

APG E-commerce Terms and Conditions of Sale

These terms and conditions are the terms and conditions on which APG agrees to sell Artwork to the Customer. If APG accepts the Customer's Order, the Customer and APG will be legally bound by these terms and conditions. PLEASE NOTE IN PARTICULAR CLAUSE 11 WHICH LIMITS APG'S LIABILITY TO THE CUSTOMER.

1. Definitions

1.1. The following terms will have the following meaning in these terms and conditions:

"Artist" the original creator of the Artwork as identified on the Website;

"Artwork" artwork produced by the Artist and licensed for resale to APG by the Artist in such form and format as identified by the Customer in their Order;

"APG" APG Works Ltd of 16-20 Sidney Street, Sheffield S1 4RH;

"Customer" the customer placing an Order via the Website;

"IPR" means intellectual property rights including copyright, design right, trade marks, patents and any other similar rights whether registered or unregistered existing anywhere in the world;

"Order" an order placed by the Customer via the Website or via telephone to APG for the purchase of Artwork;

"Original" the original copy of the Artwork as produced by the relevant Artist;

"Price" the price as displayed on the Website for the Artwork to be purchased by the Customer as indicated in the Customer's Order;

"Print" a high quality print (either digital, silkscreen or lithograph) of the Artwork produced by or on behalf of APG;

"Website" the website accessible www.apgworks.co.uk and all other domain names owned and operated by APG linking to the same content.

2. Orders

2.1. By submitting an Order, the Customer will be deemed to accept these terms and conditions and the Customer will be required to tick to confirm the Customer's acceptance of these terms and conditions prior to acceptance of the Customer's Order by APG.

2.2. The Customer must submit their Order(s) via the Website in accordance with the instructions set out on the Website or via telephone via the telephone number displayed on the Website. The Customer will be responsible for ensuring the completeness and accuracy of their Order(s) and APG will not be liable for the Customer's failure to provide complete and accurate information in their Order.

2.3. No Order will be validly submitted except via the e-commerce ordering process on the Website or related telephone number. Any terms or conditions which the

Customer attempts to add to these terms and conditions Agreement in the course of making an Order will be void.

- 2.4. No Order will be deemed to have been accepted by APG until APG notifies the Customer in writing (which may be by e-mail) of acceptance of the Order and any relevant purchase reference number.
- 2.5. APG reserves the right to:
 - 2.5.1 reject any Order submitted by the Customer for any reason. Note, in particular, that orders by Customers outside the United Kingdom (overseas) may be rejected by APG;
 - 2.5.2. cancel any Order before delivery of the relevant Artwork in the event any payment of the Price for the Artwork fails.
- 2.6. Without limitation to the provisions relating to Limitation of Liability in clause 11 below, APG will not be liable or otherwise responsible for any loss or damage caused to the Customer by cancellation of an order by APG in accordance with clause 2.5 above.

3. Availability of Artwork

- 3.1. The Original Artwork and Prints displayed as available on the Website are subject to stock and supply availability, and there may be some delay in updating the Website with regard to the availability of Artwork.
- 3.2. The Customer acknowledges and accepts that APG is reliant on its supply chain including third party suppliers of Prints and framing materials to APG in fulfilling Orders. In the event that an Order is placed which APG cannot immediately fulfil as a result of reliance on third party suppliers, APG will inform the Customer as soon as practicable and delivery may be delayed until such time as stock is available.
- 3.3. In the event that an Order for Artwork is placed by another customer prior to the Customer's Order, then the Order will not be processed and the Customer will be informed that the Artwork has already been sold, and any Price paid for the relevant Order will be refunded within a reasonable time.

4. Artwork and Sales

- 4.1. APG sells Artwork via the Website in a range of forms including in Original form (if available) and in Print form and in boxed canvas format or in a range of frames or as otherwise displayed on the Website from time to time. The Customer must indicate the form and format of Artwork and frame they require together with any specifications relating to the frame in their Order.
- 4.2. In consideration of payment by the Customer to APG of the Price for each Order in accordance with clause 5 below plus any cost of packaging and postage as may be set out on the Website from time to time, APG agrees to deliver the relevant Artwork to the Customer in the relevant form (Original, if available, or Print) and in such format (boxed canvas or framed) in accordance with the Customer's Order except in the case of Artwork which is specified as for "collection only" from APG's premises.

- 4.3. APG has licence arrangements with the Artists whose Artwork is sold via the Website. In the event that any such licence is terminated for any reason, APG will be entitled to cancel any outstanding Order prior to delivery in the event that the terms of the licence with the relevant Artist will not allow APG to fulfil the Order. In such circumstances, the Customer will be provided with a full refund of the Price for that Artwork.
- 4.4. The Customer agrees and accepts that:
- 4.4.1. APG provides the Artwork, whether purchased as an Original or as a Print, without any warranty and APG will have no responsibility for the content of the Artwork ordered by the Customer via the Website;
- 4.4.2. APG is not responsible for reviewing or editing any of the content of the Artwork or any other information contained in or relating to the Artwork and the Customer acknowledges and accepts that the Artwork is provided to APG on the basis that APG will not exercise any control or judgment of the content of the Artwork;
- 4.4.3. accordingly, the Artwork is provided to the Customer "as is" and "as available" the Customer must, accordingly judge the suitability of the Artwork for the purpose intended and the Customer purchases the Artwork at the Customer's own risk;
- 4.4.4. reasonable variations in colour, size and appearance between the Artwork as displayed on the Website and the Artwork actually delivered to the Customer and APG will not be liable for any such minor variations.

5. Prices and Payment

- 5.1. APG sells Artwork via the Website in a range of forms including in Original form (if available) and in Print form and in boxed canvas format or in a range of frames or as otherwise displayed on the Website from time to time. The Customer must indicate the form and format of Artwork and frame they require together with any specifications relating to the frame in their Order.
- 5.2. The Customer will pay the Price together with delivery costs for each Order on submitting their Order. Payment must be made:
- 5.2.1. online via the secure online e-commerce payment system on the Website utilising credit and debit cards listed on the Website or PayPal. The secure online e-commerce payment system service on the Website will be operated by PayPal. This secure online e-commerce payment system service may be changed from time to time by PayPal without prior notice;
- 5.2.2. via telephone by credit or debit cards listed on the Website;
- 5.2.3. or such other payment methods as noted on the Website (which include payment by cheque, bankers draft or postal order).
- 5.3. Delivery costs will be calculated by APG on the basis of the standard charges charged by carriers used by APG which may vary from time to time and will vary according to the weight and value of the Artwork. This cost will be confirmed to the Customer by APG prior to submitting their Order and the Customer agrees to pay

such delivery costs to APG in addition to the Price. Notwithstanding this, under usual circumstances the cost of delivery of each Order in the United Kingdom will be £10.

- 5.4. APG will provide the Customer with a receipted invoice for all payments made to APG for Orders. Further details regarding payment methods are set out on the Website or can otherwise be obtained by contacting APG.
- 5.5. No Order will be processed or accepted by APG and no Artwork will be delivered to the Customer unless and until the relevant Price for that Order has been received by APG in cleared funds from the Customer.
- 5.6. APG's standard Prices for Artwork are subject to change from time to time by APG and any such change will be notified by amending the relevant Prices displayed on the Website. Any increase in the Prices for Artwork will only apply to an Order placed after the date of the increase, and will not apply retrospectively.

6. Restrictions of the Internet

6.1. The Customer acknowledges and accepts that:

6.1.1. APG has no control over the Internet which is a worldwide network of computer systems. Access to the Website, Order processing system and secure online e-commerce payment system on the Website will not be error free or uninterrupted and may be variable; and

6.1.2. information and other material accessible over the Internet via the Website including the digital content on the Website may contain viruses, worms, Trojan horses, cancel bots, or other harmful and destructive elements. APG will not be liable for any direct, indirect, incidental or other loss or damages which result or may result from the Customer's access to or use of the Internet or the Website.

6.2. The Website is maintained by APG's web hosting service provider. Every effort is made to ensure the continuity of the Website, but some occasional technical downtime beyond APG's control and/or the control of APG's hosting service provider may occur. Such downtime may prevent the Website or its content being available for the duration of the downtime and may result in errors occurring in the posting of Orders via the Website. APG will not be liable for such delays nor errors resulting from any cause beyond APG's control and/or that of APG's web hosting provider including hosting server downtime.

7. Cancellation

7.1. Subject to these terms and conditions, the Customer may cancel any Order by e-mail to APG at apg@apgworks.co.uk quoting "Order Cancellation" in the subject heading and the relevant Order reference number in the body of the e-mail. Cancellation of an Order may only be made in accordance with clause 7.2 below.

7.2. In accordance with the Consumer Protection (Distance Selling) Regulations 2000, the Customer is granted a cancellation period of seven (7) days from the date of

submission of the Order. The following will, therefore, apply to any cancellation received by APG:

7.2.1. in the event that the Customer cancels its Order within the abovementioned seven (7) day period, on return by the Customer of the Artwork if already despatched, the Customer will be granted a full refund of the relevant Price;.

7.2.2. in the event that the Customer cancels its Order after the end of the abovementioned seven (7) day period, the relevant Price paid to APG by the Customer will be non-refundable, subject to clause 9.

7.3. The terms of this clause 7 regarding cancellation of Orders are without prejudice to APG's Returns Policy set out in clause 9 below.

8. Delivery of Artwork

8.1. On receipt of payment of the Price from the Customer by APG for an Order, APG will arrange for delivery of the relevant Artwork to the Customer to the address stated by the Customer in the Order, except in the case of Artwork which is specified as for "collection only" from APG's premises. Delivery to P.O. Boxes will not be made.

8.2. Delivery will only be possible to the UK and APG will not process Orders which request delivery to any other country:

8.3. Subject to APG's Returns Policy set out in clause 9 below, and unless otherwise agreed in writing by APG, title and risk in all Artwork delivered by APG to the Customer pursuant to an Order will take place once the Artwork is despatched for delivery by APG.

8.4. Any timescales or dates indicated for delivery of Artwork are for guidance only and time for delivery will not be of the essence in this Agreement. If no timescales or dates are so indicated, delivery will be made by APG within a reasonable time. Notwithstanding this, under usual circumstances Artwork for delivery in the United Kingdom should be despatched within 10 to 12 days from the date of the Order.

8.5. Any liability of APG for non-delivery of the Artwork will be limited to replacing the Artwork within a reasonable time (except in the case of Original Artwork where no replacement is possible) or issuing a refund of the Price paid to the Customer. Reasonable evidence of non-delivery will be required by APG and APG will not be liable for more than one replacement of undelivered Artwork.

8.6. Without limitation to the provisions relating to Limitation of Liability in clause 11 below, APG will not be liable or otherwise responsible for any loss or damage caused by late or delayed delivery of the Artwork to the Customer.

9. Returns Policy

9.1. In the event that any Artwork delivered to you pursuant to your Order is damaged or of a quality or specifications which are reasonably less than that represented on the Website or requested in the Order, the Customer may return the Artwork to APG within 14 days of the date of delivery of the Artwork and, subject to clause 9.2 below, APG will, at the Customer's preference, either:

- 9.1.1. provide a replacement copy of the Artwork to the Customer; or
- 9.1.2. provide the Customer with a full refund of the Price and reasonable delivery costs within a reasonable time which under usual circumstances should be no more than 28 days.
- 9.2. APG's Returns Policy set out in clause 9.1 above is subject to the following terms:
 - 9.2.1. any Original Artwork delivered to the Customer by APG will be non-replaceable, and in the event of return of an Original piece of Artwork by the Customer in accordance with clause 9.1 above, only a refund of the Price to the Customer will be available under APG's Returns Policy;
 - 9.2.2. in no circumstances will returned Artwork will be replaced by different Artwork from that originally requested in the Order. A new Order will be required for different Artwork;
 - 9.2.3. undamaged Artwork or Artwork of a satisfactory quality will be non-returnable under APG's Returns Policy;
 - 9.2.4. all returns of Artwork must be made in accordance with clause 9.3 below.
- 9.3. In order to return any Artwork pursuant to APG's Returns Policy set out in clause 9.1 above, the Customer must complete the following procedure:
 - 9.3.1. the Customer must complete a APG returns form accessible via the Website, which must include the reference number of the Order, details of the reasons for return and whether replacement (if available) or refund is required;
 - 9.3.2. in response to receipt of a completed APG returns form from the Customer via the Website, APG will provide full written details of where the Customer should deliver the returned Artwork;
 - 9.3.3. on receipt of the Customer's returned Artwork at the address indicated, APG will replace the Artwork or refund the Price in accordance with the relevant APG returns form.

10. IPR (Intellectual Property Rights)

- 10.1. All IPR in the Artwork sold by APG pursuant to an Order under these terms and conditions are and will remain the property of the relevant Artist(s) as properly licensed to APG, and nothing in these terms and conditions will in any circumstances assign, sell or otherwise transfer the IPR in the Artwork to the Customer or any other person. Furthermore, the Customer is not granted any licence of the IPR in the Artwork by virtue of these terms and conditions. All IPR of the relevant Artist are hereby asserted and reserved.
- 10.2. Accordingly, Artwork is sold by APG to Customers for non-commercial use by the Customer only and reproductions of the Artwork may not be made or re-sold without the express permission of the relevant Artist.
- 10.3. The Customer will be responsible for the Customer's use of the Artwork and the Customer acknowledges and accepts that APG does not make any representation or warranty about the Artwork whether express or implied. For the avoidance of doubt,

APG does not warrant that the Artwork will not contain or include any content that is likely to infringe the IPR of any third party.

10.4. Subject to clause 11 below, APG will not be liable to the Customer damages, costs and losses incurred by the Customer arising out of any claim made against the Customer for infringement of any IPR of any third party caused by the Artwork or the Customer's use of the Artwork.

11. Limitation of Liability

11.1. The Customer acknowledges and accepts that the following terms reflect a fair allocation of risk between the parties. These terms and conditions set out APG's entire liability to the Customer and all other liability of APG to the Customer is hereby excluded, subject that nothing will exclude or restrict APG's liability for fraudulent misrepresentation and/or for death or personal injury to the extent that such injury results from APG's negligence.

11.2. Subject to clause 11.1 above, the Customer agrees that APG's total liability under these terms and conditions will not exceed the Price actually paid by the Customer to APG relating to the relevant Order giving rise to the alleged claim or the sum of £500 whichever is the lower, including where such liability arises out of APG's negligence.

11.3. In no event will APG be liable to the Customer whether in contract, tort, by statute or otherwise for any special, indirect or consequential loss or damage arising out of or in connection with the sale of the Artwork to the Customer, including without limitation: loss of business and/or goods, loss of goodwill, loss of profits, loss and/or corruption of data and/or damages awarded against the Customer as a result of legal proceedings by any third party in relation to the Artwork, including any claim that the Artwork infringes the IPR of any third party. For the avoidance of doubt, neither the types of loss and/or damage specified above nor any similar types of loss and/or damage will constitute direct loss for the purposes of this agreement.

11.4. APG will not be liable to the Customer for any acts, omissions or failures of third party sub-contractors used by APG in delivering Artwork to the Customer pursuant to Orders placed by the Customer under these terms and conditions, including but not limited to intermediary suppliers of Artwork, service providers for the delivery of Artwork and service providers of the secure online e-commerce payment system on the Website.

11.5. Nothing in these terms and conditions will limit your statutory rights as a consumer.

12. Warranties

12.1. The Customer warrants and undertakes that:

12.1.1. it has the power and authority to enter into this contract with APG;

12.1.2. it will not use the Website or Artwork for any unlawful purpose or which gives rise to civil or criminal liability;

12.1.3. it will not use the Website or Artwork in conjunction with any abusive, illegal, pornographic, defamatory, libellous, untrue, discriminatory, obscene,

inflammatory or racist material or in any way which will or is likely to bring the relevant Artist or APG into disrepute;

12.1.4. it will not use the Website or Artwork to infringe the IPR of any third party.

12.2. Notwithstanding the above, the Customer warrants that the Customer will be truthful and honest in its use of the Website and make purchases of Artwork in a responsible and reasonable manner and only as envisaged by these terms and conditions.

12.3. Any breach of these warranties will entitle APG to cancel any Order at APG's discretion and APG may at its discretion cancel all or any other Orders made by the Customer and terminate this agreement without notice.

12.4. APG gives no warranties with regard to the Artwork or with regard to the content of the Website and to the maximum extent permitted by law, APG excludes liability for all representations, warranties, conditions and other terms which but for this notice would have effect or be implied.

12.5. The Customer will indemnify and hold harmless APG in full and defend at its own expense APG against all claims, liabilities, costs and losses whatsoever and howsoever incurred by APG arising out of any claim made against APG as a result of the breach by the Customer of the above warranties.

13. Data Protection

The Customer agrees to the reasonable processing of personal data (as defined in the Data Protection Act 1998) by APG for the purposes of processing the Customer's Orders and delivering the Artwork to the Customer. In processing personal data, APG will comply with all relevant legislation, including but not limited to the Data Protection Act 1998.

14. Termination

14.1. APG may terminate this Agreement at any time for any reason on notice in writing (which may be by e-mail) to the Customer in the event of any breach by the Customer of the provisions of these terms and conditions.

14.2. On termination, any outstanding Order of the Customer will be immediately cancelled. Except as otherwise provided in these terms and conditions, the Price paid to APG for the relevant Order will be refunded on termination, unless the relevant Artwork in question has been despatched to the Customer prior to termination in which case the relevant Price will not be refunded.

15. Notices

15.1. Any notice required or permitted under these terms and conditions will be in writing (which may be by e-mail) and will be deemed to have been properly given:

15.1.1. 48 hours after being posted by first class mail with postage prepaid to the address set out on the Submission or other address notified for the purpose;
or

15.1.2. at close of business on the day of effective transmission if sent by e-mail to an e-mail address notified for that purpose.

16. Force Majeure

APG will not be liable for failure to meet its obligations under these terms and conditions if APG or its contractors are prevented from or delayed in doing so due to circumstances beyond APG's reasonable control including, without limitation, acts of God, governmental actions, war, acts of terrorism, fire, explosion, flood, strikes or other labour disputes, or restraints or delays affecting carriers or inability or delay in obtaining supplies.

17. General

17.1. No provision of these terms and conditions will be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not party to it.

17.2. APG may assign its rights or obligations under these terms and conditions at anytime. The Customer may not assign its rights or obligations under these terms and conditions without APG's prior written consent.

18. Governing Law

These terms and conditions will be governed by English law and the parties hereby submit to the exclusive jurisdiction of the English courts.