



Website Terms and Conditions

Cairns Indigenous Art Fair Ltd ABN 64 167 840 100 (“**CIAF, we, our or us**”) owns and operates the Cairns Indigenous Art Fair website (<https://ciaf.com.au/>), virtual gallery and marketplace (<http://2020.ciaf.com.au/>) and the CIAF social media pages (Instagram @cairnsindigenouartfair, Facebook/CIAFcairns; Twitter @CIAFcairns; YouTube CIAF Cairns Indigenous Art Fair), (collectively, the “**Website**”). These Terms and Conditions govern your use of our Website and services (**Terms**).

Please read these terms carefully as they control the way you can and must not use our Website. These terms also describe your obligations when using our Website. Among other things, these terms set out limitations of our liability.

1 Acceptance of Terms and Conditions

- 1.1 The Website is owned and operated by Cairns Indigenous Art Fair Ltd ABN 64 167 840 100 (**CIAF, we, our or us**). By accessing and/or using our Website, you agree to bound by these Terms.
- 1.2 Use of our Website is entirely at your own risk. You must only use the Website in accordance with these Terms and any applicable law. You should immediately cease using our Website if you do not agree to these Terms.
- 1.3 These Terms also govern updates, upgrades and new and amended versions of the Website, unless such versions are accompanied by new terms for use, which will govern those versions.

2 Contact Us

- 2.1 You can contact us via our Website or by contacting:

Cairns Indigenous Art Fair
PO Box 5777, Cairns QLD 4870
51 The Esplanade, Cairns QLD 4870
(07) 4252 6312
artfair@ciaf.com.au

3 Registration and Access

- 3.1 You can, but do not need to, register an account on our Website to place orders or access features of the Website, however, you may be required to register an account to access certain features of our Website and Social Media, including but not limited to updates, promotional

material and other information from us.

- 3.2 When you register and activate an account, you will provide us with personal information such as your name, residential address, postal address, telephone number and email address. You must ensure that this information is accurate and current. We will handle all personal information we collect in accordance with the Australia Privacy Principles (**APPs**) contained in Schedule 1 of the *Privacy Act 1988* (Cth).

4 Privacy and Collection of Personal Information

4.1 We collect personal information about you:

- (a) to process your orders,
- (b) to provide you with access and use of the Website,
- (c) to provide you with our products and services,
- (d) to respond to your enquiries and feedback,
- (e) to provide you with details of updates, promotional material and other information relevant to our products and services, and
- (f) for purposes otherwise set out in the APPs.

4.2 We will handle all personal information we collect in accordance with the Australia Privacy Principles (**APPs**) contained in Schedule 1 of the *Privacy Act 1988* (Cth).

4.3 We may disclose that information to third parties that help us deliver our Website, Content, products and services (including information technology and communication suppliers, online payment suppliers, postal services, related service providers, our manufacturers and our business partners) or as required by law.

4.4 By providing your personal information to us, you consent to the collection, use, storage and disclosure of that information as described in these Terms. If you do not provide this information, we may not be able to provide all of our products or services to you.

4.5 Provided that we do not disclose your personal identity in doing so, we can collect, copy, communicate, adapt and exploit data from your use of the Website (and, for the avoidance of doubt, associated Third Party Material) and associated devices, systems, software and peripherals, to improve our products and delivery of our services to you.

Privacy and European residents

4.6 If you are a European resident, we note that we, or our third party service providers, process your personal information in order to fulfil contracts we might have with you (e.g. when you make and pay for an order through the Website).

4.7 If you would like any further information please contact us (see the 'Contact Us' section above for our contact information).

5 Orders from Merchant

5.1 When you place an order via the Website, you are not buying directly from CIAF, but from a Merchant who offers their products for sale on the Website.

5.2 When making an order, you must follow the instructions on the Website as to how to make your order and for making changes to your order before you submit it to us. We use secure online payment services. Please be aware that payments made using these online payment services will be subject to the terms & conditions of the service providers and you should review their

terms & conditions carefully before submitting your order.

- 5.3 Once you select a product that you wish to order, irrespective of any previous price you have seen or heard, you will then be shown or told (on the Website) the price you must pay including goods and services tax (GST) and any other charges.
- 5.4 Unless otherwise stated all costs and charges are in Australian (AUD) dollars.
- 5.5 You must pay for the order in full at the time of ordering by one of the payment methods we provide on our Website. You must have the authority to use the payment method or account used for purchases. The payment method or account must have sufficient funds or credit facilities to cover the purchase. We reserve the right to obtain validation of your payment details before providing you with the product and carry out security checks from time to time.
- 5.6 If you discover you have made a mistake with your order after you have submitted it to the Website, please contact us immediately. However, we cannot guarantee that we will be able to amend your order in accordance with your instructions.

Acceptance of order

- 5.7 When you place an order, you will receive a confirmation of order email (including contact details of the Merchant and a tax invoice). This email will only be an acknowledgment and will not constitute acceptance of your order until you receive a confirmation email from the Merchant.
- 5.8 Upon receipt of confirmation email from the Merchant, a legally binding agreement is formed between you and the Merchant, subject to any additional terms and conditions of the Merchant that apply such as the Merchant's refund policy and terms and conditions contained in the email. You agree to review the Merchant's terms & conditions carefully before submitting your order.
- 5.9 We may in our absolute discretion refuse to accept an order from you for any reason.
- 5.10 Until the time the Merchant accepts your order, we reserve the right to refuse to process your order and you have the right to cancel your order. If we or you have cancelled your order before it is accepted, we will promptly refund any payment already made by you to your original payment method.

6 Delivery and Returns

- 6.1 CIAF is not responsible for the processing and delivery of an order by a Merchant. We will not be liable to you for any loss, liability, costs, damages, charges or expenses arising out of or in connection with delivery of your order by the Merchant.
- 6.2 You agree to be bound by the returns policy of the Merchant. We will not be liable to you for any loss, liability, costs, damages, charges or expenses arising out of or in connection with the return, replacement or refund of your order by the Merchant.
- 6.3 Not all Merchants may accept returns. You should review the Merchant's terms & conditions carefully before submitting your order.

7 Independent Sellers

- 7.1 As part of the marketplace function on the Website, we may provide links to websites or social media operated by Independent Sellers, for the purposes of allowing you to buy products from the Independent Seller directly.
- 7.2 We are not responsible for the content on an Independent Seller's website or social media and

have no control over or rights in those linked websites or social media. Further, we do not make any claims about the quality, safety or legality of products offered for sale by an Independent Seller.

- 7.3 Each Independent Seller has their own processing times, payment terms, delivery methods and policies (e.g. payment, cancellation, delivery, returns). You should review an Independent Seller's terms & conditions carefully before submitting your order.

8 Accuracy, completeness and timeliness of information

- 8.1 The information on our Website is not comprehensive and is intended to provide a summary of the subject matter covered. While we use all reasonable attempts to ensure the accuracy and completeness of the information on our Website, to the extent permitted by law, including the Australian Consumer Law, we make no warranty regarding the information on our Website. You should monitor any changes to the information contained on our Website.
- 8.2 We may, from time to time and without notice, change or add to the Website (including the Terms) or the information, products or services described in it. However, we do not undertake to keep the Website updated. We are not liable to you or anyone else if errors occur in the information on the Website or if that information is not up-to-date.
- 8.3 Due to photographic and screen limitations associated with the representation of products, some actual products may differ to a small extent in visual appearance (for example, in colour) from the way they appear on the Website.

9 Intellectual property rights

- 9.1 Unless otherwise indicated, we own, license or have express written permission from third parties all rights, title and interest (including copyright, designs, patents, trade marks and other intellectual property rights) in our Website, and in all of the material (including all text, graphics, logos, audio and software) made available on our Website (**Content**).
- 9.2 Your use of our Website, and use of and access to any Content, does not grant or transfer any rights, title or interest to you in relation to our Website or the Content.
- 9.3 However, we do grant you a licence to access the Website and view the Content on the terms and conditions set out in these Terms and, where applicable, as expressly authorised by us and/or our third-party licensors.
- 9.4 Any reproduction or redistribution of our Website or the Content, in whole or in part, is prohibited and may result in civil and criminal penalties. In addition, you must not copy the Content to any other server, location or support for publication, reproduction or distribution is expressly prohibited.
- 9.5 All other use, copying or reproduction of our Website, the Content or any part of it is prohibited, except to the extent permitted by law.

10 Indigenous Cultural and Intellectual Property (ICIP)

- 10.1 Our Website and Content may incorporate ICIP, which belongs to the Aboriginal or Torres Strait Islander traditional owners or custodians of that ICIP. You agree that ownership of any such ICIP will remain at all times with the traditional owners or custodians of that ICIP.
- 10.2 In any access or use of the Website or Content incorporating ICIP, you agree to:
- a) respect the ICIP rights of the traditional owners or custodians of that ICIP, and comply with any relevant cultural protocols of CIAF;

- b) ensure that traditional owners or custodians continue to be acknowledged as owners of any ICIP incorporated in the Website or Content;
- c) not use the ICIP for any purpose without the prior written consent of the traditional owners or custodians of that ICIP.

10.3 CIAF is a member of the Indigenous Art Code and encourages you to deal sensitively and respectfully with the products viewed on or purchased through the Website.

11 Third Party Material

11.1 The Website may make available Content, data, information, applications, services, websites and materials from third parties (**Third Party Material**). We do not make any representation about, nor do we evaluate or examine Third Party Material, whether for usefulness for purpose, accuracy, completeness, legal compliance, availability or otherwise.

11.2 You use and access Third Party Material at your own risk. We may remove, suspend access to, change or otherwise deal with Third Party Material at any time, for any period and to any extent, without notice to you and without any liability or obligation to you. The owners or controllers of Third Party Material may do the same.

12 Linked sites

12.1 Our Website may contain links to websites or social media operated by third parties. Those links are provided for convenience and may not remain current or be maintained. Unless expressly stated otherwise, we do not endorse and are not responsible for the content on those linked websites or social media and have no control over or rights in those linked websites or social media.

13 Unacceptable Activity on the Website

13.1 You must not do or attempt to do any act that we would deem to be inappropriate, is unlawful or is prohibited by any laws applicable to our Website, including but not limited to:

- a) any act that would constitute a breach of either the privacy (including uploading private or personal information without an individual's consent) or any other of the legal rights of individuals;
- b) using our Website to defame or libel us, our employees, agents, contractors or other individuals;
- c) linking to our Website in a way that damages or takes advantage of our reputation, including in a way to suggest or imply that you have any kind of association or affiliation with us, or approval and endorsement from us when there is none, or in a way that is illegal or unfair;
- d) uploading files that consist of malicious computer program, including programs that include viruses, Trojan horses, worms or any other computer programming that may damage, modify, delete, detrimentally interfere with, access without authority or expropriate any system, data or personal information; that may cause damage to our property or the property of other individuals (**Malicious Computer Program**);
- e) interfering with security-related or other features of our Website;
- f) interfering or disrupting our Website or the servers or networks that host our Website;

- g) using data mining, robots, screen scraping or similar data gathering and extraction tools on our Website; or
- h) posting or transmitting to our Website any non-authorized material including, but not limited to, material that is, in our opinion, likely to cause annoyance, or which is defamatory, racist, obscene, threatening, pornographic or otherwise or which is detrimental to or in violation of our systems or a third party's systems or network security.

14 Warranties and Disclaimers

- 14.1 The Website and Content is provided 'as is' and to the maximum extent permitted by law, including the Australian Consumer Law, we make no express or implied warranties or representations, and disclaim all responsibility, that:
- a) the Website or the Content will be complete, accurate or up-to-date;
 - b) the Website or the Content are of a merchantable quality or fit for a particular purpose;
 - c) access to the Website or the Content will be uninterrupted or error-free or free from Malicious Computer Program; or
 - d) the Website or the Content will be secure.
- 14.2 We do not warrant that the products will meet your individual requirements and you acknowledge that the products are not made bespoke to fit any particular requirements of yours.
- 14.3 We reserve the right to cease offering the Website or any feature of the Website, or any Content, at any time without notice and we will not be responsible for any loss, cost, damage or liability that may arise as a result.

15 Limitation of Liability

- 15.1 We acknowledge that in Australia, goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. Nothing in these Terms purports to modify or exclude the conditions, warranties and undertakings, and other legal rights, under the *Australian Competition and Consumer Act 2010* (Cth) and other laws. Any and all other warranties or conditions which are not guaranteed by the Australian Consumer Law or the *Competition and Consumer Regulation 2010* are expressly excluded where permitted, including liability for incidental or consequential damages caused by breach of any express or implied warranty or condition.
- 15.2 To the maximum extent permitted by law, including the Australian Consumer Law, in no event will we (including us, our affiliates, our third-party suppliers, or any officer, director, employee, sub-contractor, agent, body corporate or successor) be liable for any direct or indirect loss, liability, costs, damages, charges or expenses – irrespective of the manner in which it occurs – which may be suffered as a result of:
- a) your use of our Website, Content and/or any other information or materials contained on the Website;
 - b) the unavailability, inaccessibility or interruption of usage of the Website;
 - c) Content, information or materials contained on the Website being incorrect, incomplete or not up-to-date;
 - d) Content, information or materials provided to you free-of-charge;
 - e) any delay or failure in performance beyond the reasonable control of us; or

- f) loss of data.
- 15.3 We are not liable to you or anyone else if interference with or damage to your computer systems occurs in connection with the use of our Website or a linked website. You must take your own precautions to ensure that whatever you select for your use from our Website is free of Malicious Computer Program that may interfere with or damage the operations of your computer systems.
- 15.4 To the maximum extent permitted by law, we are not responsible for any indirect, special or consequential liability to a customer or user (including legal fees) arising out of or from Content or use of the Website.
- 15.5 You understand that CIAF does not manufacture, store, or inspect any of the items sold through our Website. We do not make any claims about the quality, safety or legality of products offered for sale by a Merchant. Any legal claim related to a product you purchase from a Merchant must be brought directly against the Merchant.
- 15.6 You release CIAF from any claims related to products sold on our Website, including but not limited to:
 - a) products being faulty or defective;
 - b) misrepresentations about the products by the Merchant;
 - c) products not being sufficient for your purposes or not meeting your individual requirements.

16 Indemnity

- 16.1 You agree to indemnify and hold us, our affiliates, third-party suppliers, and any officer, director, employee, sub-contractor, agent, body corporate or successor, harmless from and against any and all claims, demands, proceedings, losses and damages (actual, special or consequential) of every kind and nature, known and unknown, including reasonable legal fees, due to or arising out of:
 - a) your breach of these Website Terms and Conditions; or
 - b) your breach of any law or the rights of a third party.

17 Cookies Policy

- 17.1 You agree that:
 - a) we may store cookies on your devices; and
 - b) we may issue and request cookies from your device to collect both personal and non-personal information.
- 17.2 You may disable cookies on your browser if you do not agree to this cookies policy.
- 17.3 We use cookies for the following reasons, including but not limited to:
 - a) improve our performance by reporting any errors that occur;
 - b) provide statistics about how the Website is used;
 - c) remember settings that you use for our Website;
 - d) identify and show that you are logged into the Website;
 - e) link to social networks like Facebook and Twitter;
 - f) provide more suitable ads tailored to you.

18 Breach of These Terms

18.1 If you breach any of these Terms, we may take appropriate actions, including but not limited to:

- a) issuing a warning notice;
- b) suspending your access to the Website;
- c) prohibiting your access to the Website.

19 Termination

19.1 These Terms automatically terminate if we cease to operate the Website.

20 Dispute Resolution

20.1 In the event of any dispute under these Terms, the parties agree to negotiate in good faith to resolve the dispute prior to bringing any court proceedings. Any dispute or difference whatsoever arising out of or in connection with these Terms which cannot be resolved by the parties will be submitted to mediation in accordance with, and subject to, The Institute of Arbitrators & Mediation Australia mediation and conciliation rules.

21 General

21.1 **Entire Agreement:** these Terms embody the whole agreement of the parties relating to the subject matter of these Terms and supersedes all previous agreements in respect of your usage of our Website.

21.2 **Amendment:** We reserve the right to make changes to the Website and these Terms at any time without notice. All amendments will be posted on our Website. Continued use of the Website will be deemed to constitute acceptance of the new Terms.

21.3 **Assignment:** You may not assign or delegate or otherwise deal with all or any of your rights or obligations under these Terms. We have the right to assign or otherwise delegate all or any of our rights or obligations under these Terms to any third-party.

21.4 **No waiver:** No waiver by us of any default of yours under these Terms will operate or be construed as a waiver by us of any future defaults, whether of a like or different character. No granting of time or other forbearance or indulgence by us to you will in any way release, discharge or otherwise affect your liability under these Terms.

21.5 **Notices:** Unless otherwise stated within these Terms, notices to be given to either party will be in writing and delivered by electronic mail at the email address you supplied to us or to use at our office.

21.6 **Third party rights:** All provisions of these Terms apply equally to and are for the benefit of us, our affiliates, third-party suppliers, and our and their officers, directors, employees, sub-contractors, agents, body corporates or successors, and each will have the right to asset and enforce such provisions directly or on its own behalf (save that these Terms may be varied or rescinded without the consent of those parties).

21.7 **Severability:** If any provision of these Terms is held to be unlawful, invalid or unenforceable, that provision will be deemed severed and where capable the validity and enforceability of the remaining provisions of these Terms will not be affected.

21.8 **Governing law:** Your use of the Website and these Terms are governed by the law of Queensland and you submit to the non-exclusive jurisdiction of the courts exercising jurisdiction in the Queensland.

22 Definitions

22.1 The following definitions apply to these Terms:

'Australia Privacy Principles' means the principles contained in contained in Schedule 1 of the Privacy Act 1988 (Cth).

'Content' means all forms and formats of content, data, information and material contained, incorporated, connected to or made available on or in relation to our Website and Social Media (including from our partners, affiliates, related service providers and other third-parties), including without limitation:

- (a) text, contact details, documents, reports, papers, articles, comments;
- (b) graphics, images, logos and photographs;
- (c) sound files and music;
- (d) other recordings, including video and live feed;
- (e) software or code;
- (f) Indigenous Cultural and Intellectual Property (ICIP);
- (g) websites, social media, applications;
- (h) links, posts, advertising, communications;
- (i) other products or services.

'Independent Seller' means a business that offers products for sale on its own website, which CIAF provides access to via the marketplace function on the Website.

'Indigenous Cultural and Intellectual Property' or 'ICIP' means Australian Aboriginal and Torres Strait Islander peoples' rights to their heritage. Heritage comprises all objects, sites and knowledge including language, the nature or use of which has been transmitted or continues to be transmitted from generation to generation, and which is regarded as pertaining to a particular Aboriginal or Torres Strait Islander group or its territory.

'Intellectual Property (IP)' means copyright, patents, registered and unregistered trademarks, registered designs, trade secrets and know-how, confidential information, all rights under any legislation relating to the protection of computer programs, circuit layouts and all other intellectual property as defined by Article 2 of the 'Convention Establishing the World Intellectual Property Organisation' dated July 1967.

'Malicious Computer Program' means files that consist of malicious computer program, including programs that include viruses, Trojan horses, worms or any other computer programming that may damage, modify, delete, detrimentally interfere with, access without authority or expropriate any system, data or personal information; that may cause damage to the Website or Social Media, content on either, our property or the property of other individuals or organisations.

'Merchant' means a business that offers products for sale via the Website.

'Taxes' means any applicable taxes, including GST, tourist or other visitor taxes that apply to the products.

'Third Party Material' means Content, data, information, applications, services, websites and materials from, incorporating, linked or connected to third parties (including our partners, affiliates and related service providers).