

EMMA MCINTYRE - TERMS AND CONDITIONS OF BUSINESS

PLEASE READ THESE TERMS OF SALE CAREFULLY BEFORE PLACING YOUR ORDER AND RETAIN A COPY OF THESE TERMS AND YOUR ORDER FOR FUTURE REFERENCE.

1. Interpretation

"Art Work" means the range of paintings or other artwork which is available for purchase from my website in accordance with these Terms

"Commissioned Art Work" means work which you commission me to prepare in accordance with the Commission Brief and these Terms

"Commission Brief" means the point of reference describing the scope of the assignment and the Macquettes and Commissioned Art Work to be supplied by me to you as more particularly set out in the Schedule

"Consumer" means an individual who in purchasing Art Work is acting outside his trade, business or profession

"Default" means any act, representation or omission by me, my employees or agents which is done, made or not done (as the case may be) as a result of any act, representation or omission of any of us (whether deliberate or negligent), in connection with or in relation to this contract as a result of which we are legally liable to you or any third party whether in contract, tort or otherwise. A number of Defaults which together result in or contribute to substantially the same loss or damage shall be treated as one Default occurring on the date of the occurrence of the last such Default.

"I/Me" means Emma McIntyre of 10 Lonsdale Gardens, Tunbridge Wells, Kent, TN1 1NU

"Intellectual Property" means copyright and any other proprietary and intellectual property rights to and in the Art Work and the Commissioned Art Work

"Macquette" means a small representative example of the Commissioned Art Work which is based on the Commission Brief

"Materials Costs" means the costs I incur in purchasing materials, including but not limited to paint, canvas, paint brushes, varnish/ paint treatments, books, paper and photos in order to supply a Commissioned Art Work

"Schedule" means the schedule to these Terms

"Terms" means these terms and conditions of business

"You/Your" means the person who places an order with me for Art Work and/or Commissioned Art Work

2. Formation of the Contract

2.1. These Terms apply to all Art Work and Commissioned Art Work supplied by me.

- 2.2. No contract exists between us for the sale or supply of any Art Work or Commissioned Art Work until I have received and accepted your order and sent you confirmation in writing or by email to the address or email address you have given. Once I do so, there is a binding legal contract between us. For the avoidance of doubt, no orders for delivery outside the United Kingdom will be accepted.
- 2.3. Where you are a Consumer, the contract is subject to your right of cancellation (see Clause 8 below).
- 2.4. I may change these Terms without notice to you in relation to future sales.
- 2.5. No terms or conditions put forward by you shall be binding on me.

3. **Commissioned Art Work**

- 3.1. On settlement of the Commission Brief I will prepare a maximum of 3 Macquettes for your approval. This will be subject to you paying a deposit as specified in the Schedule.
- 3.2. If you subsequently request modifications to a Macquette (which are consistent with the Commission Brief) I shall endeavour to accommodate these and shall prepare a further Macquette for your approval at no additional cost to you taking into account such modifications.
- 3.3. Approval by you in writing of a Macquette shall constitute your consent for me to commence work on the Commissioned Art Work.
- 3.4. If you decide to cancel your Commission Brief after you have approved the Macquette, I shall be entitled to retain from any deposit paid the Materials Costs or where the Material Costs are greater than any deposit, you shall be liable to pay me the Materials Costs in full, less any deposit. I shall notify you of the applicable Materials Costs in each case.
- 3.5. You shall advise me as soon as possible of any matter of which you become aware which may in your opinion affect the Commission Brief and/ or the supply by me of Macquettes or Commissioned Art Work to you.
- 3.6. If additional costs arise because of any request by you in respect of the Commissioned Art Work which is not covered by the Commission Brief, I shall be entitled to charge you for these costs in addition to the price set out in the Schedule.
- 3.7. Following completion of the Commissioned Art Work and in accordance with clause 9 I shall be permitted to exhibit copies of the Macquettes and/ or the Commissioned Art Work on my website and at exhibitions for sale and/ or for promotion and marketing purposes.
- 3.8. Following completion of the Commissioned Art Work and in accordance with clause 9 I shall store copies of the Commissioned Art Work on a number of disks and/ or in any other medium for administrative reasons or to enable me to exhibit pursuant to clause 3.7 or for any other reason. If for any reason the disks and other media on which the copies are stored are lost or destroyed, you agree that you will liaise with me and make the necessary arrangements for me to access the Commissioned Work in order to take a copy.

4. Description and Price of Art Work and Commissioned Art Work

- 4.1. The price of Commissioned Art Work shall be determined by way of a quotation as set out in the Schedule.
- 4.2. The description and price of Art Work you order shall be as shown on my website at the time you place your order unless you are notified otherwise.
- 4.3. Art Work is subject to availability. If on receipt of your order the Art Work you have ordered is not available in stock, I shall inform you as soon as possible, and refund or re-credit you for any sum that has been paid by you for the Art Work.
- 4.4. Every effort is made to ensure that prices shown on my website are accurate at the time you place your order. If an error is found, I shall inform you as soon as possible and offer you the option of reconfirming your order at the correct price or cancelling your order. If you cancel, I shall refund or re-credit you for any sum that has been paid by you for the Art Work.
- 4.5. In addition to the price, you shall be required to pay a delivery charge for Art Work and Commissioned Art Work, as shown in the section of my website about delivery.

5. Payment

- 5.1. You shall pay for Art Work, Commissioned Art Work and delivery charges in accordance with the Schedule.
- 5.2. Payment for Art Work, Commissioned Art Work and delivery charges can be made by any method shown on my website.
- 5.3. Payment is required before Art Work shall be despatched.

6. Delivery

- 6.1. The Art Work and/ or Commissioned Art Work you order shall be delivered to the address you give when you place your order, except that deliveries are not made outside the United Kingdom, and some parts of the United Kingdom are not covered, as shown on my website at the time you place your order.
- 6.2. If there is no one at the address given who is competent to accept delivery of the Art Work and/ or Commissioned Art Work, you shall be notified of an alternative delivery date or a place to collect it. If delivery cannot be made to your address subsequently or I am unable to deliver to you for any reason beyond my control, I may cancel the contract in whole or in part without liability and shall refund or re-credit you for any sum that has been paid by you or debited from your credit card for Art Work and/or Commissioned Art Work and for delivery.
- 6.3. Every effort shall be made to deliver Art Work as soon as possible after your order has been accepted, and in any event within 30 days of your order. However, I shall not be liable for any loss or damage suffered by you through any reasonable or unavoidable delay in delivery. In this case, I shall inform you as soon as possible.
- 6.4. All delivery times are estimates only and while I endeavour to avoid delay, I shall not be liable to you for any loss or damage arising from a delay in delivery.

- 6.5. I may deliver Art Work and/or Commissioned Art Work by instalments. Where I deliver by instalments you shall only incur one delivery charge.
- 6.6. You shall become the owner of any Art Work you order (excluding any Intellectual Property) and shall be responsible for risk of loss of or damage to it once it has been delivered to you.
- 6.7. In respect of Commissioned Art Work, you shall be responsible for risk of loss of or damage to it once it has been delivered to you but you shall not become the owner of the Commissioned Art Work until you have paid the balance of the price. For the avoidance of doubt, title to the Intellectual Property in the Commissioned Art Work shall remain with me at all times, even after you have paid the balance of the price.

7. Wrong Delivery or Transit Damage

Where you receive the wrong Art Work or the Art Work and/or Commissioned Art Work has been damaged in transit, you must notify me by telephone, email or fax to the telephone number, email address or fax number shown below within seven (7) working days of delivery, failing which the Art Work and/ or Commissioned Art Work shall be deemed to have been accepted by you and to be in satisfactory condition. A working day is any day other than weekends or Bank or other public holidays.

8. Your Right of Cancellation

- 8.1. If you are a Consumer, in respect of Art Work you have the right to cancel the contract at any time up to the end of seven (7) working days (see Clause 7 above) from the date you order the Art Work and not be liable to pay for it.
- 8.2. To exercise your right of cancellation, you must give me written notice by hand or post or email, at the address or email address shown below, giving details of the Art Work ordered and (where appropriate) their delivery.
- 8.3. If you exercise your right of cancellation after the Art Work has been delivered to you, you shall be responsible for returning the Art Work to me at your own cost. Art Work must be returned to the address shown below. You must take reasonable care to ensure that Art Work is not damaged in the meantime or in transit.
- 8.4. Once you have notified me that you are cancelling the contract, I shall refund or re-credit you within thirty (30) days for any sum that has been paid by you for the Art Work.
- 8.5. If you do not return the Art Work as required (or it is damaged in delivery to me), I may charge you a sum not exceeding the direct costs of recovering the Art Work.

9. Copyright

- 9.1. The Intellectual Property in any Art Work and Commissioned Art Work shall at all times remain with me unless otherwise agreed between us in writing.
- 9.2. The Intellectual Property entitles me to make copies of any Art Work and/or Commissioned Art Work and to use these copies for such purposes as I may in my sole discretion decide.

10. **Data protection**

- 10.1. I shall take all reasonable precautions to keep the details of your order and payment secure, but unless I am negligent, I shall not be liable for unauthorised access to information supplied by you.
- 10.2. I shall only use the information you provide about yourself for the purpose of fulfilling your order, unless you agree otherwise. I would like to notify you of products and offers that may be of interest to you from time to time, and if you would like to be notified of these, please tick the box below. You can correct any information about you, or ask for information about you to be deleted, by giving me written notice at the address, fax number or email address shown below.
- 10.3. Please view my privacy statement at www.emmamcintyre.co.uk for further information on how I will use your data.

11. **Waiver**

My failure to insist upon the strict performance of any of your obligations under the contract shall not be construed as a waiver and shall not affect my right to require strict performance of such obligations.

12. **Costs of Enforcement**

You will pay to me all expenses, including legal costs, incurred by me or on my behalf in enforcing the provisions of this contract.

13. **Severability**

If any provision of this contract or part thereof is found to be invalid or unenforceable, the invalidity or unenforceability of such provision or part shall not affect any other provision or the remainder of the provision in which such invalid or unenforceable part is contained, which shall remain in full force and effect.

14. **Rights of Third Party**

Nothing in this contract shall give or is intended to give rights to any third party under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

15. **Limitation of Liability**

- 15.1. The following clause specifies the extent to which I shall be liable for Default. **Its principal terms are a financial limit on my liability (except for death or personal injury), my liability only for certain defined losses, and a time limit applicable to both parties for the enforcement of claims. My entire liability and your sole remedies, whether in contract, tort or otherwise, shall be as set out in this clause.**
- 15.2. I shall accept unlimited liability for death or personal injury caused by my Default.
- 15.3. I shall accept liability for direct physical damage to your tangible property resulting from my Default.

- 15.4. I shall not be liable for the following loss or damage however caused and even if foreseeable by me:
- 15.4.1 economic loss, which term shall include loss of profits, loss of use of profits, business, revenue, goodwill or anticipated savings;
 - 15.4.2 special, indirect or consequential loss;
 - 15.4.3 loss or damage arising from your failure to fulfil your responsibilities or any matter under your control or that of a third party;
 - 15.4.4 loss or damage arising from my acting in accordance with your instructions officers, employees, agents or third parties engaged by you;
 - 15.4.5 fair wear and tear; or
 - 15.4.6 where clause 7 has not been complied with.
- 15.5. My entire liability for actual damage in respect of any one Default shall not, in any event, exceed the price of the Art Work and/ or Commissioned Art Work which are directly related to the Default.
- 15.6. Except in respect of payments due under this agreement and claims under clause 15.2 no action may be brought by either party against the other more than twelve months after the cause of action has accrued.
- 15.7. You acknowledge that:
- 15.7.1 the price of the Art Work and/ or Commissioned Art Work has been calculated on the basis that I exclude and or limit my liability to you in accordance with these Terms;
 - 15.7.2 the exclusions and limitations contained in these Terms are fair and reasonable in all the circumstances known at the date of these Terms; and
 - 15.7.3 it is not possible to foresee and provide in the agreement (in particular by way of adjustments to the price of the Goods) for all contingencies which may give rise to loss, damage or liability.
- 15.8. Each of the limitations and exclusions set out above is to be construed as a separate limitation or exclusion, applying and surviving even if for any reason one or other of the limitations or exclusions is held inapplicable or unreasonable in any circumstances, and shall remain in force despite termination of this agreement.
- 15.9. Some jurisdictions do not allow the exclusion or disclaimer of certain warranties. In such jurisdictions, one or more of the above may not apply to you.

16. Notices

All notices shall be in writing (except where provided otherwise) and may be served by sending it by recorded delivery post, email or fax to the following address, email address or fax number:

Address: 10 Lonsdale Gardens, Tunbridge Wells, Kent, TN1 1NU,

Email: prints@emmamcintyre.co.uk or emma@emmamcintyre.co.uk

Fax no: N/A

Where this contract provides for notice to be given by telephone, you should use the following telephone number:

Telephone no: 07850 512714

17. **Applicable law**

These terms of sale and the supply of the Art Work and Commissioned Art Work will be subject to English law, and the English courts will have jurisdiction in respect of any dispute arising from the contract.