

Contests: Terms and Conditions

Welcome to Kraimod, these terms and conditions, as updated and restated from time to time, constitute a binding agreement between you and Kraimod pursuant to the provisions set below (the “**Agreement**”). Without prejudice to the consent mechanisms put in place by us (Kraimod), by using the Platform and/or uploading / sending per e-mail a Design or any content to the Platform you confirm your understanding and acceptance of the Agreement.

1. Definitions

“**Confidential Information**” means information in any form or medium (whether oral, written, electronic or other) that a Disclosing Party considers confidential or proprietary, including information consisting of or relating to said Disclosing Party’s technology, trade secrets, know-how, business operations, plans, strategies, customers, and pricing, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations, in each case whether or not marked, designated or otherwise identified as “confidential”.

“**Customer**” means any person(s) that has either expressed interest in acquiring or has acquired a license to use (*inter alia*) any of the Designs.

“**Designs**” means any and all visible forms of conceptions of the mind made available by you (the “Designer”) via or otherwise found in the Platform pertaining to clothing, accessories or any other fashion goods. For the avoidance of doubt this definition shall include, but is not limited to, designs, sketches, descriptions, pictures, shapes, color combinations or any other expressions containing aesthetic value.

“**Designer**” means **you** and vice versa.

“**Documentation**” means all instructions, specifications, documents, materials or data, in any form or media that describe or contain the Designs.

“**Effective Date**” is the date in which each individual Design is made available by the Designer to Kraimod.

“**Intellectual Property Rights**” means any and all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection or other intellectual property rights laws, and all similar or equivalent rights (**including** economic rights) or forms of protection, in any part of the world in relation to the Designs and the Documentation.

“**License**” has the meaning set forth in Clause 3.1.

“**Platform**” shall mean the online design aggregation platform operated by the Provider and made accessible via the internet website “www.kraimod.com”, as restated and modified from time to time.

“**Work Product**” means any and all products, goods, services and/or work products derived, developed, sold or offered by Kraimod, his representatives, directors and/or assignees (as Sub-Licensees), whether directly or indirectly, that include any expression of the Intellectual Property

Rights, Designs or/and Documentation in any form whatsoever or derive *inter alia* from the use of the Intellectual Property Rights, Designs or/and Documentation under the License.

Further terms are defined throughout this Agreement. The use of a term in singular implies its plural form and vice versa. Non-capitalized terms shall not have the meaning set forth under this or the respective Clause.

2. Subject Matter

- 2.1 The Designer hereby makes the Designs uploaded to the Platform available to Kraimod for the fulfillment of the Subject Matter of this Agreement.
- 2.2 Subject to the terms of this Agreement, Kraimod may at its own discretion sub-license any Design, as made available by the Designer, to a Customer on an “as-is” and “as-available” under a license agreement (“**Customer Agreement**”). For the avoidance of doubt, Kraimod is not obliged to promote or otherwise endorse the Designs and does not warrant the conclusion any number of Customer Agreements related to the Designs.
- 2.3 Following conclusion of a Customer Agreement, the Designer shall be eligible to receive compensation pursuant to Clause 4 (Compensation). For the avoidance of doubt, no other economic rights arise for the Designer and no other payment obligations are imposed on Kraimod with regard to or in connection with this Agreement.
- 2.4 Both Parties enter into and execute this Agreement as independent professionals with no contractual ties to the other Party whatsoever other than this Agreement. Nothing in this Agreement is intended to or shall operate to create a partnership, joint-venture or employment relationship between the Parties, or authorize either Party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

3. Scope of License & Proprietary Rights

- 3.1. The Designer (as **Licensor**) hereby grants Kraimod, its directors, representatives and assignees (jointly and individually as **Licensee**) the right and license to use, modify, have modified, copy, display, disclose, derive works from, publish, and exploit the Intellectual Property Rights, the Designs and the Documentation, on an irrevocable, royalty-free, exclusive, transferrable and licensable basis without territorial or further limitations (hereinafter “**License**”). The License is granted by the Designer without limitations to the fullest extent permissible by law and for the purpose of carrying out this Agreement.
- 3.2. The Licensor acknowledges and agrees that the Licensee shall acquire and own any and all intellectual property rights (including economic rights) to, or in, the Work Product, including but not limited to related patents, trademarks, trade secrets, designs, trade names and/or any expression of work, whether registered or unregistered.

- 3.3. Without prejudice to Clause 3.1, the Licensee does not acquire the ownership of the Intellectual Property Rights, the Designs or Documentation as a result of this Agreement.

4. Compensation

- 4.1 Upon the conclusion of a Customer Agreement and subject to the due and timely fulfillment of its obligations under this Agreement, the Designer shall be entitled to receive compensation in the form of a winning certificate (digital or physical) to each individual Design licensed under of the said Customer Agreement, as restated or modified from time to time (“**Compensation**”). The certificate is due to be issued within thirty (30) days following the reception of the corresponding approval from the Customer.
- 4.2 The Compensation constitutes the sole and exclusive right, remedy and/or claim of any nature whatsoever available to the Designer with regard to the License and under any Customer Agreement as well as under this Agreement.

5. Representations and Warranties

- 5.1. The Parties acknowledge that the Customer Agreements could be subject to foreseen and unforeseen modifications, cancellations, limitations and/or restatements imputable to any of its parties, an event of *force majeure*, or supervening impossibility in performance (“**Restatements**”). Should a Restatement arise, the Designer shall have no **(a)** recourse to obtain or withhold the Compensation, and/or **(b)** rights of any nature in connection with the Compensation.
- 5.2. The Designer warrants and represents that the Designs, Documentation and Intellectual Property **(a) are original and unique work products of his sole authorship**; (b) do not infringe the intellectual property rights of any third party whether partly or in whole; and, (c) have not been previously licensed to, or can be claimed by, any third party.
- 5.3. The Designer warrants and represents not to:
- (a) contest the validity, enforceability and/or integrity of the trademarks, patents, trade names or intellectual property rights *inter alia* arising from or in connection to the Work Product in any form before any authority, whether directly or indirectly; or,
 - (b) pursuant to Clause 3, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Intellectual Property Rights, Designs and/or Documentation available to any third party; or,
 - (a) engage in any conduct that would constitute infringement of this Agreement, or otherwise harm Kraimod.
- 5.4. Kraimod shall use all reasonable endeavors to prevent any unauthorized access to, or use of, the Design and/or the Documentation and, in the event of any such unauthorized access or use, promptly notify the Designer.

- 5.5. Unless otherwise agreed, the Designer shall not solicit or contact, whether directly or indirectly, any Customer, established client or business partner of the Provider with a view to **(a)** inducing or encouraging such Customer, established client or business partner to discontinue or curtail any business relationship with the Provider; or **(b)** establishing any direct contractual or factual relation with such Customer, established client or business partner. It is agreed that no adequate remedy at law exists for the parties for violation of this Clause and that this Clause may be enforced by any equitable remedy, including specific performance and injunction, without limiting the right of the Provider to proceed at law to obtain such relief as may be available to it. This Clause 4.5 shall survive termination of this agreement, however arising.
- 5.6. The Customer warrants that it has and will maintain all necessary licenses, consents, and permissions necessary for the performance of its obligations under this agreement to the extent applicable.
- 5.7. Pursuant to Clause 2.4 (Independent Professionals), no Party shall have the right or authority to negotiate, conclude or execute any contract or legal document with any third person in the name of the other Party; to assume, create, or incur any liability of any kind, express or implied, against or in the name of any of the other Party; or to otherwise act as the representative of the other Party, unless expressly authorized in writing by the other Party.

6. Confidential Information & Data Protection

- 6.1. Each Party may be given access to Confidential Information from the other Party in order to perform its obligations under this agreement. A Party's Confidential Information shall not be deemed to include information that:
- a) is covered under the License pursuant to Clause 3 (Scope of License & Proprietary Rights).
 - b) is or becomes publicly known other than through any act or omission of the receiving Party;
 - c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
 - d) is independently developed by the receiving party, which independent development can be shown by written evidence; or
 - e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 6.2. Each Party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement.
- 6.3. Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.
- 6.4. Neither Party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

- 6.5. The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute the Provider's Confidential Information.
- 6.6. This Clause 6 shall survive termination of this agreement, however arising. On termination of this agreement for any reason each party shall return and make no further use of any property, Documentation and other items (and all copies of them) belonging to the other party.
- 6.7. Unless otherwise agreed, no Party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

7. Liability

- 7.1. The Designer shall defend, indemnify and hold harmless Kraimod, its employees, directors, officers, shareholders, agents and other related parties (individually and jointly as **Indemnitee**) against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or connected with any actual or threatened lawsuit, claim, administrative or legal proceeding brought **by a Customer or a third party** against the Indemnitee, on the merits of
 - (a) an act of fraud or plagiarism pursuant to Clause 5.2 (Originality);
 - (b) the infringement of the intellectual property rights of a third party arising from or in connection with the Designs or Documentation, provided that; or,
 - (c) a breach of the Designer's contractual obligations, including Clause 3.5 (License), under this Agreement.
- 7.2. In the defense or settlement of any claim and without prejudice to Clause 7.3, the Designer shall at its sole discretion procure the right for the Customer to continue using the Designs, replace or modify the Designs so that they become non-infringing.
- 7.3. The Parties contractual, tort and vicarious liability under this Agreement is governed by the applicable statutory provisions. Notwithstanding the foregoing, Kraimod's aggregated liability for any and all claims arising under this Agreement shall not exceed Compensation due and payable to the Designer at the time said claim(s) arise, as set forth in Clause 4 (Compensation).

8. Term and Termination

- 8.1. This Agreement shall commence on the Effective Date and shall remain in force and valid for an indefinite period.
- 8.2. Either Party may terminate this Agreement by written notice with immediate effect, insofar as no Customer Agreements are in force, in the event of a material breach of the Agreement by the other

Party (“Breaching Party”), if such breach is not remedied within thirty (30) days following receipt of a written notice thereof served to the Breaching Party.

- 8.3. Clauses 3 (License), 5 (Representations and Warranties), 6 (Confidentiality) and 9 (Liability) shall survive the termination of this Agreement.

9. Force Majeure

- 9.1. The Provider shall have no liability to the Customer under this agreement if it is prevented from or delayed in performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Provider or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of Providers or subcontractors, provided that the Customer is notified of such an event and its expected duration.

10. Applicable Law

- 10.1 This Agreement shall exclusively be governed by and construed in accordance with the laws of the Republic of Germany.
- 10.2 Exclusive place of jurisdiction for any dispute arising out of or in connection with this Agreement shall be Berlin, Germany.

11. Miscellaneous Provisions

- 11.1 This Agreement contains the entire understanding of the Parties hereto relating to the subject matter of this Agreement and shall supersede any and all previous covenants and agreements between the Parties therewith. All notices contemplated by or respecting this Agreement shall be sent in written.
- 11.2 This Agreement shall not be assigned by either Party without the written consent of the other Party, which shall not be unreasonably withheld.
- 11.3 Should individual provisions of this Agreement be or become ineffective, the remaining provisions shall remain unaffected thereby. The Parties shall provide, in place of the ineffective provision, for such statutorily permissible provision as most closely approaches the economic purpose of the ineffective provision. The same applies to any gaps in this Agreement.
- 11.4 Terms defined under this agreement expressed in singular encompass their plural form and vice versa.
- 11.5 All amendments and supplements to this Agreement and this Amendment Clause shall be agreed between the Parties in written form and in English.