

Trading Agreement

Lensartists welcomes you to come and play in our "sandpit" but under the following rules. This site is designed for amateur photographers who want to know that their artworks are hanging on walls all over the world and being enjoyed and revered. Therefore if you are an agent for more than one client then you must contact lensartists directly.

The following is a legal agreement between you (be that your company, employer, client) and us (lensartists). Please read this Trading agreement carefully before sending through any artworks for sale.

Emailing lensartists artworks you ("the member") accept the terms and conditions of this Trading Agreement ("Trading Agreement") and agree to be bound by the terms of this Trading Agreement.

The headings in this Trading Agreement are solely for convenience of reference and shall not affect its interpretation.

1. Age and Responsibility

1.1 You represent and warrant that you are 18 years of age or over.

1.2 Where you are entering into this Trading Agreement for a company, employer or client you

warrant that you are able to bind that company, employer or client.

1.3 You authorise lensartists to check your credit card details to verify your identity, if needed.

3. Duration

This Trading agreement will remain in force from the registration date unless or until it is terminated as set out below.

4. Intellectual Property

4.1 All materials, including but not limited to, the presentation and organization of such material, on the Site (the "Materials") are the property of lensartists and its licensors and are protected by intellectual property laws including laws relating to trade-marks, trade-names, copyrights, internet domain names and other similar rights.

4.2 The Materials may be used and copied for your own, non-commercial, personal or educational purposes, provided that the Materials are not modified and that copyright and other intellectual property notices are not deleted. The Member may not create derivative works from or otherwise use, copy or exploit the Materials in any way unless they have entered into a separate license (and then only in accordance with that license).

4.3 Lensartists does not own the copyright in any of the photographs uploaded to www.lensartists.com. Without limiting any rights a Member who is an individual and who is not acquiring for business purposes might have under the Consumer Guarantees Act 1993 lensartists does not warrant that the photographs available from the Site do not infringe the copyright or any rights of a third party.

5. Content Usage

5.3 Content is provided to the Site through members entering into a Photographer's Supply Agreement ("Photographer's Supply Agreement"). If a Member is interested in posting images they must be wholly owned by the Member. Any posting of photographs by the Member will be governed by these terms and our Photographer's Supply Agreement, and the Member should review the Photographer's Supply Agreement terms and conditions and agree to them before posting content to the Site.

9. Variation

9.1 Lensartists reserves the right to change any of the terms of this Trading agreement at any time, and the Member agrees to be bound by such changes. If and when changes are made to this Trading agreement, a notice will be published on the Site. The Member should make sure they have read and understand all such changes. The Members continued use of the membership portions of the Site after

such notice constitutes its binding acceptance of the terms and conditions in this Trading agreement as it may have changed.

9.3 Lensartists may suspend, change or discontinue any part of the Site other than as contemplated in clauses 9.1 at any time without notice.

11. **Termination**

11.1 This Trading agreement is effective until terminated. The Member may terminate this Trading agreement on four weeks notice by emailing info@lensartists.com or by such other means of written notice acceptable to lensartists which enables confirmation of the Member's identity and the Member's intention to terminate the Trading agreement.

11.4 Termination of this Trading agreement does not relieve the Member of its responsibilities to pay any amounts due to lensartists under this Trading Agreement or the Member's obligations under this Trading Agreement or any other agreement entered into at the time such Content was downloaded.

11.5 Termination of this Trading Agreement shall operate without prejudice to lensartists' rights, defenses and limitations of liability provided under this Trading Agreement, which rights, defenses and limitations of liability shall survive termination of this Trading Agreement.

12. **Indemnity**

You guarantee the full and complete performance of all the terms and conditions of this Trading Agreement. You also agree to indemnify, defend and hold lensartists and its affiliates, and their respective directors, officers, employees, shareholders, partners, licensors and agents (collectively, the "lensartists Parties") harmless from and against any and all claims, liability, losses, costs and expenses (including lawyers' fees on a solicitor and client basis) incurred by any lensartists Party in connection with: (i) any use or alleged use of the Site under your Member Name by any person, whether or not authorized by you; (ii) anything resulting from any communication made or Content uploaded under your Member Name; or (iii) any breach by you of this Trading Agreement.

13. **Liability**

13.1 Where the Member is not an individual and/or is acquiring content for business purposes the Member agrees and acknowledges the provisions of the Consumer Guarantees Act 1993 will not apply.

13.2 Nothing in this Trading Agreement will affect or limit any rights a person who is an individual and is not taking a license for business purposes may have under the Consumer Guarantees Act.

13.3 The Site, including any Content contained on or downloaded from the Site, is provided "as is"

without representation, warranty or condition of any kind, either express or implied, including, but not limited to the implied representations, warranties or conditions of merchantability, or fitness for a particular purpose. Lensartists does not represent or warrant that the Site or the Content will meet your requirements or that use will be uninterrupted or error free.

13.4 Subject to Members rights as set out in clause 13.1 Lensartists does not represent or warrant that the Site or any Content available for downloading through the Site will be free of viruses or similar contamination or destructive features.

13.5 Subject to Members rights as set out in clause 13.1 the Member assumes all responsibility and risk for use of the Site including without limitation any of the Content or information contained therein.

13.6 Without prejudice to a Member's rights as set out in clause 13.1 in no event shall any lensartists Party be liable for any incidental, indirect, punitive, exemplary, or consequential damages whatsoever (including damages for loss of profits, interruption, loss of business information, or any other pecuniary loss) in connection with any claim, loss, damage, action, suit or other proceeding arising under or out of this Trading agreement, including without limitation your use of, reliance upon, access to, or exploitation of the Site, the Content or any part thereof, or any

rights granted to you hereunder, even if lensartists has been advised of the possibility of such damages, whether the action is based in contract, tort (including negligence), infringement of intellectual property rights or otherwise.

13.7 In so far as lensartists may be liable notwithstanding the above, then to the extent permitted by law, but without prejudice to a Members rights as set out in clause 14.2 the total liability of lensartists whether in contract, tort (including negligence) under statute or regulation or otherwise for any loss, damage or injury arising directly or indirectly from any defect in the Site or any failure in respect of the Content or any breach of lensartists' obligations to the Member is limited to the lesser of \$500 or the number of credits purchased by that Member in the previous three months.

14. Terms of Use/Privacy Policy

The Member agrees to comply with any standard terms of use on the Site and that lensartists may use any information gathered about the Member in accordance with any Privacy terms on the Site. lensartists may change these from time to time. It will set out next to the hyperlink the date the terms were last updated. Any use of this Site by a Member will be treated as agreement to the latest terms.

15. Laws of New Zealand

The Site is controlled, operated and administered by lensartists in Auckland, New Zealand. The Site can be accessed across New Zealand, and overseas. As each country has laws that may differ from those of New Zealand, you acknowledge and agree that this Trading agreement will be governed under the laws of New Zealand and you agree to submit to the exclusive jurisdiction of the New Zealand Courts. Any dispute which may arise as to the interpretation of this Trading Agreement or as to any matter arising out of this Trading Agreement will be referred to a single arbitrator if the parties can agree upon one, or otherwise to an arbitrator appointed by the president for the time being of the New Zealand Law Society. Such arbitration will be conducted in accordance with the Arbitration Act 1996 or any amendment or re-enactment thereof and will take place in Auckland

If lensartists is obligated to go to court or arbitration to enforce any of its rights, or to collect any fees, you agree to reimburse lensartists for its legal fees, costs and disbursements if lensartists is successful.

16. **General Terms**

16.1 lensartists failure to insist upon or enforce strict performance of any provision of this Trading Agreement shall not be construed as a waiver of any provision or right.

16.2 If any term or condition of this Trading agreement is or becomes void or voidable then that term or condition will be severed from this Trading Agreement and replaced with a provision which validly and enforceably accomplishes to the extent possible the commercial object of the provision and the remainder of this Trading agreement will remain valid and enforceable.

16.3 You may not assign your rights or obligations under this Agreement without the prior written consent of lensartists. lensartists may assign this Trading agreement without your consent.

17. **Notices**

Any notice to be given in terms of this Trading Agreement must be in writing made by email transmission sent to the last known email address provided by the Member on their registration details or by the Member to info@lensartists.com. Any communication by email will be deemed to be received when transmitted to the correct email address of the recipient.

18. **Acknowledgement**

Contact

If you have concerns relating to the Site or this Trading Agreement, please contact lensartists at info@lensartists.com