

CX2ART - TERMS & CONDITIONS OF USE

INTRODUCTION

CX2Art is located in Sydney, New South Wales, Australia. We only sell original artwork. Sales will be accepted from anywhere globally, including (but not limited to) Australia, New Zealand, the USA, UK, Europe and Asia. Payment is accepted online. All prices are in Australian Dollars and exclusive of GST.

Before using our website, www.cx2art.com, you must read, agree with and accept all of these Terms and Conditions of Use, and understand and agree to CX2Art's policies including its Privacy and Security, Shipping, and Returns & Refunds Policy. These policies may change from time to time, and they form part of the Terms and Conditions of Use.

CX2Art reserves the right, at its absolute discretion, to change or modify all or any part of these Terms and Conditions of Use at any time, effective immediately upon publishing on the website (www.cx2art.com). If at any time these Terms and Conditions of Use are no longer acceptable to you, you should immediately cease use of the CX2Art website.

If you do not agree with or accept these Terms and Conditions of Use, you should not use or access the CX2Art website.

Last update: 8 April, 2021

DEFINITIONS

We/Us	The website CX2Art.com is owned and operated by Fifth Element Consulting Pty. Ltd. Trading as CX2Art.
Artist	The person who creates an original artwork/painting and holds copyright to that piece and is selling it through the CX2Art website.
Purchaser	Anyone purchasing artwork from this website, CX2Art, through an online payment.
Images	A term used to cover the digital files of artworks and photographs supplied by Artists or photographers.
User	Any person who visits the CX2Art website either as a customer, browser or provider for any purpose.
Content	Refers to any and all text, images, graphics, titles, original artworks, reproductions, photos, videos, profiles or links as displayed on the CX2Art website.
Original	Refers to the original painting or artwork as created by the Artist that is offered for sale on or sold via the CX2Art website. It does not include reproductions. Also referred to as Original Art, Original Painting.
Copyright	Copyright of all artworks and photograph on this site is the property of the respective creators of those artworks or photographs. Copyright protects the original expression of ideas, not the ideas themselves. It is free and automatically safeguards original works of art from copying and certain other uses. For more information refer to the information sheets on Artists & Copyright, Infringement, or the Copyright Act 1968.
Work	Artwork for sale on the CX2website.

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Service Region	CX2Art services and ships within the Australian community and globally, including (but not limited to) the USA, UK, Europe and Asia.
Age and Responsibility	The user represents and warrants that they are of sufficient legal age to use the CX2Art website and to create binding legal obligations for any liability they may incur as a result of the use of the CX2Art website. The user agrees to be responsible for all of their use of the CX2Art website (as well as for use of their username and password(s) by others, including without limitation, minors living with them). The user agrees to supervise all usage by minors of the website under their name or account.
Unauthorised Use	The CX2Art website must not be used for any illegal or unauthorised purpose. The CX2Art website must not be hacked and/or any adaptations made to any aspect of the website. Posting of advertisements or links to any other websites, including but not limited to social networking sites, is not allowed without express written permission from CX2Art.

Pricing Practices	All prices shown on the CX2Art website are in Australian Dollars (AUD). Prices of artworks shown on the CX2Art website are set at the discretion of the Artist.
Trademark	The CX2Art logo is a trademark of Fifth Element Consulting Pty. Ltd. Use of the CX2Art logo is not authorised without express written permission from Fifth Element Consulting Pty. Ltd.
Copyright	All content on the CX2Art website is copyright of either CX2Art or the Artist. Content must not be downloaded or used without express written permission from CX2Art, or the Artist where the content is their own work.
Refusal of Service	CX2Art reserves the right to refuse service to anyone at any time and at its absolute discretion.
Liability	The user assumes all responsibility and risk for use of the CX2Art website including and without limitation any of the content or information contained therein. CX2Art accepts no liability for any failure to comply with these Terms and Conditions of Use where such failure is due to circumstances beyond its reasonable control.

SALE AND PURCHASE OF THE WORK

On behalf of the Artist, CX2Art sells the work to the Purchaser, and the Purchaser buys the Work from CX2Art, on the terms of this agreement.

1. Delivery

1.1. CX2Art or their agent must deliver the Work to the Purchaser, or the Purchaser must collect the Work as agreed between CX2Art and the Purchaser.

2. PAYMENT

2.1. The Purchaser must pay CX2Art the amount specified on the CX2Art website for the Work (**Price**), according to the method and by the due date specified on the CX2Art Website.

2.2. The Purchaser must pay interest on late payments at the rate of 5% p.a. Interest:

2.2.1. accrues from (and including) the date any unpaid amount is due and is payable to CX2Art until the amount is paid in full;

2.2.2. is payable on demand;

2.2.3. accrues daily and is capitalised if not paid every 7 calendar days; and

2.2.4. is calculated on the basis of the actual number of calendar days on which interest has accrued and a 365 days year.

3. GOODS AND SERVICES TAX

- 3.1. The parties agree that all amounts payable under this agreement are exclusive of Goods and Services Tax (**GST**).
- 3.2. If a party is liable to pay GST in respect of any good or service supplied under this agreement, that party will invoice the other party for the GST amount payable for the good or service and will ensure that the invoice is a GST compliant invoice.
- 3.3. The party who receives the GST compliant invoice must pay the amount of GST invoiced at the same time as the amount payable under this agreement.

4. TRANSFER OF OWNERSHIP OF THE WORK

- 4.1. Subject to clause 4.2, title to the Work passes to the Purchaser when the full Price is paid to CX2Art by the Purchaser.
- 4.2. Risk in the Work remains with the Artist until the Work is delivered to the Purchaser or collected by the Purchaser or the Purchaser's agent or courier.

5. COPYRIGHT AND MORAL RIGHTS; RESALE OF THE WORK

- 5.1. The Artist retains all intellectual property, including all copyright, in the Work. Without limiting this, the Purchaser must not reproduce the Work or let anyone else reproduce the Work without the Artist's prior written consent.
- 5.2. The Purchaser will comply with the moral rights provisions contained within the *Copyright Act 1968 (Cth)* in relation to the Artist's moral rights in the Work.
- 5.3. If the Purchaser sells the Work to a third party during the term of the Artist's copyright in respect of the Work, the Purchaser agrees to pay a resale royalty:
 - 5.3.1. in accordance with the *Resale Royalty Right for Visual Artists Act 2009* or such other artist's resale royalty scheme in effect under Australian law at the time of such sale; or

5.3.2. if Australian law does not provide for such a royalty at the time of sale, in an amount of 5% of the sale price exclusive of GST up to a maximum amount of \$20,000.

6. ACCESS TO THE WORK

6.1. Without limiting any rights that the Artist may have under Australian law, if the Purchaser intends to destroy the Work, or is aware that the Work may be destroyed, the Purchaser must use the Purchaser's best efforts to give the Artist a reasonable opportunity to document or collect the Work or both, at the Artist's choice. If the Artist asks the Purchaser to return the Work, the Purchaser will use the Purchaser's best efforts to return the Work, or arrange for the Work to be returned.

7. DISPUTES

7.1. If a dispute or disagreement (**Dispute**) arises between the parties in connection with this agreement:

7.1.1. one party must notify [each/the] other party in writing about the Dispute (**Notice of Dispute**); and

7.1.2. [neither/no] party may start any litigation or arbitration in relation to the Dispute until the parties have complied with this clause.

7.1.3. The parties should meet within 14 calendar days after receipt of the Notice of Dispute and hold good faith discussions to attempt to resolve the Dispute.

7.1.4. If the Dispute is not resolved within 28 calendar days after receipt of the Notice of Dispute, the parties agree to submit the Dispute to mediation

7.1.5. according to the Arts Law Centre Mediation guidelines current at that time (**Guidelines**). These Guidelines are part of this agreement.

7.1.6. If the parties are not able to agree to a mediator, the Arts Law Centre must appoint a mediator.

7.1.7. The parties must continue to perform their respective obligations under this agreement despite the existence of a Dispute.

8. GENERAL PROVISIONS

- 8.1. The parties acknowledge that the Artist is an independent contractor and that nothing in this agreement creates any relationship of joint venturers, partnership, agency or employment between the parties.
- 8.2. A notice required to be given under this agreement may be delivered by hand, or sent by pre-paid post or email to info@cx2art.com. Notices are taken to have been served when received, or within 2 business days of having been sent, whichever occurs first.
- 8.3. Neither party may assign, subcontract, novate or otherwise divest this agreement or any of the rights or obligations under this agreement without the other party's prior written consent. This consent must not be unreasonably withheld.
- 8.4. Subject to clause 8.6, this agreement is the entire agreement between the parties regarding its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this agreement and has no further effect.
- 8.5. Nothing in this agreement transfers or excludes any applicable cultural rights in favour of Australian Indigenous people that may be implemented under Australian law.
- 8.6. This agreement may only be modified by a written amendment signed by the parties.
- 8.7. Invalidity of any clause of this agreement will not affect the validity of any other clause except to the extent made necessary by the invalidity.
- 8.8. This agreement is governed by the law in force in New South Wales. The parties submit to the jurisdiction of the courts of that State and any court competent to hear appeals from those courts.

For any questions or notices, please contact:

Fifth Element Consulting Pty. Ltd. (Trading as CX2Art) ABN 75 142 321 935

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