

# ENFANTS RICHES DÉPRIMÉS

---

## TERMS AND CONDITIONS

### **Buyer(s) Consent:**

Enfants Riches Déprimés' (herein after "ERD" and/or "Seller") acceptance of Buyer's order(s) is expressly made conditional on Buyer's assent to the following terms and conditions. Unless otherwise agreed to in writing by all parties, the terms and conditions set forth on the Buyer's order confirmation(s), credit application(s), and/or invoice(s) supersede the terms and conditions of the Buyer's purchase order(s) and will govern all transaction between the Buyer and the Seller. These terms and conditions also apply to all future transaction unless modified in writing and signed by all parties. Seller specifically rejects any terms or provisions which set any standards, specifications or damages related to quality and time of delivery or which contradict or purportedly claim to supersede these terms and conditions. Buyer's acceptance of goods delivered by Seller in conjunction with the order confirmation(s), credit application(s), and/or invoice(s) is an acknowledgement by Buyer of its acceptance of these terms and conditions.

### **Returns & Exchanges:**

The Seller will accept the return or exchange of retail merchandise within 7 days of receipt of goods—free of charge—contingent upon the Buyer providing adequate receipt of original purchase. Buyer must return merchandise in its original condition—original tags and packaging included. A written authorization from the Seller must also be obtained by Buyer for any returned or exchanged merchandise.

### **Notice of Defects:**

It is the responsibility of Buyer to inspect upon receipt, that all merchandise delivered matches its order. The Buyer must make any claims of defects, including but not limited to those related to shortages, quality, or specification, within the first 7 days after the receipt of merchandise. The Seller cannot be responsible for shortages when shipments are directed to a third party. Moreover, Buyer must notify Seller in writing of all claims for damages resulting from late delivery or any other defect that is known to Buyer at the time Buyer accepts the merchandise. Buyer hereby waives any claim for damages resulting from any defect Buyer is aware of, including late delivery, at the time Buyer accepts the merchandise.

### **Defaults:**

It is understood that should the Buyer become delinquent in payment, no further credit will be extended and the Seller will charge the Buyer a past due service charge at the rate of 1 ½% per month (18% per annum), collection agency fees in the amount of 30%, and/or reasonable attorney's fees, and all other costs and expenses which may be incurred by the Seller in the enforcement of the terms and conditions set forth on the invoice, credit application, and/or order confirmation. Any returned checks or rejected wire transfers will be charged back to the Buyer, and a \$50 handling fee will be charged to the Buyer. If the Buyer's account is insured and the Buyer's account is turned over to a receivable insurance company for a claim, Seller can also charge the client an additional 30% of the principal amount due which is in default. It is understood that these charges are a reasonable estimation of the damages Seller will incur upon Buyer's default.

**Jurisdiction:**

Any transactions between the Buyer and the Seller are governed by the laws of California. To the extent that any court proceedings are commenced, the Buyer and any Guarantor hereby consent to the jurisdiction of the courts of Los Angeles County, California, for any claims or controversies arising in the sale of garments by the Seller to the Buyer. The Seller also reserves the right to sue the Buyer or its Guarantor in the province or state of its domicile. However, the foregoing shall not in any way diminish or limit the arbitration provisions set forth below.

**Exclusion of Implied Warranties:**

The buyer recognizes that implied warranties of merchantability and fitness for particular purpose and all other warranties implied are excluded from any transaction between Buyer and Seller and shall not apply to the goods sold by Seller. Seller shall also not be liable for any consequential damages.

**No Responsibility:**

Buyer acknowledges that Seller has no responsibility for any work performed by any vendor referred by Buyer and hereby waives any right to assert any claim against Seller for work performed by any other company, including but not limited to claims for negligent referral, agency, or respondeat superior.

**Deterioration of Buyer's Credit:**

The Seller has the right, in addition to other remedies provided by law, to terminate any delivery or suspend further deliveries of other shipments in the event the Buyer fails to pay for anyone shipment when the same becomes due. Should the Buyer's financial condition become unsatisfactory to the Seller, the Seller may require cash payments or satisfactory securities for delivery of goods.

**Arbitration:**

- A. Agreement to Binding Arbitration
  - i. ERD and Buyer agree that upon the demand of either party, any claim or dispute between ERD and Buyer and/or any of either parties' parent corporations, successor entities, present and/or former subsidiaries, divisions, and affiliated entities, as well as each of their present and/or former shareholders, directors, officers, employees, attorneys, agents, contractors and representatives ("Agents"), shall be determined by binding arbitration as set forth in this Agreement. ERD and Buyer hereby covenant not to file a lawsuit against each other in contravention of this Agreement. The parties shall be entitled to all of the same remedies as those available for comparable actions in courts. The parties shall be entitled to be represented by independent counsel of their choosing. Claims shall be submitted to and determined exclusively by binding arbitration as provided for by Sections 1 and 2 of the Federal Arbitration Act, in conformity with the California Code of Civil Procedure. Once a party exercises its right to Arbitration as set forth below, Arbitration shall be the exclusive method for resolving any dispute; provided, however, that either party may request provisional relief from a court of competent jurisdiction, as provided in California Code of Civil Procedure section 1281.8.
  
- B. Knowing and Voluntary Consent to Binding Arbitration and Waiver of Right to Jury Trial
  - i. ERD and Buyer hereby acknowledge that they have read and understand the terms of this Arbitration Agreement, and are voluntarily agreeing to its terms. ERD and Buyer also understand that by using binding arbitration to resolve disputes, they will be giving up any right they may have to a judge or jury trial.
  
- C. Costs of Arbitration
  - i. The Parties shall each bear their own costs and attorneys' fees in any arbitration proceeding, provided however, that the arbitrator shall have the authority to require either party to pay the costs and attorneys' fees of the other party during the arbitration, as is permitted under federal or state law, as a part of any remedy that may be ordered.

**Severability**

If any provision hereof is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other provision and such invalid provision shall be deemed to be severed from the Agreement.