

ArtMakers: Seller and Support User Terms and Conditions

1 Introduction

- 1.1 "ArtMakers" is the trading name of BCre8ive Art Makers CIC ("**we**", "**us**", "**our**") a Community Interest Company (No.13269909) registered in England and Wales and whose registered office is at Yonder Hill, New Road, Instow, Devon EX39 4LN
- 1.2 These terms and conditions, together with the ArtMakers General Terms and Conditions of Use, Buyers Terms and Conditions and other policies referred to within these (**Terms**), apply to the use of the ArtMakers Website and Platform including the sale of artwork uploaded by you and all other services available through the ArtMakers Website and Platform services.
- 1.3 By registering as a Member User in order to access any of the ArtMakers' selling and/or support services and by submitting your Artwork for sale and/or engaging with any of the other services available through the Website and its Platform you are agreeing to all these terms and conditions without exception each and every time you use the Website or our services
- 1.4 Each contract for the sale of Artworks by you "**Contract**" shall be concluded in accordance with these 'Seller and Support User Terms and Conditions' the current version of which, as amended from time to time in accordance with those Terms of Use, shall form part of these Terms.
- 1.5 When you display Artworks for sale on our Platform you will be offering to sell these directly to a Buyer and you appoint us as your commercial agent to conclude the sale of the Artworks.

- 1.6 From time to time we may change these Terms and Conditions. We will notify you of any changes and it is your responsibility to check the Terms and Conditions which apply
- 1.7 ArtMakers reserves the right to alter these Terms or other Platform policies from time to time and will notify you of changes by posting a notice on the site.
- 1.8 If you do not agree to all the following terms you should not use this Platform.

2 Website Use

- 2.1 Under no circumstances will ArtMakers be liable for any damages arising from use or loss of use, data, or profits, whether in action of contract, negligence or other tortious action, arising out of or in connection with the use, or inability to use this Platform. We make no warranty that this Platform or the server that makes it available is free of viruses or bugs.
- 2.2 Throughout the Platform, you may find links to third party websites. Please note that ArtMakers is not responsible for the privacy policies or content of third party sites.

3 Contacting ArtMakers

- 3.1 Any queries, concerns or complaints must be made in writing to our registered address at Clause 1.1 above or by email to admin@ArtMakers.uk or using the [Contact Us](#) form on the website

4 Conditions

- 4.1 By registering on the site, you confirm that you are aged 18 or over and to have read and understood and agree to be bound by its Terms and Conditions. Where you are entering into an agreement on behalf of an organisation, you confirm that you have the legal right to do so and that the organisation specifically confirms that it takes full responsibility for use by any individuals on their behalf who are deemed to be users for the purposes of these Terms and any subsequent action.
- 4.2 You additionally warrant that all information you provide to ArtMakers including but not limited to your name, tax status, and country of residence, is accurate, truthful and kept up to date subject to any change.

- 4.3 If you are a business, you warrant that you operate a business which is registered in the same country as your business address and comply with all the law and regulations which apply to that business.

5 Your Account

- 5.1 When we accept your application to register on the Platform as a Seller or as a User of the ArtMakers Support Services , we set up an **Account** for you in our systems that includes
- Your level of Seller and/or Support Plan Subscription,
 - Details of benefits accruing to your subscription plan(s)
 - A record of the Password credentials with which to log-in to your Account.
- 5.2 Each time you log-in to your Account we will ask for your password. As long as the correct Password is entered, we will assume that you are the person giving instructions and you will be liable for them. You must therefore keep your password secret and make sure that is not stored in a way that enables others to impersonate you.
- 5.3 If you disclose your password to any person that you authorise to access your Account, you are also responsible and liable for any access, use or misuse or disclosure of your Password or Account details by such person.
- 5.4 We can refuse to act on any instruction that we believe:
- Was unclear;
 - Was not given by you; or
 - Might cause us to breach a legal or other duty; or
 - If we believe the Platform is being used for an illegal purpose. Unless and until you notify us by email to admin@ArtMakers.uk that you believe someone else knows your password or can use your Account by impersonating you:
- 5.5 We will not be responsible for any unauthorised access to confidential information about you in the Seller Account.
- 5.6 We will do all that the Service Provider reasonably can to prevent unauthorised access to Seller Account.

- 5.7 ArtMakers will provide a summary listing of the works that you upload to the site and of your most recent sales. However, you, not us, shall be responsible for
- Compiling and retaining permanent records of all Sales and other data associated with your Account and your use of the Platform, and
 - For reconciling all payments in relation to the Sales.
- 5.8 Upon the termination of these Terms for any reason, we shall have no obligation to you to store, retain, report, or otherwise provide any copies of, or access to, any records, documentation or other information in connection with any Sales or your Account.

6 Uploading Work for Sale - Terms

- 6.1 By registering and becoming a Seller on the ArtMakers Website and Platform and by uploading Artwork Content you grant ArtMakers a worldwide, non-exclusive, royalty-free, sublicensable right and license to access, view, use, copy, reformat, distribute, publicly display, publicly perform and transmit your Artwork Content via online and physical sales channels (including the Platform and third party sites and platforms) in any media now known or not currently known.
- 6.2 This right and license is solely for the purpose of enabling ArtMakers to use your content for the promotion of the Platform. ArtMakers does not claim, and so may not violate, ownership rights in your Artwork Content.
- 6.3 You acknowledge that the only compensation you will receive for such license, if any, will be in the form of the Net Sale Proceeds, payable only upon the sale of an Artwork through the Platform, and defined later in this document.
- 6.4 By uploading Artwork for sale to the ArtMakers Website you authorise us to act as your agent to:
- Promote your Artwork(s) for sale to Buyers via the Platform (but we are not obliged to find you Buyers),
 - To conclude each Contract for the sale of your Artwork(s) between you and the Buyer via the Platform and
 - To accept payment on your behalf via the Platform in accordance with the Terms of Use.
- 6.5 Each such Contract is between you and the Buyer only. We are not a party to that Contract and we are neither the buyer nor the seller (or reseller) of the Artwork(s) that you offer for sale.

- 6.6 We are not the Buyer's agent for any purpose.
- 6.7 You, and not us, are responsible for performing the obligations under the terms of any Contract between you and a Buyer.
- 6.8 You are the seller of record for all your Contracts, but the Buyer pays us via the Platform for the relevant sales.
- 6.9 The Buyer's obligation to pay for any Artwork(s) under each Contract with you is satisfied when that Buyer properly pays us for the Artwork(s) via the Platform.
- 6.10 Because we conclude the sale on your behalf and the Buyer's payment to us satisfies the Buyer's obligation to pay for the Artwork(s), our name will appear on the Buyer's payment card statement (which may also display the Seller's name).
- 6.11 You must dispatch or arrange for the dispatch of the Artwork(s) you have sold after receiving notification from us, of the Buyer's order.
- 6.12 Buyers may only pay for Artwork(s) they purchase via the Platform by making a payment to us and you must not invoice any Buyer, or obtain payment, outside the Platform.
- 6.13 Any refunds to Buyers may only be initiated via the Platform. We may in our sole discretion investigate or decline to process any transaction involving any Artwork(s) purchased via the Platform.
- 6.14 Except as otherwise expressly provided in these Terms, we are not the agent, intermediary or other representative of the Seller. We are not a fiduciary or trustee of the Seller.

7 Accepting Your Artwork for Sale

- 7.1 Any Artwork which you wish to offer for sale is submitted to us subject to our approval.
- 7.2 We reserve the right to accept, decline or remove any Artist, Artwork, or any application made to us without explanation
- 7.3 You warrant that you are the creator and sole and exclusive owner of all Artworks displayed on the ArtMakers' Platform.

- 7.4 You additionally warrant that you have obtained all clearances, and acknowledge that you shall be solely responsible for all costs and expenses related to third party rights, e.g. use of photographs taken by others, necessary for display and sale of Artworks on the Platform.
- 7.5 All Artworks represented for sale on ArtMakers must be one-of-a-kind or limited edition original artworks with a maximum edition size of 100. All Artworks must be signed by their creator or accompanied by a certificate of authenticity signed by their creator.
- 7.6 To upload images of your art you must provide clear images of the Artwork. This must include at least one clear front shot. Further information is available on the Website but if you need any further help please contact us at admin@artmakers.uk
- 7.7 All images and information which you supply to us must be accurate and up to date and in the format we require.

8 Certificates of Authenticity

- 8.1 You warrant that you are legally able to supply a certificate of authenticity for each piece of original artwork you offer for sale on or via the Website and agree to include it with the Artwork.
- 8.2 All impressions sold from a limited edition print run must be assigned numbers in correspondence with the order in which they were produced. The number of each impression must be marked clearly on the Artwork itself or on its accompanying certificate of authenticity.
- 8.3 You acknowledge and agree that you are solely responsible for all Artwork Content you upload to ArtMakers. You may not upload Artwork Content or any other materials which are or ArtMakers reasonably believes to be:
- offensive, including material that incites racial hatred or promotes discrimination;
 - obscene or pornographic; or
 - materials which infringe, misappropriate or violate a third party's patent, copyright, trademark, trade secret, moral rights or other intellectual property rights, or rights of publicity or privacy, or result in the violation of any applicable law or regulation.

8.4 ArtMakers reserves the right to remove any Content or Artwork Listings from the Platform at any time in its sole discretion.

9 Exclusivity

9.1 ArtMakers does not require exclusive exhibition rights for any piece of artwork offered for sale on the site, EXCEPT that

9.2 If an artwork by you is accepted for inclusion into one of our Virtual Online Exhibitions then that work is temporarily withdrawn from sale at any other outlet anywhere in the world for the duration of the Virtual Online Exhibition.

10 Your Obligations

10.1 It is your responsibility to ensure that all Listings submitted to the Platform represent the Artworks offered for sale therein to the highest degree of accuracy possible.

10.2 Where inaccurate specifications or materially misleading images are submitted as part of Artwork Listings from which any Sale is made, ArtMakers reserves the right to debit any costs associated with resulting Buyer return requests from the Gross Sale Proceeds.

10.3 The price stated in each of your Artwork Listings (**Price**) must be a reasonable reflection of the value of the Artwork offered for Sale, and must be equal to the price set for the same Artwork on any other channels through which the Artwork is sold directly or on consignment.

10.4 Where you are VAT registered the price of your artwork on the site should include VAT at the relevant percentage rate

10.5 ArtMakers may from time to time wish to offer discount Prices for circumstances such as

- The intention of a Buyer to buy multiple Artworks from you
- Seasonal events.

10.6 The same work may not be offered for sale anywhere else at a price lower than the sale price agreed by you and displayed on the Website.

10.7 Where a Buyer introduced to you through the Platform locates your Artwork offered for sale elsewhere at a lower price either directly by

yourself or by an authorised consignee, ArtMakers reserves the right to adjust the Price of the Artwork on ArtMakers, before or after Sale of the Artwork has been completed, to be equal to the lower price, and calculate your Net Sale Proceeds for any resulting Sales in accordance with this updated Price.

- 10.8 Your specified shipping and handling fees for Artworks listed on ArtMakers must be an accurate representation of costs incurred in fulfilment of the order. Inflating your shipping and handling fees with a view to avoiding or lessening ArtMakers commission is strictly prohibited.
- 10.9 It is your sole responsibility to arrange the packaging and shipment of Artworks for delivery to any Buyers introduced to you through the Platform. It is your responsibility to research accurate shipping rates and select a preferred courier prior to listing your Artwork. ArtMakers will not be liable for any losses incurred as a result of inaccurately quoted rates.
- 10.10 Artworks must be packaged and shipped in accordance with ArtMakers Packaging and Delivery Guidelines. Where these requirements are not met, ArtMakers reserves the right to debit any costs associated with resulting Buyer return or cancellation requests from Net Sale Proceeds.
- 10.11 It is your responsibility to comply with all local tax regulations with respect to any sales completed on the Platform, and to include any required documentation or invoices within packages shipped.

11 Commissions and Bespoke ArtWorks

- 11.1 You may discuss the scope, requirements, timeline and budget of an order for commissioned or bespoke Artworks using the enquiry messaging tool we provide on the Platform for that purpose.
- 11.2 Once you have agreed the specification with the Buyer, you can notify us using the tool provided on the Platform or by emailing us to admin@ArtMakers.uk
- 11.3 Buyer places the order we will debit the Buyer's card for any agreed deposit which will be paid to you (less our Commission and Fees) for commencing work in the ordinary course. Once you complete and dispatch the Artwork we will debit the Buyer's card for the balance of the

Gross Sale Proceeds and we will pay the Net Sale Proceeds to you in the ordinary course.

12 Placing and Fulfilling Orders

- 12.1 **Buyers Placing Orders:** When an order has been placed for one of your Artworks you will receive a confirmation notice to your nominated notification email address, inclusive of all details necessary for the dispatch of the Artwork to the Buyer. You are also able to view outstanding and completed orders from your Orders page in your Seller Dashboard.
- 12.2 **Notifications:** We will notify you by sending a confirmation notice to your nominated notification email address when a Buyer places an order via the Platform
- 12.3 **Sending your Artwork:** You must promptly either:
- Despatch the Artwork(s) specified in the order using tracked delivery method and notify us using the form provided on the Platform that you have done so (**Order Dispatch Confirmation**), to enable us to send the Order Confirmation to the Buyer
 - Notify us using the tool provided on the Platform that you are unable to supply the Artwork(s), to enable us to notify the Buyer that the order will not proceed or
 - In the case of Commissions or Custom Artworks, you must use the tool provided on the Platform to confirm the fact the specification and terms of the custom Artwork have been agreed when you commence work on the Artwork, to enable us to issue an invoice and debit the Buyer's chosen payment method for the amount of any agreed deposit; and, when the Artwork is completed and dispatched, notify us using the tool provided on the Platform, to enable us to issue an invoice, send the Order Confirmation to the Buyer and debit the Buyer's chosen payment method for the balance of the Price
- 12.4 The Contract between you and the Buyer will only be formed when we send the Order Confirmation to the Buyer. The Buyer's chosen payment method will be debited for payment for the Artwork(s) and all applicable Delivery Charges.

13 Payment to Artists

- 13.1 Your Net Sale Proceeds will be held by ArtMakers until we have received confirmation that the artwork has been delivered to the Buyer and the Buyer is satisfied with their purchase.
- 13.2 On receipt of confirmation from the buyer or on expiration of ArtMakers' returns period, your Net Sale Proceeds will be transferred to your Nominated Payment Account in line with ArtMakers' current Payment Schedule
- 13.3 ArtMakers is entitled to withhold your Net Sale Proceeds for any given Sale if there is, or in ArtMakers' reasonable opinion is likely to be, a dispute with you or a dispute between you and the Buyer, until such dispute is resolved to ArtMakers' reasonable satisfaction.

14 Returns and Complaints

- 14.1 All returns requests submitted by Buyers are received, processed and arranged by ArtMakers.
- 14.2 On receipt of a complaint, action will be taken to investigate and rectify the problem
- 14.3 You will receive immediate notice via your nominated notification email address of any approved returns requests for Artworks you have sold through ArtMakers, as well as a further confirmation email once a collection date and service has been arranged.
- 14.4 **Damage in Transit:** ArtMakers will accept no liability for damage to Artworks in transit from you to your Buyer. It is solely your responsibility to ensure that you package your Artworks sufficiently and ship them via a service that will minimise the likelihood of damage.
- 14.5 You acknowledge that any postage or shipping guidance provided by ArtMakers in the form of help articles or support correspondence comes with no guarantee of safe transit if followed. If you do not secure transit insurance for any Artwork before shipping it, you do so solely at your own risk.
- 14.6 **Lost in Transit:** ArtMakers will accept no liability for Artworks lost in transit on their way to your Buyer. If you do not send your Artworks via a

traceable method of shipment, you do so at your own risk and ArtMakers reserves the right to issue a full and immediate refund to the Buyer on notice of non-delivery within the estimated timeframe.

15 Fees and Payments due to ArtMakers

- 15.1 You may list Artworks for sale on ArtMakers in accordance with your Seller Plan Subscription. Your monthly or Annual Seller Plan Fee payable to ArtMakers is determined by your Seller Plan Subscription and laid out on the website (Link)
- 15.2 When your Artwork is sold to a Buyer introduced to you through ArtMakers, ArtMakers is entitled to charge the commission and fees, plus VAT where applicable, in accordance with your Plan Subscription
- 15.3 You must pay to us Commission on any sale of your Artwork or Artworks to any Buyer first introduced to your Artworks, or with whom you have first made contact, via the Platform. We will deduct our Commission from the Gross Sale Proceeds for that Artwork. Any attempts to complete sales or any other monetary transactions initiated on the Platform outside of the Platform are strictly prohibited, and will result in the suspension or closure of your Seller Account.
- 15.4 In any case where ArtMakers reasonably believes a sale or monetary transaction initiated on the Platform to have been completed outside of the Platform, ArtMakers reserves the right to debit any costs associated with resulting Buyer return requests from any Net Sale Proceeds due to you.
- 15.5 ArtMakers deducts Commission from the Gross Sale Proceeds on a percentage basis in relation to Sales completed through the Platform, as identified in your subscription plan. Online payment transaction fees are met by ArtMakers. This policy may be subject to change at the discretion of ArtMakers
- 15.6 In the event of any change to the Commission and Fees Policy, ArtMakers will provide with at least 14 days notice, by posting the changes on the Platform.
- 15.7 Your Net Sale Proceeds for any given Sale is the Gross Sale Proceeds based on the Price at which the relevant Artwork(s) is/are sold under the Contract, less the total Commission and taxes due in relation to the Sale and any discount that you have offered or authorised ArtMakers to offer to the relevant Buyer.

16 Payment Procedures

- 16.1 You shall open and maintain in your name a payment account with a duly authorised payment services provider to receive payments from us and include the details of it on the payments page in your Membership Account (**Nominated Payment Account**).
- 16.2 Your Net Sale Proceeds will be transferred to your Nominated Payment Account in the next available qualifying pay run, normally at the end of each month.
- 16.3 It is your responsibility to ensure that all despatched orders are marked as shipped on your Orders page. Your Net Sale Proceeds for any given order will not be transferred until these requirements have been satisfied with respect to that order.
- 16.4 ArtMakers reserves the right to defer the payment of your Net Sale Proceeds until the next pay run for any given Sale if the total payment amount is under £50 GBP / €50 EUR / \$50 USD (depending on the currency of payment) and the payment method is a bank transfer to a Nominated Payment Account held by you with a payment service provider located outside of United Kingdom.

17 Termination of Your Account by ArtMakers

- 17.1 ArtMakers may, in its sole discretion, terminate this agreement, access to the Platform without notice to you.
- 17.2 Upon termination, all rights and obligations will be extinguished other than such rights and obligations which are necessary to process any orders placed prior to such termination.

18 Cancellation of Your Account by You

- 18.1 You may request deletion of your ArtMakers Account from your user settings page.
- 18.2 On receiving notice of your cancellation request, we will endeavour to remove your Seller Profile and Portfolio from the Platform within 2 working days.

19 User Data

- 19.1 To the extent that personal data is supplied by users to ArtMakers, such data shall be owned by ArtMakers and subject to the then effective Privacy Policy of ArtMakers, the Data Protection Act 1998 and any other applicable law or regulation in the relevant jurisdiction.
- 19.2 Where you receive personal data from users of the Platform, you will comply with all applicable law and regulation, the ArtMakers Privacy Policy and all other instructions of ArtMakers.

20 Liability

- 20.1 ArtMakers is a venue and provides an online marketplace and gallery only.
- 20.2 The Website and Platform are provided on an "as is" basis. ArtMakers makes no representations or warranties of any kind to you relating to the Platform to the fullest extent permitted by law.
- 20.3 You will ensure that anything you do will not incur any liability for us and you will not cause us to breach any law, statute or regulation and will, in any event, completely indemnify us against any claim or action whatsoever including, but not limited to, any losses or expenses incurred whatsoever, resulting from your breach of our Terms and Conditions and agreement.
- 20.4 ArtMakers shall not be liable for any damages of any kind including without limitation, direct, indirect, incidental, punitive and consequential losses (including loss of profits and loss of data) arising out of these Terms or use of the Platform, provided that nothing in these Terms shall exclude or limit liability for death or personal injury arising as a result of negligence, fraud or any other liability which may not be excluded or limited by law.
- 20.5 Without limiting the foregoing, ArtMakers' total and aggregate liability to you shall in no event exceed the total amounts actually received by you in any calendar year in connection with a sale of Artwork through the Platform.
- 20.6 You hereby indemnify ArtMakers and keep ArtMakers, third party sellers, directors, shareholders and employees at all times fully and effectively

indemnified from and against all actions, proceedings, claims, demands, costs (including, but not limited to, legal costs of ArtMakers), awards and damages however arising as a result of any breach or non-performance by you of any of the undertakings, warranties, representations or obligations under these Terms or otherwise arising from a transaction.

21 Legal Jurisdiction

- 21.1 These Terms are governed by the laws of England and you agree to submit to the exclusive jurisdiction of the courts of England and Wales with respect to your relationship with ArtMakers.
- 21.2 It is your responsibility to comply with all laws applying to online conduct and admissible content in the locality from which you operate. It is your responsibility to adhere to all applicable tax requirements for sales made to users on the Platform.