

# E(A)RTH GALLERY

## Terms and Conditions

### EarthGallery®

Welcome to our community! Please read our Terms and Conditions to maximize your experience with us.

[www.earthgallery.art](http://www.earthgallery.art) is a market that allows artists to showcase their works and sell them on consignment under a commercial model called Booking, under which clients receive continued personalized advice and guidance.

Our team will walk the buyers who visit our website through the exclusive selection of works picked according to an eclectic curatorial rationale among artists who show the best projections for the international market.

Our gallery operates in accordance with the provisions of Chilean law. Our website is owned by Earth Gallery®, with its principal place of business at 679 Nibaldo Correa St., district of Las Condes, Santiago de Chile.

For any information related to the site and its operation, please contact us at: [earthgalleryart8@gmail.com](mailto:earthgalleryart8@gmail.com)

### **1. PURPOSE**

The purpose of these terms and conditions is to set the rules governing the use of the Site by buyers as well as the obligations incumbent upon Earth Gallery® and the technological tools through which the works of art will be sold.

Earth Gallery®, hereinafter referred to as the Seller (A), hereby agrees to comply with these rules applicable to all services and content available on the Site.

The mere use of the Site automatically implies acceptance of these rules by the Buyer.

Sales made through the Site between the Buyer and the Seller (A) are governed by the General Conditions of Sale, which must be accepted by the Buyer and must be confirmed and accepted in writing by one of our Executives, Assistants, Curators, or whoever is determined by (A), in each transaction.

## **2. ENFORCEABILITY**

Earth Gallery reserves the right to modify, at any time, the Conditions of Sale taking into account any legal, jurisprudential, editorial, functional and/or technical changes that may be necessary, which in due time before any transaction will be informed on the site as well as in any other means deemed necessary and/or convenient for Customers and Artists.

Any use of the Site by the BUYER after the publication of these Terms and Conditions and their subsequent and informed modifications constitutes acceptance by the Buyer.

## **3. DESCRIPTION OF SERVICES**

The Site offers Buyers a market service that allows them to purchase works of art at a price that has been previously agreed upon by the artists and professional specialists who perform specific functions for our Earth Gallery®, to receive personalized assistance regarding the delivery of the works, and to participate in the post-sale management of the works sold according to the market and any cultural steps that may be required.

## **4. ACCESS TO SERVICES**

The use of the Site and its services implies the BUYER'S COMPLETE ACCEPTANCE.

Whether acting as a professional or in the name and on behalf of a legal entity, Buyer must provide:

- ID of the legal representative of the company;
- Bank account information of the legal entity;
- Email address;
- Telephone #;
- Username and password;
- Buyer's resume.

In using the services, Buyer undertakes to comply with the legislation applicable to this commercial activity, in particular the identification, accounting, social and tax obligations, as well as the obligations vis-à-vis the consumer in its capacity as Buyer.

## **5. OBLIGATIONS RELATING TO WORKS**

Earth Gallery® guarantees to Buyers that the AUTHENTICITY OF THE WORKS HAS BEEN CERTIFIED BY THE AUTHOR, AND IN THE EVENT THAT THE AUTHOR IS DECEASED OR DISABLED, BY HIS/HER SUCCESSION OR FOUNDATION, as the sole author of the work offered.

Earth Gallery undertakes to offer on the site only the works available for sale and to indicate without delay in case of unavailability due to force majeure.

The technical data sheet provided by (A) includes a brief description of the work and information regarding, above all, their genre, techniques, dimensions, weight, and nature.

Earth Gallery guarantees that the works do not in any way infringe the laws, regulations, and standards in force, nor do they infringe the rights of third parties.

As such, (A) undertakes not to offer for sale any false work and warrants the Buyer against any action that may be brought by a third party, including potential beneficiaries of the work, and any possible penalties that may result from such action.

Earth Gallery will provide the Buyer with a certificate of authenticity for the work sold.

Earth Gallery also sets the selling price of the work, including taxes, but EXCLUDING SHIPPING COSTS AND INSURANCE.

Earth Gallery® guarantees the veracity of the INFORMATION presented, as well as the non-deceptive nature of the illustrations of the work, and undertakes not to mislead potential Buyers as to the characteristics and condition of the work.

## **6. CONDITIONS OF SALE**

When a Buyer wishes to purchase a work, the seller of (A) must confirm each step of the sales process with the Buyer through an email or text message.

The Seller (A) has 48 hours from receipt of the intention to purchase by the Buyer to confirm the availability of the work, and to agree upon the PAYMENT, NATIONAL SHIPPING OR EXPORT, AND DELIVERY OF THE WORK to the buyer, in an exclusive, reserved and guaranteed manner.

If no response is received within 48 hours, the sale will be cancelled and the piece of work will be available for sale again on the Site.

If Seller (A) confirms the availability of the Work requested by Buyer within 48 hours, Seller shall undertake not to accept another offer by any third party.

The Work will then be shown as "sold" on the Site and the artist will be informed of the opening for another artwork.

If after 3 business days Earth Gallery has not validated the order by confirming receipt of payment, the order will be cancelled and the artwork will be available for sale again on the Site.

If confirmation of receipt of payment is received before the 3-working day deadline, the sale shall be deemed closed under the terms of the General Conditions of Sale accepted by the Buyer and the Seller.

Subsequently, Earth Gallery will entrust the Work to the carrier agreed upon with the buyer, prioritizing and guaranteeing the quality and efficiency of the transport.

## **7. SALES PRICES AND PAYMENT TERMS**

It is hereby agreed that the price (including taxes) paid by the Buyer is the price set by the artist plus a sales commission for Earth Gallery.

**Seller (A) shall determine the final sale price, taking into account the price set by the artist, commissions, taxes and shipping costs, the latter being the responsibility of the buyer.**

The Buyer accepts the use of the payment services presented in a timely manner by Earth Gallery, the terms of use of which will be made available to Buyer as the Sale itself proceeds.

Earth Gallery will pay the Artist the agreed value of the work (without commission) no later than 15 business days after the sale. A Sample Contract to be filled with the information of the Artist and/or his/her Representative is attached.

Seller (A) expressly waives the right to claim the benefit of interest generated by the temporary immobilization of the amounts received in connection with the transaction.

In exchange for its services, Earth Gallery will charge the Seller (A) a commission of 40% of the price (including taxes) paid by the Buyer, excluding shipping costs.

## **8. DELIVERY OF THE WORKS**

For each piece of work sold, Earth Gallery shall inform Buyer of the expected delivery methods, the cost of delivery, and packaging costs.

When Seller (A) receives Buyer's intent to purchase, Seller will indicate for each artwork, the hours of availability during which the Artwork may be picked up by a supplier designated by Earth Gallery at the address indicated by Artist.

Earth Gallery reserves the right to refuse receipt of the Artwork in the absence of packaging that does not correspond to the criteria established by Earth Gallery jointly with the artist.

The Seller (A) and the Artist undertake to respect the dates set with the carrier for the removal of the Piece of Work.

**This delivery method is mandatory for all works offered for sale on the Site.**

It is understood that Earth Gallery is solely responsible for the risk of delivery of the work and is bound by the obligations incumbent upon it in this capacity, in particular those relating to deadlines, the quality of the packaging, and the conformity of the work delivered.

## **9. RIGHT OF WITHDRAWAL**

In accordance with the legal provisions in force, the Buyer has a period of 5 business days from the receipt of the Work to exercise its right of withdrawal with respect to the Seller (A), free of charge and on grounds that are well-founded and agreed with Earth Gallery.

The Buyer shall exercise his right of withdrawal with Earth Gallery by sending an e-mail to the address provided on condition of grounds, such as, DAMAGE, QUALITY OF MATERIAL, CERTIFIED NON-AUTHENTICITY, AND INACCURATE DIMENSIONS.

Earth Gallery will then process the Buyer's withdrawal request and proceed to reimburse the Buyer within 14 business days from the date Earth Gallery was informed that the Buyer's had exercised its right of withdrawal.

Only the price paid by Buyer for the Piece of Work (excluding shipping costs) will be reimbursed.

## **10. INTELLECTUAL PROPERTY**

In addition to the warranties owed by Seller (A) with respect to the rights relating to the Works and the free disposal thereof, the Artist grants to Earth Gallery, without geographical limits and free of charge, the right to:

- Publish, edit, disseminate and use temporarily or permanently, directly or indirectly, in whole or in fragments, alone or in association with other works, by any process and in any medium of the works;
- Communicate to the public, represent, disseminate the works in whole or in part, directly or indirectly, by any means of communication to the public and, in particular, by broadcasting or electronic communication on all networks;

The transfer of rights over the Works shall be granted solely for publication on the Site, but also for communication and marketing purposes within the broader scope of Earth Gallery's activity.

Such transfer of rights shall be granted for the duration of the contractual relationship between Earth Gallery and the Artist.

Earth Gallery is the exclusive owner of all intellectual property rights related to the development of the Site and its contents, unless expressly stated otherwise.

The Site, trademarks, designs, models, images, texts, photos, logos, graphic designs, software, as well as programs, search engines, databases, sounds, videos, domain names, design and any other content available on the Site, with the exception of images, texts and photos provided by the Artist, and although this list is by no means exhaustive, shall be the exclusive property of Earth Gallery and shall be protected by the provisions in force regarding copyrights, trademarks, patents, and any other intellectual or industrial property rights.

THESE TERMS AND CONDITIONS DO NOT imply the transfer of any intellectual property rights BY THE ARTIST for either the development or the content of the Site.

Earth Gallery respects the moral right of the Artist which remains imprescriptible and inalienable and undertakes to respect the Artist's right of authorship by mentioning his/her name on each of his/her reproductions in our media.

Earth Gallery also undertakes to comply with the Artist's requests concerning the right of respect for the integrity, the right of disclosure and the right to cancellation or withdrawal of his or her works.

## **11. OBLIGATIONS OF SELLER (A)**

Seller (A) undertakes to provide quality service to Buyers.

In this regard, any Buyer shall have the possibility to report a claim relating to the works.

Earth Gallery will inform the Artist by e-mail of any complaint filed by a Buyer about a piece of work.

Disputes will be resolved directly between Buyer and Seller (A).

Seller (A) will make every effort to resolve the dispute with Buyer amicably.

The Artist agrees to check the emails received from Earth Gallery at least once a day.

Likewise, the Artist agrees to respond to calls by members of our Earth Gallery staff.

## **12. PERSONAL DATA**

With regard to information technology, files and individual freedoms, the Artist shall have the right to access, modify, rectify, and delete his/her personal data processed through the Site, as well as the right to object to the communication of such data to third parties for justified reasons by sending a request to Earth Gallery.

Earth Gallery will use this data for the execution of its services, as well as to reinforce and personalize its communication, in particular through letters/emails, and finally to personalize the Site.

The personal data communicated by the Artist will be destroyed no later than 2 months after its withdrawal.

Earth Gallery reserves the right to store certain data in order to justify, if necessary, the fulfillment of its contractual or legal obligations. The data stored in this way will be limited to what is strictly necessary for the operation of the service.

Earth Gallery will undertake to implement all necessary measures to protect the confidentiality of the information provided by BOTH ARTISTS AND BUYERS to the maximum extent possible.

### **13. DURATION**

These Terms and Conditions shall apply for the duration of the commercial relationship between the Parties, that is, one (1) year for artists and indefinite for Buyers.

### **14. TECHNICAL ASSISTANCE**

Earth Gallery will make available to Buyers a personalized service able to provide all the necessary information for the Acquisition of the Works of Art and their respective Authors (Artists).

### **15. ENTIRE AGREEMENT**

These Terms and Conditions constitute the entirety of the Terms and Conditions, irrespective of any particular terms and conditions that may and/or should be agreed upon.

### **16. FORCE MAJEURE**

In the event of force majeure events lasting more than two months, these Terms and Conditions shall automatically terminate, unless otherwise agreed by the parties.

Cases of force majeure or fortuitous events are expressly considered to be those that are usually retained by the jurisprudence of the Chilean courts and tribunals.

### **17. APPLICABLE LAWS**

These Terms and Conditions are governed by Chilean law, as well as by the substantive and formal rules, regardless of the place of performance of the obligations hereunder.

## **18. COMPETENT JURISDICTION**

IN THE EVENT OF A CLAIM by one or more parties, they shall undertake to jointly seek an AMICABLE solution prior to any litigation.

In accordance with the provisions of the Chilean Code of Commerce, the Chilean consumer protection agency (*Servicio del Consumidor*) may be called upon for any litigation by one or both parties.

For all legal effects, the Chilean courts shall have jurisdiction and venue.