

## Albion Art Trading Limited (Albion)

### TERMS OF TRADING

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**These terms and conditions below will apply in respect of any Service that Albion provides to You. It is important, that you read and understand these terms before giving us any instructions to sell, purchase, commission, exchange deal or advise or provide Services in relation to any Artwork. Any agreement formed shall be termed the Agreement and these terms and conditions shall be incorporated as the terms and conditions of such Agreement.**

#### 1. Purpose and effect

These terms and conditions will apply to any Services provided or work undertaken by Albion for you, on your behalf or at your request including all Services provided by Albion's employee's agents and sub-contractors.

These terms and conditions will be incorporated into and apply to all dealings between us, unless other terms are agreed in writing signed by a director of Albion.

#### 2. Meanings

The following words shall have the following meanings:

"Artist" means any incorporated or unincorporated entity person or group of the same who are individually or collectively responsible for the creation of any Artwork.

"Artwork" means any two or three-dimensional work, including without limitation, any graphic, dramatic, literary work computer generated work, painting, sculpture, print, concept art, installation, photographic work including a work of artistic craftsmanship.

"Client" or "You" means any person who retains or engages Albion to provide Services."

"Primary Sales" means a first Sale of an original Artwork on behalf of an Artist/author/creator of an original Artwork limited-edition reproduction of an Artwork.

"Secondary Sales" means a sale or disposition of an Artwork between buyers and sellers other than a Primary sale.

"Sale and "Sell" (as the context requires)" means; creation of a legally binding obligation or option to sell, or transfer of legal or equitable interest in or to an Artwork, or to effect a permanent or temporary transfer of physical possession, declaration of trust, exchange for other artefacts for value in money or money's worth, making of a donation, gift, other disposition of the Artwork, the creation of any security interest over the Artwork and any receipt of valuable consideration in respect of any of the above individually or in combination whether directly or via an incorporated undertaking controlled or directed by a You.

"Purchase" means without limitation the acquisition of any legal or beneficial right title or interest in the Artwork or the right to possession of an Artwork, the benefit of a security interest over Artwork, including an option to acquire an Artwork or any interest therein, the right to display the Artwork on a permanent or semi-permanent basis whether by leasing, grant or gift whether directly or via an incorporated undertaking controlled or directed by You.

"Services" means all work to be undertaken by Albion for Clients including without limitation, management and representation of Artists and services to collectors investors, sellers, purchasers, and those wishing to commission Artworks, acquire or dispose of Artworks; including without limitation the curation, appraisal or improvement of collections, assessment, authentication or valuation of Artworks; sourcing commissioning or acquiring Artwork, displaying or procuring the display of Artwork for Sale, (gallery services), assisting acquisition of Artwork, advising on provenance, arranging introductions to others for supply of services, advertising, marketing and arranging for the sale by auction, purchase, leasing, lending, commissioning, or arrangement of security over or in respect of Artworks, and or making arrangements leading to public auction arranging for commercialisation of

Artworks by licensing or merchandising; and all services which are ancillary thereto.

"Sole and Exclusive" means that the appointment of Albion shall exclude the appointment or engagement of third parties by the Client for the provision of the Services which shall be conducted only by Albion to the exclusion of the Client and all third parties.

"Term" means the period from the date of appointment until terminated in accordance with Clause 13 and appointment shall mean any request to perform any Services whether made orally or in writing which is contemplated by these Terms and Conditions and which is accepted by Albion.

#### 3. Interpretation

The headings are for convenience only and shall not be part of or affect the interpretation or construction of these terms and conditions.

#### 4. Authority

By engaging Albion to provide Services in relation to the Sale, Purchase, exchange, Commission or other disposition of an Artwork you authorise Albion to negotiate and enter into binding contracts on your behalf and in your name.

#### 5. Our obligations

Nothing in these terms constitutes an obligation or warranty that Albion will conclude Sales or Purchases or complete other transactions on your behalf. Albion's obligation is limited to using reasonable commercial endeavours to assist You to achieve any objective as is made known to and accepted by Albion.

You shall throughout our engagement fully co-operate with Albion in good faith to consider any proposals we present to you which are consistent with your stated objectives and assist Albion to perform the Services.

You will not impede the provision of Services and you will promptly disclose to Albion all information offers or expressions of interest by any third party in relation to any Artwork or Services which are the subject of our engagement.

You will provide Albion all relevant information which may assist Albion to perform the Services.

#### 6. Representation of Artists.

By agreeing to appoint Albion to provide Services to You as an Artist, for Sell or commercialise you Artwork and develop the market for your Artwork absent any agreement to the contrary in writing (signed by a director of Albion) such appointment will be on a Sole and Exclusive basis throughout the Term .

Save as otherwise agreed in writing, you will pay Albion a sum equal to

- a) 50% of all value receivable in monies and money's worth arising from a Primary Sale.
- b) 20% of all value receivable in monies and money's worth arising from any agreement made during the term of our engagement (including renewals) for any commercialisation licensing or reproduction of Artwork or any part thereof.
- c) 10% of all value receivable in monies and monies worth in relation to a Secondary Sale.

Where a Sale or disposition or commercialisation of an Artwork occurs after termination of our engagement. Albion shall be entitled to fees calculated in accordance with Clause 13 for the periods set out therein.

Albion's Fees shall be payable on the formation of a binding obligation to Sell Purchase or exchange any Artwork or upon receipt of value in relation to the commercialisation of Artwork (in money or money's worth).

## 7. Transport and Shipping

In the event that your Artwork is loaned or consigned to Albion, a gallery or auction house for sale display loan or storage or delivered to you or a third party.

Albion shall;

- a) arrange insurance a reputable insurer (and pay all premiums) in respect of loss of or damage to the Artwork resulting from risks which are common or usual in the trade arising from transportation delivery appropriate to the nature and value of the Artwork and in respect of such further risks as You are agreed in writing.
- b) pay for and arrange all transport and shipping costs including the cost of returning the Artwork to you.

You will be responsible for the provision (at your expense) to Albion of a schedule of condition of the Artwork (including photographic) prior to shipment. Shipment and handling shall be undertaken by a reputable expert approved by Albion in advance.

It is your responsibility to identify any risks other than those set out and which are the subject of any policy of insurance incepted in accordance with this Clause. It is your obligation to inspect such policy or policies and to request Albion to seek additional cover in value or for risks which shall be at your expense.

## 8. Gallery Responsibility

If Albion provides services for display or arrange the public display of Artwork (gallery services) Albion will be responsible for;

- a) unpacking and hanging, erecting (but not constructing assembling or fabricating) the Artwork.
- b) for any packaging carry crate or other materials used for the transportation of Artwork
- c) taking down dismantling and repacking Artwork.

Albion will arrange and pay for the removal of the Artwork within seven days from the last day of the loan or consignment period.

If you (Artist/Vendor) are unable or unwilling to accommodate the return to you of the Artwork within 7 days of the end of the period of consignment loan or display of the Artwork, Albion shall be entitled to put the Artwork into storage and to charge you for the reasonable storage costs and any insurance premium and additional transport costs until this can be returned to you.

## 9. Sale/ of Artwork

If Albion provides Services intended to procure enable or secure the Sale or Purchase of Artwork on your behalf or for your benefit you agree to pay to Albion a Fee equal to;

- a) **10 % of all** value receivable in money or money's worth from any Sale or disposition of **Artwork as a Secondary Market Sale.**
- b) **to 10% of the total value of any exchange of Artworks (aggregated values of each Artwork)** Each disposal and acquisition shall constitute separate Sale/Purchase.

All fees and monies shall be made to Albion within 14 days of entering into a binding contractual obligation to conclude a Sale or Purchase or the delivery of the Artwork to you/ the buyer whichever is the earlier.

Commissions or fees charged by third parties including without limit by Auction houses and third-party Galleries for display or as commission on sale shall paid by you additional to Albion's fees.

In the event that if Albion negotiates an introductory commission payable to Albion from an auction house, gallery or other intermediary then in Albion's discretion such commission may be deducted such monies as are received by Albion (or reimburse) from the fees you pay to Albion as and when such third-party commissions are actually received by Albion. Albion shall be under no obligation to do so.

For the avoidance of doubt In the event that Albion is the effective cause of an exchange of value between You and a third party who has also engaged Albion including; the Sale, Purchase, commission, loan, grant or receipt of security or any interest in an Artwork or the commercialisation, licensing manufacture of derivative products in two or three dimensions, Albion will be entitled to be remunerated for its Services by payment of Its fees from both acquiring and disposing party and each acquisition and disposition shall constitute a separate obligations.

## 10. Purchase & Commissioning of Artwork

If you engage Albion to acquire one or more Artworks whether by purchase of an existing work or by Commissioning of a new Artwork you shall pay to Albion a commission of 20% of the consideration payable for the Artwork (in money or money's worth). Albion may choose to purchase the commissioned work as Principal and resell this to you. In such event Albion shall be entitled to retain any profit on resale to You.

If payment for the Purchase of a commissioned work by exchange of Artworks, of payment for service by delivery of Artwork, Albion shall be entitled to be paid a commission equal to 20% of the value receivable in respect of both the Artwork disposed of and the value of the Artwork acquired of and each acquisition and disposal shall constitute a separate and individual Sale and Purchase.

If Albion purchases any Artwork (whether as principal or nominee) for you or on your behalf any Artwork (including by Commission) you shall be responsible for paying to Albion the full price of the Artwork, together with any delivery costs, third-party fees, out of pocket expenses, commissions, customs duties, levies, insurance freight storage charges and VAT or equivalent sales tax attributable to the Purchase.

## 11. Lien

Albion shall be entitled to a general and specific lien by way of security over any Artwork or other property which is lawfully in Its possession in relation to all and any fees costs and expenses payable to Albion (whether invoiced or not).

## 12. Representations.

By requesting Albion to provide Services you represent and warrant to Albion that;

- a) you are the legal and beneficially owner of the Artwork and that such Artwork is not subject to any liens, or security interests and/or you have full unrestricted legal authority to sell, purchase, transport import export and deal with the Artwork as legal and beneficial owner or with full authority of the legal and beneficial owner.
- b) the Artwork is as you represent it and that it has not been unlawfully replicated or copied and that all documents provenances and records relating to it are original authentic and accurate.
- c) the Artwork has never been stolen misappropriated, seized, impounded, or sequestered by any government or authority and does not constitute the proceeds of crime or tax avoidance and was not acquired using the proceeds of crime nor used in the facilitation of any crime.
- d) the Artwork is not subject to any injunction judgement, governmental lien or restriction on export or transfer.

- e) all taxes duties and fees relating to the import, export or dealing in the Artwork have been paid (including personal taxes).
- f) any proposed dealing in the Artwork will not constitute or form part of any larger transaction or tax avoidance scheme.
- g) the Artwork has not been cited or implicated in any money laundering, breach of sanctions unlawful export or import or cited in breach of export controls or restrictions.
- h) any proposed sale or dealing with the Artwork will not nor result in breach of any laws or regulations sanctions or other restrictions.
- i) the Artwork is not subject any and contract or understanding or declaration of trust promise or testamentary disposition which might affect any Sale auction transportation display or dealing with the Artwork.

### 13. Termination of Albion's engagement.

Either party may terminate this contract of Services by giving 60 days written notice.

Either party may terminate this Contract for Services forthwith on giving notice in writing to the other if one party ceases to carry on business or commits a material breach of any term of this agreement and (in the case of a breach capable of being remedied) shall have failed, within 21 days after the receipt of the request in writing from the other to remedy the breach.

### 14. Post Termination Benefit

You acknowledge that a Sale, Purchase, or other disposition of Artwork may arise after the Term of our engagement has expired that may have been assisted initiated or derived from the Services and/or introductions work or representation of you by Albion during the Term therefore;

**If you terminate our engagement** and after termination you enter into any agreement for Sale or Purchase (including an exchange) of Artwork or conclude any commercial agreement was the subject matter of Albion's engagement during the Term including the grant of any consent permission or license for the commercialisation or licensing of any Artwork within 24 months of termination of Albion's engagement which you will pay;

If within 12 months of termination 100% of Albion's fee

If within 18 months of termination 50% of Albion's fee

If within 24 months of termination 25% of Albion's fee

You undertake to keep Albion fully Informed of all transactions undertaken in the 24 months after Termination and provide all documents and records so that Albion may determine the fees which may be due to it.

### 15. Licensing/regulatory Approval

If any Sale or Purchase of an Artwork is contingent on the issue of any licence, authorisation or permit then payment of Albion's fees must be made to Albion within 7 days after the issue of the relevant licence or permission.

### 16. Advisor Services

By engaging Albion to provide Services particularly (but without limitation) advice in relation to the assessment, valuation, creation improvement or disposal of a collection or executing any similar project and Albion provides you with advice as to which Artworks to acquire or dispose of and you do not retain Albion to effect such acquisitions or disposals, then in such event you will pay to Albion fees equivalent to 20% of all value of Artworks Sold or Purchased by you or on your behalf or at you direction within 24 months of the date upon which Albion makes a recommendation or provides its advice as to the Purchase or Sale of such Artworks (Including Sales and Purchases of works by Artists recommended by Albion).

alternatively, at Albion's election

You will pay a fee to Albion calculated by reference to at by Albion's hourly rates in relation the provisions of such Services namely £500.00 per hour for a director and £250 per hour for all other staff engaged on the supply of the services.

### 17. Invoices & Payment.

You shall pay each invoice Albion submits to you, in within 14 days of its date in cleared funds, in England.

Payment shall be deemed to have been made when Albion receives cleared funds, you will bear the costs of transmission and the risk of any loss of funds or failure in transmission irrespective as to who chooses the method of payment.

Partial payment of any invoice shall in no circumstances be deemed to discharge the full amount due.

If you fail to make full payment in accordance with this Clause you shall pay interest on the amount unpaid at the rate set out in the Late Payment of Commercial Debts (Interest) Act 1998 or where that Act does not apply at the rate of 2% per annum above Barclay's Bank base rate from the date when payment was due until payment is made in full compounded quarterly.

### 18. Statements made about Artwork.

All statements by Albion as to the authenticity, quality, attribution, description, date, age, provenance, value, title or condition of any Artwork constitutes Albion's judgement and opinion only.

Any opinion or statement as to value of any Artwork is highly subjective and constitutes Albion's assessment and perception of market conditions at any moment in time Albion and may include an assessment of the existence of willing buyers and willing sellers or other matters which Albion considers relevant.

Any statements made by Albion and opinions given by Albion shall not be used as the basis of making commercial decisions to Purchase or sell an Artwork or make any investment and shall be for guidance only and subject always to Clause 21 (Limitation of Liability)

### 19. Insurance and risk

Unless otherwise agreed in writing you are responsible for all risk of loss or damage to Artwork at all times and will insure against all foreseeable risks and loss in accordance with any schedule of condition which is obtained by you or by Albion on your behalf.

Albion will take reasonable care to appoint reputable carriers and will take reasonable care of your Artwork whilst it is on our possession.

Where Albion obtains Insurance for Artwork, you will be named as a loss payee and Albion's liability to you is limited to obtaining such Insurance cover as required by this Agreement for the risks set out in any such policy and shall not in any event exceed the sums paid under such policy or policies of insurance.

### 20. Passing of title

If you purchase Artwork from Albion including Artwork that we have, purchased for You, will not receive any legal or beneficial right title or interest in or to the Artwork until Albion has received payment in full in cleared funds all sums due in respect of that Artwork and that relating to any exchange of Artwork and any fees due to Albion which are outstanding .

If you take physical possession of the Artwork before full payment has been made, risk in the Artwork will pass to you on delivery however until full payment has been made you must:

- a) keep possession of the Artwork, not sell it or hand it over to any other person or dispose of any interest in it;
- b) in the case of an Artwork consisting of more than one item, keep those items together;

- c) keep any identifying marks showing that Albion is the owners of the Artwork and ensure these are clearly displayed;
- d) store the Artwork securely on your premises and at your own expense, separately from all other property;
- e) maintain insurance for all foreseeable risk relating to loss or damage to the Artwork naming Albion as loss payee and providing a copy of such policy of insurance when requested to do so.
- f) upon Albion's giving you reasonable notice, allow Albion or a third party acting on Albion's behalf to have access to the Artwork to inspect such Artwork; and
- g) preserve the Artwork in the same condition as it was on delivery and in particular, not restore, repair, clean or undertaken any work on it without Albion's written consent.

## 21. Limitation of liability

This Clause 21 sets out the entire financial liability of Albion to you and your successors in title, agents, trustees and anyone claiming through you in respect of any breach of this agreement and or for any loss or damage to any Artwork and any loss or damage attributable to any representation, misrepresentation, misstatement, tortious act or omission arising out of or in connection with this Agreement.

Any claim against Albion which relates to the provenance or condition of an Artwork which has been Sold supplied or authenticated or valued by Albion must be brought within a period of 2 years from the date of the invoice for the Artwork or the Service provided or the delivery to you of the Artwork whichever is the earlier.

You agree that in the event of any loss or damage to any Artwork you will rely solely upon your rights to be indemnified by the insurers and the payments to made to you under the relevant policy of insurance and in consequence thereof you hereby fully and effectively indemnify Albion and hold Albion and Albion's officers' directors' agents, employees and sub-contractors safe against all claims damages awards and cost (including legal costs on a full indemnity basis) relating to any claims loss damages or awards arising from any dealing in or loss of or damage to any Artwork which is the subject matter of our engagement.

Albion will be named as loss payee on any insurance policy and that you notify your insurers that all rights of subrogation express or implied are excluded.

Save for damage caused by fraud or deliberate malicious conduct of our employees Albion's liability for loss and damage will be limited to the amount attributable to loss and damage arising from events which are insured and shall not exceed the amount payable and actually paid to you under any policy of insurance.

Albion shall not be liable in any event whether contractual or non-contractual for any indirect or consequential loss, loss of profit, or expectation of profit, savings arising out of any expression of opinion or any statements made by Albion in relation to an Artwork including but not limited to the value Authenticity or provenance of an Artwork .

All warranties, terms and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this agreement.

**Albion shall not be responsible for any alleged loss or damage to or arising out of loss or damage to the Artwork if the Artwork is not shipped or delivered to the carrier without a schedule of condition, in accordance with these terms.**

Nothing in these Terms limits or excludes either Albion's or Your liability for death or personal injury resulting from negligence, fraud, or fraudulent misrepresentation.

You acknowledge that insurance is available for most foreseeable loss or damage to Artwork and you agree to rely on the terms indemnity and limits of all policies of insurance acquired accordance with these terms and conditions.

Albion will not be liable for loss of profits; including Indirect losses, loss of opportunity, loss of business; depletion of goodwill and/or similar losses; loss of anticipated savings; loss of goods; loss of contract; loss of use; loss of corruption of data or information; any special, indirect, consequential, or pure economic loss, costs, damages, charges or expenses; and

**Albion's total liability to you in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance, or contemplated performance, of this agreement shall in any event be limited to £50,000 (fifty thousand pounds)**

## 22. Rescission

In the event an adverse claim is made by a third party as to ownership authenticity or provenance or lawful entitlement by you to deal with any Artwork which is the subject of Services provided by Albion, Albion shall be entitled to terminate its engagement with immediate effect (wholly or just in relation to the questioned Artwork) or to rescind this agreement ab initio and terminate any contract for the Sale or Purchase of Artwork which is the subject of any such claim whether such contract was made by Albion as principal or as your agent on your behalf with your authority. In such event you will indemnify and hold safe Albion in respect of all loss it suffers as a result of such claim and or termination of Albion's engagement.

Upon notice of Albion's election to rescind any Sale or Purchase, you will promptly return the Artwork to Albion or as the case may be accept the redelivery of the Artwork to you.

All amounts paid will be repaid including any amount which represents a royalty due to the Artwork's author upon the resale of the Artwork ("Resale Royalty").

The refund of the price or the return of the Artwork as the case may be) together with any Resale Royalty will constitute your sole remedy and recourse against Albion with respect to any claims made by third parties in relation to any Artwork.

If ownership or title to any Artwork is disputed Albion may retain possession of such disputed Artwork until such dispute is resolved by a court of competent jurisdiction and You will be responsible for all costs and expense of storage insurance and fees during such period until the ownership of such Artwork is resolved.

## 23. Notices

Any notice to be given to us or that we must give to you in connection with these terms and conditions must be in writing and must be sent by post, or delivered by hand, to our address or to your last known address as notified to us by you as the case may be or by email to the email addresses from and to which we customarily send emails between one another.

## 24. VAT & other purchase taxes

All fees payable shall be subject to VAT or similar purchase taxes.

You will be responsible for payment of all import and export duties fees and taxes relating to the sale purchase import or export of or dealing in any Artwork.

## 25. Law and Jurisdiction

All contracts for the provisions of any services by Albion shall be deemed to have been made in England irrespective as to where the services are performed or where the Artwork is situated.

The situs of all debts and fees and monies due to either party shall be England.

These terms and conditions and any non-contractual obligations arising from or in connection with them shall in all respects be construed and take effect in accordance with English law.

## 26. Arbitration

Save that each party acknowledges the other's right to request the High Court to grant, interim relief, no court action shall be brought in relation to any claim or dispute until the arbitrator has made a final award, either one of us may, by giving written notice to the other, elect to have any disputes arising from or in connection with the provisions of any services or the sale purchase or commissioning or dealing in any Artwork to which these terms and conditions apply in whole or in part out of, or in connection with, these Terms and Conditions to be referred to a single arbitrator in London pursuant to the rules of the London Court of International Arbitration in accordance with the Arbitration Act 1996.

The seat of such an arbitration will be London and the language to be used in the arbitral proceedings will be English.

The decision of the arbitrator shall be final and binding and may be registered and executed by the party with the benefit of any award in any country or jurisdiction in which the paying party is resident or in or through which the paying party holds or transmits assets.