

TERMS AND CONDITIONS FOR COMMISSIONED WORK

Version number: 1.0

Effective date: 18th September 2023

1. Introduction

1.1 We are “Kerry Lindsell – Fine Art”. Our contact information is at the end of this document.

1.2 These are our terms and conditions which apply when you order any commissioned work from us.

1.3 Where we refer to “Consumer” below we mean an individual acting for purposes which are wholly or mainly outside that person’s trade, business, craft or profession.

2. Giving us information

IN SHORT: TAKE CARE TO GIVE US ACCURATE INFORMATION

2.1 You agree to ensure that your order, including delivery address and any other information you supply to us, is correct and that you tell us immediately if there are any changes.

3. How you enter a legal contract with us

THIS SECTION TELLS YOU HOW AND WHEN YOU BECOME LEGALLY BOUND BY A CONTRACT WITH US

3.1 We will send you an offer email or other communication including or linking to these terms. You accept the offer and there is a binding legal contract when you tell us in writing (e.g., by email) that you accept. Unless we agree otherwise in writing, our offer lasts for 14 days and you cannot accept it after this time.

3.2 There is no Consumer “cooling off” right to cancel commissioned artwork because this relates to goods that are customised/personalised.

4. Sending us reference photos

IN SHORT: YOU MUST SEND US SUITABLE REFERENCE PHOTOS WITHIN 14 DAYS

4.1 We usually create commissioned artwork from reference photos. Unless we agree otherwise in writing (e.g., if we agree to take the photos ourselves in a photo session – see below), you are responsible for supplying us with the reference photos. You agree to comply with the photo guidelines on our website. In any case, we are entitled to end the commission if we do not receive reference photos that we think are suitable within 14 days of your order.

5. Photo sessions

IN SHORT: OUR PHOTO SESSIONS AND PHOTOS ARE CHARGEABLE AND THERE MAY BE A FEE IF YOU CANCEL

5.1 Unless we agree otherwise in writing, our photo sessions are chargeable and our fee is payable in advance.

- 5.2 You can cancel a photo session at any time by emailing us. If so, there will be a full refund unless you cancel within 24 hours of the scheduled session time in which case you will be charged in full. We may agree to reschedule your session at no extra cost if we think there are exceptional circumstances but this is up to us. This cancellation policy does not affect the following Consumer cooling off rights: If you are a Consumer, you may have the legal right this contract within 14 days of the contract insofar as it applies to our photo session services if you comply with the requirements explained in the Annex at the end of this document. However, you lose the legal right to cancel if the photo session services have been completed.
- 5.3 We are entitled to rearrange any photo session if there are exceptional circumstances, e.g., illness. If so, we will give you as much notice as possible and we will provide a full refund if we are unable to offer or agree with you a rescheduled session.
- 5.4 You agree to behave in a reasonable and civilised manner during photo sessions and to comply with our reasonable requirements.
- 5.5 We reserve the right to immediately end any session if in our discretion you have breached these terms and conditions. No refunds will be given in such case.
- 5.6 You agree that, if you would like to receive copies of the photographs, these are subject to separate fees that are payable in advance.

6. Deposit

IN SHORT: YOU MUST PAY A DEPOSIT WITHIN 7 DAYS

- 6.1 Once when we tell you that we have suitable reference photos, you agree to pay us a deposit at the rate we have specified. We are entitled to end the commission if we do not receive the payment in full within seven days thereafter.
- 6.2 Your deposit is non refundable unless these terms specifically say otherwise.

7. Our right to end the contract

THIS SECTION TELLS YOU WHEN WE CAN DECIDE TO END THE COMMISSION

- 7.1 We are entitled to end the commission at any time if there are exceptional circumstances that prevent us from completing the work, e.g., due to illness. If so, we will make a full refund.
- 7.2 We are entitled to end this contract at any time without refund if you or anyone on your behalf acts inappropriately towards us, for example harassment, threats or abusive language.

8. Preparing your commission and payment of the balance

IN SHORT: YOU MUST RESPOND PROMPTLY TO APPROVAL REQUESTS AND PAY THE BALANCE OF THE FEE IN FULL BEFORE WE SEND YOU THE FINISHED ARTWORK

- 8.1 If we give you a timescale for supply of the finished artwork, that is an estimate only and in any case it is subject to your reasonable cooperation.

- 8.2 If we send you preliminary sketches or progress shots and ask for your approval, you agree to respond promptly. We are entitled to end the commission (without refund) if you fail to respond to any such request within 7 days or if you reject three iterations of any design.
- 8.3 It is up to us whether to agree to any changes requested after you have approved any design. If we agree to do so, we are entitled to make such changes subject to an additional fee payable in advance and to end the commission if that fee is not paid within 7 days.
- 8.4 Once when we tell you that the artwork is ready, you agree to pay us the balance of the fee plus the delivery charge. We will not despatch the artwork unless we have received payment in full. If we do not receive this within 14 days, we are entitled to end the contract without refund and to destroy the artwork if we wish.

9. Delivery

THIS SECTION SETS OUT OUR AND YOUR RESPONSIBILITIES IN CONNECTION WITH DELIVERY OF ARTWORK

- 9.1 Delivery is only to the countries we specify on our website and is subject to any other delivery restrictions or requirements explained on our site. We have the right to cancel any order for delivery to a location to which we don't deliver (even if there is a legal contract). You agree to pay us any additional delivery costs we incur if we decide to deliver outside our normal delivery area.
- 9.2 We will tell you about any applicable delivery charges when you place your order and may depend on the delivery method chosen. NB Delivery charges don't include customs or import duties which may be applied to your order by the relevant authorities. We have no control of these, and it is your separate responsibility to pay for them. We recommend that you check with your local customs office in advance.
- 9.3 Unless we say otherwise, any delivery timescales we provide are estimates only. We aren't responsible for delays in delivery (a) if due to circumstances beyond our reasonable control and where we could not have taken reasonable steps to deal with the delay or (b) if you haven't given us adequate delivery instructions.
- 9.4 You agree to alert us in advance to any access restrictions.
- 9.5 If there is no answer, we may, but aren't obliged to, leave the package at the doorstep, hall or reception as available, or with a neighbour.
- 9.6 If you receive notification of an unsuccessful attempted delivery, you agree to use the details provided to immediately contact the courier to arrange re-delivery.
- 9.7 If you have failed to comply with your obligations regarding delivery, we are entitled to abort delivery and you agree to pay us the amount of any delivery, storage, insurance or other costs that we incur. We are entitled to require that such costs be paid before we arrange re-delivery.
- 9.8 Risk of damage or loss to the goods passes to you on delivery either to you or to somebody identified by you to take possession of the goods.

10. Restrictions on our legal responsibility– very important

THIS SECTION LIMITS OUR LEGAL RESPONSIBILITY IN VARIOUS WAYS AND MAKES YOU RESPONSIBLE FOR CERTAIN LOSSES WE SUFFER, EG IF YOU BREAK THE CONTRACT

10.1 Nothing in this agreement in any way limits or excludes our liability for negligence causing death or personal injury or for fraud or fraudulent misrepresentation or for anything which may not legally be excluded or limited. In this section, any reference to us includes our officers, employees and agents, who have the right to enforce this agreement.

10.2 *The following clauses apply only if you are a Consumer:*

- We are under a legal duty to supply goods that are in conformity with the contract. Nothing in our agreement affects your legal rights relating to goods that don't conform with the contract, whether because they are faulty, not as described or otherwise. You can get advice about your legal rights from your local Trading Standards office or Citizens' Advice Bureau.
- Subject to the above, we are not responsible for any loss or damage where:
 - there is no breach of a legal duty owed to you by us;
 - such loss or damage was not reasonably foreseeable (meaning it was not an obvious consequence of our breach or not contemplated by you and us at the time we entered into this contract);
 - (and to the extent that) such loss or damage is your fault, for example by not complying with this agreement; or
 - such loss or damage relates to a business (as we do not intend for goods bought by Consumers to be used for business).
- You will be responsible to us for any reasonably foreseeable loss or damage we suffer (including claims made by other people) resulting from your breach of this agreement.

10.3 *The following clauses apply only if you are not a Consumer:*

- Subject to the other terms of this agreement, we warrant that, upon delivery and for a period of twelve months thereafter, the goods will be free from material inherent defects.
- To the fullest extent allowed by law, you and we exclude all terms, conditions, warranties and representations howsoever arising, whether imposed by statute or by law or otherwise, that are not expressly stated in this agreement.
- Subject to the first paragraph in this section (“Nothing in this agreement...”), we shall under no circumstances whatever be liable under or in connection with this agreement, whether in contract, tort (including negligence), misrepresentation, breach of statutory duty, or otherwise, for any:
 - loss of profit; loss of data; loss of use; loss of production; loss of contract; loss of opportunity; loss of savings; or harm to reputation or loss of goodwill; or
 - indirect, consequential or special losses.
- Subject to the first paragraph in this section (“Nothing in this agreement...”), our entire liability in respect of all other losses arising under or in connection with this agreement whether in contract, tort (including negligence),

misrepresentation, breach of statutory duty or otherwise, shall in no circumstances exceed the price paid for the relevant goods.

- You agree to indemnify us against all claims and liabilities arising out of or in connection with your breach of this agreement (except insofar as we are at fault).
- This agreement constitutes the entire agreement between us with respect to its subject matter and supersedes any previous communications or agreements between us. We both acknowledge that there have been no misrepresentations and that neither of us has relied on any pre-contractual statements.

11. Intellectual property rights (IPR)

IN SHORT: YOU CANNOT USE OUR IMAGES OR PHOTOS COMMERCIALY

- 11.1 We remain the owner of the IPR in all materials that we create for you including images and photos. You may use such materials for your personal and non-commercial use only. For example, you cannot resell our images or photos whether on their own or incorporated into merchandise or other products.
- 11.2 Just so you are aware: We retain the right to use the images and photos created for you however we wish, including to promote our own goods or services or for merchandising.

12. Your personal information

IN SHORT: OUR PRIVACY POLICY APPLIES

- 12.1 You agree that we can deal with your personal information in accordance with our [Privacy Policy](#) which may change from time to time.

13. Things we can't control

IN SHORT: WE AREN'T RESPONSIBLE FOR "ACTS OF GOD"

- 13.1 We are not liable for failure to perform or delay in performing any obligation under this agreement if the failure or delay is caused by any circumstances beyond our reasonable control including third party telecommunication failures and epidemics/pandemics.

14. Transferring this contract to someone else

IN SHORT: WE CAN PASS THIS CONTRACT TO SOMEONE ELSE BUT YOU NEED OUR PERMISSION TO DO LIKEWISE

- 14.1 We may transfer all or part of our rights or duties under this agreement provided we take reasonable steps to ensure that your rights under this agreement are not prejudiced. As this agreement is personal to you, you may not transfer any of your rights or duties under it without our prior written consent.

15. English law and courts

IN SHORT: ENGLISH LAW APPLIES AND ONLY UK COURTS CAN ADJUDICATE ON DISPUTES

- 15.1 These terms and conditions are under English law and any disputes will be decided only by the courts of the United Kingdom. If you are a Consumer, you will benefit from any mandatory provisions of the law of the country in which you are resident. Nothing in these terms and conditions affects your rights as a Consumer to rely on such mandatory provisions of local law.

16. General

HERE ARE SOME FINAL BUT IMPORTANT POINTS THAT APPLY

- 16.1 We may send all notices under this agreement by email to the most recent email address you have given us. You can send notices to our email address shown below. Headings used in this agreement are for information and not binding. If any part of this agreement is ineffective or unenforceable for any reason, the rest of the agreement will still apply. If either of us overlooks any breach of this agreement by the other, it can still be actioned later. A person who is not a party to this agreement can't enforce it unless the agreement says otherwise. The parties are independent contractors and, except as otherwise specifically stated above, nothing in this agreement makes any party an agent, employee or representative of the other.

17. Information about us

- 17.1 Name: Kerry Lindsell trading as "Kerry Lindsell – Fine Art"
 17.2 Business address: 9 Braeval, Aberfoyle, Stirling FK8 3UY, UK
 17.3 Contact email address: kalindsell@gmail.com
 17.4 Other contact information: See our website/contact page

ANNEX – COOLING OFF

LEGAL RIGHT TO CANCEL PHOTO SESSION SERVICES

The following applies if you are a Consumer and have the legal right to cancel this contract insofar as it applies to photos session services (as explained above).

Right to cancel

1. You have the right to cancel the contract within 14 days without giving any reason.
2. The cancellation period will end after 14 days from the day when we enter a legal contract with you as explained above – "How you enter a legal contract with us".
3. To exercise the right to cancel, you must tell us Kerry Lindsell – Fine Art, 9 Braeval, Aberfoyle, Stirling FK8 3UY, UK, (email address above) of your decision to cancel the contract by a clear statement (e.g., a letter sent by post or e-mail). You may use the model cancellation form below, but you don't have to.
4. To meet the cancellation deadline, you must send your communication telling us you want to cancel before the cancellation period ends.

Effects of cancellation

5. If you cancel the contract, we will refund to you all payments received from you.
6. The refund will be made without undue delay, and no later than 14 days after the day we receive your notice to cancel the contract.

7. The refund will be made using the same means of payment you used for the initial transaction, unless you expressly agreed otherwise; in any event, you will not incur any fees as a result of the refund.

8. If you ask us to start performing the services during the cancellation period, you must pay us an appropriate proportion of the payment to cover services performed until the point when you tell us you want to cancel the contract.

MODEL CANCELLATION FORM

Complete and return this form only if you wish to cancel the contract:

— To Kerry Lindsell – Fine Art, 9 Braeval, Aberfoyle, Stirling FK8 3UY, UK, email address above:

— I/We [*] hereby give notice that I/We [*] cancel my/our [*] contract of sale of the following goods [*]/ for the supply of the following service [*],

— Ordered on [*/received on [*],

— Name of consumer(s),

— Address of consumer(s),

— Signature of consumer(s) (only if this form is notified on paper),

— Date

[*] Delete as appropriate