

# AORIST TERMS OF SERVICE: CONSIGNMENT

*Last Updated 12/20/2021*

Welcome to Aorist!

The following consignment terms (the “**Consignment Terms**”) form a legal agreement between you and Aorist for the consignment of artwork and secondary sale thereof on the Aorist platform. These Terms of Consignment set forth terms that are additional to, and not in lieu of, Aorist’s [Terms of Service](#) and [Privacy Policy](#), which are both incorporated herein and made a part hereof by this reference. Please read these Terms of Consignment as set out below carefully before using the [Aorist website](#), (the “**Site**”), the [Aorist platform](#), and the related features and services to consign artwork (collectively, the “**Consignment Services**”). If any term of these Terms of Consignment conflicts with any term of the Terms of Service or Privacy Policy, the term of Terms of Consignment shall prevail.

**Please read these Terms carefully before using the Consignment Services.**

THESE CONSIGNMENT TERMS CONTAIN AN ARBITRATION CLAUSE, A CLASS ACTION WAIVER, AND OTHER IMPORTANT INFORMATION REGARDING YOUR LEGAL RIGHTS, REMEDIES, AND OBLIGATIONS. PLEASE SEE SECTION 5 OF THESE TERMS BELOW REGARDING RESTRICTIONS ON YOUR LEGAL RIGHTS IN ANY DISPUTE INVOLVING OUR SERVICES, INCLUDING CONSIGNMENT AND SECONDARY SALE OF ARTWORK OR OUR PRIVACY POLICY. THE ARBITRATION CLAUSE AND CLASS ACTION WAIVER GOVERN HOW CLAIMS AGAINST AORIST CAN BE BROUGHT BY YOU AS A USER OF OUR SERVICES. BY AGREEING TO THESE CONSIGNMENT TERMS, YOU ACKNOWLEDGE AND AGREE TO SUBMIT ALL CLAIMS YOU MAY HAVE AGAINST AORIST THROUGH FINAL AND BINDING ARBITRATION, AND YOU WAIVE ANY RIGHT TO PARTICIPATE IN CLASS ACTIONS, CLASS ARBITRATIONS, OR REPRESENTATIVE ACTIONS.

## **1. Our Consignment Services**

### **Overview**

The Aorist Platform and its Services (as defined herein and in the [Terms of Service](#)) include a Consignment Service where a Collector that has purchased a unique non-fungible token (“**NFT**”) for digital art (collectively, “**Artwork**”) can effect the secondary sale of the Artwork and transfer of the Artwork from an Aorist user’s Aorist Digital Wallet (an “**Aorist Wallet**”) to a Collector’s Aorist Wallet. A Collector that uses the Consignment Services to re-sell Artwork is referred to herein as a “**Seller**”. For further information on how does your Aorist Digital Wallet work, please visit our [Terms of Service](#).

### **Use of the Consignment Services**

You may access and use the Consignment Services strictly in accordance with these Consignment Terms.

## **2. Your Acceptance of the Consignment Terms; Changes**

### **Acceptance**

Your use of the Consignment Service is conditional on your acceptance of these Consignment Terms and Aorist's Terms of Service. By visiting the Site or using the Consignment Service, you agree on your behalf, and on behalf of any organization, entity, or other person on whose behalf you may act (collectively referred to herein as "**you**"), to accept and abide by these Consignment Terms. By agreeing to these Consignment Terms on behalf of any organization, you represent and warrant that you have, and at all times will have, while accessing and using the Consignment Services, authority to bind such entity or person.

### **Changes to the Consignment Terms**

In our sole discretion, we have the right to add to, remove, modify or otherwise change any part of these Consignment Terms, in whole or in part, at any time. If we exercise this right, the "Last Updated" notice at the top of this document will be amended to reflect the last date of such changes. Changes will be effective as of the date the changes to these Consignment Terms are made available on the Site. If you have provided us with your email, and provided you have not opted out of receiving electronic communications from us, we may provide you with notification of any changes to these Consignment Terms which, in our sole discretion, materially alter your rights or obligations in accessing and using the Consignment Services. It is your responsibility to check these Consignment Terms each time you use the Consignment Services to determine whether any changes have been made, including by checking the "Last Updated" date at the top of these Consignment Terms. **If any change to these Consignment Terms is not acceptable to you, you must discontinue your use of the Consignment Services immediately.** Your continued use of Consignment Services after any such changes are posted will constitute acceptance of those changes. These Consignment Terms apply exclusively to your use and access to the Consignment Service and do not alter the terms or conditions of any other agreement you may have with us.

## **3. Consignment Service Rules**

### **Art Transactions**

Seller establishes the sale price for an Artwork and may sell the Artwork directly to a Collector or enter the Artwork into an auction process. Upon a Collector's successful purchase of an Artwork, the Artwork will transfer from the Seller's Aorist Wallet to the Collector's Aorist Wallet. The full transfer of rights to the Artwork, however, is conditional upon our receipt of Collector's payment to us of the total sale price for the Artwork and any applicable sales tax. Receipt of this payment will complete the transaction (herein referred to as an "**Art Transaction**").

The maximum time limit to receive the funds from the Collector is 10 calendar days. If we have not received the corresponding funds for a sold Artwork after this period, the Artwork will pass on to the next highest bidder or interested purchaser.

Sales of all Artwork on the Aorist Platform is between Seller and a Collector; Aorist is not the seller and is not a party to the Art Transactions. Unless otherwise stated, transactions on the secondary market do not grant the purchaser the right to any additional items that may have been provided by the Artist creator of the Artwork to the first Purchaser (for additional information on what Additional Items are, please visit our "[Terms of Service](#)").

### **Credit Card Payments**

Seller agrees and understands that if the Collector purchases the Artwork via a credit card, any processing fees that may apply shall be passed on to the Aorist and taken out of the sale price for the Artwork.

### **Consignment Fee; Artist Royalty**

By using the Consignment Services, Seller agrees to have certain fees and royalties deducted from the sale price of an Artwork. Aorist shall deduct a Consignment Fee equal to five percent (5%) of the total sale price for an Artwork sold under these Terms of Consignment. Aorist shall also deduct, and remit to the creator of the Artwork, an Artist Royalty equal to ten percent (10%) of the total sale price. The Consignment Fee and Artist Royalty will be deducted at the time of execution of the smart contract governing the Art Transaction.

### **Taxes**

A Seller may be required by law to declare and pay taxes on any income earned from the sale of an Artwork. It is Seller's obligation to determine its income tax liability. Furthermore, depending on Seller's location, Value Added Tax (VAT), Goods and Services Tax (GST), or similar consumption tax may apply to the Consignment Fee. Any payments with respect to your Art Transactions shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law in your jurisdiction requires the deduction or withholding of any Tax (a "**Withholding Tax**") from any such payment then Aorist will add the tax as a separate fee that is deducted from the total sale price and therefore passed on to the Seller. Such tax will be deducted at the time of execution of the smart contract governing the Art Transaction. Upon our request, you agree to promptly provide a properly executed Internal Revenue Service Form W-9 or applicable Internal Revenue Service W-8 and any other tax form that is reasonably required by us so to comply with our tax reporting obligations.

### **Display of Consigned Artwork; Promotion of Consigned Artwork**

Seller consents to the display of the consigned Artwork on the Site. Seller further consents to have its full name displayed and associated with the consigned Artwork and understand and agrees that the full name of the Artist who created the Artwork will also be displayed and associated with the consigned Artwork. The purchase and bid history of an Artwork, including all successful purchase prices and any current bids will be displayed alongside the consigned Artwork. Aorist may, but is not obligated to, promote the sale of Artwork and undertake other promotional activities on the Seller's behalf (e.g. promotional materials, events, social media postings, and press releases).

### **Duration of Consignment**

Seller can terminate the consignment relationship and remove the Artwork as being consigned on the Aorist Platform at any time. Aorist will not remove a consigned Artwork from being displayed on the Site without Seller's consent.

#### **4. Jurisdiction and Governing Law**

##### **Jurisdiction**

Aorist is located within the United States and does not intend to be subject to any non-US jurisdiction or law. We may limit the availability of the Consignment Services at any time, in whole or in part, at our sole discretion, to any person, geographic area or jurisdiction that we choose.

##### **Governing Law**

Except as otherwise expressly provided herein, these Consignment Terms are governed by the laws of the State of New York, United States of America (excluding its conflict of law rules or choice of law rules). The United Nations Convention on Contracts for the International Sale of Goods does not apply to these Terms.

#### **5. Dispute Resolution**

**PLEASE READ THIS SECTION CAREFULLY BECAUSE IT IS AN AGREEMENT TO ARBITRATE DISPUTES (“ARBITRATION AGREEMENT”) AND LIMITS THE MANNER IN WHICH YOU CAN SEEK RELIEF.**

In consideration for our provision of the Consignment Services to you, you and Aorist each agree that any and all disputes or claims arising under, out of, in connection with, or related to your use of Aorist, these Terms in any fashion, or the subject matter, negotiation, performance, termination, interpretation, or formation of the agreement resulting from your acceptance of these Consignment Terms, (a “**Dispute**”) must be resolved exclusively in binding arbitration. However, a party may assert a claim in small claims court, if the asserted claim qualifies and so long as the matter remains in such court and advances only on an individual (non-class, non-representative) basis. This Agreement to Arbitrate is intended to be broadly interpreted and the Federal Arbitration Act governs the enforcement of this Agreement to Arbitrate.

For any dispute with Aorist, you agree first to contact us at [support@orist.art](mailto:support@orist.art) and attempt to resolve the dispute with us informally. In the unlikely event that we do not resolve a dispute informally, we each agree to resolve any claim, dispute, or controversy (excluding any claims for injunctive or other equitable relief) arising out of or in connection with or relating to these Consignment Terms, or the breach or alleged breach thereof (collectively, “**Claims**”), by binding arbitration by the Judicial Arbitration and Mediation Services (“**JAMS**”) pursuant to its Comprehensive Arbitration Rules and Procedures and shall be conducted in New York, New York, unless otherwise agreed to in writing by the parties. Each party will be responsible for paying any JAMS filing, administrative and arbitrator fees in accordance with JAMS rules. The award rendered by the arbitrator shall include costs of arbitration, reasonable attorneys' fees and

reasonable costs for expert and other witnesses, and any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. Nothing in this Section shall prevent either party from seeking injunctive or other equitable relief from the courts as necessary to prevent the actual or threatened infringement, misappropriation, or violation of that party's data security, intellectual property rights, or other proprietary rights.

### **No Class Action; No Jury Trial**

ALL CLAIMS MUST BE BROUGHT IN THE PARTIES' INDIVIDUAL CAPACITY, AND NO CLASS ACTION OR REPRESENTATIVE OR PRIVATE ATTORNEY GENERAL THEORIES OF LIABILITY OR PRAYERS FOR RELIEF MAY BE MAINTAINED IN ANY ARBITRATION OR OTHER PROCEEDING UNDER THIS AGREEMENT. UNLESS WE AGREE OTHERWISE, THE ARBITRATOR MAY NOT CONSOLIDATE MORE THAN ONE PERSON'S CLAIMS. YOU AGREE THAT, BY ENTERING INTO THESE TERMS, YOU AND WE ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION.

## **6. General Provisions**

### **Severability**

Every provision of these Consignment Terms will be construed, to the extent possible, so as to be valid and enforceable. If any provision of these Consignment Terms so construed is held by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, such provision will be deemed severed from these Consignment Terms, and all other provisions will remain in full force and effect.

### **Entire Agreement**

These terms, together with our [Privacy Policy](#) and our [Collector Terms](#), and any amendments and any additional agreements you may enter with us in connection with the Consignment Service, constitute the entire agreement between you and us concerning the Consignment Service.

### **Waiver**

Our failure at any time to enforce any of the provisions of these Consignment Terms or any right or remedy available hereunder or at law or in equity, or to exercise any option herein provided, will not constitute a waiver of such provision, right, remedy or option or in any way affect the validity of these Consignment Terms. Our waiver of any default will not be deemed a continuing waiver, but will apply solely to the instance to which such waiver is directed.

### **Headings; Summaries**

The section headings and any plain English summaries appearing in these Consignment Terms are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or extent of such section or in any way affect such section.

### **No Assignment**

These Consignment Terms, and any rights and licenses granted hereunder, may not be transferred or assigned by you, but may be assigned by us without restriction. Any attempted transfer or assignment in violation hereof shall be null and void.

**No Third-Party Beneficiaries**

Other than as expressly provided in these Consignment Terms, no third-party beneficiaries are intended or will be construed as created by these Consignment Terms.

**Notices; Electronic Communications**

Any notice sent to Aorist should be sent by email at [support@orist.art](mailto:support@orist.art).

**Contact:** Please contact us at [support@orist.art](mailto:support@orist.art) with any questions regarding these Consignment Terms.