

## CONSIGNMENT AGREEMENT

made and entered into, by and between Artist

((Name of the Artist))

and

TheArtists  
Forchstrasse 37  
8032 Zürich

The Artist is the author and owner of the works of art on the attached list of consigned works

and

TheArtists (TA) is engaged in the business of promotion, exhibition and the sale of works of art;

The Artist wishes to consign the works to TA for sale, and TA wishes to have the works consigned for sale.

The parties hereby agree as follows:

## **WORKS**

The Artist hereby agrees to exclusively consign the works (list of consigned works attached) to TA for the consignment period for the purposes of their sale, and TA hereby accepts such consignment (the “consignment”). If necessary the attached list of consigned works is updated on a regular base, stating all necessary information about the works, including retail price, insurance value and production costs. As a principle the works remain in the possession of the Artist and is/are offered by TA online. Exceptions are possible, for example in the form of physical exhibitions, but require the prior consent of and collaboration with the Artist.

## **CONSIGNMENT PERIOD**

The period of the consignment shall be twelve (12) month from

1 June 2023 to 1 June 2024  
(the „consignment period“).

## **PROLONGATION OF THE CONSIGNMENT PERIOD**

One (1) month before the end of the consignment period the parties may agree on a prolongation of the consignment agreement. This shall be agreed in writing, where email exchange is sufficient. The attached list of consigned works may be adapted and different works may be added.

## **PRODUCTION COSTS**

The term “production costs” refers to the amount one of the parties or a third party pays for material or third-party costs (such as subcontractors etc.) for the production of (a) specific work(s) consigned to TA. These costs must be fixed and defined prior to the consignment. Their repayment shall be subject to a separate agreement between the parties and is only possible in case of the sale of that specific work.

## **REPRESENTATION**

During the consignment period, TA shall act as the Artist’s exclusive sales representative for the sale of the specific works and may sub-consign the works at its own discretion to any qualified third party in order to sell or exhibit the work. Within the consignment period the Artist agrees not to sell or consign the works other than through TA. During the consignment period and until the sale of the works and the transfer of title in the works, the Artist remains the owner of the works. If the Artist sells a work consigned to TA during the consignment period to any third party without involving TA, TA may terminate this agreement for cause.

## **IMAGE RIGHTS/ADDITIONAL COSTS**

The Artist will hand over to TA – free of rights of third parties – and transfer a license free of charge to use images of each work in high resolution quality to be published on TA website and used for purposes associated with TA, such as sales purposes, documentation, archival purposes and the promotion of the works of the Artist such as press and publications for an unlimited time period und the worldwide territory in any media. For the avoidance of doubt it is stated that TA will not claim any reimbursement of costs for activities (PR, texts, online costs etc.).

## **LOCATION OF THE CONSIGNED WORKS**

The consigned works will remain located at the Artist's premises or at a place designated by the Artist. The Artist shall inform TA about the location of the works and any change of the location of the works during the consignment period. The Artist is obliged to cooperate, hand out and make available the works to TA or requested third parties during the consignment period upon request by TA. As a principle the consigned works will be directly shipped from the Artist's premises to the designated Buyer.

## **INSURANCE**

TA will not provide any insurance for the works before the sale. The Artist assures that the works are insured and kept in a safe place until the works are sold. But TA will take measures to insure the artworks after the sale during transport. This will apply from the moment of the hand-over of the works from the Artist to the designated transport company until the hand-over to the Buyer and four (4) weeks after hand-over to the Buyer; the insurance costs will be reimbursed to TA from the payment of the purchase price. (see also below: The Sale/Artists Fund)

## **FRAMING, SHIPPING AND INSURANCE EXPENSES**

TA agrees to arrange and to upfront all costs in connection with packing, insuring and shipping the works by common carrier from its present location to the Buyer, the connected costs will be fully communicated with the Artist. Costs for framing (if applicable), packing, shipping and insurance expenses will be reimbursed to TA from the retail price and are part of the calculation of the sales shares. (see below: The Sale)

## **WORK CONDITION**

The Artist assures that the works are in pristine and excellent condition at the moment of closing this agreement and the Artist will maintain all care and diligence that the condition remains unaltered during the consignment period. Commercially reasonable precautions will be taken to protect the works from any harm such as fire, theft, mishandling, dirt, and from extremes of light, temperature, and humidity at all times during the consignment period. Until handed over to the transport company the Artist is responsible for the physical works.

## **DAMAGE IN THE WORKS DURING THE CONSIGNMENT PERIOD**

Any damage to the work, regardless of who may be responsible, must be reported immediately latest within 72 hours to TA in order to discuss consequences; the parties may decide to exchange the damaged work for another work by the Artist. The Artist shall provide all relevant and necessary information describing or relating to the works, the damage and its cause to the TA. For the avoidance of doubt: TA will not provide any conservation for the works.

## **END OF CONSIGNMENT IF THE WORK REMAINS UNSOLD**

Unless otherwise agreed in writing, the consignment will terminate with the end of the consignment period. If the works remain unsold at the end of the consignment period the Artist is free to offer the works to third parties or commission third parties to sell the works.

## **THE SALE / THE ARTISTS FUND**

In the event of the sale of the works, the communicated fee for shipping, framing (if applicable) and insurance costs will be reimbursed from the retail price to the party who paid for them in the first place (usually TA). Reimbursements will require the proof of costs via receipts and invoices.

The remaining amount (shared amount) will be split as such:

- The Artist shall receive 60 % of the shared amount (see attached list of consigned works).
- An additional 5% of the shared amount will be paid by TA into a fund administered by TA. This fund consists of equal payments of 5% of the total remaining amount of all sold works of all Artists of a specific selection of a curator (season). The Artist will receive an equal share of the sum allocated at the end of a consignment period of works within one selection of the curator (season) who had selected the Artist. A season lasts twelve (12) months.
- The remaining 35% remain with TA for covering costs and investment in further activities.
- Discounts will not be granted.
- TA will pay out the Artist's share as soon as possible but no later than one (1) month after receiving the sales revenues with regards to the Return Policy of TA (see below).

## **RETURNS**

TA will handle any return procedure as each Buyer may return a work according to the following terms: According to the Terms and Conditions of the Sale each Buyer shall notify TA seven (7) days after receiving the work that the Buyer intends to return the work; the Buyer then has to return the work within a term of another 7 days after the announcement of the intention to return it.

## **INVOICING PROCEDURE**

The works shall not be released from the custody of the Artist to the purchaser and title to the physical works shall not pass to the purchaser until payment in full has been received by and cleared into the account of the TA and the Artist has been informed of this fact. TA is obliged to notify the Artist accordingly and in due course of any incoming payment.

- TA will assist the Artist in the invoicing procedure concerning his share of the sale.
- In general TA will take care of and instruct regarding all matters of additional VAT amounts.
- The Artist confirms that the physical work is free and clear of any encumbrances and liens, and is fully available for sale. In case of a sale that includes a work certificate, the parties will agree upon who will handle issuing and hand-over of such certificate to the Buyer. The hand-over of such certificate will only take place if the work will not be or has not been returned to the Artist or TA by the Buyer.
- The Artist also indemnifies TA against any potential legal action by any prior owner or creditor arising out of the consignment or sale of the works.
- As a qualifying artwork, upon sale, the TA shall collect and pay over any applicable royalty due under an Artist's Resale Right Regulations or similar provisions.

## **AUTHENTICITY**

The Artist hereby represents and warrants to TA that the works are authentic, that is, the works were created by the Artist, and the attribution and description of the works as described in attached list of consigned works are accurate and complete. Only if a work requires a certificate will the Artist issue such certificate and send it to each Buyer together with the purchased work. TA shall receive a copy of such certificate for documentation purposes from the Artist as soon as possible.

## **ADDITIONAL TERMS**

- TA will inform the Artist about a Buyer's name, residence and country.
- The parties shall cooperate regarding all sales efforts and the Artist shall supply to TA information and statements about her/his/their life and work – based on the free will and only to the extent the Artist feels comfortable.
- The Artist shall inform TA whether he or she is a member of any Copyright Collecting society.
- The Artist may use free of charge for their own purposes the texts and the material (videos, interviews etc.) TA has provided as part of the collaboration, but needs to credit the authors accordingly.
- This agreement does not mean or intend any employment.
- Any additional terms, including for example specific and individual provisions regarding production costs etc., shall be agreed upon in writing, email exchange is sufficient.

## APPLICABLE LAW

This Agreement and all matters relating to it shall be governed by the laws of Switzerland. The parties agree that place of jurisdiction for all matters related to disputes related to this agreement is Zürich, Switzerland.

## DISPUTES

The Artist and the TA agree that any and all disputes, claims or controversies arising out of or relating to this Agreement shall first be attempted to be solved in an amicable way taking into account the principles of TA as stated in the Mission statement. This paragraph shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. In the event of a conflict between this paragraph and the rules, this paragraph shall control.

This Agreement including the list of consigned works, which forms an integrative part of this Agreement, may be executed in one or more counterparts.

Day:

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Place:

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Artist:

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Day:

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Place:

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TheArtists:

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