

Selling your work through Barnsley Museums

CONDITIONS OF SALE

The following terms and conditions of sale shall apply to work that has been chosen by the Council to be displayed for sale at the Council's premises.

1. In this agreement the following definitions shall apply:

"Artwork" means the series or collection of works or crafts created by the Seller to be stored and displayed for sale at the Premises;

"Barnsley Museums" means employees of the Council with operational responsibility for the Premises;

"Council" means Barnsley Metropolitan Borough Council;

"Period of Display" means the period during which the Artwork is stored and displayed by the Council;

"Premises" means the gallery shops at:

- Cooper Gallery, Church Street, Barnsley S70 2AH
- Elsecar Heritage Centre, Wath Rd, Elsecar, Barnsley S74 8HJ
- Experience Barnsley, Town Hall, Church St, Barnsley S70 2TA
- Cannon Hall Museum, Bark House Ln, Cawthorne, Barnsley S75 4AT
- Worsbrough Mill, Worsbrough Bridge, Worsbrough, Barnsley S70 5LJ

"Seller" means the artist named in section 1 of this agreement, whose artwork has been chosen by the Council to be displayed for sale at the Premises.

2. The Council's responsibilities

2.1. The Council shall:

2.1.1. Notify the Seller by email that it has been successful in its application to display its Artwork for sale at the Premises;

2.1.2. Issue to the Seller a vendor form (to be duly completed by the Seller) to enable the Seller to receive payment for any Artwork sold;

2.1.3. Issue to the Seller a written order for the Artwork (to be issued by the Barnsley Museums retail team);

2.1.4. Provide a sale space for the Artwork in one of the Premises, such space to be determined by the Barnsley Museums retail team (in their absolute discretion). In order to provide an opportunity for a variety of artists, artwork may be moved around the Premises and displays changed or refreshed often. The Seller shall have no designated position or amount of sale space within the Premises and cannot pre-determine or influence where or how their Artwork is displayed. The initial Period of Display shall be 3 months. However, the Council aims to provide as much variety as possible to its customers and therefore reserves the right in its absolute discretion (and without any obligation or liability to the Seller) to change, reduce or temporarily remove items from display, depending on the needs of the Council and its retail offer;

2.1.5. Be responsible for unpacking the Artwork and for hanging or otherwise installing it at the Premises;

2.1.6. Notify the Seller when the Period of Display for its Artwork has expired and take down or dismantle the installation of the Artwork;

2.1.7. Not lend the Artwork to third parties without the Seller's prior written consent.

3. Seller's responsibilities

3.1. The Seller shall arrange and pay for the packing of its Artwork and shall provide at its own cost appropriate transportation of the Artwork to the Premises where the Artwork is to be displayed for sale. The Seller must ensure its Artwork is adequately packed and delivered to the Premises to protect their work.

3.2. All Artwork will be condition checked upon arrival at the Premises and any damaged or unsuitable items will be returned to the Seller at the Seller's cost and expense. The Seller must (at its own cost and expense) arrange delivery of its Artwork to and from the Premises. The Council shall not be responsible or liable for postage of items to be delivered or returned to the Seller.

3.3. The Artwork must be delivered to the Premises where the Artwork is to be displayed for sale, with a delivery note clearly stating the number of products delivered and the individual RRP of each item.

3.4. The Seller shall be responsible for collecting its Artwork from the Premises at the end of the Period of Display. The Seller shall arrange and pay for the removal of the Artwork from the Premises within a period of twenty-eight days from the end of the Period of Display. For the avoidance of doubt, the Council reserves the right, if the Seller fails to collect the Artwork within such period, to put the Artwork into storage and to charge the Seller for reasonable storage costs. The Council shall be entitled (without liability to the Seller) to dispose of any Artwork that is not collected from the Premises (or from storage) within 3 months of the end of the Period of Display, without liability to the Seller.

3.5. All Artwork provided by the Seller for display and sale under this agreement must be:

3.5.1. of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Seller expressly or by implication, and in this respect the Council relies on the Seller's skill and judgement;

3.5.2. be free from defects in design, material and workmanship; and

3.5.3. comply with all applicable statutory and regulatory requirements.

4. Seller's warranties

4.1. The Seller warrants and undertakes that:

4.1.1. it is the sole owner of the Artwork;

4.1.2. it shall notify the Council of any third-party right, interest or claim in respect of the Artwork as soon as it becomes aware of it;

4.1.3. it shall notify the Council if the Artwork or its display has or could possibly be found to breach any libel, privacy, or obscenity laws, or infringe any right of any third party and if so shall use its best endeavours to give the Council all available information about the Artwork and any previous history concerning charges or allegations under such laws relating to the Artwork; and

4.1.4. Where the Artwork contains the likeness or other details of a third party individual and the storage, display and other and use of the Artwork in any part of the world as contemplated by this agreement 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.

4.1.5. The Seller indemnifies the Council, and shall keep it indemnified, against all claims, costs and damages that arise directly or indirectly from the Seller's breach of any of the warranties or undertakings in this agreement, whether implied or express.

5. Copyright and image rights

5.1. For the avoidance of doubt, unless otherwise agreed by the parties, no copyright in the Artwork shall pass to the Council under this agreement and the Artwork shall remain the property of the Seller.

5.2. The Seller permits the Council, free of any charge or licence fee, the non-exclusive right to produce, during the period of display at the Premises, one or more images of the Artwork (**Images**) and grants to the Council a non-exclusive licence to use and reproduce the Images (including on the Council's website, its social networking and other online pages and sites that mention or promote the exhibition of the Artwork) for the following purposes:

5.2.1. to support or enhance the exhibition of the Artwork including the production of printed exhibition catalogue;

5.2.2. archival and education purposes, including the inclusion of Images in teachers' packs and support materials; and

5.2.3. to publicise and promote the Council, Barnsley Museums and/or the Premises.

5.3. The Seller permits the Council in perpetuity after the expiry of the Period of Display the non-exclusive right in perpetuity to use and reproduce the Images, free of any charge or licence fee, for its private archival purposes and to continue to sell and distribute copies of any exhibition catalogue or other material incorporating the Images produced by it during the Period of Display.

5.4. The Seller waives in favour of the Council all so-called moral rights in the Images to which it is or may become entitled to the extent necessary to enable the Council's exploitation of the Images under this agreement and grants it all other rights necessary to exploit the rights granted to it in paragraph 5.2.

5.5. The Seller further warrants and undertakes that it owns or has obtained all necessary rights and permissions from all, if any, third-party holders of rights in and to the Artwork in order to grant the rights in paragraph 5.2 including a full waiver of any so-called moral rights in the Images owned by or accruing to such third party. I

6. Interpretation Material

6.1. The Seller shall deliver to the Council with the Artwork certain interpretation material about the Artwork and full and accurate biographical information about (and photograph of, where requested) the Seller (**Interpretation Material**) which the Council may, at its discretion, use in connection with the display of the Artwork.

6.2. The Seller grants to the Council a non-exclusive licence to use and reproduce the Interpretation Material during the display period for exhibition, publicity and educational purposes only (including on the Council's website, its social networking and other online pages and sites and for the purposes of an exhibition catalogue) and, in perpetuity, after the expiry of the Period of Display the right to use and reproduce the Interpretation Material for its private archival purposes and to continue to sell and distribute copies of any exhibition catalogue or other material incorporating the Interpretation Material produced by it during the Period of Display.

7. Sale of the Artwork and payment

7.1. During the Period of Display the Council shall offer the Artwork for sale at its Premises for such price as the parties shall agree. However, the Council shall not be under any obligation actively to market the Artwork or take any steps to increase the likelihood of a sale.

7.2. All Artwork will be added to the Council's stock management system and daily sales recorded electronically.

7.3. On a sale of the Artwork that results from its display by the Council the Seller shall pay to the Council a commission equal to 35% plus VAT of the wall price ("**Commission Sum**"). The Council shall collect from the purchaser the sale price and shall deduct from the sale price the Commission Sum before paying the balance of the sale price to the Seller. Such balance shall be paid to the Seller within the calendar month following the month of the sale, by BACS transfer.

7.4. For the avoidance of doubt, the Council shall not be liable for any loss incurred by the Seller or any loss of potential proceeds in connection with any such sale or offer to purchase from any third party.

7.5. The Seller is responsible and liable for its own VAT payment on the non-commissionable element of the sale.

8. Insurance and Liability

8.1. The Seller shall take out and maintain insurance for the Artwork (at its own cost and with a reputable insurance company) including cover for any damage, loss or theft during its packing and transport to and from the Premises and during its storage and/or display at the Premises. The Seller shall ensure that it has in place the following minimum levels of insurance cover:

8.1.1. product liability insurance in a minimum indemnity sum of £5 million in respect of each claim or series of connected claims; and

8.1.2. public liability insurance in a minimum indemnity sum of £5 million in respect of each claim or series of connected claims.

And shall upon request by the Council and to the satisfaction of the Council produce written proof of the insurances required under this paragraph 8.1.

8.2. In the event any item of the Artwork suffers damage whilst being stored or displayed at the Premises (after being condition checked upon arrival by Barnsley Museums) and to the extent that the damage is attributable to the negligent acts or omissions of the Council, its employees, agents or subcontractors, the Council shall (at the Council's discretion) either:

8.2.1. arrange with the Seller to have the item repaired (at the Council's reasonable cost);
or

8.2.2. pay the Seller the sale price for the item less the Commission Sum.

9. The Seller shall keep the Council indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct losses, and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Council as a result of or in connection with:

9.1.1. any claim made against the Council for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the supply or use of the Artwork, to the extent that the claim is attributable to the acts or omissions of the Seller, its employees, agents or subcontractors;

9.1.2. any claim made against the Council by a third party for death, personal injury or damage to property arising out of or in connection with defects in the Artwork, to the extent that the defects in the Artwork are attributable to the acts or omissions of the Seller, its employees, agents or subcontractors; and

9.1.3. any claim made against the Council by a third party arising out of or in connection with the supply of the Artwork, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of these Conditions of Sale by the Seller, its employees, agents or subcontractors.

9.2. The Council shall not be liable to the Seller for any claim for loss of publicity or opportunity to enhance the Seller's reputation (even if caused by delay or failure to exhibit or exploit the Artwork).

- 9.3.** To the fullest extent possible, the Council excludes all liability to the Seller, whether in contract, tort (including negligence), breach of statutory duty or otherwise, for any indirect or consequential loss arising under or in connection with this agreement.
- 9.4.** Nothing in this agreement limits any liability which cannot legally be limited, including liability for:
- 9.4.1.** death or personal injury caused by negligence;
 - 9.4.2.** fraud or fraudulent misrepresentation;
 - 9.4.3.** breach of the terms implied by section 12 of the Sale of Goods Act 1979; and
 - 9.4.4.** breach of section 2 of the Consumer Protection Act 1987.

10. Termination

- 10.1.** This agreement may be terminated immediately by either party upon written notice to the other party:
- 10.1.1.** on 30 days' written notice;
 - 10.1.2.** the other party commits a material breach of any term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so; or
 - 10.1.3.** with immediate effect if any order is made or resolution passed for the liquidation, winding up or dissolution of the other party (otherwise than for the purposes of reconstruction or amalgamation) or if it becomes unable to pay its debts as they fall due.
- 10.2.** Termination of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.
- 10.3.** Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this agreement shall remain in full force and effect.
- 10.4.** On termination, the Seller shall immediately arrange for collection of the Artwork in accordance with paragraph 3.4 above.

11. Force Majeure

- 11.1.** In this paragraph "**Force Majeure Event**" means an event beyond the reasonable control of the Council including but not limited to strikes, lock-outs or other industrial disputes, failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, terrorist acts, sabotage, public demonstration, compliance with any law or governmental or regulatory order, accident, fire, flood, storm or default of suppliers or subcontractors.
- 11.2.** The Council will not be liable to the Seller as a result of any delay or failure to perform its obligations under this agreement as a result of a Force Majeure Event.

12. General

- 12.1.** Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party except as expressly provided in these Conditions of Sale.
- 12.2.** Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 12.3.** This agreement constitutes the entire agreement between the parties and supersedes any prior agreements, commitments or understandings.
- 12.4.** Any variation of this agreement will only be binding when agreed in writing and signed by both parties.
- 12.5.** No term of the agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to the agreement.
- 12.6.** A waiver of any right under this agreement is only effective if in writing and will not be deemed to be a waiver of any subsequent breach or default. A failure to exercise or a delay in exercising any right or remedy under this agreement will not operate as a waiver of that or any other right or remedy and no single or partial exercise of any right or remedy under the agreement will preclude or restrict the further exercise of that or any other right or remedy.
- 12.7.** If a court or any other competent authority finds that any provision of the agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision will, to the extent required, be deemed deleted without affecting the validity and enforceability of the other provisions of the agreement.
- 12.8.** This agreement and any non-contractual obligations arising out of or in connection with it are governed by English law and the parties irrevocably submit to the jurisdiction of the courts of England.