

- **TERMS AND CONDITIONS**

Welcome to BirdArtInternational. Com , an Artwork International website providing an online Art trading community. These terms and conditions are intended to assist keep all Artwork International websites a safe place to trade.

1.1 **Acceptance of terms and conditions:** The terms and conditions are the terms on which Artwork International Limited offers you access to the Services and the Websites. By registering as a member of Artwork International you accept these terms and conditions. If you do not accept these terms and conditions, you must refrain from using the Services.

1.2 **Amendment of terms and conditions:** These terms and conditions may be amended in whole or in part by Artwork International from time to time. Amendments will be effective immediately upon posting of the amended terms and conditions on this Website. You are responsible for ensuring you are familiar with the latest terms and conditions. Your continued use of the Services represents your agreement to be bound by the terms and conditions as amended.

These terms and conditions were last updated 18th March 2009.

1.3 **Terminology:** In these terms and conditions, the following expressions have the meanings set out:

'item', 'items' means goods or property including, but not limited to, paintings, drawings and sculpture that may be bought or sold through the websites;

'member' means a registered member of Artwork International;

'artist' refers to the subset of members who have placed items for sale on the website

'Services' means any one or more of the services offered by Artwork International Limited from time to time, including artwork listings and any other service that Artwork International may offer;

'we', 'us' and 'our' are a reference to Artwork International Limited;

'you' and 'your' are a reference to you;

'Website' means any Artwork International website through which the services are offered;

'listing' means a listing on the Website through which you offer, negotiate, buy, sell or advertise any item;

- **SPECIFIC WARNINGS**

2.1 **The services:** Artwork International provides a venue to introduce members who want to buy and sell items. Artwork International does not take any part in the sale of items other than by providing our Website as a venue for members. A contract of sale will be formed between the buyer and the artist directly. We do not act as agent for either party and do not participate in any sale or transaction between you and other members, including where you use the ESCROW service. If you use the credit card or Paypal service, we simply pass on payments made by one member to another according rules laid out in section 5.2 Artwork International Escrow style account.

2.2 **At your own risk:** Transactions and all other contact between you and other members

are conducted entirely at your own risk. You agree that Artwork International takes no responsibility or liability for any misconduct of any of its members including, without limitation, members that have registered under false pretences or who attempt to defraud you. Artwork International gives no undertakings, representations, or warranties in relation to items sold or listed on the Website, including:

- a about ownership of any item;
- b as to the content, safety, description, worthiness, quality, or legality of the items that are listed on the Website;
- c as to the accuracy or truth of listings;
- d that any item will meet your requirements or expectations; or
- e about the ability of members to complete a transaction, including credit card transactions.

2.3 Disclaimer: You expressly understand and agree that:

- a your use of the services is at your sole risk. The Website and services are provided on an "as is" and "as available" basis. To the maximum extent permitted by law and without limiting clause 2.2, Artwork International disclaims and excludes all implied conditions or warranties, including, but not limited to, any warranties of merchantability, fitness for a particular purpose, and non-infringement;
- b Artwork International does not warrant that i) the services provided will be uninterrupted, timely, secure, or error free, or ii) that any information (including feedback) provided on the Website is error-free or reliable;
- c no advice or information that is obtained by you from Artwork International or anyone else shall create any warranty by Artwork International that is not expressly stated in the terms and conditions; and
- d responsibility for the content of listings appearing on this Website (including hyperlinks) rests solely with the artists. The placement of such listings on the Website does not constitute Artwork International's recommendation or endorsement of the advertised product or service. Each artist is solely responsible for any representation made in connection with its listings of goods for sale.
- e while Artwork International may facilitate payment for some items by credit card or Paypal, Artwork International is in no way involved in the transaction itself, and responsibility for any refund rests with the artist.
- f while Artwork International has systems in place to reduce the risk of credit card fraud, Artwork International is not responsible for protecting members from credit card fraud. Artwork International's fraud protection systems may from time to time block legitimate credit card payments. In these cases payment will need to be made by other means.

2.4 Liability: You agree that, to the maximum extent permitted by law, any and all liability and responsibility of Artwork International to you or any other person under or in connection with these terms and conditions, or in connection with the services, the Websites, another Member's acts or omissions, or your use of or inability to use, the services or the Websites, is excluded regardless of whether such liability arises in contract, tort (including negligence), equity, breach of statutory duty or otherwise. Artwork International's liability and responsibility is excluded in respect of any and all

loss or damage, whether direct or indirect, including, without limitation, loss of profits, loss of data, loss of business or anticipated savings, general and special damages, and consequential and incidental loss.

2.5 Indemnity: You agree to release, indemnify and keep indemnified us from and against all actions, claims, costs (including legal costs and expenses), losses, proceedings, damages, liabilities, or demands suffered or incurred by us to any person arising out of or in connection with your failure to comply with these terms and conditions, your failure to complete a transaction, your use of Artwork International's message boards, your sale or attempted sale of an item prohibited under clause 4.2(e), or arising out of any content or item you submit, post, transmit, or make available through the Services.

2.6 Breach: Without limiting any other rights and remedies available to Artwork International, Artwork International may limit your activities on the Website, remove your listings, warn other members of your actions, issue a warning to you, suspend or terminate your membership, or refuse to provide our Services to you if you breach these terms and conditions or where Artwork International considers it appropriate.

2.7 Additional rules: In addition to the terms and conditions set out in this document, the Schedule of Countries and Schedule of fees form part of these terms and conditions.

- **BECOMING A MEMBER**

3.1 Becoming a Member: Becoming a member is free. You may only register as a member if can form a legally binding contract that is enforceable against you. For example, in the UK, Australia and New Zealand you must be 18 years old. By registering as a member, you warrant that you can form a legally binding contract.

3.2 Accurate Information: You warrant that you have provided complete, accurate and current personal information when registering as a member. You must maintain and update your personal information held by Artwork International to ensure it is kept current at all times. Artwork International may phone or mail you to verify these details. You must not register as a member under multiple identities or personas (whether false or not). However, at Artwork International's discretion, you may create a business membership in addition to your personal membership.

3.3 Termination of membership: Artwork International reserves the right to decline to register or to terminate your membership without entering into further discussions with you. Without limiting the foregoing, Artwork International may terminate your membership if a serious complaint or multiple complaints are received about you from other members, if you breach these terms and conditions, if you impersonate another member, or if we, at our sole discretion, deem your behaviour to be unacceptable. Members who have registered under multiple aliases will have all of their aliases disabled.

3.4 Security of your login information: You are responsible for keeping your login information, including your email address and password, secret and secure. Without limiting the foregoing, you agree:

- a not to permit any other person to use your user name or membership; and
- b not to disclose, or provide to any other person, your password, email address, date of birth or any other information in connection with your membership that may allow them to gain

access to your membership.

3.5 Emails and newsletters: Artwork International will send you emails relating to your membership, transactions and other activities on the Website, and for promoting and marketing other Artwork International products and services to you. Artwork International may also send regular electronic newsletters to members. Newsletters will contain clear and obvious instructions for how you can unsubscribe from the mailing list.

- **GENERAL RULES**

- 4.1 General**

- a All listings, bids or communications made through Artwork International shall be made in good faith.
- b You must not damage, interfere with or harm the Website or Services, or any network, or system underlying or connected to them, or attempt to do so.
- c You may not use a robot, spider, scraper or other automated means to access the Website or information featured on it for any purpose.
- d You shall not list your email address, phone number or any other contact detail within the description of listings, listing comments and/or questions, in your member profile, or in the Artwork International message boards.
- e You must not complete a transaction outside of the Artwork International process or otherwise seek to avoid Artwork International's success fees. Attempts by you to avoid fees, including through multiple memberships, premature withdrawal of a listing, or otherwise, may result in Artwork International suspending or terminating your membership at the discretion of Artwork International.
- f You must not use the Services or the Website to promote items for sale outside the Services.
- g You are responsible for any actions taken through your membership. Artwork International memberships are not transferable and therefore can not be sold, leased, lent or traded.

- 4.2 Your obligations as an artist**

- a Artists must be located in one of the permitted countries as per the Permitted Countries Schedule. Artists outside of these countries are not permitted to sell on Artwork International.
- b Artists must accept payment into the currency they specify in the listing. Payments will be via a Paypal account or cheque or money order in the currency determined by the artist.
- c You will only enter listings that are accurate, current, complete, and include all relevant information about the terms of sale, payment terms, shipping methods and who bears the cost of shipment. The primary photograph should display the entire work of art or if a detail is shown – the caption should clearly reflect this. Each work of art may only be listed once.
- d You will only place listings for items that exist and are to be sold. You will not list items that you are not legally entitled to sell or that are not in your possession. You will not sell or offer services.

- e You must not list anything that is illegal, offensive (including anything of a defamatory, pornographic, or racially or ethnically objectionable nature), stolen, or unsafe, anything which infringes copyright or other intellectual property rights, items which have been illegally imported or which would require illegal import or export in order to complete the transaction, or any item of which the sale is prohibited by, or violates any, law. You are responsible for ensuring that any listing by you does not breach this clause 4.2(d). You agree that Artwork International may disclose your personal information, including your name and contact details, to the relevant authorities, parties and/or the applicable intellectual property right holders (or their representatives) if we consider that you are in breach of this clause 4.2(d) at any time.
- f By submitting an image to the Website, you give permission to us to use that image in any part of the website, email newsletters or other marketing activities associated with publicity for the website in perpetuity.
- g To protect your images, we will watermark with our logo any images you upload to your listings of dimensions greater than 500 by 500 pixels. You must ensure you hold the copyright or are otherwise licensed to use any images you add to your listings.
- h When you list an item for sale on Artwork International, you do so with the intention of selling this item through the site. Each item listed is to be exclusively available through the BirdArtInternational.com website for a period of 3 months from the date of approval so that the artwork can be effectively marketed to the database of potential customers. Therefore you should not advertise your item through another forum.
- i If you remove a listing for an sale you will incur a non-refundable withdrawal fee as per the fee schedule, regardless of the reason.
- j The service provided by the website also includes introductions of potential Buyers to Artists. In the 12 month period following the first enquiry from a buyer to the artist, any sales to the buyer will be subject to a service charge on the sales price of goods as per the Fees Schedule whether they have been listed on the website or not.
- k Artwork International websites may be used by individuals or businesses to list specific items only and must not be used for multiple or generic item. You must not place multiple listings for a single item.
- l Your listing may only contain a URL for a website that contains further information on the item you have listed. This website must not offer any items for sale, or contain contact details. You must not use Artwork International listings to promote a business or website other than one for sale in your listing.
- m You may choose to sell to any buyer at your discretion.
- n Listings will be pre-screened for content. Artwork International reserves the right to remove any listing that it deems to not reach the required quality standard, are unsuitable or in breach of the terms and conditions.
- o You should respond within 2 working days to any enquiry. In the case of holidays or other absences, please ensure that someone can respond on your behalf.
- p You agree to your email address being supplied to the buyer.
- q You must promptly forward the listed item to the successful buyer on completion of the transaction.
- r You must not charge unreasonable amounts for shipping and packaging costs.
- s To help maintain quality listings, Artwork International reserves the right to suspend

artists and/or the items at their discretion.

- t All listings should show the price including local taxes such as GST, VAT or other sales taxes that may be applicable to a local sale – that is, they will show the total price (excluding postage and packaging) that a buyer in the same locality will pay. If these taxes are not payable when goods are exported, they can be removed at the time of invoicing.

4.3 Your obligations as a buyer

- a You must be located in one of the permitted countries as per the Permitted Countries Schedule to buy on Artwork International. People outside of these countries are not permitted to purchase items on Artwork International.
- b You must make full and prompt payment for any item you buy.
- c In the case of goods crossing national boundaries, the buyer is responsible for the payment of border duties and local sales taxes.
- d You agree to have the amount paid being publicly shown on the Artwork International Websites. You also agree to your email address being supplied to the artist when you agree to purchase an item.
- e If you negotiate a sale and you do not pay for the item, you will receive a warning from Artwork International if the artist complains about you. After 3 such complaints, Artwork International may suspend or terminate your membership.
- f If you use the Buy Now facility through the Escrow style service to pay by credit card or via Paypal, you agree to:
 - attempt to resolve the issue with the artist first, and to inform Artwork International and co-operate fully and reasonably to resolve any problem transaction before requesting a chargeback from your card issuer or bank.
 - return the goods (with original packaging) should you seek a refund from the artist in the event that they are not as described or arrive damaged.

4.4 Feedback

- a Feedback you provide on other members must not contain offensive, defamatory or inappropriate language. Artwork International reserves the sole right to determine what is considered offensive, defamatory or inappropriate language.
- b You may only give member feedback that relates to a specific transaction. You must not post feedback on a transaction that does not relate to that specific transaction.
- c You must not post feedback about yourself or include any contact details or personal information in your feedback.
- d Feedback is provided for the sole purpose of facilitating trading between members on the Artwork International Website. You must not market or export any feedback to any venue other than the Artwork International Website. Linking to your Artwork International feedback from other buying and selling websites will be considered a breach of our terms and conditions.

- **FEES AND ACCOUNTS**

- 5.1 **Artwork International Listing Fees and Success Fees**

- a Artwork International charges fees for the use of the Website as a venue.
 - b All fees are payable by the artist.
 - c Artwork International's current fees are listed on our Fees Schedule which is available to artist once they have logged into the website..
 - d Any non-commission listing fees are charged at the time of listing and are not refundable. Artwork International may (at our sole discretion) refund a commission or success fee charged if a sale is not successfully completed, provided that a member follows our defined refund process. .
 - e Artwork International reserves the right to change the fees charged for any of our Services at any time. In the event that we introduce a new service, the fees for that service are effective at the launch of the service, unless otherwise stated.
 - f GST is payable on the service fees. The current applicable rates are 12.5% for New Zealand Residents Artists and 0% for residents outside New Zealand. Unless otherwise stated in these terms and conditions, no interest or other financial charges will be applied to Artwork International account balances.
 - g Artwork International reserves the right to investigate queries regarding the refund of success fees with buyers, artists and any other relevant party.
 - h Before listing an item, you should review Artwork International's fees to ensure you are aware of the fees that you will incur.
 - i You must pay the fees immediately upon demand by Artwork International. Artwork International reserves the right to remove Artists from its Websites for non-payment. In this case the Artist will be liable to pay the Withdrawal fee in respect of each listing.
 - j Artists must settle any service fees immediately when they receive payment for their artwork. Artwork International reserves the right to take action against you to recover outstanding debts. You are liable for all expenses (including legal fees) that Artwork International incurs when collecting that debt.

- 5.2 **Artwork International Escrow style account**

- a Artwork International operates an optional Escrow style account for the transfer of money between a buyer and an artist.
 - b When the buyer and artist have agreed a sales price and pricing for postage and packaging, the buyer pays the agreed amount into the escrow account either from a Paypal account or by Credit card.
 - c On receipt of cleared funds, Artwork International notifies the artist that the funds have been received and forwards the postage and packaging element of the payment to the artist. The artist despatches the item to the buyer.
 - d The buyer acknowledges the receipt of the item and that it has been received in good condition. Artwork International forwards the amount of the sale less any service fees to the artists. Artwork International raises an invoice for the service fees that it has taken from the original remittance and send it to the artist. Artwork International

informs the buyer that the payment has been made to the Artist.

- e In the case of a dispute, monies will be held in the account until a resolution is reached between the parties. Monies will be returned to the buyer and/or paid to the artist on receipt of notification from one party that the payment should be made to the other party.

- **GENERAL PROVISIONS**

6.1 **System Integrity:** Artwork International will use its reasonable endeavours to ensure the availability of the Website and Services, subject to any downtime required for maintenance. However, Artwork International takes no responsibility for any system unavailability, or for any loss that is incurred as a result of Website or Services being unavailable. Further, Artwork International assumes no responsibility for the corruption of any data or information held by Artwork International.

6.2 **Resolution of disputes:** As Artwork International is not a party to any sale or transaction between you and another member, you agree not to involve, or attempt to involve, Artwork International in any dispute or in the resolution of disputes that arise between you and another member as a result of the Services provided, other than as provided in clause 4.3 f.

6.4 **Force Majeure:** Without prejudice to clause 2.3(a), Artwork International has no liability for any lack of performance, unavailability or failure of the Services or the Website, or for any failure of Artwork International to comply with these terms and conditions where the same arises from any cause reasonably beyond the control of Artwork International.

6.5 **No Waiver:** If we do not exercise or enforce any right available to us under these terms and conditions, it does not constitute a waiver of those rights.

6.6 **Partial Invalidity:** If any provision of these terms and conditions becomes or is held to be invalid, unenforceable or illegal for any reason, and in any respect, that provision shall be severed from the remaining terms and conditions, which shall continue in full force and effect.

6.7 **Governing Law:** These terms and conditions are governed by the laws of New Zealand. You submit to the non-exclusive jurisdiction of the Courts of New Zealand.

6.8 **Intellectual Property Rights:** Artwork International (and its licensors or suppliers, as the case may be) owns all proprietary and intellectual property rights in the Website (including text, graphics, logos, icons and sound and video recordings) and the software and other material underlying and forming part of the Services and the Website.

- a You may not without our prior written permission, in any form or by any means:
 - b Adapt, reproduce, copy, store, distribute, print, display, perform, publish or create derivative works from any part of this Website; or
 - c Commercialise, copy, or on-sell any information, or items obtained from any part of this Website.
- d

6.9 **Entire agreement:** These terms and conditions supersede all previous conditions, understandings, commitments, agreements and representations whatsoever whether oral or written, and constitutes the entire agreement, between the parties, relating to the subject matter of these terms and conditions.

6.10 **Privacy:** Artwork International collects personal information about you through your use of the Services and the Website, including:

- your registration details; and
- information relating to your use of the Website and the content you access.

You agree that Artwork International may use this personal information to assist us to provide the Services to you, for internal research purposes, to verify your identity, for promoting and marketing other Artwork International products and Services to you, and for any other use that you authorise. You agree to your membership's trading history being published in your feedback.

We will not sell or allow third parties to access your personal information without your consent. We release account and other personal information only when we believe release is appropriate to comply with law; facilitate court proceedings; enforce or apply our terms and conditions; or protect the rights, property, or safety of Artwork International Limited, our users, or others. Government agencies with statutory roles enabling them to request information from us include but are not restricted to the Police, Inland Revenue Department and Ministry Of Economic Development. You may contact Artwork International to ask whether information has been provided to government agencies.

If you intend to take Disputes Tribunal proceedings against another member and you require that member's contact details in order to take such proceedings, Artwork International will release those details to you if you make a Statutory Declaration stating that you require that member's contact details for the sole purpose of taking Disputes Tribunal proceedings. You may obtain a Statutory Declaration for this purpose by contacting Artwork International or the Disputes Tribunal.