Client hereby undertakes not to disclose the same unless required by law.
38. VAT will be applicable on deliveries of Services rendered by ERIC KUSTER STUDIO. The VAT treatment will depend

on the actual facts and circumstances of the Services provided.

39. The Client warrants that it is fully entitled and capable of fulfilling its obligations pursuant to the Agreement. The Client warrants that at the time of concluding the Agreement it is not insolvent and knows of no circumstances which would entitle any creditor to exercise any rights over or against its assets or which would otherwise cause detriment to its financial position.
40. If any provision of the Agreement is for any reason held invalid or illegal in any respect, such invalidity or illegality will not affect the validity of the other provisions as set forth in the Agreement and ERIC KUSTER STUDIO will substitute for the affected provision, a valid and enforceable provision which most closely approximates the intent and economic effect. If such provision cannot be amended so as to be valid and enforceable, then such provision is severable from the Agreement and the remaining provisions of the Agreement remain valid and enforceable.
41. The Client is not entitled to transfer or novate its rights and obligations pursuant to the Agreement to any third party, without ERIC KUSTER STUDIO's prior written consent. The Client hereby gives its prior consent for the transfer or novation of its obligations, whether in whole or in part, by ERIC KUSTER STUDIO to a third party.
42. The Client is not entitled to set off any amounts due by ERIC KUSTER STUDIO against any amounts due by the Client.
43. All disputes connected to or ensuing from the Agreement shall be governed by and construed in accordance with the laws of Malta. Any dispute or controversy arising under or in connection with the Agreement or Offer will exclusively be brought before the competent court in Malta, subject to appeal as provided by law. If the court decides in favour of ERIC KUSTER STUDIO from any legal action brought against the Client by ERIC KUSTER STUDIO, ERIC KUSTER STUDIO will be awarded reasonable attorneys' fees and costs by the Client in addition to any other relief that may be granted.

St. Julians, Malta  
March 2017

