

## ERIK'S DELICAFÉ APP TERMS AND CONDITIONS

The Erik's DeliCafé App (the “**App**”) is offered by Erik's DeliCafé Franchises, Inc. and its franchisees. (“Erik's”, “**we**”, or “**us**”). These Terms and Conditions (“**Terms and Conditions**”) apply only to this App and the Rewards Program (as defined below) offered herein, and not to any other website, mobile app, product, service, or program offered by us. These Terms of Use are a legal and binding agreement between you and Erik's governing your use of this App, which includes its content, information, services, and features.

**Please read these Terms and Conditions, which apply to your use of this App and enrollment and participation in our Rewards Program. If you do not agree to these terms, then do not use this App or participate in the Rewards Program.**

### **Modifications**

We may modify these Terms and Conditions from time to time. When we do, we will notify you by email or otherwise as required under applicable law. It is therefore very important that you update your account information or notify us when your email address changes. Any changes to this Terms and Conditions will also be posted here. Your continued use of the App or participation in the Rewards Program after any modification confirms your acceptance to the modifications.

Additionally, Erik's may at any time, for any reason, and without notice or liability: (1) modify, suspend, or terminate operation of or access to this App or any portion thereof; (2) change, revise, or modify this App or any portion thereof; (3) interrupt the operation of this App or any portion thereof for maintenance and support; (4) impose limits on certain features and services, or restrict access to the App; and/or (5) terminate the authorization, rights, and license given above. Upon any termination, the rights and licenses granted to you herein shall terminate, and you must cease all use of the App.

### **Content & Use**

This App and all content, information, and other materials featured, displayed, contained, and available on this App (collectively, the “Content”) are owned by or licensed to Erik's and are protected by copyright, trademark, trade dress, patent, and/or other intellectual property rights. Subject to your compliance with these Terms and Conditions, Erik's grants you a personal, non-exclusive, non-transferable, limited right to access, use, display, and download this App for noncommercial purposes only. You may not, in any way, otherwise copy, reproduce, distribute, transmit, display, perform, reproduce, publish, license, modify, create derivative works from, sell, or exploit, in whole or in part, this App or its Content.

You agree to use this App and the Content in accordance with these Terms and Conditions and all applicable laws and regulations. Erik's may prohibit access, use, conduct, communications, or content that we, in our sole discretion, deem to be harmful to this App, the Content, users, us, our brand, or any other person or entity, or that violates these Terms and Conditions and/or applicable law.

## Rewards Program

We offer the Erik's Loyalty Club program (the "**Rewards Program**") to reward and thank our loyal restaurant customers. Rewards Program services are provided through our App and through our website. The Rewards Program is available to enrolled members at participating Erik's restaurants in the United States. Rewards accumulated under the Rewards Program are promotional and have no cash value. There are no membership fees associated with the Rewards Program.

**Eligibility:** You may enroll in the Rewards Program if you: (1) are a legal resident of the United States; (2) at least 13 years of age at the time you enroll; (3) have an active, valid e-mail address; and (4) are a human being. No corporations, partnerships, limited liability companies, or other legal entities can participate in the Rewards Program.

The Rewards Program is not targeted towards, nor intended for use by, anyone under the age of 13. If you are between the ages of 13 and 18, you may only use the Rewards Program under the supervision of a parent or legal guardian who agrees to be bound by these Terms and Conditions.

**Enrollment/Rewards Account:** You can enroll in the Rewards Program and create a Rewards account ("**Rewards Account**") in one of the following ways:

Click [here](#) to create a Rewards Account;

Visit the Erik's website located at [www.eriksdelicafe.com](http://www.eriksdelicafe.com); or

Download the App and sign up through your Email address.

Your Rewards Account is personal to you and may not be sold, transferred or assigned to, or shared with family, friends or others a third party. You may have only one (1) Rewards Account.

As a part of the Rewards Program, Erik's will send you transactional, informational, and promotional messages and/or offers. These communications may happen in the form of push notifications through the App, email, and/or any other ways you may have selected when you enrolled in the Rewards Program. If your contact information changes, or if you wish to change your contact information or the method by which we send you messages, please contact us at <https://eriksdelicafe.com/contact-eriks/>.

**Rewards:** By accumulating one hundred (100) Points in your Rewards Account, you will earn one (1) \$10 Reward (a "**Reward**"), which you may redeem at participating Erik's restaurants. The Reward will be valid for 365 days (1 year) from the date they were earned. Once you earn a Reward, you may start accumulating Points towards another Reward. You may redeem any amount of Rewards per visit regardless of the number of Rewards you have earned in your Rewards Account. A Reward may not be combined with other offers or coupons. Points are valid for the lifetime of Erik's Reward Program.

You will earn and receive Points toward Rewards as follows:

**Qualifying Purchases:** Rewards Program members will earn and receive Points toward Rewards by making qualified purchases at participating Erik's restaurants and by, scanning the QR code at the register when placing your order, providing your phone number at the register when placing your order, scanning the bar code on the receipt within fourteen (14) days of your purchase, placing an online order when logged into your loyalty account, or by other methods we may allow from time to time. You will earn one (1) Point for every \$1.00 spent on a qualified purchase. Rewards earned will be valid for 365 days (1 year) from the date they were earned. To receive Points for a qualified purchase, scan the QR code at the register when placing your order, provide your phone number at the register when placing your order, scan the bar code on the receipt from your purchase with the built in scanner in the App, manually enter the numbers located under the bar code on the receipt within fourteen (14) days of your purchase, placing an online order when logged into your loyalty account, or by other methods we may allow from time to time. After this verification, the Points to which you are entitled will be applied to your Rewards Account. You can track the Points and Rewards you have already earned and that you may earn in the future by logging into your Rewards Account.

You can also receive a Buy One Get One Free ("BOGO") offer for a Sandwich with Character or Entrée Salad for every friend you refer who joins our Rewards Program by downloading the App and starts earning Points. Your extra Points will not be awarded until the referred member enrolls in the Rewards Program through the App and earns their first Points. You can also share your Erik's experience on your personal Facebook page through the App. You have the option to make your comment public, but please note that by making your comment public, we may use your comment on the Erik's website, Facebook page, and/or other social media outlets.

**Discontinuation of the Loyalty Club Card:** Effective January 1, 2017 we updated our Rewards Program. Previously, Erik's has used a Loyalty Club Card ("Loyalty Club Card"), or a phone number connected to a Loyalty Club Account, as a vehicle for customers to collect Points and redeem Rewards. To provide better service to our customers, we now operate our Rewards Program services online through the App and through our website.

After October 1, 2017 all Loyalty Club Cards will be discontinued and any Points or Rewards accrued on a Loyalty Club Card, or via a phone number connected to a Loyalty Account, will no longer be accepted. All Erik's locations have already transitioned to the online Rewards Program and can only award Points and redeem Rewards through our App or website.

After December 1, 2022 Loyalty Club Cards cannot be redeemed or transferred to a Loyalty Club Account.

**Additional Rewards Program Terms:** Erik's reserves the right to terminate your Rewards Account and/or your participation in the Rewards Program if we determine in our sole discretion that you have violated these Terms and Conditions, you have more than one (1) account, or that the use of your account is unauthorized, deceptive, fraudulent or otherwise unlawful. Erik's may,

in its sole discretion, suspend, cancel, or combine Rewards Accounts that appear to be duplicative, and may refuse to allow you to reenroll in the Rewards Program.

Erik's has the right at any time, with or without giving you prior notice, to:

- end or cancel the Rewards Program and/or any specific Reward;
- change any Reward or other Rewards Program benefit we offer;
- change the requirements for earning a particular Reward;
- change the time you have in which to earn a particular Reward; and/or
- change any other feature of the Rewards Program.

If we end the Rewards Program, Rewards you have earned but not used will expire on the end date, and you may not redeem any Rewards or use any credits after the end date.

## **Login and Registration**

Certain features or services offered on or through this App may require you to complete a registration process and/or setup an account or login. In connection therewith, you agree to (1) provide true, accurate, current, and complete information about yourself, and (2) maintain and promptly update your information to keep it true, accurate, current, and complete. You are entirely responsible for maintaining the confidentiality of the information you hold for your login, including your password. You agree to notify Erik's immediately of any unauthorized use of your login, or any other breach of security. You may be held liable for losses incurred by Erik's or any other App user or visitor due to someone else using your login as a result of your failing to keep your login information secure and confidential.

You may not use anyone else's account or login information. Erik's shall not be liable for any loss or damage arising from your failure to comply with these obligations.

## **No Warranties**

THIS APP, THE CONTENT, AND THE REWARDS PROGRAMS ARE PROVIDED ON AN "AS IS", AND "AS AVAILABLE" BASIS, AND ERIK'S HEREBY EXPRESSLY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, ACCURACY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE FOREGOING, ERIK'S DOES NOT GUARANTEE THAT THE APP OR CONTENT WILL BE ERRORFREE, UNINTERRUPTED, OR FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS, OR THAT ANY DEFECTS WILL BE CORRECTED.

## **Limitations of Liability**

IN NO EVENT SHALL ERIK'S BE LIABLE TO YOU OR TO ANY THIRD PARTY FOR ANY DAMAGES (DIRECT OR INDIRECT) WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE ARISING OUT OF OR IN CONNECTION WITH THIS APP (INCLUDING ITS MODIFICATION OR TERMINATION), THE CONTENT, THE

REWARDS PROGRAM, OR THESE TERMS OF USE, WHETHER OR NOT ERIK'S MAY HAVE BEEN ADVISED THAT ANY SUCH DAMAGES MIGHT OR COULD OCCUR AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY. BECAUSE SOME STATES DO NOT PERMIT THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES, IN SUCH JURISDICTIONS, LIABILITY IS LIMITED TO THE FULLEST EXTENT PERMITTED BY SUCH STATE LAW.

## **Electronic Communications**

When you visit this App or send e-mails to us, you are communicating with us electronically. You consent to receive communications from us electronically. We will communicate with you by e-mail or by posting notices on this App. You agree that all agreements, notices, disclosures, and other communications that we provide to you electronically satisfy any legal requirement that such communications be in writing. You further agree that any notices provided by us electronically are deemed to be given and received on the date we transmit any such electronic communication as described in these Terms and Conditions.

## **International Users**

This App is controlled, operated, and administered by Erik's from offices within the United States of America. We make no representation regarding use of this App outside of the United States. You may not use this App or export any portion of it in violation of U.S. export laws and regulations. If you access this App from locations outside of the United States of America, you are responsible for compliance with all local laws.

## **Governing Law/Venue**

This App is governed by and subject to the laws of the State of California, USA and, where applicable, U.S. federal law, without regard to conflict of law principles. You agree to submit to the exclusive jurisdiction and venue of the courts located in [Santa Cruz County, California] for any disputes arising out of these Terms and Conditions, the App, or the Rewards Program. Notwithstanding this provision, you agree that Erik's may apply for injunctive or other equitable relief in any court of competent jurisdiction.

## **Privacy**

Please review our Privacy Policy located on our website: <http://www.eriksdelicafe.com> (the "**Privacy Policy**"), which is incorporated herein and also governs your use of this App, to understand Erik's privacy practices.

## **General Provisions**

All or any of Erik's rights and obligations hereunder may be assigned to a subsequent owner or operator of this App in a merger, acquisition or sale of all or substantially all of Erik's assets. If, for any reason, a court of competent jurisdiction finally determines any provision of these Terms

and Conditions or any portion thereof to be unenforceable, such provision will be enforced to the maximum extent permissible so as to give the intended effect thereof, and the remainder of these Terms and Conditions will continue in full force and effect. Erik's failure to act with respect to a breach by you or others does not waive Erik's right to act with respect to that breach or subsequent or similar breaches.

## **Questions**

If you have any questions regarding the App, the Rewards Program, and/or these Terms and Conditions, you can contact us at: <https://eriksdelicafe.com/contact-eriks/>

## **Last Updated**

Terms and Conditions last updated on January 4, 2023