



Orica NFT Gallery Terms of Service

Effective date: 29 March 2022

IMPORTANT -- PLEASE READ THESE ORICA NFT GALLERY TERMS OF SERVICE (THE "**AGREEMENT**") CAREFULLY. THIS AGREEMENT SETS FORTH THE LEGALLY BINDING TERMS AND CONDITIONS GOVERNING ACCESS AND USE OF THE ORICA PLATFORM AND ORICA NFT GALLERY (AS DEFINED BELOW).

BY APPLYING FOR AN ORICA NFT GALLERY ACCESS AND USING ORICA'S SERVICES: (I) YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTAND, AND AGREE TO BE LEGALLY BOUND BY THIS AND TERMS OF SERVICE AGREEMENTS (INCLUDING ALL OF THE TERMS AND CONDITIONS SPECIFIED OR REFERENCED BELOW); (II) YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT (INCLUDING ALL OF THE TERMS AND CONDITIONS SPECIFIED OR REFERENCED BELOW), ON BEHALF OF THE ENTITY, COMPANY AND/OR ORGANIZATION IDENTIFIED AS "ORICA" ON ORICA ACCOUNT REGISTERED ON BEHALF OF ORICA PLATFORMS LTD (THE "ORICA"); AND (III) YOU AGREE THAT YOU ARE ENTERING INTO THIS AGREEMENT (INCLUDING ALL OF THE TERMS AND CONDITIONS SPECIFIED OR REFERENCED BELOW) WITH ORICA PLATFORMS LTD, A BVI COMPANY. YOU AGREE THAT ORICA MAY VARY THESE TERMS AT ANY TIME AND WITHOUT NOTICE TO YOU. YOU AGREE THAT IT IS YOUR RESPONSIBILITY TO BE AWARE OF ANY CHANGES MADE TO THE TERMS, AND BY CONTINUING TO BROWSE, USE AND PURCHASE FROM THE ORICA'S PLATFORM AND ORICA'S NFT GALLERY YOU AGREE TO BE BOUND BY THE TERMS AS VARIED FROM TIME TO TIME.

IF YOU DO NOT AGREE WITH ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, OR DO NOT HAVE SUCH AUTHORITY, DO NOT ACCESS OR USE ORICA NFT GALLERY OR ORICA'S PLATFORM (OR ANY PART THEREOF) IN ANY WAY.

This Agreement governs your access to and use of certain products, services and properties made available by Orica ("**We**," "**Us**" or "**Our**"). This Agreement regulates Orica NFT Gallery as an online space where artists (the "**Artist(s)**") can offer for sale digital artworks (the "**Artworks**") represented on non-fungible cryptographic tokens (the "**NFT**") to collectors, users and general public ("**Members**") that can access, purchase, sell, swap and exchange NFTs.

WHEREAS, Orica organizes a charity NFT art exhibition REFUGE (the "**Exhibition**") that will be hosted in the 3D virtual world browser-based platform Decentraland at Orica NFT Gallery (Orica's virtual land plot in Metaverse) between 31 March 2022 and 30 April 2022.

WHEREAS, Orica and Artist want to help the people of Ukraine amidst the Russian invasion and therefore they agree to donate all and any proceeds from primary or secondary Artwork sales to the Giving Block's Ukraine Emergency Response Fund to support humanitarian relief efforts in Ukraine (<https://thegivingblock.com/campaigns/ukraine-emergency-response-fund>).

WHEREAS, the Parties have agreed that Orica will select 20 (twenty) Artworks and minted respective NFTs to be exhibited and sold at the Exhibition from 31 March 2022 until sold, but not later than 30 June 2022 COD. If not sold by 30 June 2022, the Artist will be able to ask Orica

either to (1) burn the minted NFT per Artist's Artwork, or (2) prolong the NFT listing as agreed by the Parties.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, the adequacy and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. SERVICES AND GRANT OF LICENSE

- 1.1. Artists own proprietary intellectual property rights and titles in the art that may mean visual, literary, dramatic, artistic or other works (the "**Artwork**").
- 1.2. Artists have agreed to grant a license to Orica to create an NFT that will correspond to the Artwork on the terms and conditions set out in this Agreement
- 1.3. Orica hereby engages Artists for the provision of services on the creation and modification of the Artwork that will be used for creating NFT(s) corresponding to the Artwork (the "**Services**").
- 1.4. All and any proceeds from NFTs sales made at the Exhibition will be transferred to the approved charitable organization.

2. ARTIST ELIGIBILITY

- 2.1. To publish Artwork or the corresponding NFT at the Exhibition, the Artist must:
 - 2.1.1. be a registered and verified artist at Orica's NFT platform at <https://app.orica.io/browse>;
 - 2.1.2. have at least **2 (two)** 1/1 Artworks and/or 1/x edition(s) of Artworks minted to corresponding NFTs and published to the Platform;
 - 2.1.3. accept and agree to this Agreement and Orica NFT Marketplace Terms of Use.
 - 2.1.4. agree that the Artwork can be published on Orica's NFT platform at <https://app.orica.io/browse> for marketing purposes to publicize the Exhibition and future charity events held by the Parties.

3. PROPRIETARY RIGHTS FOR ARTWORK

- 3.1. Artists declare and guarantee that they are the sole and exclusive owners of all rights, titles and interest in the Artworks and all copies of the Artworks created thereby.
- 3.2. Orica will not at any time commit any act or omission which is likely to in any way prejudice the Artist's title to their Artwork.
- 3.3. Artists grant Orica unlimited permission to create NFTs corresponding to Artwork in perpetuity.
- 3.4. Artists retain proprietary intellectual property rights to the Artwork.
- 3.5. Artists retain the right to claim original authorship of the Artwork as it was created. Orica will provide credit to Artist whenever possible.
- 3.6. The license granted by Artist to Orica under this Agreement will commence upon the Effective Date.
- 3.7. Artist waives the right to reproduce Artwork in any additional NFT format and on any NFT platform other than the Orica NFT Platform. Artist guarantees that the NFT created hereunder that corresponds to the Artwork will be exclusively published and distributed via the Orica NFT Platform. If found in violation, Orica may stop making all and any payments to Artist hereunder and Orica may also seek collections of damages and lost profits from Artist.

4. REPRESENTATIONS, WARRANTIES, AND COVENANTS

4.1. General Representations

By executing this Agreement, Artist represents and warrants to Orica that (a) Artist's execution of this Agreement and/or any related agreements do not, and the performance of obligations hereunder or thereunder will not, (i) violate any law applicable to Artist; or (ii) conflict with, result in the breach of any provisions of, or constitute a default under any agreement, fiduciary duty, or other obligation to which Artist may be bound; (b) Artist will not communicate or otherwise convey any false or misleading information about Orica to any third party; (c) during this Agreement validity and after its termination, Artist not make any false, defamatory or disparaging statements about Orica or its business partners, contractors, agents, related parties or the officers or directors of Orica or its related parties; (d) while providing the Services, Artist will act diligently and in good faith.

4.2. The Parties agreed that the Artwork or corresponding NFT will not be used for any commercial purpose other than described herein without prior written permission of the Artist.

4.3. Artist's Warranties

Artist warrants and undertakes that:

4.3.1. Artist is the exclusive owner of any and all rights in and to the Artwork and that no other individual or entity may claim any rights, title and/or interest in and to said Artwork;

4.3.2. Artwork will contain nothing that will infringe any rights of any third party, nor be contrary to any law, nor does it contain any obscene, blasphemous or defamatory matter, and its exploitation shall not place any person in contempt of court nor in breach of any provision of any statute.

4.3.3. Artist is not aware, having made full and reasonable inquiry, of any claim by any third party that the Artwork or any pre-existing material incorporating the Artwork or included within the Artwork, or the exploitation of the Artwork by either party, has infringed or will infringe any rights of any third party and Artist agrees that Artist shall immediately inform Orica if Artist becomes aware of any such claim.

4.3.4. Artist undertakes and agrees to indemnify and hold Orica harmless from all and any claims, actions, proceedings, demands, obligations, liabilities, losses, costs, charges, damages, fines, judgments, assessments, penalties and other expenses incurred or suffered by Orica as a result of or arising from any act or omission of Artist under this Agreement, or at law.

4.3.5. Artist hereby waives in favour of Orica and all its assignees and successors in the title all moral rights in the Artwork to which Artist may be entitled under the relevant intellectual property regulations as amended from time to time to the extent necessary for us to exploit the license granted under this Agreement.

4.3.6. Artist irrevocably grants Orica the exclusive right to include an image of the Artwork in its catalog(s), postcard(s), educational material(s), and publication on its website, and for other promotional purposes, materials and opportunities.

4.3.7. Artist shall have no control over Orica's adaptations or alterations to the Artwork related to this Agreement. All adaptation/alteration decisions shall be made solely by Orica's representatives to promote NFTs sales.

5. GENERAL

5.1. Modifications, Amendments, and Waivers

5.1.1. No failure or delay by Artist in exercising any right, power or privilege under this Agreement including (but not limited to) the right to terminate this Agreement shall operate as a waiver of that right, power or privilege, nor shall any single or partial exercise by Artist of any right, power or privilege preclude any further exercise of any other right, power or privilege.

5.1.2. The rights and remedies provided for are cumulative and not exclusive of any rights and remedies provided by law.

5.1.3. This Agreement can be unilaterally amended, modified, waived, discharged or terminated at any time at Orica's sole discretion. It is your responsibility to be aware of any changes made to the terms, and by continuing to browse, use and purchase from Orica's NFT Platform and Orica's NFT Gallery you agree to be bound by the terms as varied from time to time.

5.2. Severability

5.2.1. In the event that any provision hereof is found invalid or unenforceable pursuant to judicial decree or decision, the remainder of this Agreement will remain valid and enforceable according to its terms.

5.2.2. Obligations of Artist provided hereunder will survive the amendment or waiver of any provision of this Agreement and the termination of this Agreement.

5.3. Governing Law

This Agreement and any dispute, controversy, proceedings or claim arising out of or in connection with it or its formation or subject matter (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of the British Virgin Islands. In the event that any provision hereof is found invalid or unenforceable pursuant to judicial or decision, the remainder of this Agreement will remain valid and enforceable according to its terms.

5.4. Arbitration and Jurisdiction

5.4.1. If there is a disagreement between Artist and Orica on the interpretation of this Agreement or any aspect of the performance by either party of its obligations hereunder, representatives of the parties will, within 10 days of receipt of a written request from either party to the other, in good faith try to resolve the disagreement without recourse to legal proceedings. Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the LCIA Rules, which rules are deemed to be incorporated into this clause by reference. The number of arbitrators shall be one. The arbitrator of the arbitral tribunal shall be appointed in accordance with the LCIA Rules. The seat, or legal place, of arbitration shall be Tortola, the British Virgin Islands in accordance with the BVI Arbitration Centre. The language to be used in the arbitral proceedings shall be English.

5.5. Limitation of Liability

ORICA WILL NOT BE LIABLE TO ARTIST WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, TORT, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF REVENUE OR GOODWILL OR ANTICIPATED PROFITS OR LOST BUSINESS). FURTHER, NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, IN NO EVENT SHALL ORICA'S CUMULATIVE LIABILITY TO ARTIST ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER BASED IN CONTRACT, NEGLIGENCE, STRICT LIABILITY, TORT OR OTHER LEGAL OR EQUITABLE THEORY, EXCEED THE TOTAL FEES PAID TO ARTIST UNDER THIS AGREEMENT.

5.6. Binding Effect

This Agreement shall commence upon the Effective Date and shall continue until terminated by either Artist or Orica upon written notice by or to Artist or Orica. This Agreement will bind and inure to the benefit of each party, and each of their successors and assigns.

5.7. Notices

Any notices or other communication required or permitted under this Agreement must be in writing and will be deemed given on the day it is delivered in email, to the address of the party to receive said notice.

6. INDEMNIFICATION

Artists and Members hereby agree to indemnify and hold harmless Orica, and its subsidiaries and affiliates, and their directors, officers, employees, agents, shareholders, partners, members, and other owners, against any and all claims, actions, demands, liabilities, losses, damages, judgments, settlements, costs, and expenses (including reasonable attorneys' fees) (any or all of the foregoing hereinafter referred to as "**Losses**") insofar as such Losses (or actions in respect thereof) arise out of or are based on any claim arising out of or in any way related to this Agreement.

Contact Information:
Orica Platforms LTD
Email: support@orica.io