



LICENSING AGREEMENT ISSUED PURSUANT TO THE COPYRIGHT LICENSING LIMITED AUCTION HOUSE LICENSING SCHEME

PARTIES

1. **COPYRIGHT LICENSING LIMITED** a duly registered company having company number 396745 (**CLNZ**)
2. **[Name of Auction House]** of **[insert address]**, an **AUCTION HOUSE** operating in Aotearoa New Zealand

BACKGROUND

- A. CLNZ is a collective management organisation that manages licensing rights on behalf of New Zealand visual artists ("Artists") with regard to their copyright-protected artistic works ("Artistic Works").
- B. The copyright in the Artistic Works is owned by the Artists who created those works.
- C. The Licensee operates an auction house business which is engaged in the public auction and sale of items including Artistic Works.
- D. Sections 29, 30 and 31 of the New Zealand Copyright Act 1994 make it an infringement of copyright to copy, and issue copies to the public, copyright protected works including artistic works, other than pursuant to a copyright licence.
- E. The Licensee makes copies of Artistic Works and issues those copies to the public in printed and digital sales catalogues, and other supplemental promotional material in order to promote the sale of Artistic Works by the Licensee.
- F. In order to comply with New Zealand copyright law, the Licensee wishes to obtain from CLNZ permission to reproduce, publish and issue to the public, copies of Artistic Works ("Licensed Works").
- G. CLNZ is willing to grant such a licence to the Licensee on the terms and conditions set out in this Agreement.

LICENCE TERMS

The Parties agree as follows:

1. Licence

1.1 Subject to the terms and conditions of this agreement, the attached Licence Fee Schedule, and receipt of the relevant Licence Fees, CLNZ grants to the Licensee a non-exclusive licence to reproduce, publish and communicate to the public the Licensed Works in connection with the business of the Auction House for the following purposes:

- a) to promote the sale of the Licensed Works in printed promotional catalogues;
- b) to promote the sale of the Licensed Works in online sales catalogues on the Licensee's Websites, Social Media and email;
- c) to archive online sales catalogues incorporating Licensed Works on the Licensee's Websites;
- d) to report on sales of Licensed Works on the Licensee's Websites, Social Media and email;

1.2 The Licensee agrees that the licence granted by this agreement is limited to the use of the Licensed Works for the purposes set out in clause 1.1 and that any other uses of Artistic Works will be negotiated and licensed separately.

2. Requirements for use of Licensed Works on Websites and Social Media

2.1 The Licensee will ensure that images of Licensed Works used on Websites and Social Media are suitable for screen-based viewing but not suitable for producing a reproduction quality copy.

2.2 In the case of use of Licensed Works on Social Media the following additional conditions apply:

- a) Licensed Works must not be uploaded directly to Social Media but must be embedded in an image which contains details of the Licensed Work;
- b) Licensed Works must not be used as a profile image on Social Media; and
- c) Licensed Works must not be able to be downloaded from Social Media.

2.3 The Licensee will use its reasonable endeavours to digitally correct images to represent a true and accurate reproduction of the original Licensed Work.

2.4 The Licensee must not delete any electronic metadata accompanying a Licensed Work.

2.5 The Licensee may make such backup copies of the digital images of Licensed Works as may be necessary to use the digital images in accordance with this Agreement.

2.6 The digital images referred to in clause 2.5 must at all times remain in the custody, control or power of the Licensee and its agents.

2.7 The Licensee will use and maintain a copyright notice on its websites explaining in clear language that the Licensed Works are protected by copyright law and advising that the Licensed Works or any part of them may not be modified, republished, distributed, reproduced or communicated in any form except as may be allowed by the New Zealand Copyright Act 1994 (and any subsequent amendments).

3. Permission Acknowledgment

3.1 The Licensee agrees that it will publish or cause to be published the following acknowledgment whenever a Licensed Work is used including on Websites and Social Media:

- (a) artist's name;
- (b) title of work;
- (c) symbol © accompanied by the [name of copyright owner]/ Licensed by CLNZ

3.2 The acknowledgment referred to in sub-clause 3.1 must appear underneath or close to the Licensed Work or, at the option of the Licensee, on an "Acknowledgements" page of a publication.

4. Licence Fees

4.1 The Licensee agrees that it will pay a Licence Fee to CLNZ for each use of a Licensed Work by the Licensee in accordance with the Licence Fee Schedule attached.

4.2 In addition to the Licence Fee payable under clause 4.1, the Licensee will pay to CLNZ any required Goods and Services Tax (GST).

4.3 Immediately on receipt of the information referred to in clause 5.1 below, CLNZ will issue a Tax Invoice to the Licensee based on the Licensee's reported usage. The Tax Invoice will be paid on or prior to the 20th of the month following the date of the invoice.

4.4 If the Licensee fails to pay the Licence Fees by the due date:

- (a) interest on the unpaid amount will accrue at an interest rate of 2% above the base annual lending rate of Westpac Banking Corporation in New Zealand calculated daily from the due date to the actual date of payment; and
- (b) any licence granted under this agreement will be suspended until such payment is received.

4.5 If the Licensee fails to report as required in clause 5.1, CLNZ may:

- (a) estimate the Licensee's usage; and
- (b) invoice the Licensee for Licence Fees on the basis of that estimated usage; and
- (c) invoice the Licensee for an amount of \$150.00 (exclusive of GST) as an administrative charge for investigating and compiling the usage data.

5. Reporting requirements

- 5.1 The Licensee will keep accurate records of all uses of Licensed Works made in accordance with clause 1.1 and will provide these in Licence Usage Reports to CLNZ. The format for these reports will be agreed by the parties and will be in an electronic format that includes sales data equivalent to the information provided to Art Sales Digest.
- 5.2 The Licence Usage Reports will be provided to CLNZ on or before the 10th working day of the month, for usage during the prior month.
- 5.3 The Licensee will also provide to CLNZ one copy of each sale catalogue published by an Auction House in which Licensed Works are used pursuant to this Agreement. This copy may be provided in a digital format.

6. Obligation to notify of disposal or acquisition

- 6.1 The Licensee will notify CLNZ within 30 days of the relevant event if it disposes of or ceases to operate the Auction House or if it acquires or commences to operate any other business engaged in the sale or reproduction of artistic works.
- 6.2 The licence granted by this Agreement will apply to a business acquired or commenced to be operated by the Licensee only after CLNZ has been notified of the acquisition or commencement of operation and has consented to include that business within the scope of this Agreement.

7. Term

- 7.1 The initial term of this Agreement runs from 1 June 2021 through to 30 June 2023.
- 7.2 CLNZ and the licence holders that are party to the CLNZ Auction House Licensing Scheme will meet in March 2023 to review the scheme. Revisions to the Agreement for 1 July 2023 onwards must be agreed between the parties.
- 7.3 The purpose of the review is to formally assess the operation of the scheme including, but not limited to, the supply of data, rights conferred and fees.
- 7.3 The licensing scheme in operation from 1 July 2023 onwards will automatically renew on 1 July each year unless CLNZ notifies the Licensee otherwise, in writing.

8. No alteration

The Licensee agrees not to crop, overprint or otherwise alter the appearance of Licensed Works in any reproduction, publication or communication of the Licensed Works except with the prior permission of CLNZ.

9. Moral rights

The Licensee agrees to respect the moral rights of Artists of Licensed Works.

10. Warranty

CLNZ warrants that it is authorised to grant the licence set out in clause 1.

11. Indemnity

The Licensee indemnifies CLNZ against all liability incurred by CLNZ as a result of or arising out of any breach by the Licensee of this Agreement or for use of Licensed Works other than in accordance with this Agreement.

12. Confidentiality

12.1 Subject to clause 12.2, a party must not during or after the term of this Agreement, except in the proper course of the performance of its obligations under this Agreement, disclose any confidential information of the other party without the previous consent in writing of the other party.

12.2 CLNZ may:

- (a) use the Licensee's confidential information to determine monies payable to CLNZ under this Agreement and distributions to the Artists whose works have been copied;
- (b) disclose to any person that the Licensee is a party to this Agreement.

12.3 This clause 12 does not apply to confidential information which is:

- (a) required to be disclosed by law;
- (b) in the public domain other than by breach of an obligation of confidence; or
- (c) disclosed to the party's legal advisers.

13. Termination of right to use Licensed Work

In the event that CLNZ ceases to represent the rights of a copyright owner in respect of his or her Licensed Work, CLNZ will notify the Licensee and the Licensee will within two months of receiving such notice cease to use that Licensed Work under this Licence and will remove all copies of the Licensed Work from Websites and Social Media unless the Licensee has obtained permission for these uses from the copyright owner of the Licensed Work.

14. Termination for Cause

Each party shall have the right to terminate the Agreement in its entirety upon the occurrence of any of the following:

- (a) The failure of the other party to comply with any material term of this Agreement and the failure to cure that non-compliance before the expiration of 90 days from the date of a written notice thereof specifying the nature of such default; provided, that if the default is of a nature that cannot be cured within such 90 day period, then the failure of the defaulting party to commence the cure within such 90 day period and diligently to pursue cure to completion shall be sufficient cause for termination;
- (b) The repeated occurrence of any one or more of the events described in paragraph (a) above, notwithstanding that any such event shall have been cured.
- (c) Either party becomes insolvent within the meaning of the Companies Act 1993 or ceases to carry on business.

15. Miscellaneous

- 15.1 This agreement embodies the entire understanding and agreement between the parties as to its subject matter.
- 15.2 This agreement may only be varied, modified or replaced by a written document signed by the parties.
- 15.3 A single or partial exercise or waiver of a right relating to this agreement will not prevent any other exercise of that right or the exercise of any other right.
- 15.4 Each party shall promptly execute all documents and do all things that any other party from time to time reasonably requires of it to effect, perfect or complete the provisions of this agreement and any transaction contemplated by it.
- 15.5 This agreement is governed by and is to be construed in accordance with the laws of New Zealand.
- 15.6 *Disputes:*
 - If either party has any dispute with the other party in connection with this Agreement:
 - That party will promptly give full written particulars of the dispute to the other party; and
 - The parties will promptly meet together and in good faith try and resolve the dispute.

Alternative Dispute Resolution:

If the dispute is not resolved within 28 days after and excluding the date on which the written particulars were given (or any longer period agreed to by the parties in writing) the dispute will be managed in accordance with CLNZ's Alternative Dispute Resolution Process which is available from CLNZ's website at www.copyright.co.nz

Obligations under this Agreement:

The parties will continue to comply with their obligations under this Agreement during the dispute resolution process but disputed payments may be withheld to the extent of the dispute.

- 15.7 The Licensee may not dispose of, encumber or sublicense any right under this Agreement without the prior written consent of CLNZ.

16. Interpretation

In this Agreement:

- Words referring to the singular include the plural and the reverse;
- Any reference to either party includes that party's executors, administrators or permitted assigns or, if a company, its successors or permitted assigns or both;
- Clause headings are for reference purposes only.

SIGNED by COPYRIGHT LICENSING LIMITED) _____
Signature of Authorised Signatory

Name of Authorised Signatory

Date

SIGNED on behalf of LICENSEE) _____
Signature of Director/Authorised Signatory

Name of Director/Authorised Signatory

Date