

**ERIC KUSTER INTERIOR STUFF B.V.**  
General Terms & Conditions

## GENERAL TERMS & CONDITIONS

Eric Kuster Interior Stuff B.V.

These General Terms and Conditions of ERIC KUSTER Interior Stuff B.V. (hereinafter; 'ERIC KUSTER') established at (1272RN) Huizen, Sparrenlaan 11, The Netherlands, have been registered with the Amsterdam Company Register under no. 32076708 and 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.

### General

1. ERIC KUSTER is a company active in trading a-class interior design and related products and developing interior design projects.
2. These General Terms and Conditions form an integral part of any offer between ERIC KUSTER 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, products and/or work by or on behalf of ERIC KUSTER. The General Terms and Conditions of the Client are explicitly rejected.
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:**

Eric Kuster Interior Stuff B.V.;

**Agreement:**

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

**Client:**

the customer who purchases Products and Services from ERIC KUSTER;

**Offer:**

the offer of Products and/or Services made by ERIC KUSTER to the Client;

**Order Amount:**

the total of Price(s) quoted in the Offer for Products and/or Services requested by the Client;

**Price(s):**

the price(s) to be paid by the Client to ERIC KUSTER for Products and/or Services;

**Product(s) :**

the product(s) purchased by the Client from ERIC KUSTER as specified in the Offer;

**Service(s):**

the service(s) provided by ERIC KUSTER to the Client as specified in the Offer;

**Ex Warehouse:**

leaving the ERIC KUSTER warehouse where Products purchased by the Client from ERIC KUSTER are prepared for transportation.

### Offer - proposal by ERIC KUSTER

6. An Offer is valid for 30 calendar days. After the end of this period of time the Offer by ERIC KUSTER 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 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 in writing. ERIC KUSTER reserves the right to cancel the Agreement for whatever reason on provision of notice to the Client.
10. In case ERIC KUSTER provides Services, the Offer in relation thereto will be based on the information provided by the Client to ERIC KUSTER. Such information may include drawings and /or measurements. ERIC KUSTER 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 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 reserves the intellectual property rights to any designs, images, drawings, specimens, samples and models that are provided with any Offer. These items must be returned to ERIC KUSTER immediately upon request by ERIC KUSTER, notwithstanding other statutory measures at ERIC KUSTER's disposal to safeguard its rights.
15. Price increases after the above six (6)-month period are at the Client's risk. Price increases after the above six (6)-month period will be passed on prior to delivery at ERIC KUSTER's request.
16. Price changes in relation to clearances, closing-down sales, showroom models, discounts, campaigns and special offers fall outside the scope of the accepted Offer.

#### **Retention of title**

17. ERIC KUSTER is and will remain the owner of the Products it delivers to the Client for as long as the Client has not paid the accepted Order Amount in full. Where this applies, the Client is obliged to deal with the delivered Products in a proper and decent manner.
18. If the Client has not paid the final invoice prior to delivery, the Client may not sell, give as security or lend the delivered Products to third parties, or remove or arrange for the delivered Products to be removed from the space where they have been delivered to, until the total Order Amount and any additional interest and costs if so applicable have been paid in full to ERIC KUSTER.

#### **Delivery/Delivery date**

19. Unless agreed otherwise, the delivery date is not a strict deadline.
20. Delivery is made Ex Warehouse from the moment ERIC KUSTER gives written notice to the Client that Products are ready for collection by the Client, regardless of the means of transportation.
21. If the Client does not collect the Products within ten (10) business days after the above-mentioned notice, ERIC KUSTER will formally claim specific performance of the Agreement, and charge storage costs, personnel costs and any other further damage/loss and other costs, notwithstanding its right to additional or replacement compensation.
22. Upon request, goods can be delivered from the Warehouse to the location designated on the Agreement. In the event ERIC KUSTER takes care of transportation, all delivery charges, shipment costs, insurance costs, customs clearance costs

#### **Prices & costs**

12. **Pre-payment**  
After acceptance of the Offer by the Client, ERIC KUSTER requires from the Client a prepayment of 50% of the total Order Amount, including VAT if applicable.
13. **Other/additional costs**  
After the acceptance of the Offer, ERIC KUSTER may charge hourly rates, call-out charges and any other relevant expenses, unless otherwise agreed.
14. **Price changes**  
If there is a price change after the acceptance of the Offer but before handover or delivery, this will not have any effect on the agreed Price as long as it happens within six (6) months of the acceptance of the Offer.

and VAT if applicable must be paid by the Client to ERIC KUSTER before shipment. ERIC KUSTER cannot accept any claims for delays caused by forces beyond its control or through fault of carriers.

### **Handover and delivery to location**

23. If parties agree in writing ERIC KUSTER performs Services and/or delivers the Products to location, the Client is obliged to ensure that:

- the handover/delivery location can be properly locked;
- the handover/delivery location is accessible and, insofar as reasonably possible, everything has been done to ensure a smooth handover/delivery;
- subfloors are free from lime, cement, dirt and loose objects and left broom clean and in an orderly manner;
- electricity, light, heating, water and adequate ventilation are available in the space where the work is to be performed.

If the Client does not comply with the above conditions or obligations, ERIC KUSTER will be entitled to charge costs at its own discretion and as it sees fit.

24. The Client must inform ERIC KUSTER in due time of special circumstances that necessitate the use of a lift, hoist or crane. Any costs in this regard are payable by the Client.

25. If the Client provides incorrect or incomplete information, the costs of using special tools are payable by the Client. Damage/loss that arises from the use of special tools is at the risk and expense of the party that uses them, unless the damage/loss cannot be attributed to that party.

### **Storage of Products that cannot be delivered**

26. If the Products to be delivered to the Client, as agreed by parties in accordance with provision of these General Terms and Conditions, on the agreed date are not or cannot be delivered due to reasons attributable to ERIC KUSTER, ERIC KUSTER will propose a new delivery date for the Products to be delivered within a reasonable period of time.

27. If the Products to be delivered to the Client, as agreed by parties in accordance with provision of these General Terms & Conditions are not or cannot be accepted by the Client on the agreed date due to reasons attributable to the Client, the Client is charged with all costs to return the Products to the warehouse of ERIC KUSTER. ERIC KUSTER is entitled to charge the Client for any storage costs and further damage/loss and costs if so incurred by ERIC KUSTER. ERIC KUSTER will propose a new delivery date within a reasonable period of time.

28. If for a second time the Products to be delivered to the Client, as agreed by parties in accordance with provision of these General Terms & Conditions, are not or cannot be accepted by the Client on the agreed date due to reasons attributable to the Client, ERIC KUSTER will formally claim specific performance of the Agreement, and charge storage costs, transportation costs, personnel costs and any other further damage/loss and other costs if so incurred by ERIC KUSTER, notwithstanding its right to additional or replacement compensation.

29. If the Client has paid the full Order Amount prior to delivery of the Products, but delivery is not possible or desired, ERIC KUSTER will keep the Products stored for a maximum of six (6) months at the Client's expense, unless agreed otherwise.

30. The Client states that it has not taken delivery of the Products by the end of six months, the Client hereby already waives any right in respect of the uncollected Products and approves that ERIC KUSTER may freely dispose of the Client's Products after six (6) months, including selling uncollected Products to another party, if necessary. Before ERIC KUSTER does this, it must give notice of its intention to do so to the Client in writing (or by e-mail). If 100% of the Order Amount has been paid, 40% of the Order Amount will be returned to the Client, except in case of customised products.

31. The storage costs will amount 1% of the Prices as quoted in the Offer (excluding VAT) for the stored Products, subject to a minimum of €250.00, unless ERIC KUSTER plausibly demonstrates that its costs are higher.

## **Payment**

32. All Prices stated in the Offer are in euros and exclude any value-added tax (VAT), if applicable. All payment transactions must be transferred to the bank account as mentioned on the invoice. No credit card payments are accepted.
33. The remaining 50% of the total Order Amount must be paid by the Client in the week prior to the planned or actual delivery date but no later than two (2) business days before delivery.
34. Every Agreement, even if this includes contracting work, is made subject to the provisions as described in these General Terms and Conditions.
35. In case of contracting work, the fee consists of an agreed percentage based fee and/or a fee based on an agreed hourly rate for work done by ERIC KUSTER or its (assigned) employees. In addition ERIC KUSTER will charge the Client for travel expenses and other costs incurred by ERIC KUSTER in relation to the work contracted (excluding VAT).
36. If ERIC KUSTER makes partial deliveries for the performance of Agreement, it is entitled, to request payment of the entire partial delivery before that delivery is made. The Client will receive an interim invoice for each partial delivery. Payment must be made no later than two (2) business days before the delivery.
37. 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. If an invoice is not paid, or is not paid in full, after five (5) business days, ERIC KUSTER is entitled, in case of a prepayment, to suspend the agreed delivery date. If the invoice is an interim invoice, ERIC KUSTER is entitled to suspend the agreed earlier delivery date. The associated costs are payable by the Client.
38. After the expiry of the above five (5) business days, ERIC KUSTER 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.
39. 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.

40. 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**

41. 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.
42. Contract extras and/or contract variations will be charged at ERIC KUSTER's own discretion and as it sees fit. Contract extras generally include all work and supplies that are not specified in the Agreement and are requested by the Client.

## **Cancellation**

43. If the Client no longer wishes to perform its obligations under the Agreement, before ERIC KUSTER has performed under the Agreement, the Client will owe to ERIC KUSTER 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's right to recover actual higher damage/loss from the Client.

## **Suspension and termination**

44. 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 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.
45. 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 will be entitled to terminate all or part of the Agreement extra judicially and with immediate effect.

46. 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 did not know, nor should have known, at the time of entering into the Agreement, ERIC KUSTER 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 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 has already incurred in relation to the performance of the work.

### **Complaints and liability**

47. ERIC KUSTER's warranty commitment extends only to the obligation to warrant that the delivered Products are in accordance with the Agreement. If Services and/or other work are also performed, ERIC KUSTER will perform these Services to the best of its knowledge and ability.

48. The Client may enforce complaints relating to defects in the delivered Products and/or materials and/or the performance of the work only if these are submitted within ten (10) business days of delivery of the Products or the completion of the work. If it is not reasonably possible to submit a complaint within the above-specified time frame, the ten (10)-day time frame applies from the moment the defect was or could have been discovered. The complaint must be specific and well-motivated, substantiated where necessary with detailed photographs. 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.

49. If the Client wishes to perform or prevent work, or arrange for the performance or prevention of work, against ERIC KUSTER's advice, every complaint relating to this will be excluded.

50. Likewise, complaints cannot be enforced if:

- these are due to normal wear and tear;

- these are due to the Products being exposed to abnormal circumstances or being carelessly or incompetently handled by the Client;
- these are due to discolouration or hairline cracks arising from the direct effect of heat sources such as the sun, central heating pipes and fireplaces;
- these are due to extreme changes in the air humidity rate or temperature, or an air humidity rate that is too high or too low in the relevant areas and surrounding areas;
- one (1) year has passed since delivery.

51. If the Client's complaint is valid, with due observance of the above, ERIC KUSTER will, at its discretion and as it sees fit, and within a reasonable period of time, either a) deliver whatever is missing, b) repair the damage or c) replace what has been delivered.

52. ERIC KUSTER and the Client agree that ERIC KUSTER 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. The Client expressly waives the right in advance to hold ERIC KUSTER liable in the cases as set out in the first sentence of this provision.

53. Insofar as ERIC KUSTER is obliged to pay any compensation to the Client based on delivery of defective Services, Products 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 and the Client agree that ERIC KUSTER will never be liable, under any circumstances, for a higher amount than is paid under its liability insurance, if applicable.

54. ERIC KUSTER and the Client agree that ERIC KUSTER 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 will take the necessary care within reasonable limits.

55. The execution of orders and/or performance of work entrusted to ERIC

KUSTER 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 is not a party to this relationship, under any circumstances, unless expressly agreed otherwise in writing. The Client undertakes to expressly and clearly bringing 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**

56. The Client shall not infringe the intellectual property rights of ERIC KUSTER, its shareholders or its affiliated companies, (including but not limited to trademarks, trade names, logos, images, text, design rights, patents and copyrights, Product descriptions or other words or symbols) and ERIC KUSTER, 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, its shareholders or its affiliated companies, in and / or the value of such intellectual property rights.

### **Miscellaneous**

57. The General Terms and Conditions hereof and any subsequent correspondence relating to the Agreement, the Products 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.

58. VAT will be applicable on Product deliveries and/or Services rendered by ERIC KUSTER. The VAT treatment will depend on the actual facts and circumstances of the Product delivery/Service provided.

59. 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.

60. 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 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.
61. The Client is not entitled to transfer or novate its rights and obligations pursuant to the Agreement to any third party, without ERIC KUSTER'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 to a third party.
62. The Client is not entitled to set off any amounts due by ERIC KUSTER against any amounts due by the Client.
63. All disputes connected to or ensuing from the Agreement shall be governed by and construed in accordance with Dutch law. Any dispute or controversy arising under or in connection with the Agreement or Offer will exclusively be brought before the competent court in Amsterdam, subject to appeal as provided by law. If the court decides in favour of ERIC KUSTER from any legal action brought against the Client by ERIC KUSTER, ERIC KUSTER will be awarded reasonable attorneys' fees and costs by the Client in addition to any other relief that may be granted.

Huizen, The Netherlands,  
March 2017

