

General Conditions of Sale

These Conditions set out the basis on which Seller will enter into the Contract with the Buyer for the sale of Artwork via the Website. FOR THE AVOIDANCE OF DOUBT, **GREATJOY ART STUDIOS** STRICTLY ACTS AS THE SELLER'S AGENT FOR THE SALE OF THE ARTWORK UNDER THE CONTRACT. CONSEQUENTLY, THE CONTRACT FOR THE SALE OF THE ARTWORK IN THIS INSTANCE IS BETWEEN THE SELLER AND THE BUYER. **GREATJOY ART STUDIOS** SHALL NOT BE A PARTY TO THE CONTRACT.

DEFINITIONS AND INTERPRETATION

Artwork: the artwork as particularized in the Promotional Material.

Business: means a person acting for purposes relating to that person's trade, business, craft or profession, whether acting personally or through another person acting in the trader's name or on the trader's behalf.

Conditions: these general conditions of sale.

Confidential Information: information in whatever form (including, without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) relating to the business, Buyers, products, affairs and finances of a party for the time being confidential to it and trade secrets including, without limitation, technical data and know-how relating to its business or any of its or their suppliers, Buyers, agents,

distributors, shareholders, management or business contacts and, whether or not such information (if in anything other than oral form) is marked confidential.

Consumer: shall have the meaning given to it in the Regulations.

Contract: the contract between the Seller and the Buyer for the sale and purchase of the

Artwork in accordance with these Conditions.

Buyer: the Business or Consumer which or whom wishes the Seller is to provide the Artwork and which wishes to purchase the Artwork from the Seller.

Exhibition: the online exhibition of the Artwork via the Website.

Force Majeure Event: events, circumstances or causes beyond a party's reasonable control including but not limited to acts of God, flood, drought, earthquake or other natural disaster; epidemic or pandemic; terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; nuclear, chemical or biological contamination or sonic boom; any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, restrictions arising out any other Force Majeure Event; collapse of buildings, fire, explosion or accident, interruption or failure of utility service, and in the case of **Greatjoy Art Studios** , a failure of its suppliers or subcontractors.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Loss: any actions, awards, charges, claims, compensation, costs, damages, demands, expenses, fees, fines, interest, liabilities, losses, penalties, proceedings and settlements and Losses shall be construed accordingly.

Memorandum of Sale: the written confirmation that the Order has been accepted by **Greatjoy Art Studios**

Order: means an offer by the Buyer to enter into a Contract with the Seller in accordance with these Conditions.

Promotional Materials: the Exhibition, Website, catalogues, brochures or such other applicable sales or promotional literature, materials or publications.

Seller: the artist, Consumer or Business which or whom has instructed **Greatjoy Art Studios** to offer the Artwork for Sale.

Greatjoy Art Studios : Greatjoy Art Studios (PTY) Limited, a company incorporated and registered in South Africa with company registration number 2021 /795154 /07 whose registered office is at 20 Devon Place East Wing , Longmeadow Business Estate , Modderfontein, Johannesburg , 1610 .

Website: www.greatjoyartstudios.com

1.2 In these Conditions, the following rules of interpretation apply:

(a) a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

(b) a reference to a party includes its personal representatives, successors or permitted assigns;

(c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

- (d) any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- (e) a reference to writing or written includes emails; and
- (f) unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

2. AGENT FOR THE SELLER

2.1 **Greatjoy Art Studios** strictly acts as the Seller's agent for the sale of the Artwork under the Contract. Consequently, the Contract in this instance is between the Seller and the Buyer and each party has the rights and obligations set out in these Conditions (including but by no means limited to, where the Buyer is a Consumer, the consumer rights set out in the Regulations and the Act.

2.2 As the Seller's agent, **Greatjoy Art Studios** has the authority, on behalf of the Seller, to:

- (a) prepare the Promotional Material;
- (b) organise an online exhibition of the Artwork;
- (c) offer the Artwork for sale via the Website;
- (d) negotiate the sale of the Artwork;
- (e) accept offers made by the Buyer;
- (f) reject any Order;
- (g) sign a Sale Memorandum; and
- (h) provide assistance in respect of the delivery of any sold Artwork.

3. FORMATION OF CONTRACT

3.1 These Conditions apply to the Contract to the exclusion of any other terms that the Buyer may seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3.2 If the Buyer wishes to purchase the Artwork at the published price (which can be found on the Website, in accordance with an Exhibition or otherwise), then the Buyer shall first be required to raise an Order for the Artwork.

3.3 An Order can be raised in the following ways:

(a) via the Website, by selecting the applicable Artwork, delivery method and then

proceeding to the checkout;

(b) via email, by contacting info@greatjoyartstudios.com ; or +27 76 060 9936

(c) via telephone, by contacting

3.4 Should the Buyer wish to negotiate the price of the Artwork it shall contact **Greatjoy Art Studios** via either of the methods described in clause 3.3(b) or 3.3(c) above. Where a negotiated price is agreed between the Buyer and the Seller, the Buyer shall be required to raise an Order for the Artwork pursuant to clause 3.3(b) or 3.3(c) above.

3.5 The Seller may reject any Order that the Buyer raises at its absolute discretion and the Order shall only be deemed to be accepted when a Memorandum of Sale is issued on behalf of the Seller at which point the Contract shall come into existence.

4. PROMOTIONAL MATERIAL

4.1 Any samples, drawings, descriptive matter or advertising produced by **Greatjoy Art Studios** on behalf of the Seller and any descriptions or illustrations contained in the Promotional Materials are produced for the sole purpose of giving an approximate idea of the Artwork referred to in them. They shall not form part of the Contract nor have any contractual force and prior to raising the Order, it is the Buyer's responsibility to ensure that the Artwork are suitable for the Buyer's intended application or use.

4.2 The description of any Artwork in the Promotional Material, any condition report and any other statement made by **Greatjoy Art Studios**

on behalf of the Seller (whether orally or in writing) about any Artwork, including about its nature or condition, artist, period, materials or provenance are the opinion of **Greatjoy Art Studios** and/or the Seller and should not be relied upon as a statement of fact. Neither **Greatjoy Art Studios** or the Seller carries out in- depth research of the sort carried out by professional historians and scholars and such research should be carried out by the Buyer prior to raising its Order.

4.3 All dimensions and weights listed in the Promotional Material are approximate only.

5. SELLER'S WARRANTY

5.1 The Seller warrants that:

- (a) it is the owner of the Artwork or a joint owner of the Artwork acting with the permission of the other co-owners or, if the Seller is not the owner or a joint owner of the Artwork, has the permission of the owner to sell the Artwork, or the right to do so in law;
- (b) the Artwork is free and clear of any and all liens, mortgages and security interests or other encumbrances held by any person;
- (c) it has the right to transfer ownership of the Artwork to the Buyer without any restrictions or claims by anyone else;
- (d) the Artwork is free of any restrictions relating to the re-sale of the Artwork by a Buyer; and
- (e) where the Artwork contains the likeness or other details of a third party individual and the sale and other use of the Artwork in any part of the world as contemplated by these Conditions amounts to the processing of Personal Data of that individual, the Seller warrants that any consent necessary to make that activity lawful has been obtained from the individual in question in compliance with all applicable laws for the protection of the privacy of individuals in any relevant part of the world.

5.2 The Seller gives no warranty in relation to the Artwork other than those set out above.

6. PRICE AND PAYMENT

6.1 The price of the Artwork shall be as set out on the Website or otherwise within the Promotional Materials, as the case may be.

6.2 The Buyer shall pay the sums due for each Order in full and in cleared funds within 7 days of the Contract coming into existence in accordance with clause 3.5.

6.3 Unless otherwise agreed in writing between the Seller and the Buyer, payment for the Artwork must be made in advance of the Artwork being shipped. Where a delivery date in respect of any Artwork has been agreed between the parties, the Seller shall have no liability towards the Buyer for any Losses suffered where there has been a failure to deliver on that delivery date and such failure arises as a result of the Buyer's failure to comply with its payment obligations under clause 6.2.

6.4 Payments made under the Contract shall be made either via the method defined on the Website or to the bank account particularized in the invoice. Time for payment is of the essence, which means that if payment is not received within the required time frame then, in addition to its other rights and remedies under the Contract, the Seller shall be entitled to terminate the Contract.

6.5 All amounts payable by the Buyer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Seller to the Buyer, the Buyer shall, on receipt of a valid VAT invoice from the Seller, pay to the Seller such additional amounts in respect of VAT as are chargeable on the sale of the Artwork at the same time as payment is due for the sale of the Artwork.

7. IMPORT AND EXPORT LICENCES

The Buyer's shall be responsible for and warrants that it shall:

(a) verifying local legislation and regulations relating to the manufacture, sale, packaging and labelling of Artwork which are in force within the territory to which the Artwork is to be imported (where applicable) prior to the sale in order to be assured that import or export of the Artwork is possible in accordance with such legislation and regulations; and

(b) obtain, at its own cost, any licenses required to either import or export the Artwork, and

Greatjoy Art Studios shall provide the Buyer with reasonable assistance in order to ensure compliance with this clause 7.

8. AUTHENTICITY

8.1 Where Artwork is sold as authentic under the Promotional Material and the Buyer provides evidence in the form of a written report by a recognised expert or test results that the said Artwork is not authentic, the Seller shall refund the purchase price.

8.2 The Buyer shall give immediate notice to the Seller upon becoming aware that or any event taking place to give a suspicion that any Artwork is not authentic. For the purposes of this clause 8, authenticity shall be defined as the state of an Artwork that is genuine and not a forgery or a copy

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9. DELIVERY / COLLECTION

9.1 The Buyer acknowledges that it shall be solely responsible for any and all costs that may arise in relation to the delivery or collection of the Artwork. Such costs may include but are not limited to:

(a) shipping;

(b) insurance; and

(c) import and export licences.

9.2 Unless otherwise agreed, **Greatjoy Art Studios** shall deliver the Artwork to the location as agreed between the parties.

9.3 Delivery of the Artwork shall be completed on the completion of unloading of the Artwork at the delivery location.

9.4 Where the Buyer is a Business, any quotes dated for delivery are approximate only, and time for delivery is not of the essence. Whether the Buyer is a Business or a Consumer, **Greatjoy Art Studios** shall not be liable for any delay in delivery of the Artwork that is caused by a Force Majeure Event or the Buyer's failure to provide **Greatjoy Art Studios** with adequate delivery instructions or any other instructions that are relevant to the supply of the Artwork.

10. TITLE AND RISK

10.1 Title to the Artwork shall not pass from the Seller to the Buyer until **Greatjoy Art Studios** (on behalf of the Seller) has received payment in full (in cash or cleared funds) for the Artwork.

11.2 Risk in the Artwork shall pass following the successful delivery of the Artwork under clause 9.3. Where the Buyer is a Consumer, this means that the risk of damage to the Artwork shall pass to the Buyer once the Artwork has been successfully unloaded at the agreed delivery location.

11. INTELLECTUAL PROPERTY RIGHTS

11.1 Unless otherwise agreed by the parties or permitted within this Agreement, no Intellectual Property Rights in the Artwork shall pass from the Seller to the Buyer under the Contract.

11.2 The Seller:

(a) warrants that:

(i) it possesses all relevant Intellectual Property Rights in the Artwork that are required to allow the sale; and

(ii) that the sale of the Artwork shall not infringe the Intellectual Property Rights of any third party; and

(b) shall indemnify the Buyer in full against any Losses suffered by the Buyer as a result of any claim that the Artwork infringes a third party's Intellectual Property Rights.

11.3 Liability under the indemnity in clause 11.2(b) is conditional on the Buyer discharging the following obligations. If any third party makes a claim, or notifies an intention to make a claim, against the Buyer which may reasonably be considered likely to give rise to a liability under clause 11.2(b) (Claim), the Buyer shall:

(a) as soon as reasonably practicable, give written notice of the Claim to the Seller, specifying the nature of the Claim in reasonable detail;

(b) not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Seller;

(c) give the Seller and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Buyer, so as to enable the Seller and its professional advisers to examine them and to take copies (at the Seller's expense) for the purpose of assessing the Claim; and

(d) take such action as the Seller may reasonably request to avoid, dispute, compromise or defend the Claim.

12. DATA PROTECTION

12.1 All parties acknowledge that **Greatjoy Art Studios** is a data controller and is committed to ensuring the security and protection of any personal data that it processes in connection with the sale of the Artwork and to provide a compliant and consistent approach to data protection.

12.2 **Greatjoy Art Studios** will process personal data in accordance with its privacy notice .

12.3 The Buyer and Seller shall ensure that any personal data (and otherwise) that provided to **Greatjoy Art Studios** will be accurate, up to date and complete.

13. LIABILITY – THIS CLAUSE ONLY APPLIES IF THE BUYER IS A CONSUMER

13.1 The Seller or, where applicable, **Greatjoy Art Studios** shall only be responsible for loss or damage suffered by the Buyer that is a foreseeable result of any failure by the Seller or **Greatjoy Art Studios** to comply with the Contract but, except as set out in clause 13.2, the Seller or **Greatjoy Art Studios** shall not be responsible for any Loss or damage that is not foreseeable. Loss or damage is foreseeable if either it is obvious that it will happen or if, at the time the Contract was formed, both parties knew it might happen.

13.2 The Seller or JB Art Gallery does not exclude or limit in any way its liability to the Buyer where it would be unlawful to do so. This includes liability for death or personal injury caused by the Seller's or Greatjoy Art Studio's negligence or the negligence of the Seller's or Greatjoy Art Studio's employees, agents or subcontractors; for fraud or fraudulent misrepresentation; for breach of the Buyers legal rights in respect of the Artwork.

14. LIMITATION OF LIABILITY AND INDEMNITY – THIS CLAUSE ONLY APPLIES IF THE BUYER IS A BUSINESS

14.1 Nothing in the Contract shall limit or exclude the Seller's or Greatjoy Art Studio's liability for:

(a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

(b) fraud or fraudulent misrepresentation; or

(c) any other matter for which it is not legally possible to limit or exclude its liability.

14.2 Subject to clause 14.1, neither the Seller or **Greatjoy Art Studios** shall not be liable to the Buyer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

- (a) loss of profits;
- (b) loss of goodwill;
- (c) loss of business;
- (d) loss of business opportunity;
- (e) loss of anticipated saving;
- (f) loss or corruption of data or information; and
- (g) any indirect, special or consequential Loss.

14.3 Subject to clause 14.1, the Seller's and **Greatjoy Art Studios** total liability to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise for any Losses suffered or incurred by it arising under or in connection with this Contract shall be limited to the price paid by the Buyer to the Seller for the Artwork in cleared funds under this Contract.

15. TERMINATION AND THE RIGHT TO CHANGE YOUR MIND

15.1 Where the Buyer is a Consumer, it may terminate the Contract with **Greatjoy Art Studios** . The Buyer's rights when it terminates the Contract shall depend on the Artwork that it has purchased, whether there is anything wrong with those Artwork, the conduct of **Greatjoy Art Studios** and when the Buyer decides to terminate the Contract.

15.2 The Contract will be terminated immediately and **Greatjoy Art Studios** will refund the Buyer in full for any Artwork which have not been provided. These reasons are:

- (a) **Greatjoy Art Studios** has informed the Buyer about an error in the price or description of the Artwork which is the Seller's fault and the Buyer does not wish to proceed;
- (b) there is a risk that supply of the Artwork may be significantly delayed because of events outside of the Seller's control; or

(c) the Buyer has a legal right to end the Contract because of something that the Seller has done wrong.

15.3 Where the Buyer has changed its mind about the Artwork, then the Buyer may be able to receive a refund where it has changed its mind within the cooling off period. However, this refund may be subject to reductions and the Buyer will be required to pay the costs of returning the Artwork to the Seller.

15.4 As the Contract is for the sale of Artwork, the Buyer has 14 days after the day that the Artwork has been collected in order to change its mind, unless the Artwork are split into several deliveries over different days. In this case the Buyer has until 14 days after the day of the last delivery to change its mind about the Artwork.

15.5 **Greatjoy Art Studios** will refund any sums paid by the Buyer for any Artwork not provided.

16. GENERAL

16.1 Assignment and other dealings.

(a) The Seller may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with (Transfer) all or any of its rights or obligations under the Contract. Where the Buyer is a Consumer, any assignment or otherwise under this clause shall not adversely affect the supply of the Artwork.

(b) The Buyer may not Transfer any or all of its rights or obligations under the Contract without the prior written consent of the Seller.

16.2 Entire agreement.

(a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

(b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party

agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

16.3 Variation. No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

16.4 Waiver. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

16.5 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

16.6 Third party rights. A person who is not a party to the Contract shall not have any rights to enforce its terms as though it were a party to it.

16.7 Privacy. Details on how **Greatjoy Art Studios** handles personal information can be found within its Privacy and Cookies Policy, which is available on the Website.

16.8 Governing law. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

16.9 Jurisdiction. Each party irrevocably agrees that the courts of South Africa shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.

