

These Terms and Conditions govern each Negotiated Resale Right and are an integral part of the binding contract formed by and among the Artist, the Gallery, the Collector and Xipsy LLC.

Resale or other Transfer of a Work

- The Collector agrees to pay an amount equal to the Negotiated Resale Right Percentage (as shown on the Invoice for the Work) multiplied by the Profit, if the Collector Resells the Work prior to Expiration of the Negotiated Resale Right. This amount is referred to as the **Resale Right Payment**.
- Within 15 days of Resale or any other Transfer, the Collector shall satisfy the terms of the Negotiated Resale Right by providing Xipsy with confirmation of the terms of the Transfer and making any applicable Resale Right Payment to Xipsy. The Notification Form and Resale Right Payment Instructions are accessible at www.Xipsy.com or through info@xipsy.com.
- Failure to notify Xipsy of a Transfer of a Work constitutes fraud and will serve to toll any applicable statutes of limitations.
- If the Work is Resold in a jurisdiction that legally requires a Royalty Payment be made to the Artist, then the Resale Right Payment shall be reduced by the amount of such Royalty Payment. If the Royalty Payment is greater than the Resale Right Payment, then no payment will be due; however the Collector is still obligated to report the Resale to Xipsy to terminate the Negotiated Resale Right and allow the Xipsy record to transfer unencumbered to the new purchaser.
- If the Collector Donates the Work to a Qualified Institution no Resale Right Payment will be due.
- If the Work is transferred by gift, will or the laws of intestacy, the obligations of this Agreement shall pass with the Work and remain binding upon any recipients or heirs; the Collector agrees to use his or her best efforts to notify, or cause to be notified, Xipsy of any such Transfer.

Partial Resale or Other Transfer

- Should any portion less than 100% of the Work be Resold or otherwise Transferred, the Collector shall notify Xipsy as specified above and pay the Resale Right Payment in proportion to the percentage of the work Resold. For each Transfer of the remaining interest, the Profit shall be recalculated on a pro rata basis.

Expiration Date

- Each Negotiated Resale Right shall remain in full force and effect until midnight on the date that is 50 years from the Date of the Invoice, and shall operate to bind the parties as well as their heirs, legatees, executors and administrators.

Good Faith Compliance

- The Collector covenants not to Resell or otherwise Transfer the Work in such a manner or at such a time for the purpose of avoiding compliance with the terms of the Negotiated Resale Right.

Confidentiality

- All non-public information received by Xipsy (including initial sales prices, resale prices and the identity of any purchasers) shall be treated as confidential by Xipsy; provided however, that Xipsy may disclose any information to (x) any subsidiary or affiliate for the purposes of carrying out its obligations hereunder (provided that such recipient agrees to maintain the confidentiality of the information) and (y) as requested by any state or federal agency or as requested by a court of law.

Negotiated Resale Right Management

- All Resale Right Payments shall be made to Xipsy. Xipsy shall distribute the Resale Right Payments to the Artist, and, if applicable, the Gallery in accordance with the agreements and instructions received from the Artist and Gallery.
- To ensure compliance with the Negotiated Resale Right, Xipsy may request once every two years that the Collector provide Xipsy with a written affirmation of the continued 100% ownership of the Work by the Collector (or, in the case of a prior Partial Transfer, such lesser amount then owned). The request may be made more frequently if Xipsy has a reasonable basis (as determined solely by Xipsy) to believe that the Work may have been Transferred by the Collector.

Prohibition on Liens

- The Collector shall not pledge, securitize or otherwise encumber the Work without the prior written consent of Xipsy, which shall not be unreasonably withheld so long as the Negotiated Resale Right holders have a perfected first priority security interest.

Recovery of Legal Fees

- In a successful legal action against the Collector for breach of these Terms and Conditions, the Collector agrees to pay Xipsy, the Artist or Gallery, as applicable, in addition to any damages awarded, all costs and expenses associated with the filing and maintenance of such cause of action including but not limited to all court costs, filing fees, reasonable attorney's fees and expenses and the cost of enforcing any judgment or this term.

Notices; Contact Details

- Any required notice or updated or amended version of these Terms and Conditions shall be effective when posted on the Xipsy website.
- If any of the contact details for the Collector change from those listed on the Invoice, the Collector shall notify Xipsy of such change.

Assignment

- These Terms and Conditions shall be binding upon, inure to the benefit of, and be enforceable by, the parties and their respective successors and assigns. Neither the Negotiated Resale Right nor any part of these Terms and Conditions shall be assigned by operation of law (except upon the death of the Collector) or otherwise by the Collector without the prior written consent of Xipsy. Any purported assignment without such consent shall be void. Upon delivering notice to the Collector, Xipsy may at any time assign its obligations hereunder.

Miscellaneous

- The Negotiated Resale Right and these Terms and Conditions shall be governed by, and construed in accordance with, the laws of the State of New York, except that body of law governing conflicts of law. Each party submits to the exclusive jurisdiction of the courts of New York, New York.
- If any term or provision of these Terms and Conditions is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other provisions shall remain in full force and effect so long as the economic or legal substance of the contemplated transactions is not affected in any manner materially adverse to any party. Upon determination that any term or provision is invalid, illegal or incapable of being enforced, the parties shall negotiate in good faith to modify these Terms and Conditions so as to effect the original intent of the parties as closely as possible in an acceptable manner so that the contemplated transactions are fulfilled to the extent possible.
- The failure of any party to assert any of its rights under this Agreement shall not constitute a waiver of such rights.

Defined Terms

- **Artist** means the person or persons identified as the artist or artists on the Invoice.
- **Collector** means the person or persons identified on the Invoice as the purchaser or on whose behalf the Work was purchased. Collector includes any assigns or authorized representatives acting on the Collector's behalf hereunder.
- **Consideration** means cash, cash substitutes or the fair market value of other property received by a party, but shall not include the value of any state or federal tax deductions available to a party.
- **Donation** means the transfer of title from the Collector to a Qualified Institution without receipt of any Consideration other than acknowledgement of the Donation for tax purposes.
- **Invoice** means the bill of sale, purchase agreement or other document confirming the terms of the sale of the Work to the Collector and stating the Negotiated Resale Right Percentage.
- **Negotiated Resale Right Percentage** means the amount stated on the Invoice. The default Negotiated Resale Right Percentage is fifteen percent.
- **Profit** is calculated by subtracting the purchase price as shown on the Invoice (less all discounts) from the total amount of Consideration received in exchange for the Work. When Resold via auction, Profit is calculated from the "hammer price" and does not include the buyer's premium. Commissions paid to auction houses or dealers or other intermediaries by the Collector shall not be deducted from the Profit, nor shall other expenses (including but not limited to costs for transportation, framing, insurance or conservation) incurred during the course of ownership of the Work.
- **Qualified Institution** means a publicly supported charitable institution whose purpose is the display and maintenance of fine art.
- **Partial Transfer** means the Transfer of any portion of the Work rather than the entirety.
- **Resale** means any sale, exchange or trade the result of which is the transfer of title of the Work from the Collector to a third party.
- **Resale Right Payment** means the amount equal to the Negotiated Resale Right Percentage multiplied by the Profit.
- **Royalty Payment** means a payment due by operation of law to the Artist upon transfer of the Work.
- **Seller** means the gallery, artist or third party owner who sold the Work sold with the Negotiated Resale Right as indicated on the Invoice.
- **Transfer** means the Resale, Donation, exchange, barter, or any other transfer of title in the Work.
- **Work** means any work of art sold with a Negotiated Resale Right as identified on the Invoice.