

# **TERMS AND CONDITIONS**

## **NoonPowell Fine Art Ltd**

These Terms and Conditions (the 'Terms and Conditions') apply to the sale of original paintings, sculpture, photography and limited edition prints (the 'Artworks') by the artist (the 'Artist') by NoonPowell Fine Art Limited to you. We are NoonPowell Fine Art Limited (the 'Gallery') a company registered with number 11159271, whose registered address is at 13 Whitehall Park Road, London, W4 3NE.

### **1. OUR CONTRACT WITH YOU:**

The Terms and Conditions apply to you as a visitor to our website, exhibition, art fair booth, online platforms, website shop or to our London gallery premises at 136b Lancaster Road, Notting Hill, London, W11 1QU.

### **2. STATEMENTS ABOUT THE ARTWORK**

- a) All statements made by the Gallery regarding the authenticity, attribution, description, date, age, provenance, title of work or condition of the Artwork constitute our judgement and our opinion only and are not warranted by the Gallery. We do not accept liability as a result of any alterations in expert opinion which may take place subsequently to the sale of the Artwork.
- b) On request the Gallery will provide a report on the condition of the Artwork at the time of sale and provide any information in our possession regarding the condition for which you may reasonably ask. We will not be responsible for any subsequent deterioration of the Artwork, however occasioned, after the sale. We the Gallery accept no responsibility with regard to the hanging and installation of sold Artwork; any work undertaken in this regard is at your own risk.
- c) All photographic images, advertising and specifications provided by the Gallery are issued or published for the sole purpose of providing an appropriate presentation of the Artwork. They do not purport to be an exact or complete reproduction.
- d) You are responsible for satisfying yourself as to any statements made by the Gallery as to the matters set out in clauses 2a, 2b, 2c.

### **3. PAYMENT OF PURCHASE PRICE**

- a) You must pay the Gallery the invoiced purchase price for the Artwork, together with delivery costs (if applicable), any framing costs or additional costs relating to the sale and any VAT (if applicable). Full payment is deemed received when the Gallery has received cleared funds equal to the total payment written on the invoice.
- b) You are not entitled to withhold payment of any amount payable to the Gallery by reason of any dispute or claim by you whether by way of set off, counterclaim or other deduction. In the event of non-payment or other breach, we shall be entitled to obtain and enforce judgement without determination of any claims by you.

- c) The Gallery reserves the right to require that you present such documents as we may request to confirm your identity. Where payment of the Artwork is made by someone other than you, we may require that you provide documents to confirm their identity and their relationship with you. We reserve the right and sole discretion to decline such payments.

#### **4. DELIVERING OF ARTWORK AND PASSING OF RISK**

- a) The Artwork will only be delivered following receipt by the Gallery of the full price of the Artwork in cleared funds.
- b) The Artwork will be delivered to the address provided by you and as agreed with the Gallery in writing, unless it is agreed that the Artwork will be collected from the Gallery in person. You are responsible for all costs related to delivery or collection of the Artwork unless a different sum has been agreed by both parties in writing prior to the sale of the Artwork to you.
- c) As soon as the purchase price is paid in full and you are in possession of the Artwork, you will become the legal owner of the Artwork and, upon such payment, you will be responsible for the Artwork and the risk of damage to or loss of the Artwork will pass to you.
- d) If the Artwork has been purchased 'unseen', meaning that the Artwork has not been physically viewed in person by you or;

the Artwork is not being collected by you, but is being delivered by hand, courier or shipping agent by the Gallery after purchase, the Gallery will then arrange for the safe delivery of the Artwork to your premises and will insure the Artwork against loss or damage during transit. This shall be subject to any such agreed delivery and insurance costs being charged to you by the Gallery, made binding by way of the Gallery invoice to you which is provided during the confirmation of purchase of the Artwork.

- e) You will be responsible for the Artwork, for the risk of damage to it or loss of the Artwork and also for insuring it once in your possession and from the time and date of delivery or collection and you agree that thereafter you will not hold the Gallery responsible for insuring the Artwork or for any loss or damage to the Artwork. Any loss or damage prior to delivery shall be covered by the terms of the Gallery's insurance, but the Gallery shall have no liability for loss of profit, business, revenue or incidental, consequential or exemplary damages.
- f) Should you not accept delivery of the Artwork at the agreed date and time, we reserve the right to charge you for the reasonable costs of any required storage, insurance and re-delivery and risk in the Artwork shall immediately pass to you and you irrevocably authorise the Gallery to deposit the Artwork with you if delivery has not taken place within six months of the purchase.
- g) Dates that are provided for delivery of Artwork are approximate and the Gallery will not be liable for any delay. Time of delivery shall not be of the essence nor capable of being made of the essence. You will provide the Gallery with all necessary information and documentation to facilitate delivery.

## **5. PASSING OF OWNERSHIP**

- a) The full legal title to the Artwork will not pass on to you until the Gallery has received payment in full cleared funds, including all sums due in respect of the Artwork and any other amount due by you to the Gallery, and the Gallery is fully satisfied as to your identity and that of any third party payer.
- b) Should you have possession of the Artwork before full payment has been made, you undertake as our fiduciary agent and bailee:
  - i. to keep possession of the Artwork and not sell it, export it or hand it over to any other person or dispose of any interest in it and in the case of an Artwork consisting of more than one item, keep those items together;
  - ii. not to remove any identifying marks showing that the Gallery either owns or has the Artwork consigned by the Artist, leaving any identifying marks clearly displayed. You agree to store the Artwork on your premises and at no cost to the Gallery, keeping the Artwork separate from other property with adequate security measures in place;
  - iii. at the Gallery's request and after it has provided reasonable notice to allow the Gallery or a third party acting on its behalf to have access to the Artwork in order to fully inspect it;
  - iv. to preserve the Artwork in the same state as it was on delivery and in particular, not restore, repair, clean or reframe the Artwork without its written consent and take all reasonable steps to prevent any damage to or deterioration of the Artwork; and
  - v. to keep the Artwork comprehensively insured for not less than the invoice price of the Artwork, have the Gallery's interest noted on the insurance policy as an additional named insured and provide a copy of such notification to the Gallery.

## **6. EXPORT AND LOCAL TAXES**

- a) Should the Artwork be exported from the United Kingdom, whether to other countries within the EU or outside of the EU, the Gallery will normally make appropriate arrangements for export and shipment and may make a reasonable additional charge for doing so. Unless otherwise agreed in writing, the agreement is not conditional upon the granting of any requisite export licence or permission which both parties will use their best endeavours to obtain.
- b) Each party will to the extent such obligation is applicable to that party in connection with the sale and / or export of the Artwork:
  - i. Comply with all requirements of any relevant tax authorities (that is, any authority imposing administering or collecting any tax, duty or levy including HM Revenue and Customs), any export licensing authorities and any other relevant official bodies;

- ii. and obtain all the relevant documents showing proof of export without delay.
- c) You will reimburse the Gallery any sum claimed if any relevant tax authority or other official body makes any claim against the Gallery for VAT, sales tax, use tax or any other expense or penalties resulting from your failure to comply with any relevant requirements for export or import.
- d) When upon its sale to you the Artwork is intended for export, you will be charged for VAT on the Artwork should it then not be exported.
- e) You will be responsible for paying any taxes including but not limited to import tax, duty, merchandise, sales or use tax that have to be paid in the country of destination whether on shipment or on import or at any other time.

## **7. RETURNS AND REFUNDS**

- a) In the event that Artwork is purchased online, you may have a right to cancellation. If you do (and only if you do) the following terms apply.
  - i. You must notify the Gallery in writing that you wish to cancel within 14 days of receipt of the Artwork.
  - ii. The Artwork must be returned to the Gallery within 21 days of delivery with the Artwork in the same condition in which it left the Gallery and with all original packaging.
- b) The Gallery will only process a refund on the Artwork once it has been delivered back to the Gallery by you and then has passed a full inspection by members of its staff. The Gallery agrees to pay a full refund in line with the price of the Artwork less any shipment costs or other costs relating to the delivery of the Artwork;
- c) You agree to pay the return cost of shipment of the Artwork to the Gallery including any additional packaging necessary and to ensure the Artwork is adequately and safely packaged and insured for return shipment. You will pay the full cost of delivery and any costs which may arise and which are not paid by you in relation to the return delivery will be deducted from your refund. Any loss or damage of the Artwork during transit to the Gallery is the responsibility of the purchaser or third party payer and you will be responsible for recovering the cost of the Artwork through the insurance policy that you put against the Artwork for the shipment.
- d) Following a successful inspection of the Artwork once it has been returned to the Gallery, the Gallery agrees to refund you or the third party payer, the price of the Artwork by the same method of payment or by way of agreed transaction by card or bank transfer. The reimbursement will be paid within 14 days after the day the Gallery receives back the Artwork and any related goods supplied by the Gallery.
- e) The Gallery reserves the right to make a deduction from the refund for loss of value incurred if the loss is the result of unnecessary or negligent handling by you. This is because you are liable for that loss and, if that deduction is not made, you must pay the Gallery the amount attributed to that loss.

## **8. LIMITATION OF GALLERY LIABILITY**

The Gallery makes no representation or warranty of any kind whatsoever, express or implied, in connection with the Artwork. The Gallery and its officers, directors and employees or agents exclude all liability (whether in contract, tort or otherwise), to the fullest extent permitted by applicable law, for any loss or damage that may result to you or a third party in connection with the Artwork.

## **9. DATA PROTECTION**

We may collect, hold, control, use and transmit personally identifiable information obtained in agreement from you in the course of your purchase of Artwork from the Gallery. By agreeing to such information being used in these ways and for such information to be disclosed to the Artist if you are in breach of your obligations under these terms and conditions.

## **10. COPYRIGHT**

The copyright subsisting in all images and other materials produced for the sale of the Artwork is owned by the Gallery and such images and materials may only be used with its permission. The Gallery will have rights to use such images in its own discretion after the sale of the Artwork. For the avoidance of doubt, the sale of Artwork does not transfer or assign or licence any copyright or other intellectual property rights to you. During the period in which the Artwork is protected by copyright, the copyright of the Artwork remains with the Artist (or any person to whom that right has been assigned legally). You are purchasing the Artwork, but not the right to produce copies of the Artwork (including photographs thereof) for publication or do any other act restricted by copyright. If such rights are sought, you should contact the copyright owner.

## **11. GOVERNING LAW AND JURISDICTION**

These Terms and Conditions shall be governed by and construed in accordance with English law. Disputes arising in connection with this legal notice shall be subject to the exclusive jurisdiction of English courts.