

## **GAVAGAN ART TERMS AND CONDITIONS FOR THE SUPPLY OF ARTWORK(S)**

### **1. Basis of Sale**

- 1.1. These Terms, the Order and our price list are considered by us to set out the whole agreement between you and us for the sale of the Artwork(s) and supersede and extinguish all previous agreements, promises, assurances, representations and understandings between us. Please check that the details on the Order are complete and accurate before you commit yourself to the contract. If you think that there is an omission or a mistake, please make sure that you ask us to confirm any changes in writing. We do not accept responsibility for statements and representations made by an unauthorised employee or agent. By placing an Order with us you agree that you have read and understood the Terms of Sale.
- 1.2. Any samples, drawings, descriptions or advertising we issue, and any descriptions or illustrations contained in our websites, newsletters, catalogues or brochures, are issued or published solely to provide you with an approximate idea of the Artwork(s) they describe. They do not form part of the contract between you and us or any other contract between you and us for the sale of the Artwork(s).
- 1.3. If any of these Terms are inconsistent with any term of the Order, the Order with any agreed terms stated within shall prevail.
- 1.4. The Order is an offer by you to enter into a binding contract, which we are free to accept or decline at our absolute discretion.
- 1.5. These Terms shall become binding on you and us when:
  - 1.5.1. we issue you with a Sales Invoice; or
  - 1.5.2. we notify you that the Artwork(s) are ready, whichever is the earlier, at which point a contract shall come into existence between us. Title to the artwork passes to you when the artwork has been fully paid for and you have been notified that your artwork is available for collection from the gallery or for delivery to you.
  - 1.5.3. Please quote the Sales Invoice number (where applicable) in all subsequent correspondence with us relating to the Order.
  - 1.5.4. We have the right to revise and amend these Terms from time to time to reflect changes in market conditions affecting our business, changes in technology, changes in payment methods, changes in relevant laws and regulatory requirements and changes in our system's capabilities. You will be subject to the policies and terms in force at the time that you order the Artwork(s) from us, unless any change to those policies or these terms is required by law or government or regulatory authority (in which case, it will apply to orders you have previously placed that we have not yet fulfilled).
- 1.6. Gavagan Art is not regulated by the Financial Conduct Authority and is not authorised to offer advice on current and future investment, whether regulated or unregulated. If you are making investment decisions you should seek advice from an independent financial advisor or other regulated professional. Investments in art can go down as well as up. Gavagan Art gives no guarantee, warranty or representation as to the investment potential of the Artwork(s) that it offers for sale.

### **2. The Artwork(s)**

- 2.1. We warrant that prior to despatch, the Artwork(s) shall:
  - 2.1.1. conform in all material respects with their description subject to any qualification or representation contained in the website, newsletter, brochures, advertisements or other documentation;
  - 2.1.2. be of satisfactory quality as defined under the Consumer Rights Act 2015;
  - 2.1.3. be fit for any purpose we represent in writing the Artwork(s) are fit for or for any reasonable purpose for which you use the Artwork(s);
  - 2.1.4. be free from material defects in design and material insofar as it is through the expression of craft or artistry intended by the artiste; and
  - 2.1.5. comply with all applicable statutory and regulatory requirements for selling the Artwork(s) in the United Kingdom.
- 2.2. This warranty is in addition to your legal rights in relation to Artwork(s) which are faulty or which otherwise do not conform with these Terms. Advice about your legal rights is available from your local Citizens' Advice Bureau or trading standards.

- 2.3. This warranty does not apply to any defect in the Artwork(s) arising from fair wear and tear, wilful damage, accident, negligence by you or any third party, if you use the Artwork(s) in a way that we do not recommend, or your failure to follow our instructions, or any alteration or repair you carry out without our prior written approval.
- 2.4. We will take reasonable steps to pack the Artwork(s) properly and to ensure that you receive your Order in good condition.
- 2.5. These Terms apply to any repaired or replacement Artwork(s) we may supply to you in the unlikely event that the original Artwork(s) are faulty or do not otherwise conform with these Terms.
- 2.6. You shall examine your artwork carefully for any damage and contact us immediately should any defects be identified, in order that we can take the necessary steps to repair, replace, or if necessary refund you. Upon receipt of your artwork please remove all packaging and inspect the piece closely to ensure that it is free from any damage or defect. Should you be less than satisfied with the quality of the artwork itself or any aspect of the frame, you should notify us no later than 14 working days from receipt of the Artwork(s). Any delay in notifying us might adversely affect your legal rights.
- 2.7. You should always seek relevant advice when maintaining your artwork.

### **3. Delivery**

- 3.1. You may collect the Artwork(s) from us or, if specified at the point of Order and for an additional charge, we will arrange delivery of the Artwork(s) to you.
- 3.2. Delivery of the Order will be completed when either we or our delivery agents deliver the Artwork(s) to you or we make the Artwork(s) available for collection by you.
- 3.3. We will take reasonable steps to meet any estimated delivery or collection date specified in the Order or otherwise agreed by us in writing. However, occasionally this date may be affected by factors beyond our control and so cannot be guaranteed. We will let you know if we become aware of an unexpected delay and will arrange a new estimated date with you.
- 3.4. If you fail to take delivery of the Artwork(s) within 7 calendar days of the date on which we notify you that the Artwork(s) are ready then, except where this failure is caused by our failure to comply with these Terms or by an event beyond your control:
  - 3.4.1. we will store the Artwork(s) until delivery takes place and reserve the right to charge you a reasonable sum, to cover storage costs thereafter such as expenses and insurance; and
  - 3.4.2. we shall have no liability to you for late delivery.
- 3.5. If you have not taken delivery of the Artwork(s) within fourteen calendar days of our notifying you that they are ready, we may, after giving you reasonable prior notice in writing, resell or otherwise dispose of part or all of the Artwork(s) and, after deducting reasonable storage and selling costs, credit the balance to a client account held by us or charge you for any shortfall below their price.
- 3.6. If we are not able to deliver the whole of the Order at one time due to operational reasons or shortage of stock, we may deliver the order in instalments. We may charge a small delivery cost to cover the cost of these instalment delivery but will always consult with you prior to despatch. If you ask us to deliver the Order in instalments, we may charge you extra delivery costs. Each instalment shall constitute a separate contract. If we are late delivering an instalment or one instalment is faulty, that will not entitle you to cancel the contract and we are entitled to fulfil the remainder of the instalments as agreed under the contract.

### **4. Returns**

- 4.1. In the unlikely event that the Artwork(s) do not conform with these Terms, please let us know as soon as possible after delivery or collection. We will ask you to return the Artwork(s) to us in its original packaging or (at our option) arrange collection and once we have checked that the Artwork(s) are damaged or defective, we will either (at our option):
  - 4.1.1. provide you with a full or partial refund (including refund of any reasonable delivery charges which you have incurred); or
  - 4.1.2. replace the Artwork(s).
- 4.2. Artwork(s) will not be accepted for return unless we are reasonably satisfied that they are damaged or defective.
- 4.3. Artwork(s) to be returned by you to us must clearly show the Order number on the packaging.
- 4.4. These Terms will apply to any replacement Artwork(s) we supply to you.

4.5. Please note that no claims will be accepted in respect of any changes in colouring of artworks which have occurred through natural processes.

## **5. Cancellation**

5.1. If you are contracting as a consumer and your Order is not taken in person at our business premises, you may cancel your contract to purchase the Artwork(s) at any time within 14 days, beginning on the day after you receive the Artwork(s). This right of cancellation does not, however, apply in the case of bespoke Artwork(s) made or commissioned to your specific order. To cancel a Contract, you just need to let us know that you have decided to cancel. You can contact Mary Gavagan on telephone number 07799797961, or by email [info@gavaganart.com](mailto:info@gavaganart.com). If you are e-mailing us or writing to us please include your order number. If you send us your cancellation notice by e-mail your cancellation is effective when Mary Gavagan confirms receipt of the cancellation.

5.2. If you cancel your Contract we will:

5.2.1. refund you the price you paid for the Artwork(s). However, please note we are permitted by law to reduce your refund to reflect any reduction in the value of the Artwork(s), if this has been caused by your handling them in a way which would not be permitted in any of our exhibition or art galleries;

5.2.2. refund any delivery costs you have paid, although, as permitted by law, the maximum refund will be the costs of delivery by the least expensive delivery method we offer (provided that this is a common and generally acceptable method); and

5.2.3. make any refunds due to you as soon as possible and in any event within the deadlines indicated below:

5.2.3.1. if you have received the Artwork(s) and we have not offered to collect it from you: 14 days after the day on which we receive the Artwork(s) back from you or, if earlier, the day on which you provide us with evidence that you have sent the Artwork(s) back to us.

5.2.3.2. if you have not received the Artwork(s) or you have received them and we have offered to collect them from you: 14 days after you inform us of your decision to cancel the Contract.

5.3. We will refund you on the credit card or debit card used by you to pay.

5.4. If Artwork(s) have been delivered to you before you decide to cancel your Contract:

5.4.1. then you must return them to us without undue delay and in any event not later than 14 days after the day on which you let us know that you wish to cancel the Contract. You can either send them back, return them to us in-store or hand them to our authorised carrier. If we have offered to collect the Artwork(s) from you, we will collect the Artwork(s) from the address to which they were delivered. We will contact you to arrange a suitable time for collection;

5.4.2. unless the Artwork(s) are faulty or not as described, you will be responsible for the cost of returning the Artwork(s) to us. If the Artwork(s) is one which cannot be returned by post, we estimate that if you use the carrier which delivered the Artwork(s) to you, these costs should not exceed the sums we charged you for delivery. If we have offered to collect the Product from you, we will charge you the direct cost to us of collection.

5.5. Apart from the special circumstances described above, you may only cancel your order with our consent in writing. Any deposit held will be used to defray our initial costs and expenses of fulfilment and any remaining deposit (or part of it) will be retained by us to be used as a credit against the purchase of other Artwork(s) for the same or higher price. In the case of Artwork(s) which we are unlikely to be able to use or sell elsewhere, we may, if we have agreed to a cancellation, also deduct the value of these items from your deposit and ask you to pay any additional amount if their value is more than the amount of your deposit.

5.6. Advice about your legal right to cancel the contract is available from your local Citizen's Advice Bureau or Trading Standards Office.

## **6. Title and Risk**

6.1. The Artwork(s) will be your responsibility from the first available point for delivery or from when you are notified that the artwork is available for collection from the gallery or any other location which has been mutually agreed (and the artwork is fully paid for).

6.2. Ownership of the Artwork(s) will only pass to you when we receive payment in full of all sums due for the Artwork(s), including delivery charges, and delivery being available to be completed. We reserve the right to repossess any Artwork(s) in which We retain legal and beneficial ownership if We do not receive full payment.

6.3. We reserve the right to instruct finance payments to commence 14 calendar days after we have notified you that your Artwork(s) are available.

## **7. Price and Payment**

7.1. All prices indicated are current prices but may be subject to change at the artiste's sole discretion.

7.2. These prices exclude :

7.2.1. VAT;

7.3. delivery costs, which will be notified to you prior to the acceptance of your offer. These prices include framing where indicated on our Order or website.

7.4. It is always possible that, despite our best efforts, some of the Artwork(s) we sell may be incorrectly priced. We will normally check prices as part of our dispatch procedures so that, where the Artwork(s)' correct price is less than our stated price, we will charge the lower amount when dispatching the Artwork(s) to you. If the Artwork(s)' correct price is higher than the price stated on the Order, we will normally, at our discretion, either contact you for instructions before dispatching the Artwork(s), or reject the Order and tell you. If the pricing error is obvious and unmistakable and could have reasonably been recognised by you as a mispricing, we do not have to provide the Artwork(s) to you at the incorrect (lower) price.

7.5. Payment in cleared funds for all Artwork(s) must be made at the time when Artwork(s) are collected or with the Order, as the case may be. We accept payment by BACS in pound sterling, credit finance with Own Art (subject to status) and most debit and credit cards. For financing options with Own Art please visit <https://www.ownart.org.uk/>

7.6. We are not responsible for the collection, remittance and/or payment of any taxes, charges, levies, assessments or other fees of any kind imposed by any governmental or other authority in respect of the purchase, importation, sale or distribution of the Artwork(s) and these are and will remain your responsibility.

## **8. Original Works**

8.1. Where we have commissioned and/or sold to you an original work of art then, no rights to exploit any intellectual property rights, whether by copying such work or licensing such work for reproduction or publishing such work in any format, including, but not limited to, sculpture, limited edition print, illustration or other form of artwork or advertising, is granted to you, nor should any such grant be implied or inferred. All such rights are expressly reserved to the artiste or his or her estate (as the case may be) and we do not guarantee that any such rights either will or will not be exercised.

## **9. Limitation of Liability**

9.1. If we fail to comply with these Terms, we are responsible for loss or damage you suffer that is a foreseeable result of our breach of the Terms or our negligence, but we are not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if it is an obvious consequence of our breach or if it was contemplated by you and us at the time we entered into this contract and shall not exceed the purchase price of the Product in aggregate for any one or all claims.

9.2. We provide the Artwork(s) to You only for Your personal and private use/purposes. We make no warranty or representation that Artwork(s), or other Artwork(s) or materials that We provide to You are fit for commercial, business, industrial, trade, craft or professional purposes of any kind (including resale). We will not be liable to You for any loss of profit, loss of business, interruption to business or for any loss of business opportunity.

9.3. Provided that we have taken all reasonable steps to establish the provenance of an original work, in the event of it being established that such work is not attributable to the relevant artist, our liability shall be limited to refunding the original cost of the artwork to you, up to a maximum of £1,000 (whichever is the higher) in aggregate of all claims and we shall not be responsible for any other losses including loss of anticipated investment value.

9.4. You acknowledge that in entering into this contract you do not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement or otherwise confirmed by us in writing.

9.5. We do not exclude or limit in any way our liability for:

9.5.1. death or personal injury caused by our negligence or the negligence of our employees, agents or subcontractors;

9.5.2. fraud or fraudulent misrepresentation; or

9.5.3. any other liability which we are unable to exclude by law.

9.6. if you are a Consumer as defined by the Consumer Rights Act 2015, or a consumer for the purposes of any other consumer protection legislation, nothing in these Terms and Conditions is intended to or will exclude, limit prejudice, or otherwise affect any of Our duties or obligations to You, or Your rights or remedies, or Our liability to You under the Consumer Rights Act 2015, the Regulations, the Consumer Protection Act 1987, or any other consumer protection legislation, as that legislation is amended from time to time. This includes, without limitation, Your rights and remedies under all such legislation for any breach of any term of the contract (whether the terms is part of these Terms and Conditions or is a term implied by any such legislation) and for any non-conformity of the Artwork(s) with the contract. For more details of Your legal rights please refer to Your local Citizens Advice Bureau or Trading Standards Office.

#### **10. Events Outside Our Control**

- 10.1. We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under these Terms that is caused by events outside our reasonable control (Force Majeure Event).
- 10.2. A Force Majeure Event includes any act, event, non-occurrence, omission or accident beyond our reasonable control and includes, in particular (without limitation), the following:
- 10.2.1. strikes, lock-outs or other industrial action; or
  - 10.2.2. civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war; or
  - 10.2.3. fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster; or
  - 10.2.4. impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport; or
  - 10.2.5. impossibility of the use of public or private telecommunications networks.
- 10.3. Our obligations under these Terms are suspended for the period that the Force Majeure Event continues, and we will have an extension of time to perform these obligations for the duration of that period. We will take reasonable steps to bring the Force Majeure Event to a close or to find a solution by which our obligations under these Terms can be performed despite the Force Majeure Event.

#### **11. Assignment**

- 11.1. You may not transfer any of your rights or obligations under these Terms to another person without our prior written consent, which we will not withhold unreasonably. We can transfer all or any of our rights and obligations under these Terms to another organisation, but this will not affect your rights under these Terms.

#### **12. Notices**

- 12.1. All notices sent by you to us must be sent to Gavagan Art, Storey Institute Meeting House Lane, Lancaster, Lancashire LA1 1TH or by email to [info@gavaganart.com](mailto:info@gavaganart.com). We may give notice to you at either the e-mail or postal address you provide to us in the Order. Notice will be deemed received and properly served 24 hours after an e-mail is sent or 3 days after the date of posting of any letter. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that the letter was properly addressed, stamped and placed in the post and, in the case of an e-mail, that the e-mail was sent to the specified e-mail address of the addressee.

#### **13. Data Protection**

- 13.1. We will only use your personal information as set out in our Privacy Policy available on our website.

#### **14. General**

- 14.1. If any court or competent authority decides that any of the provisions of these Terms are invalid, unlawful or unenforceable to any extent, the term will, to that extent only, be severed from the remaining terms, which will continue to be valid to the fullest extent permitted by law.
- 14.2. If we fail, at any time while these Terms are in force, to insist that you perform any of your obligations under these Terms, or if we do not exercise any of our rights or remedies under these Terms, that will not mean that we have waived such rights or remedies and will not mean that you do not have to comply with those obligations. If we do waive a default by you, that will not mean that we will automatically waive any subsequent default by you. No waiver by us of any of these Terms shall be effective unless in writing.
- 14.3. A person who is not party to these Terms shall not have any rights under or in connection with them under the Contracts (Rights of Third Parties) Act 1999.
- 14.4. Whilst We use all reasonable endeavours to ensure that You are satisfied with the Artwork(s) and Your dealings with Us, We want to hear from You if you have any complaint about the Artwork(s) or any other

complaint about Us. Please raise any complaint with Mary Gavagan contactable at 07799797961 or email [info@gavaganart.com](mailto:info@gavaganart.com)

14.5. These Terms shall be governed by English law and we both agree to the non-exclusive jurisdiction of the English courts.

14.6. Any dispute, controversy, proceedings or claim between you and Us relating to these Terms and Conditions the Contract, or the relationship between you and Us (whether contractual or otherwise) shall be subject to the jurisdiction of the courts of England.

**15. Interpretation**

15.1. The definitions in this clause apply in the terms and conditions set out in this document:

15.2. Headings do not affect the interpretation of these terms.

Cooling Off Period	as defined under the Consumer Rights Act 2015
Force Majeure Event	shall have the meaning given in clause 11
Artwork(s)	the Artwork(s) that we are selling to you
Order	your selection of the Artwork(s) from display on our website or your order for the Artwork(s) as set out in our Sales Invoice
Terms	the terms and conditions set out in this document
We, Us, Our	Mary Gavagan trading as Gavagan Art, Storey Institute, Meeting House Lane, Lancaster, LA1 1TH
Writing	or written includes faxes and e-mail
You	the person or persons which is buying the Artwork(s) from us.