

# Delivery conditions for works of art

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These delivery conditions may be used by BOK affiliates, in amended or unabridged form. Although great care and attention has been paid to the content and composition of the conditions, BOK accepts no liability whatsoever arising from consulting and using them. These delivery conditions apply to all conceivable forms of visual art.

## 1. General Provisions

1.1 The commissioning party is the person who purchases any form of art, or commissions its production or enters into an agreement with one or more artists, with the aim of acquiring, trading, lending or publishing works of art. In these delivery conditions, he is referred to as the buyer/commissioning party.

1.2 The artist is the person who professionally performs and delivers any form of art.

1.3 These delivery conditions, to the exclusion of purchasing or other conditions of the commissioning party, apply to the conclusion, content and fulfilment of all agreements concluded between the commissioning party and the artist.

## 2. Quotation

2.1 Quotations are without obligation and are valid for two months. Quotations may be subject to change due to an unforeseen change in the work, increases in material prices and/or wages of third parties involved in the work. Quoted rates and offers do not automatically apply to future commissions.

2.2 Quotations by the artist are based on the information provided by the commissioning party. The commissioning party guarantees to have provided all information required for the planning, execution and completion of the commission and to have done so in time and truthfully.

2.3 Quotations do not include copyright.

## 3. Purchase and/or commission confirmation

3.1 Purchases/commissions must be confirmed by both parties in writing or by email, stating the agreed price, the content of the purchase/commission and the delivery period.

3.2 If the commissioning party fails to send confirmation, but nevertheless approves of the artist starting to execute the commission, the content of the offer will be deemed to have been agreed. Further verbal agreements and stipulations will bind the artist only after they have been confirmed by the artist in writing.

3.3 If after an instruction for price calculation and quotation for a work of art yet to be executed, the instruction for execution and delivery is delayed by more than one month, the artist is entitled to charge the buyer/commissioning party for the costs of the research, sketches and price calculation 30 days after the date of the written quotation.

3.4 If the purchase/commission confirmation is made unilaterally by the artist only and the buyer/commissioning party raises no objection within eight days, the content of this confirmation will be binding on the parties and will be legally valid.

3.5 The buyer/commissioning party and the artist undertake to observe confidentiality in connection with all confidential information they receive from each other or from other sources within the framework of their agreement.

Information is considered confidential if the other party has communicated its confidential nature or if such confidentiality ensues from the nature of the information.

#### **4. Execution**

4.1 The artist must inform the buyer/commissioning party in advance of the delivery conditions to be set by him.

4.2 The artist will endeavour to execute the commission with due care and to strive for a result that is acceptable to the commissioning party. Insofar as required, the artist will keep the commissioning party informed of the progress of the work.

4.3 A term specified by the artist for completing the work of art is indicative, unless the nature or content of the agreement indicates otherwise. The commissioning party must notify the artist in writing or by email if the specified period is exceeded.

#### **5. Sketches and designs**

5.1 If the buyer/commissioning party requires a variant of the first design, or one or more new designs, he will be charged separately for this additional work.

5.2 All designs and sketches remain the intellectual property of the artist, with the exclusive right to publication and exploitation. Designs also remain his material property, unless explicitly agreed otherwise. The artist supplies his designs and sketches solely to give an impression of a work of art yet to be delivered or executed, accompanied by a written estimate of the execution costs.

#### **6. Third-party work**

6.1 Insofar as proper execution of the agreement requires this, the artist has the right to ask third parties to execute part of the commission. The artist will only do this after consulting the commissioning party.

6.2 If the technical execution of a particular work of art must be partially or completely realised by third parties, the artist who received the commission to deliver the entire work is obliged to supervise the proper execution. The artist is responsible for the artistic result of the entire work of art. Third parties who have been charged by the artist with the execution of parts of or the entire work of art are responsible to him for the technical result. The artist decides who executes the work, unless otherwise agreed in advance.

#### **7. Delivery**

7.1 The artist must deliver the work of art to be delivered by him at the agreed time as stated in his commission confirmation. If the artist has to deviate from this due to unforeseen circumstances, the artist must notify the buyer/commissioning party in a timely and motivated manner in writing or by email.

7.2 The buyer/commissioning party is obliged to receive the work of art commissioned by him and to assess it for approval as soon as possible after completion. Unless otherwise agreed, the buyer/commissioning party must do everything to enable timely delivery. If this proves impossible, he must inform the artist in a timely and motivated manner.

7.3 The delivery period agreed on with the artist can never be regarded as a strict deadline by the buyer/commissioning party, unless the contrary has been explicitly agreed on with the artist in writing or by email.

7.4 The artist is permitted to charge custody, storage and insurance costs from the end of the pre-agreed delivery period until the moment the buyer/commissioning party has made actual delivery possible.

## **8. Payments**

8.1. The artist is entitled to claim payments in multiple instalments.

8.2. The buyer/commissioning party must make payments within thirty days of the date of the invoice, which is in accordance with the commission agreement sent to him by the artist. Claims regarding the amount due on invoices do not suspend the payment obligation.

8.3. If the payment term is exceeded, the buyer/commissioning party owes statutory interest until the full amount has been paid. If the payment term is exceeded, the artist may suspend his work until the buyer/commissioning party has paid the amount due, plus interest. Payments are deemed to have been made when the artist has received the full amount.

8.4. Additional costs that relate to the collection of the money payable and not paid in time by the buyer/commissioning party are at the expense of the buyer/commissioning party.

## **9. Additional costs**

9.1 For a commissioned work of art, the research and preparation work, auxiliary materials, production resources, intermediate products, packaging, transport, transport risks, travel and accommodation expenses, insurance and VAT are, where applicable, at the expense of the buyer/commissioning party.

9.2 If the commissioning party makes changes to the commission that could not have been foreseen by the artist and cause additional work will be paid by the commissioning party to the artist in accordance with the rate agreed on in the agreement. Contract extras exist if, as a result of the commissioning party providing incorrect or incomplete information, the artist must reorganise his scheduled activities. The artist will charge the commissioning party for additional work on the basis of actual costs.

9.3 All tools/materials, means of production and intermediate products form part of the artist's studio set-up and remain his property, even if they have been charged to the buyer/commissioning party. The artist is not obliged to keep them, unless otherwise agreed on in advance. If it has been agreed that these must be kept, the artist is entitled to charge custody, storage and insurance costs.

9.4 If the purchase/delivery instruction means that the artist must deliver a test piece in the chosen material, a model or a scale model of the design, these additional activities will be charged to the buyer/commissioning party as additional costs.

## **10 Complaints**

10.1 Complaints must be sent to the artist in writing, stating the reasons, within fourteen days of receiving the delivered work of art.

10.2 After fourteen days after completion of the commission have elapsed, the commissioning party is deemed to have fully accepted the result of the commission. After that, the artist will no longer process any complaint as such. If in a special case, this period needs to be extended for the buyer/commissioning party, the artist will reasonably allow a longer period of another fourteen days.

10.3 The buyer/commissioning party must base his complaint on the information stated in the commission confirmation. The buyer/commissioning party may not reject a work of art without inviting the artist to explain his work of art verbally.

10.4 If the buyer/commissioning party has not made any written comments on the calculated amount within eight days of receiving the artist's invoice, he will be deemed to have accepted and approved the invoice.

## **11. Disputes**

11.1 A dispute between the buyer/commissioning party and the artist arises as soon as one of the parties declares that this is the case.

11.2 A dispute between the buyer/commissioning party and the artist, his heirs or legal beneficiaries, can be submitted to an arbitration committee of at least three experts, who can settle the dispute by issuing a binding opinion for both parties. The composition of the arbitration committee may vary, but always consists of an artist, a gallery owner and a lawyer. The committee will issue its opinion within 30 days of consideration.

11.3 If arbitration is not desired or does not produce the desired result, the ordinary civil court will decide.

## **12. Cancellation**

12.1 If a purchase/commission agreement is cancelled by the buyer/commissioning party, while the artist has already reached an advanced stage with preparation, implementation work and/or commitments with third parties, the buyer/commissioning party will be obliged to pay the artist the entire sum of all costs incurred involved in the creation of the work of art.

12.2 If the circumstances under which the purchase/commission agreement was concluded change in such a way that the artist is no longer able to properly carry out the originally intended commission for artistic or material reasons, he is entitled to terminate that agreement, but without prejudice to his right to a new commission agreement in accordance with those changed circumstances.

12.3 If due to force majeure the artist is unable to fulfil his obligations under the purchase/commission agreement, these will be postponed until the force majeure situation has ended. If the artist is still unable to fulfil his obligations after three months and the delivery of the work does not allow any further delay, the buyer/commissioning party is entitled to cancel the agreement; he is obliged to pay for the work performed by the artist up to that date, as well as the associated costs.

12.4 In the event of a situation of deferral of payment or bankruptcy of the buyer/commissioning party, the artist is entitled to terminate the agreement immediately and by registered letter, enclosing the invoice for the costs incurred for the work he has performed up to that date.

## **13. Guarantees and indemnifications**

13.1 The artist guarantees that the work of art was devised, designed and created by him and that as the creator within the meaning of the Copyright Act and as the copyright holder, he/she will have the disposal of the work.

13.2 The artist is entitled to sign his work and give it a title and/or code.

13.3 The commissioning party indemnifies the artist, or individuals engaged by the artist for the commission, against all third-party claims arising from the application or use of the result of the commission.

13.4 The commissioning party indemnifies the artist against claims with regard to intellectual property rights to the materials or data used for the execution of the commission and which have been provided by the commissioning party.

## **14. Liability**

14.1 The artist is not liable for damage, regardless of the nature thereof, due to artist acting on incorrect and/or incomplete information provided by or on behalf of the commissioning party.

14.2 The artist's liability is in any case limited to the sum paid out by his insurer in the relevant case.

14.3 The artists can be held liable for direct damage only. Direct damage is limited to the reasonable costs

to determine the cause and scope of the damage, insofar as the assessment relates to damage within the meaning of these conditions, any reasonable costs incurred to ensure the substandard performance of the artist conforms with the agreement, insofar as these can be attributed to the artist and reasonable costs incurred to prevent or limit any damage, insofar as the commissioning party is able to demonstrate that these costs have led to a limitation of the direct damage, as referred to in these general terms and conditions.

14.4 The artist can never be held liable for indirect damage, including consequential damage, lost profits, missed savings and losses due to business interruptions.

14.5 The artist can never be held liable for damage caused by the improper handling of the work of art by the buyer/commissioning party and/or placing or hanging the work of art in an unsuitable space - indoors or outdoors - where it can be affected by vermin, wind and weather and climatic influences or can be damaged by any moving objects.

The present work of art, called ..... and produced on ..... should be in a good and original condition for a period of ..... years.

## **15. Other provisions**

15.1 The commissioning party is not permitted to transfer any rights under an agreement concluded with the artist to third parties.

15.2 The parties are obliged to treat facts and circumstances which, within the framework of the commission, are disclosed to the other party, as private and confidential. Third parties who are engaged in the execution of the commission are obliged to treat these facts and circumstances from the other party with the same privacy and confidentiality.

15.3 The agreement between the artist and the commissioning party is governed by the laws of the Netherlands. The court competent to hear disputes between the artist and the commissioning party is the court with jurisdiction in the district where the artist is established, or the court that is competent according to the law, which is at the discretion of the artist.

15.4 The material ownership of the work of art does not give the owner the right to reveal, multiply or reproduce or any other form of exploitation. Pursuant to the Copyright Act 1912 and the Copyright Contract Act, this right is exclusively reserved for the artist, unless otherwise agreed on with the artist in writing in advance and for a fair compensation.

15.5. Insofar as applicable to 3D artworks in particular, the artist must always be consulted in the event of relocation, disassembly and assembly of the work of art. If the work of art is relocated, the artist must have given written permission to the commissioning party/buyer/material owner of the work of art.

15.6 To keep the work of art in good condition, the artist will, where applicable, provide conservation advice. This does not mean such advice will always make it possible to prevent the work of art from being affected by unforeseen circumstances that may arise in the future. The advice is always given in consultation with the material owner of the work of art.

15.7 Furthermore, the commissioning party/buyer/material owner will handle the work of art with due care and, where applicable, maintain the work of art in accordance with the maintenance instructions which the artist has provided separately from these conditions and which are signed by the buyer and artist.

The undersigned hereby declares to have read and agreed to the delivery conditions.

Name:

Address:

Place of residence:

Date:

Signature: