

# Terms of Service

## 1. These terms

Binkies (also: “us”, “we”) is a provider of services for enhancing websites with Binkies Content. This document explains the terms by which you may use our online services, web site and software provided on or in connection with the service (the “Binkies Platform”); the Binkies Content accessible through it and any Additional Services we may offer; all three collectively referred to as “Services”.

### A. Applicability

By entering into an Agreement with us, accessing or using the Platform or Binkies Content, including by embedding our code on your site, or using one of our Additional Services, you signify that you have read, understood, and agree to be bound by this Terms of Service (“Terms”), and to the collection and use of your information as set forth in our Privacy Policy, whether or not you are a registered user of our Services. These Terms apply to all visitors, users, and others who access the Services (“Users”).

### B. Changes and Updates

Binkies may, in its sole discretion, modify or update these General Terms from time to time, and so you should review these terms periodically. When we change these Terms, we will update the ‘last revised’ date at the top. If there are material changes to these Terms, we will notify you either by posting a notice of such changes prior to implementing the change or by directly sending you a notification.

If you do not agree to any of these terms or any future Terms of Service you must notify us in writing of your specific disagreement within 14 days after the change. We will then work to resolve the dispute. If we do change the Terms of Service while you remain in disagreement of the change, you may end your subscription and terminate this agreement per the date of the new Terms of Service. Your continued use of our Services after 14 days of the date of change constitutes your acceptance of the new Terms of Service.

### C. Eligibility

You may use our Services only if you (on behalf of your company) (can) form a binding contract with Binkies, and only in compliance with these Terms and all applicable local, state, national, and international laws, rules and regulations. The Services are not available to any Users previously removed from the Services by Binkies.

## 2. Binkies Platform

### A. Grant

Subject to the terms and conditions of this Agreement, you are hereby granted a non-exclusive, limited,

non-transferable, non-sublicensable, freely revocable, license to use the Binkies Platform solely for the purpose of enhancing websites with Binkies Content. You may only integrate the Platform on any web sites owned, operated or controlled by you ("Customer Sites"). Binkies reserves all rights not expressly granted herein in the Services and the Binkies Property (as defined in Section 4(A)).

#### **B. Restrictions**

Except as expressly permitted under Section 2(A), you agree not to use, copy, modify, create a derivative work of, reverse engineer, decompile or otherwise attempt to extract the source code of the software underlying the Platform or any part thereof, unless this is expressly permitted or required by law, or unless authorized by Binkies in writing.

### **3. Binkies Content**

#### **A. Definition**

The Binkies Platform allows you to publish, display, configure and create product images, 3D representations and potentially other forms of interactive and visual product representation existing now or invented in the future. Any and all interactive and visual product representation accessible and delivered through the Platform shall be known as "Binkies Content".

#### **B. Ownership & License Grant**

You acknowledge that Binkies owns all right, title, and interest, including all copyright, moral rights, and all other types of intellectual property in and to the Binkies Content created, provided, hosted and/or served through use of the Platform. To the extent necessary, you hereby agree to transfer and assign any rights you may have in (parts of) the Binkies Content to us to ensure our ownership of the Binkies Content.

Subject to the terms and conditions of this Agreement (including any restriction on any applicable sign-up sheet or authorization form), you are hereby granted a non-exclusive, limited, non-transferable, non-sublicensable, freely revocable, license to publicly display and publish the Binkies Content made available to you through the Platform as content on any web sites owned, operated or controlled by you ("Customer Sites"). Binkies reserves all rights not expressly granted herein in the Binkies Content (including, without limitation, re-selling and re-licensing of the content to any third party). You will not use the Binkies Content for any purpose beyond the scope of the license granted herein.

Furthermore, Binkies explicitly reserves the right to display, offer, license, resell or distribute any Binkies Content created using the Platform to any other Binkies customer or offer the Binkies Content for licensing.

#### **C. Restrictions**

Except as expressly permitted under Section 3(A), you agree not to use, copy, modify, create a derivative work of, reverse engineer or otherwise attempt to extract the Binkies Content or any part thereof, unless this is expressly permitted or required by law, or unless authorized by Binkies in writing.

### **4. Ownership Rights**

#### **A. Binkies' Proprietary Rights**

As between you and Binkies, Binkies and its licensors exclusively own all right, title and interest in and to all Services, including without limitation any improvements thereto, updates, and all materials therein or transferred thereby, including, without limitation, software, images, text, graphics, illustrations, logos, patents, trademarks, service marks, and copyrights (the “Binkies Property”), and all Intellectual Property Rights (as defined below) related thereto and derivative works of the foregoing. Except as expressly provided herein, nothing in this Agreement shall be deemed to create a license in or under any such Intellectual Property Rights (as defined below), and you agree not to sell, license, rent, modify, distribute, copy, reproduce, transmit, publicly display, publicly perform, publish, adapt, edit or create derivative works from any materials or content accessible by or provided to you through any and all of our Services. Use of the Binkies Property or materials for any purpose not expressly permitted by this Agreement is strictly prohibited.

For the purposes of this Agreement, “Intellectual Property Rights” means all patent rights, copyright rights, mask work rights, moral rights, rights of publicity, trademark, trade dress and service mark rights, goodwill, trade secret rights and other intellectual property rights as may now exist or hereafter come into existence, and all applications therefore and registrations, renewals and extensions thereof, under the laws of any state, country, territory or other jurisdiction.

## **B. Your Proprietary Rights**

**Customer Sites.** As between you and Binkies and subject to Section 4(C), you own all right, title and interest in and to the Customer Sites and all data and content embedded thereon or contained therein (excluding the Platform and Binkies Content), and any Intellectual Property Rights for any of the foregoing embodied therein.

**Customer Data.** Customer Data (as defined herein) will be and will remain your property. “Customer Data” means any profile information, data, and other content or information provided by you, directly or indirectly, to Binkies in connection with your use of the Platform, including without limitation such data, content, and information related to your business or the users of the Customer Sites.

Binkies shall only use Customer Data in accordance with Binkies’ Privacy Policy. For the avoidance of doubt, this includes without limitation, using Customer Data in aggregate form to create reports, provide and improve the Services, and provide better functionality to our customers and their end users.

## **C. Licenses to Binkies**

**Customer Data.** You expressly grant, and you represent and warrant that you have all rights necessary to grant, to Binkies, a royalty-free, sublicensable, transferable, perpetual, irrevocable, non-exclusive, worldwide license to use, develop, transmit, distribute, modify, reproduce, publically display, and create derivative works of any Customer Data for the purposes of (a) providing the Services (b) developing, maintaining, supporting, and improving the Services so long as any Customer Data relating to end users of the Customer Sites is not reasonably identifiable with an individual; (c) marketing, promoting and advertising the Services so long as any Customer Data relating to end users of the Customer Sites is not reasonably identifiable with an individual; and (d) creating and distributing reports so long as any Customer Data relating to end users of the Customer Sites is not reasonably identifiable with an individual.

**Name and Logo.** You expressly grant, and represent and warrant that you have all rights necessary to grant, to Binkies, a royalty-free, sublicensable, perpetual, irrevocable, non-exclusive, worldwide license to

use, reproduce, modify, publish, and distribute your name, logo, or any other identifying words or marks used by and/or associated with you to identify you ("Your Marks"), in whole or in part, and in any form, media or technology, whether now known or hereafter developed, for use in connection with the Services to identify you as a customer of Binkies. Unless otherwise approved in writing by you, we will not remove, obscure, or alter any of Your Marks. Binkies acknowledges that all goodwill generated through our use of any of Your Marks will inure to your benefit and we hereby assign and will assign to you any and all goodwill generated through our use of any of Your Marks, without any payment or other consideration of any kind to us.

**Marketing.** You expressly grant, and represent and warrant that you have all rights necessary to grant, to Binkies, a royalty-free, sublicensable, perpetual, irrevocable, non-exclusive, worldwide license to use, reproduce, publish, edit, and distribute any of Your Marks, in whole or in part, and in any form, media or technology, whether now known or hereafter developed, to identify you as a customer of Binkies in connection with any marketing, promotion, or advertising of the Services.

**Customer References.** You expressly grant, and represent and warrant that you have all rights necessary to grant, to Binkies, a royalty-free, sublicensable, perpetual, irrevocable, non-exclusive, worldwide license to use, reproduce, publish, edit, and distribute any of Your Marks, in whole or in part, and in any form, media or technology, whether now known or hereafter developed, to identify you as a customer of Binkies in connection with providing customer references regarding the Services to other Users.

**Case Studies.** You expressly grant, and represent and warrant that you have all rights necessary to grant, to Binkies, a royalty-free, sublicensable, perpetual, irrevocable, non-exclusive, worldwide license to use, reproduce, publish, edit, and distribute any of Your Marks, in whole or in part, and in any form, media or technology, whether now known or hereafter developed, for use in connection with identifying you in case studies relating to your use of the Services.

**Feedback and Improvements.** You may choose to or we may invite you to submit comments, suggestions, feedback, or ideas about the Services, including without limitation about how to improve the Services or our products ("Ideas"). By submitting any Idea, you agree that your disclosure is gratuitous, unsolicited and without restriction and will not place Binkies under any fiduciary or other obligation, and that we are free to use the Idea without any additional compensation to you, and/or to disclose the Idea on a non-confidential basis or otherwise to anyone. You further acknowledge that, by acceptance of your submission, Binkies does not waive any rights to use similar or related ideas previously known to Binkies, or developed by its employees, or obtained from sources other than you.

## 5. Additional Service

### A. Eligibility

Binkies may provide Additional Services to you, but we have no obligation to do so. Binkies, at its sole discretion, may deny to offer you any and all of these Additional Services. The act of providing you access to our Platform to use the Binkies Content does not create an obligation for us to offer or deliver any or all additional services.

## **B. Consultancy**

Some additional services may involve us performing consultancy services. These services are always performed on a best effort basis. You, and you alone, are responsible to determine whether any and all advice given by us is appropriate for your business. We do not assume responsibility for its content and are not liable for any damages resulting from your usage of advice or information provided by us. Unless explicitly agreed upon otherwise, any and all consultancy services (including support) will be performed during regular business hours in our office location.

## **C. Transit**

Depending on the additional services you are using, it may be necessary to transfer tangible or intangible products and items between our facilities. The transport of these tangible or intangible products shall be at your sole and exclusive option, risk, responsibility and cost.

We assume no responsibility for any products in transit. You are solely responsible for any and all shipping, insurance or transport of an item and all related costs in both transit directions.

# **6. Paid Services**

## **A. Billing Policies**

Certain aspects of our Services may be provided for a fee or other charge. If you elect to use paid aspects of our Services, you agree to the terms of sale, pricing, payment and billing policies applicable to such fees and charges. Binkies may add new services for additional fees and charges, or amend fees and charges for existing services, at any time in its sole discretion.

## **B. Refunds**

No Refunds. In the event you cancel your subscription, you shall receive no refund or exchange for any unused time on a subscription, any license or subscription fees for any portion of the Services, any unused credits on a subscription, any content or data associated with your account, or for anything else.

## **C. Subscription Terms**

You acknowledge and agree that you shall be responsible for paying all fees due for the full term of your subscription, whether or not you cancel such subscription prior to the end of such term. You further acknowledge and agree that the term of your subscription shall automatically renew for additional successive terms equal to the period of your initial term, unless you provide Binkies with notice of your intent not to renew your subscription at least sixty (60) days prior to the end of the then-current subscription term.

## **D. Payment Information; Taxes**

All information that you provide in connection with a purchase or transaction or other monetary transaction interaction with the Services must be accurate, complete, and current. You agree to pay all charges incurred by users of your credit card, debit card, or other payment method used in connection with a purchase or transaction or other monetary transaction interaction with the Services at the prices in effect when such charges are incurred. You shall pay all applicable subscription fees, including any value-added, sales, excise, service, use or other taxes now or hereafter imposed upon or required to be collected by Binkies by any authority in connection with or arising from the Services and/or this Agreement, excluding taxes based upon Binkies' net income. You shall pay each invoice issued by Binkies by the applicable due

date and in the currency specified by Binkies. Any amounts not paid when due shall bear interest at the rate of one and one-half percent (1.5%) per month or the maximum rate allowed by law, whichever is less.

## 7. Collection and Use of Customer Data; Security

### A. Consent to Collection and Use of Customer Data

In connection with any Customer Data, you hereby represent and warrant that (a) any personally identifiable information, including without limitation if such information is in aggregate form, about your end users that you provide to Binkies, directly or indirectly, hereunder was, is, and will be collected with the informed consent of such end users, (b) you have obtained all necessary rights, releases, and permissions to provide such Customer Data to Binkies, and (c) the collection, use, and disclosure of such information by you does not violate any laws or rights of any third party, including without limitation any Intellectual Property Rights, rights of privacy, or rights of publicity, and is not inconsistent with the terms of any applicable privacy policies.

Binkies takes no responsibility and assumes no liability for any Customer Data that you or any other User or third party provides, posts, publishes or transmits over the Platform. You shall be solely responsible for Customer Data and the consequences of using, disclosing, or transmitting it, and you agree that Binkies is only acting as a passive conduit.

### B. Security

We have implemented commercially reasonable and industry standard technical and organizational measures designed to secure Customer Data from accidental loss and from unauthorized access, use, alteration or disclosure. However, you acknowledge that Binkies cannot guarantee that unauthorized third parties will never be able to defeat those measures.

## 8. Representations and Warranties

Each party warrants and represents that such party has full right, power, and authority to enter into and perform this Agreement without the consent of any third party. You hereby represent, warrant, and covenant to use the Services (including, without limitation, Binkies Content) in accordance with all applicable laws. Binkies represents, warrants and covenants that Binkies will use commercially reasonable efforts to prevent the Services from introducing into your computer systems, databases, or software, any virus or any other contaminants that may be used to access, alter, delete, disrupt, damage, disable, inhibit, or shut down your computer systems, databases, or software, in a manner other than in accordance with the terms of this Agreement.

## 9. Indemnification

Each party will indemnify and hold harmless the other party and its successors and their respective affiliates, officers, directors and employees against and from all third party: claims, actions, demands, damages, liability and expenses (including, without limitation, court costs and reasonable attorneys' fees) (together, "Claims") arising out of or in connection with the indemnifying party's breach or alleged breach of Sections 7(A) or 8 of this Agreement. You will further indemnify and hold harmless Binkies and our successors and

our affiliates, officers, directors and employees against and from all Claims arising out of or in connection with the Customer Sites, including without limitation any violation or alleged violation of any law or third-party rights by the Customer Sites or any data, (binkies) content, or information contained therein or transferred thereby. The indemnifying party's obligations are conditioned upon the indemnified party: (i) giving the indemnifying party prompt written notice of any Claim for which the indemnified party is seeking indemnity (provided however, the failure to give timely notice shall not relieve the indemnifying party of its obligations under this section except to the extent that such untimely notice materially impairs the ability of the indemnifying party to defend); (ii) granting complete control of the defense and settlement to the indemnifying party (provided however, the indemnified party may participate with counsel of its choosing at its own expense); and (iii) reasonably cooperating with the indemnifying party, at the indemnifying party's expense, in defense and settlement of such Claim. The indemnifying party shall not, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened proceeding in respect to which indemnified party is or could be indemnified hereunder unless such settlement either (a) includes an unconditional release of the indemnified party from all liability on all Claims that are the subject matter of such proceeding or (b) is consented to in writing by the indemnified party (which consent shall not be unreasonably withheld).

## 10. No Warranty

EXCEPT FOR THE WARRANTIES SET FORTH IN SECTION 8, THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. USE OF THE SERVICES IS AT YOUR OWN RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICES ARE PROVIDED WITHOUT WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT.

NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM BINKIES OR THROUGH THE SERVICES WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED HEREIN. WITHOUT LIMITING THE FOREGOING, BINKIES, ITS SUBSIDIARIES, AND ITS LICENSORS DO NOT WARRANT THAT THE (BINKIES) CONTENT IS ACCURATE, RELIABLE OR CORRECT; THAT THE SERVICES WILL MEET YOUR REQUIREMENTS; THAT THE SERVICES WILL BE AVAILABLE AT ANY PARTICULAR TIME OR LOCATION, UNINTERRUPTED OR SECURE; THAT ANY DEFECTS OR ERRORS (OF BINKIES CONTENT) WILL BE CORRECTED; OR THAT THE SERVICES ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. ANY MATERIALS DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICES IS DOWNLOADED AT YOUR OWN RISK AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM SUCH DOWNLOAD OR YOUR USE OF THE SERVICES.

BINKIES DOES NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY PRODUCT OR SERVICE ADVERTISED OR OFFERED BY A THIRD PARTY THROUGH THE BINKIES SERVICES OR ANY HYPERLINKED WEBSITE OR SERVICE, AND BINKIES WILL NOT BE A PARTY TO OR IN ANY WAY MONITOR ANY TRANSACTION BETWEEN YOU AND THIRD-PARTY PROVIDERS OF PRODUCTS OR SERVICES.

## 11. Limitation of Liability

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL BINKIES, ITS AFFILIATES, AGENTS, DIRECTORS, EMPLOYEES, SUPPLIERS OR LICENSORS BE LIABLE FOR ANY DIRECT, INDIRECT, PUNI-

TIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES, THAT RESULT FROM THE USE OF, OR INABILITY TO USE, THESE SERVICES. UNDER NO CIRCUMSTANCES WILL BINKIES BE RESPONSIBLE FOR ANY DAMAGE, LOSS OR INJURY RESULTING FROM HACKING, TAMPERING OR OTHER UNAUTHORIZED ACCESS OR USE OF THE SERVICES OR YOUR ACCOUNT OR THE INFORMATION CONTAINED THEREIN.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, BINKIES ASSUMES NO LIABILITY OR RESPONSIBILITY FOR ANY (I) ERRORS, MISTAKES, OR INACCURACIES OF (BINKIES) CONTENT; (II) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR ACCESS TO OR USE OF OUR SERVICE; (III) ANY UNAUTHORIZED ACCESS TO OR USE OF OUR SECURE SERVERS AND/OR ANY AND ALL PERSONAL INFORMATION STORED THEREIN; (IV) ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM THE SERVICE; (V) ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE THAT MAY BE TRANSMITTED TO OR THROUGH OUR SERVICES BY ANY THIRD PARTY; AND/OR (VI) ANY ERRORS OR OMISSIONS IN ANY (BINKIES) CONTENT OR FOR ANY LOSS OR DAMAGE INCURRED AS A RESULT OF THE USE OF ANY (BINKIES) CONTENT POSTED, EMAILED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE THROUGH THE SERVICES. IN NO EVENT SHALL BINKIES, ITS AFFILIATES, AGENTS, DIRECTORS, EMPLOYEES, SUPPLIERS, OR LICENSORS BE LIABLE TO YOU FOR ANY CLAIMS, PROCEEDINGS, LIABILITIES, OBLIGATIONS, DAMAGES, LOSSES OR COSTS IN AN AMOUNT EXCEEDING THE AMOUNTS PAID BY YOU TO BINKIES UNDER THIS AGREEMENT DURING THE MOST RECENT TWELVE (12) MONTHS.

THIS LIMITATION OF LIABILITY SECTION APPLIES WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER BASIS, EVEN IF BINKIES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW IN THE APPLICABLE JURISDICTION.

The Services are controlled and operated mainly from different facilities in the Netherlands, but may include facilities in other locations. Binkies makes no representations that the Services are appropriate or available for use in any specific location. Those who access or use the Services from other jurisdictions do so at their own volition and are entirely responsible for compliance with all applicable Netherlands and local laws and regulations, including but not limited to export and import regulations. You may not use the Services if you are a resident of a country embargoed by the Netherlands or are a foreign person or entity blocked or denied by the Dutch government.

## 12. Confidentiality

“Confidential Information” of either party will mean information disclosed to or learned by the receiving party concerning the disclosing party’s business, customers, products, proposed products, plans, inventions, processes and techniques, which is designated as “Confidential”, “Proprietary” or some similar designation or should reasonably be considered to be confidential or proprietary due to its nature or the context of its disclosure. Confidential Information does not include information that: (i) is or becomes generally known to the public through no fault or breach on the part of the receiving party; (ii) the receiving party obtains from a third party rightfully, without breach of nondisclosure obligations and without restriction on disclosure; or (iii) the disclosing party regularly provides to others without restriction on disclosure. Except as explicitly authorized in writing by this Agreement or otherwise, each party will: (a) not use, for its own benefit or the benefit of any third party, the other party’s Confidential Information; and (b) use all reason

ble care, but in no event less care than it takes to protect its own Confidential Information of similar importance, to protect the other party's Confidential Information from unauthorized use, disclosure and publication. Both parties acknowledge that the breach of this Section 12 could cause great or irreparable injury to the disclosing party and that pecuniary compensation would not afford adequate relief, and therefore, that upon any such unauthorized disclosure by the receiving party, the disclosing party shall be entitled to seek appropriate equitable relief in addition to whatever other remedies it might have at law. Within five (5) days after termination of this Agreement, each receiving party shall destroy or deliver to the disclosing party, at the disclosing party's option, all materials in receiving party's possession or control that contain or disclose any Confidential Information of the disclosing party.

## 13. Termination

Binkies, in its sole discretion, may terminate or suspend your account at any time if, in Binkies' sole discretion, you violate any term or provision of this Agreement without prior notice or liability to you. If customer defaults in the performance of any material provision of this Agreement, including without limitation any payment obligations due under Section 6, then Binkies may give written notice to Customer that if the default is not cured within thirty (30) days the Agreement will be terminated. If Binkies gives such notice and the default is not cured during the thirty (30) day period, then the Agreement shall automatically terminate at the end of that period. Upon termination of your account, your right to use the Services will immediately cease and all amounts due under Section 6 shall become immediately due and payable.

Sections 3, 4, 5, 6 (to the extent not satisfied), 7, and 9-15 shall survive any termination or expiration of this Agreement. Upon termination of this Agreement for any reason, you shall cease all use of the Services and you shall destroy and remove from all computers, hard drives, networks, and other storage media all copies of the Services and any the data, and shall so certify, if requested, to Binkies that such actions have occurred.

## 14. Assignment

This Agreement, and any rights and licenses granted hereunder, may not be transferred or assigned by you, but may be assigned by Binkies without restriction. Any attempted transfer or assignment in violation hereof shall be null and void.

## 15. General

### A. Independent Contractors

Neither party has the ability to bind the other party to any agreements or other obligations and will not attempt to do so. Binkies and you are independent contractors, and nothing in this Agreement creates any partnership, joint venture or agency relationship. As between each other, each party is fully responsible for all persons and entities it employs or retains.

### B. Offers

Any offers made by us are non-binding, no rights can be derived from these offers until Binkies has made

confirmation of acceptance of your order. Binkies, in its sole discretion, reserves the right to refuse customers.

### **C. Force Majeure**

Binkies shall be excused from any delays in the performance of its obligations under these terms if such a delay results from compliance with any requirement of applicable law, acts of god, fire, strike, embargo, terrorist attack, war, insurrection or riot or other causes beyond our reasonable control. Any delay resulting from any of such causes shall extend performance accordingly or excuse performance, in whole or in part, as may be reasonable under the circumstances.

### **D. Use of Your Name**

You agree that Binkies may use your name, logo, or any other identifying words or marks used by and/or associated with you to identify you as a customer of Binkies, for use in connection with marketing, promoting, and advertising the Services, for use in customer references and case studies involving you, and for use in other activities related to Binkies' business.

### **E. Compliance with Law**

You shall ensure that your use of our Services complies in all respects with all applicable laws, statutes, regulations, ordinances or other rules promulgated by governing authorities and any and all agreements with third parties that you or your business are subject to. We shall have no responsibility for your use of our Services, including, without limitation, Binkies Content, nor shall we be responsible for any legal.

### **F. Governing Law**

This Agreement shall in all respects be governed by the laws of the Netherlands, without recourse to its conflict of law principles. All disputes arising out of or in connection with this Agreement shall be exclusively referred to the courts of The Hague, the Netherlands, but without prejudice to enforcement of any judgment or order thereof in any other jurisdiction. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.

### **G. Arbitration**

In the unlikely event that Binkies has not been able to resolve a dispute it has with you after attempting to do so informally, we each agree to resolve any claim, dispute, or controversy (excluding any Binkies claims for injunctive or other equitable relief) arising out of or in connection with or relating to this Agreement, or the breach or alleged breach thereof (collectively, "Actions"), in accordance with the Arbitration Rules of the Netherlands Arbitration Institute (Nederlands Arbitrage Instituut) by three (3) arbitrators appointed as follows.

Each party shall appoint one arbitrator. The claimant will do so in its Request for Arbitration and the Respondent will do so in its Short Answer. The party appointed arbitrators shall attempt to agree on a chairman. If, within thirty (30) days after the confirmation of the last party-appointed arbitrator, such appointed arbitrators have not agreed on a chairman, then the chairman will be appointed by the Netherlands Arbitration Institute.

If any party fails to appoint an arbitrator as provided above, the Netherlands Arbitration Institute will appoint such arbitrator. Upon the request of any party, the chairman of the arbitral tribunal will be of a

nationality different than that of the parties. The place of arbitration will be Amsterdam. The language of the arbitration will be English.

#### **H. Notification Procedures**

All notices from you to Binkies must be given in writing and sent by registered or certified mail (postage prepaid and return receipt requested), by hand or messenger delivery, by overnight delivery service, by facsimile with receipt confirmed, by electronic mail, to Binkies' addresses provided on the Platform. Any notice or report delivered in accordance with this Section will be deemed given on the date actually delivered; provided that any notice or report deemed given or due on a Saturday, Sunday or legal holiday will be deemed given or due on the next business day. Binkies may provide notifications, whether such notifications are required by law or are for marketing or other business related purposes, to you via email notice, written or hard copy notice, or through conspicuous posting of such notice on our website, as determined by Binkies in our sole discretion. Binkies reserves the right to determine the form and means of providing notifications to our Users, provided that you may opt out of certain means of notification as described in this Agreement. Binkies is not responsible for any automatic filtering you or your network provider may apply to email notifications we send to the email address you provide us.

#### **I. Entire Agreement/Severability**

This Agreement, together with any sign-up sheets and authorization forms, amendments and any additional agreements you may enter into with Binkies in connection with the Services, shall constitute the entire agreement between you and Binkies concerning the Services. If any provision of this Agreement is deemed invalid by a court of competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of this Agreement, which shall remain in full force and effect.

#### **J. No Waiver**

No waiver of any term of this Agreement shall be deemed a further or continuing waiver of such term or any other term, and Binkies' failure to assert any right or provision under this Agreement shall not constitute a waiver of such right or provision.



**Let's talk!**

letstalk@binkies3d.com