

# Space for Artists

## Terms and Conditions

### 1. The Site is a Venue.

**1.1. WE ARE NOT A PARTY TO ANY ART SALES TRANSACTION.** We do not own nor can we enter into any contract concerning any art work listed on the Site. Instead, the Site acts as a venue to allow a member of our Site (each, a "**member**" or "**artist**") to offer for sale, in a variety of pricing formats, a specific art work to potential buyers (each, a "**buyer**" and, collectively with a member, the "**users**"). We are not involved in the actual transaction between buyers and members. As a result, the quality of art works advertised, the truth or accuracy of the listings (including the content thereof or any artwork), the ability of members to purchase an art work or the ability of buyers to pay for art works are solely the responsibility of the users. Art works are listed by an "**artist**" by category in a "**space**".

### 2. Personal Use.

**2.1.** Although we do charge a fee to members to advertise art works on the Site, we do not charge buyers to access the Site and research listings. Accordingly, we grant users a limited, revocable, non-exclusive license to access the Site to, as applicable, advertise art works and/or research, view or make legitimate enquiries to members regarding their interest in particular art works for their personal use, all in accordance with these Terms. Any other use of the Site is expressly prohibited. Importantly, this license does not include any right of collection, aggregation, copying, duplication, display or derivative use of the Site nor any right of use of data mining, robots, spiders or similar data gathering and extraction tools without our prior written permission; provided, however, that a limited exception from the foregoing exclusion is provided to general purpose internet search engines and non-commercial public archives that use tools to gather information for the sole purpose of displaying hyperlinks to the Site, provided they each do so from a stable IP address or range of IP addresses using an easily identifiable agent. "General purpose internet search engine" does not include a website or search engine or other service that provide classified listings or art work advertisements, or any subset of the same, or which is in the business of providing art work sale services.

### 3. Proprietary Rights and Downloading of Information from the Site.

**3.1.** The text, files, images, photos, maps and other materials on the Site (collectively, the "**content**") are only for your personal use. All content on the Site, and the Site itself, is protected by copyright and database rights, and you will abide by any and all additional copyright notices, information, or restrictions contained in or relating to any content on the Site. Copying or storing of any content for other than for your personal, noncommercial use is expressly prohibited without the prior written permission from us or the applicable copyright holder. As part of the purchase enquiry process, for your own personal, noncommercial use and not for further distribution, you may download, display, and/or print one (1) copy of any portion of the Site. You

may not modify the same, and you must reproduce our copyright notice in the form "© 2009 - A Space for Artists . - All Rights Reserved" as displayed on the relevant portion(s) of the Site that you desire to download, display or print.

#### **4. Unauthorized Use.**

4.1. Unless otherwise provided within these Terms, or unless otherwise applicable law requires us to allow you to do so, you may not do any of the following without our prior written consent:

- Copy, reproduce, upload, post, display, republish, distribute, or transmit any part of the content in any form whatsoever;
- Reproduce any portion of the Site on your website or otherwise, using any device including, but not limited to, use of a frame or border environment around the Site, or other framing technique to enclose any portion or aspect of the Site, or mirror or replicate any portion of the Site;
- Modify, translate into any language or computer language, or create derivative works from, any content or any part of this Site;
- Reverse engineer any part of this Site, save to the extent expressly permitted by applicable law;
- Sell, offer for sale, transfer, or license any portion of the Site in any form to any third parties;
- Use any robot, spider, other automatic device, or manual process to monitor, copy, or keep a database copy of the content or any portion of the Site;
- Use the Site other than to advertise art works and to make legitimate enquiries to our members;
- Use the Site to make any false, fraudulent or speculative reservation, or any reservation in anticipation of demand;
- Post or transmit any unlawful, threatening, abusive, libelous, defamatory, obscene, vulgar, indecent, inflammatory, sexually explicit, pornographic or profane material or any material that could constitute or encourage conduct that would be considered a criminal offense, give rise to civil liability, or otherwise violate any law or for any other purpose that is unlawful or prohibited by these Terms;
- Post or transmit any information that constitutes or contains false or misleading indications of origin or statements of fact;
- Use or access the Site in any way that adversely affects the performance or function of the Site, or any other computer systems or networks used by us or the Site, or infringes on our copyright or any copyright of our members;
- Violate, plagiarize or infringe the rights of third parties including, without limitation, copyright, trademark, patent, rights of publicity or privacy or any other proprietary rights;
- Upload or transmit to the Site or use any device, software or routine that contains viruses, Trojan horses, worms, time bombs, or other computer programming routines that may damage, interfere or attempt to interfere with, or intercept, the normal operation of the Site, or appropriate the Site or any system, or take any action that imposes an unreasonable load on our computer equipment, or that infringes upon the rights of any third party; or
- Disguise the origin of the information transmitted through the Site.

If you are aware of or experience any content, activity or communication through or in connection with the Site that appears to be in violation of the above, or in violation of any other provision of these Terms, we ask that you please inform us of any such violation by sending an email to [admin@spaceforartists.com](mailto:admin@spaceforartists.com).

## **5. Changes to Site; Unavailability of Site.**

5.1. We may change, suspend or discontinue any aspect of the Site at any time, including the availability of any Site features, database, or content, where we have legal, commercial or technical reasons to do so. We may also impose limits on certain features or services or restrict your access to parts or all of the Site for similar reasons.

5.2. There may also be times when the Site becomes inaccessible as a result of technical difficulties experienced by us or on the Internet. We will, however, use reasonable skill and care to overcome these difficulties where they are within our control. Please note, however, that we cannot guarantee continuous access to the Site or any of its specific features.

## **6. Your E-mail Address and Our Privacy Policy.**

6.1. We encourage you to tell us how you wish us to use your personal data for marketing of products to you. Therefore, in line with prevailing law, we give you the opportunity to opt in or out of receiving emailed newsletters from us. Please review our [Privacy Policy](#) for more information regarding our information collection practices and safeguards. Your use of the Site signifies your acknowledgement of and agreement with our Privacy Policy.

## **7. Data Transmittal**

7.1. Many of the computer systems and companies that process your data on our behalf are based in the United States and potentially also in other countries outside the European Union ("EU"). Thus, your personal data will be transferred to, processed and held both inside and outside the EU. Please note that countries outside the EU may not have as well developed data protection laws in place to protect your information as those inside the EU, but we will nevertheless ensure your personal data is treated in compliance with applicable law, these Terms and our Privacy Policy. Further details of the companies and countries involved will be provided on written request, by writing to our postal address set out in these Terms.

## **8. Identity Verification.**

8.1. User verification on the Internet is difficult and we cannot and do not confirm each user's purported identity. We encourage you to communicate directly with a buyer or member through the tools available on the Site.

## **9. Limitations of Use of Other User's Information; No Spam.**

9.1. You agree that, with respect to other users' personal information that you obtain through the Site or through any Site-related communication or any Site-facilitated transaction, we have granted to you a license to use such information only for: (a) any Site-related communications that are not unsolicited commercial messages, (b) using services offered through the Site, (c) facilitating a financial transaction between you and the other user (such as an on-line booking or charging a personal credit card) and (d) any other purpose that a user expressly agrees to after you tell them the purpose you would like to use it for. In all cases, you must give users an opportunity to remove themselves from your address book or database and a chance to review what information you have collected about them. In addition, under no circumstances, except as defined in this provision, can you disclose personal information about another user to any third party without both our consent and the consent of the other user. You agree that other users may use your personal information to communicate with you in accordance with this provision. Further, you agree that you will protect other users' personal information with the same degree of care that you protect your own confidential information, and you assume all liability for the misuse, loss, or unauthorized transfer of such information.

9.2. We do not tolerate spam. Therefore, without limiting the foregoing, you are not licensed to add a Site user, even a user who has purchased an art work from you, to your mailing list (email or physical mail) without the user's express consent.

## **10. Use of Email Tools.**

10.1. We do not permanently store email messages or the email addresses sent from these tools. If you send email using the email link to an artist we do not have access to a copy of that email. We do not rent or sell email addresses.

## **11. Responsibility for user-contributed content.**

11.1. We pre-screen content posted on the Site by members.. We do reserve the right to decline to permit the posting on the Site of, or to remove from, any user-contributed content that fails to meet our content requirements.

11.2. All art work listings on the Site are submitted by the member and are the responsibility of the member, and we specifically disclaim any and all liability arising from the alleged accuracy of the listings, art education and history content, or any alleged breaches of contract on a member's part. Members are solely responsible for keeping their art work information up to date on the Site, including, but not limited to any and all representations about any art work, its amenities, location, and its availability for a specific date or range of dates. We do not represent or warrant that any of the copy, content, art work reviews, guest book entries, art work location, suitability, pricing or availability information published on the Site is accurate or up-to-date even in the case where prospective buyers have searched for specific special offers, dates, or types of art works. Members are solely responsible for ensuring the accuracy of any art work descriptions. However, we reserve the right at all times to disclose any information as permitted by prevailing law to satisfy any law, regulation or government request.

## **12. Limitation of Liability.**

*12.1.* In no event will the Site, subsidiaries, affiliates, officers, directors and/or employees be liable for any lost profits or any indirect, consequential, special, incidental, or punitive damages arising out of, based on, or resulting from our Site, these Terms, your use of the Site and/or any transaction between users, even if we have been advised of the possibility of such damages. These limitations and exclusions apply without regard to whether the damages arise from (1) breach of contract, (2) breach of warranty, (3) strict liability, (4) tort, (5) negligence, or (6) any other cause of action, to the maximum extent such exclusion and limitations are not prohibited by applicable law. If you are dissatisfied with the Site, you do not agree with any part of these Terms, then your sole and exclusive remedy against us is to discontinue using the Site. In all events, our liability, to you or any third party in any circumstance arising out of or in connection with the Site is limited to the greater of (a) the amount of fees you pay to us in the three months prior to the action giving rise to liability. Nothing in these Terms shall exclude or restrict our liability for death or personal injury resulting from our negligence; nor for our fraud or our fraudulent misrepresentation.

### **13. Disclaimer.**

*13.1.* We warrant that the Site will be provided with reasonable care and skill with the intention of meeting our technical specifications for the Site, but we cannot and do not guarantee that the Site will meet your requirements, including (without limitation) as to the availability or speed of delivery of the Site, any of its features of content, any communication through or relating to the Site, or any transaction you may enter into with other users. Except as expressly stated elsewhere in these Terms, all representations, warranties, conditions and other terms relating to the Site or any of its content, whether express or implied (by common law, statute, collaterally or otherwise) are hereby excluded, except in the case of our fraud or our fraudulent misrepresentation, or where such exclusion is not permitted by law. We do not warrant that the functions of the Site or any materials or content contained therein will be uninterrupted or error free, that defects will be corrected, or that the Site or the server that makes it available is free of viruses or other harmful components, although we will take reasonable steps to avoid ourselves introducing viruses or other harmful components to the Site.

*13.2.* You acknowledge that any transmission to and from this Site is not confidential and your communications may be read or intercepted by others.

### **14. Release.**

*14.1.* In the event that you have a dispute with one or more other users (including, without limitation, any dispute between users regarding any transaction or user-contributed content), you hereby agree to release and discharge us from all liabilities, claims and expenses which arise out of or in connection with that dispute.

### **15. Indemnity.**

*15.1.* You agree to indemnify us against all liabilities, claims and expenses (including reasonable legal fees) that may arise out of or in connection with (a) any breach of these Terms by you or through a machine on which you access the Site; (b) any of

your user-contributed content infringing these Terms or the rights of any person or entity; or (c) any art work-related transaction to which you are party or that is entered into in connection with this Site.

15.2. If any claim is made against us that you indemnify us for under Clause 15.1, then (a) we will have the right to conduct its defense and settlement, but (b) we will take reasonable account of any representations you make to us as to such defense and settlement.

## **16. Choice of Law and Forum.**

This Agreement shall be governed by and construed in accordance with the laws of Australia and Victoria and subject to the non-exclusive jurisdiction of the Australian courts.

## **17. Notification of Infringing Content.**

17.1. If you see or experience any user-contributed or other content, activity or communication through or in connection with the Site, that appears to infringe any requirement of these Terms, we would like you to inform us at [admin@spaceforartists.com](mailto:admin@spaceforartists.com)

## **18. No Agency.**

18.1. Our relationship is that of independent contractors, and no agency, partnership, joint venture, employee-employer or franchiser-franchisee relations is intended or created by these Terms or your use of the Site.

## **19. Notices.**

19.1. Except as explicitly stated otherwise, any notices shall be given (in the case of you contacting us) by email to [admin@spaceforartists.com](mailto:admin@spaceforartists.com)

or, when we need to send you notice, to the email address you provide to the Site during the registration process (in your case, and as applicable). Notice shall be deemed given upon receipt or 24 hours after email is sent, unless the sending party is notified that the email address is invalid. Alternatively, we may give you notice by certified mail, postage prepaid and return receipt requested, to any address provided to us during the registration process (as applicable). In such case, notice shall be deemed given three days after the date of mailing.

## **20. Amendments.**

We reserve the right to change these Terms from time to time, and post the new version of these Terms.

## **21. Links to Third-Party Sites.**

21.1. This Site may contain links and pointers to other Internet sites, resources of the Site. Links to and from the Site to other third-party sites, maintained by third parties, do not constitute an endorsement by us of any third-party sites or the contents thereof.

## **22. Your Record of These Terms.**

22.1. We do not separately file the Terms entered into by each user of the Site. Please make a copy of these Terms for your records by printing and/or saving a downloaded copy of the Terms on your personal computer.

## **23. Miscellaneous.**

23.1. These Terms are intended to constitute the entire agreement between us and you with respect to your use of the Site. We may immediately terminate any user's access to or use of the Site due to such user's breach of these Terms or other unauthorized use of the Site. Our failure to exercise or enforce any right or provision of these Terms shall not constitute a waiver of any such right or provision. If for any reason a court of competent jurisdiction finds any provision of these Terms, or portion thereof, to be unenforceable, that provision shall be deemed severed, and the remainder of these Terms shall continue in full force and effect.

## **24. Contact.**

This Site is provided by A Space for Artists. Our ABN is 97543191510

# **Additional Terms and Conditions Applicable to Our Members**

## **25. Member Eligibility; Accuracy of Information.**

25.1. Our services may only be used by members who can form legally binding contracts under applicable law. If you are registering on behalf of an incorporated or unincorporated entity, you represent that you have the authority to bind the entity to this Agreement.

25.2. Each member further represents and covenants that any information submitted to the Site during such member's registration with the Site shall be true and correct. Member further agrees to keep their contact information on the Site online up to date.

25.3. Each member agrees to promptly provide such proof of personal identification, proof of ownership of the art work listed on the Site, and proof of authority to list the art work as we may request.

## **26. Content, Layout and Copy.**

26.1. We reserve the right to determine the design, layout and functionality of our Site.

26.2. We reserve the right to review and edit copy or amend the content, layouts or photographs supplied by any member. All content and copy edits submitted by members are subject to review and approval by us.

26.3. Notwithstanding our right to edit and amend the content, copy and photographs, we do not accept and we shall not have any liability for any loss or damage resulting from the design or positioning of the copy, art works, content and/or photographs or any change made to any content, photograph or copy submitted by any member or edited or amended by us.

## **27. Photographs of Artwork or other Subject Matter.**

27.1. We will use reasonable efforts to reproduce faithfully any photograph submitted, but we are not responsible for any loss or damage or harm otherwise resulting from any defect in this regard.

27.3. By submitting a photograph electronically through the Site the member represents and warrants that (a) (i) it holds all intellectual art work rights with respect to each submitted photograph, or (ii) it has secured from the copyright holder all rights necessary for the photograph to be used in an online listing, b) that the photograph accurately and fairly represents the subject of the photograph and has not been altered in any manner that would mislead a viewer of that photograph.

## **28. Copyright Grant.**

28.1. If you are a member, by accepting these Terms and by paying for and posting a listing on the Site, you grant to us and our affiliates a perpetual, worldwide, irrevocable, unrestricted, non-exclusive, royalty-free and fully paid-up license to use, copy, license, sublicense (through multiple tiers), adapt, distribute, display, publicly perform, reproduce, transmit, modify, edit and otherwise exploit the copy, the photographs and the likenesses (if any) of any content you post on the Site, and you grant the Site and its owner, the ability to copyright and protect the images, copy, and content available via your listing from the unauthorized use by unaffiliated third parties who may, from time to time, attempt to pirate such information via electronic or other means. We need these rights to host and display your listing. You further agree to assist us at our expense and control to protect such copyrighted material from unauthorized redistribution. We are not responsible for any infringement or violation of laws resulting from content supplied by any member. Each member hereby waives and releases all rights to any claim against us for any alleged or actual infringement of any proprietary rights, rights of privacy and publicity, moral rights and rights of attribution in connection with any user-contributed content posted or provided to us by such member.

28.2. Each member agrees that we may reproduce in whole or in part any photographic material supplied by such member in the promotion of either such member's art work or the promotion of the Site.

28.3. It is the member's responsibility to obtain reproduction permission for all photographic and other material used in their listings. The member warrants that he is

the owner of the copyright in such material or is authorized by the owner thereof to grant to us the rights therein contained.

## **29. Hypertext Links.**

*29.1.* We reserve the right to refuse hypertext links to, or addresses of, other web sites from members' pages, and to remove links or web addresses without notice. Further, we reserve the right to charge for hypertext links at any time.

## **31. Substitution of Art works.**

*31.1.* Each 'space' may only relate to a art work of a specified artist. The work of one artist may not be substituted for another artist. If a member submits work of another artist to an existing listing that, if approved, would substantially alter the listing to make it that of another artist, then we have the right to terminate the listing and may choose to retain any fees associated with the term of the previously existing listing as compensation for the violation of this condition.

## **32. Advertising More than One copy of an Art work on the Site or more than one media type in a 'Space'.**

*32.1.* Each listing on the Site displays an individual and uniquely identified art work available for sale. The listing specifically cannot be a mere example of art works in a given area nor may it be a reproduction. We reserve the right to amend the copy or remove any listing when more than one copy of the art work is described in such listing, and may choose to retain any fees associated with the initial term of such non-conforming listing as compensation for the violation of this condition. You may not list different media types (category) within one 'space'. For example, you may not list watercolour works and oil works in the one 'space'.

## **33. Unauthorized Payment Methods**

*33.1.* No member may request any buyer to mail cash in payment for all or part of a art work sale transaction. Any violation of this term may result in the immediate removal of the listing from the Site without notice to member and without refund.

## **34. Termination of Advertising**

*34.1.* All listings are sold to run the full term. Listings removed at your request prior to the completion of their full term are not subject to a refund.

*34.2.* We reserve the right to refuse any listing submitted to us either through our online submission process. We may refuse to publish the listing for any reason, and each current or prospective member expressly agrees to release and hold us harmless from any loss or liability that may arise from such a decision.

*34.3.* If, in our reasonable discretion, any member submits unsuitable material to our Site or into our database, persistently misuses the Site or our online systems, or is in material breach of these Terms, we reserve the right to remove immediately such member's art work from the Site without refund.

34.4. If we become aware of or receive a complaint from any person or entity regarding a member's listing or sale practices that, in our reasonable discretion, warrants the immediate removal of such member's listing from the Site (for example, and without limitation, if a member sells an art work to multiple buyers on the same date, or engages in any practice that, in our reasonable discretion, would be considered unfair, or if we receive a complaint that any listing's content infringes on the rights of a third party), then we may immediately remove the allegedly offensive listing from the Site without notice to the member and without refund while we investigate the basis for the complaint. If we conclude, in our reasonable discretion, that any such complaint is meritorious, then we may permanently remove the listing from the site without notice to the member and without refund.

34.5. If any member is in breach of these Terms or its obligations to us then we may immediately remove such member's listing from the Site without notice to the member and without refund.

### **35. Distance Selling.**

35.1 When, as a member, you choose to create a listing, you are agreeing that the listing may be placed shortly after you have paid for the space. By placing a 'space' you are agreeing to pay for that 'space'. As a result you do not have the right to cancel your agreement to create the listing.

### **36. GST (Goods and Services Tax)**

36.1 If, as an artist, you are required to charge GST on your works, it is your responsibility to collect and pay that tax to the authorities..