

# Art | Basel

## Crowdfunding

### Terms of Use

Please read these Terms of Use (the "Agreement" or "Terms of Use") carefully before using Art Basel's curated page on Kickstarter (the "Site"). By using the Site in any manner, including, but not limited to, visiting or browsing the Site, you agree to be bound by this Agreement and respect its terms.

This is a legally binding contract between you and MCH Swiss Exhibition (Basel) Ltd, a Swiss Corporation located at Messeplatz, 4058 Basel, Switzerland referred herein as "Art Basel". If you have any questions about its meaning you should consult with an attorney before using the Site.

#### 1. KICKSTARTER RULES.

All of the terms, conditions, policies, and procedures of Kickstarter apply to the Site. You promise that you have reviewed and agree with all of those terms, conditions, policies, and procedures.

#### 2. SUMMARY OF SERVICE.

The Site is a platform where non-profit arts organizations ("Creators") can submit artistic projects or projects related to the development of their organizations ("Projects") and seek contributions from users of the Site ("Backers"), all as described more fully below. Creators, Backers, and those who browse the Site are sometimes referred to herein as "Users."

#### 3. ACCEPTANCE OF TERMS.

The Service is offered subject to acceptance of all of the terms and conditions contained in these Terms of Use and all other operating rules, policies, and procedures that may be published on the Site by Art Basel, which are incorporated by reference. These Terms of Use apply to every User and complement Kickstarter existing Terms of Use.

Art Basel may, at its sole discretion, modify or replace these Terms of Use by posting the updated terms on the Site. Unless otherwise indicated by Art Basel, any changes will become effective on a prospective basis from the date of posting. It is your responsibility to check the Terms of Use periodically for changes. Your continued use of the Service following the posting of any changes to the Terms of Use constitutes acceptance of those changes.

Art Basel reserves the right to change, suspend, or discontinue the Service or any of its features at any time for any reason without notice or liability. Art Basel may also impose limits on certain features and services or restrict your access to parts or all of the Service without notice or liability.

Art Basel may, in its sole discretion, refuse to offer the Service to any person or entity and change its eligibility criteria at any time. This provision is void where prohibited by law and the right to access the Service is revoked in those jurisdictions.

#### 4. THE SERVICE.

The Service will operate as follows:

##### 4.1

Creators may submit Projects for the consideration of Art Basel. Our guidelines, suggestions for Projects, and details on where and how Projects should be submitted can be found on the Art Basel website ([artbasel.com/crowdfunding](http://artbasel.com/crowdfunding)).

##### 4.2

Projects will be reviewed by an independent jury of art professionals selected in the sole discretion of Art Basel. Projects will be reviewed based on criteria (a) determined in the sole discretion of the jury, (b) may or may not be published, and (c) may change from time to time.

##### 4.3

Projects approved by the jury will be listed on the Site in accordance with normal Kickstarter rules.

##### 4.4

Projects not approved by the jury may still be listed on Kickstarter (if accepted by Kickstarter), but not on the Site.

##### 4.5

Every Creator must be a qualified non-profit arts organization, meaning a non-profit art museum, a kunsthalle, an art school, a qualified digital art platform, or another organization approved in the sole discretion of the independent jury.

##### 4.6

All funded Projects will be subject to Kickstarter's normal charges. Art Basel will not receive any compensation from the donations by the backers including the corporate grants and/or donations.

##### 4.7

If a Project listed on the Site receives full funding and results in exhibited artworks, you agree these cannot be offered for sale for six months after their initial presentation. If the works are then sold, you agree the total funds raised via the Site need to be donated to the non-profit arts organization that initially vouched to exhibit the works.

#### PROHIBITED PROJECTS.

A Project will not be considered or accepted if, in the sole discretion of Art Basel, the Project:

- Infringes any copyright or other right of any other person
- Violates any law or contract
- Is unlawful, threatening, abusive, harassing, defamatory, libelous, deceptive, fraudulent, tortious, obscene, offensive, profane, or invasive of another's privacy
- Otherwise violates these Terms of Use or Kickstarter's policies and Terms of Use

#### 5. RULES AND CONDUCT.

You may use the Service only as intended, to match Backers with Creators. You may not use the Service for any other purpose, whether personal or commercial. The Service is provided only for use of your non-profit arts organization, except as otherwise provided. You are responsible for all of your activity in connection with the Service and guarantee to keep Art Basel clear of any liability whatsoever.

#### 6. REGISTRATION.

You may view Projects on the Site without registering, but as a condition of using certain aspects of the Service, you may be required to register with Kickstarter. You are solely responsible for activity that occurs on your account and shall be responsible for maintaining the confidentiality of your password for the Site. You will never allow any other person to use your account, or use the account of any other User.

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#### 7. THIRD-PARTY SITES.

The Service may permit you to link to other websites or resources on the Internet, and other websites or resources may contain links to the Site. When you access third-party websites, you do so at your own risk. Those other websites are not under the control of Art Basel, and you acknowledge that Art Basel is not liable for the content, functions, accuracy, legality, appropriateness, or any other aspect of those other websites or resources. The inclusion on another website of any link to the Site does not imply endorsement by or affiliation with Art Basel. You further acknowledge and agree that Art Basel shall not be liable for any damage related to the use of any content, goods, or services available through any third-party website or resource.

#### 8. USER CONTENT.

The Site may allow Users to post comments and other content, other than Projects ("User Content"). You acknowledge User Content may be protected by copyrights, trademarks, service marks, patents, trade secrets, or other rights and laws. You shall abide by and maintain all copyright and other legal notices, information, and restrictions contained in any Content accessed through the Service. You shall not sell, license, rent, or otherwise use or exploit any User Content for commercial use or in any way that violates any third-party right and guarantee to keep Art Basel clear of any liability resulting from your infringement to Copyrights laws. By submitting or posting User Content, you agree to the following terms:

- You grant to Art Basel the worldwide, non-commercial, non-exclusive, perpetual, irrevocable, royalty-free, transferable right to (and to allow others acting on its behalf to) use, edit, market, distribute, and otherwise fully exploit your User Content and your trademarks, service marks, slogans, logos, and similar proprietary rights in connection with this Service and Art Basel.
- You may be identified publicly by your name or User ID.
- You grant to each User a non-exclusive license to access your User Content through the Service, and to use, edit, modify, reproduce, distribute, prepare derivative works of, display and perform such User Content solely for personal, non-commercial use.
- You agree that your User Content will not contain third-party copyrighted material, or material that is subject to other third-party proprietary rights, unless you have permission from the rightful owner of the material or you are otherwise legally entitled to post the material and to grant Art Basel all of the license rights granted herein.
- The use or other exploitation of your User Content by Art Basel and Users as contemplated by the foregoing will not infringe or violate the rights of any third party, including without limitation any privacy rights, publicity rights, copyrights, contract rights, or any other intellectual property or proprietary rights.
- Art Basel shall have the right to delete, edit, modify, reformat, excerpt, or translate any of your User Content.
- Art Basel will not be liable for any errors or omissions in any User Content.
- All User Content you access through the Service is at your own risk and you will be solely responsible for any resulting damage or loss to any party.

#### 9. REMOVAL OF INFRINGING MATERIALS.

Art Basel will remove infringing Projects, User Content, or other materials from the Site in accordance with the Digital Millennium Copyright Act if properly notified that such materials infringe on the copyright of a third person. If you believe that your work has been copied in a way that constitutes copyright infringement, please notify Art Basel's contact person in writing. Your notice must contain the following information (please confirm these requirements with your legal counsel, or see the U.S. Copyright Act, 17 U.S.C. §512(c)(3), for more information):

- An electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest;
- A description of the copyrighted work that you claim has been infringed;
- A description of where the material that you claim is infringing is located on the Site;
- Your address, telephone number, and email address;
- A statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; and
- A statement by you that the information in your notice is accurate and under penalty of perjury that you are the copyright owner or authorized to act on the copyright owner's behalf.

Conversely, if you believe that your work has been removed or disabled by mistake or misidentification, please notify Art Basel's contact person in writing. Your counter-notice must contain the following information (please confirm these requirements with your legal counsel or see the U.S. Copyright Act, 17 U.S.C. §512(g)(3), for more information):

- A physical or electronic signature of the user of the Services;
- Identification of the material that has been removed or to which access has been disabled and the location at which the material appeared before it was removed or access to it was disabled;
- A statement made under penalty of perjury that the subscriber has a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material; and
- The subscriber's name, address, telephone number, and a statement that the subscriber consents to the jurisdiction of the Federal District Court for the judicial district in which the address is located, or if the subscriber's address is outside of the United States, for any judicial district in which the service provider may be found, and that the user will accept service of process from the person who provided notification under subscriber (c)(1)(C) or an agent of such person.

Under the Copyright Act, any person who knowingly materially misrepresents that material is infringing or was removed or disabled by mistake or misidentification may be subject to liability.

If you fail to comply with these notice requirements, your notification or counter-notification may not be valid.

Our designated contact person for notice of alleged copyright infringement is:

Attn:  
Ms Nadine Lopez  
Art Basel  
MCH Swiss Exhibition (Basel) Ltd  
Messeplatz 4058, Basel Switzerland  
nadine.lopez@artbasel.com

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### Terms of Use

#### 10. TERMINATION.

Art Basel may terminate your access to the Service, without cause or notice. All provisions of the Terms of Use that by their nature should survive termination including, without limitation, ownership provisions, warranty disclaimers, indemnity, and limitations of liability. Art Basel also reserves the right to, at any time, for any reason, and without notice: (i) cancel, reject, interrupt, remove, or suspend a Project; or (ii) remove, edit, or modify any User Content.

#### 11. WARRANTY DISCLAIMER.

THE SERVICE IS PROVIDED "AS IS" AND "AS AVAILABLE" AND IS WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES IMPLIED BY ANY COURSE OF PERFORMANCE OR USAGE OF TRADE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED.

Without limiting the foregoing, Art Basel makes no warranty that (a) the Service will be secure or available at any particular time or location, (b) the Site will be free of viruses, (c) Kickstarter will perform its obligations, if any, (d) Projects or other content will not infringe upon your rights or the rights of third parties, or (e) you will not be offended by Projects or other content. Electronic Communications Privacy Act Notice (18 USC §2701-2711): ART BASEL MAKES NO GUARANTY OF CONFIDENTIALITY OR PRIVACY OF ANY COMMUNICATION OR INFORMATION TRANSMITTED ON THE SITE OR ANY WEBSITE LINKED TO THE SITE. Art Basel will not be liable for the privacy of email addresses, registration and identification information, disk space, communications, confidential or trade-secret information, or any other Content stored on Art Basel's equipment, transmitted over networks accessed by the Site, or otherwise connected with your use of the Service. Your use of the Service is solely at your own risk. Some states or countries do not allow limitations on how long an implied warranty lasts, so the above limitations may not apply to you.

#### 12. INDEMNIFICATION.

You shall defend, indemnify, and hold harmless Art Basel, its affiliates, and each of its and its affiliates' employees, contractors, directors, suppliers, and representatives from all liabilities, claims, and expenses, including reasonable attorneys' fees and other legal costs, that arise from or relate to your use or misuse of, or access to, the Service. Art Basel reserves the right to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will assist and cooperate with Art Basel in asserting any available defenses.

#### 13. LIMITATION OF LIABILITY.

IN NO EVENT SHALL ART BASEL OR ITS CORPORATE PARTNERS, NOR THEIR RESPECTIVE DIRECTORS, EMPLOYEES, AGENTS, PARTNERS, OR SUPPLIERS, BE LIABLE UNDER CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE, OR ANY OTHER LEGAL OR EQUITABLE THEORY WITH RESPECT TO THE SERVICE (I) FOR ANY LOST PROFITS, DATA LOSS, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER, SUBSTITUTE GOODS OR SERVICES (HOWEVER

ARISING), (II) FOR ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE (REGARDLESS OF THE SOURCE OF ORIGIN), OR (III) FOR ANY DIRECT DAMAGES IN EXCESS OF (IN THE AGGREGATE) ONE HUNDRED U.S. DOLLARS (\$100.00). SOME STATES OR COUNTRIES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS AND EXCLUSIONS MAY NOT APPLY TO YOU.

#### 14. INTERNATIONAL.

Accessing the Service is prohibited from territories where the Content on the Site is illegal. If you access the Service from other locations, you do so at your own initiative and are responsible for compliance with local laws.

#### 15. ELECTRONIC DELIVERY, NOTICE POLICY, AND YOUR CONSENT.

You consent to receive from Art Basel all communications including notices, agreements, legally required disclosures, or other information in connection with the Services (collectively, "Contract Notices") electronically. Art Basel may provide the electronic Contract Notices by posting them on the Site. If you desire to withdraw your consent to receive Contract Notices electronically, you must discontinue your use of the Services.

#### 16. GOVERNING LAW.

These Terms of Service (and any further rules, policies, or guidelines incorporated by reference) shall be governed by and construed in accordance with the laws of Switzerland. You agree that the Site is a passive website that does not give rise to personal jurisdiction over Art Basel or its parents, subsidiaries, affiliates, successors, assigns, employees, agents, directors, officers or shareholders, either specific or general, in any jurisdiction other than Switzerland. You agree that any action at law or in equity arising out of or relating to these terms, or your use or non-use of the Services, shall be filed only in the courts of Switzerland and you hereby consent and submit to the personal jurisdiction of such courts for the purposes of litigating any such action. You hereby irrevocably waive any right you may have to trial by jury in any dispute, action, or proceeding.

#### 17. INTEGRATION AND SEVERABILITY.

These Terms of Use and other referenced material are the entire agreement between you and Art Basel with respect to the Service, and supersede all prior or contemporaneous communications and proposals (whether oral, written or electronic) between you and Art Basel with respect to the Service and govern the future relationship. If any provision of the Terms of Use is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that the Terms of Use will otherwise remain in full force and effect and enforceable. The failure of either party to exercise in any respect any right provided for herein shall not be deemed a waiver of any further rights hereunder.

#### 18. MISCELLANEOUS.

Art Basel shall not be liable for any failure to perform its obligations hereunder where the failure results from any cause beyond Art

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Basel's reasonable control, including, without limitation, mechanical, electronic, or communications failure or degradation. The Terms of Use are personal to you, and are not assignable, transferable, or sub-licensable by you except with Art Basel's prior written consent. Art Basel may assign, transfer, or delegate any of its rights and obligations hereunder without consent. No agency, partnership, joint venture, or employment relationship is created as a result of the Terms of Use and neither party has any authority of any kind to bind the other in any respect. In any action or proceeding to enforce rights under the Terms of Use, the prevailing party will be entitled to recover costs and attorneys' fees. All notices under the Terms of Use will be in writing and will be deemed to have been duly given when received, if personally delivered or sent by certified or registered mail, return receipt requested; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; or the day after it is sent, if sent for next day delivery by recognized overnight delivery service.

# Additional Terms of Use for Creators

By submitting a Project to the Site, you agree to the terms set forth below. These terms supplement but do not replace the Terms of Use, meaning that you continue to be subject to all of the Terms of Use. Unless otherwise defined below, capitalized terms have the meanings given to them in the Terms of Use.

As a Creator, you agree as follows:

**1.**

Your Project might not be approved. Approval is in the sole, unlimited discretion of the independent jury appointed by Art Basel. Decisions of the jury may not be appealed and you understand and agree that Art Basel is not liable for any decisions related to the selection of projects.

**2.**

Even if your Project is approved, in accordance with Kickstarter Terms of Use and policies, you might not receive funding.

**3.**

You represent that your Project is original. If you did not create the Project yourself, then you know the person who created the Project (the "Artist") and have obtained that person's written consent to submit the Projects. Your Project does not copy any other artwork, and does not otherwise infringe on the rights of any other person.

**4.**

You represent that the Project is not intended to defame or otherwise injure any person.

**5.**

You represent that presenting the Project on the Site, subject to the Terms of Use (as supplement by these Additional Terms), does not violate any other agreements to which you are a party or by which you are bound.

**6.**

If your Project is fully funded, you will promptly provide any rewards you have promised to Funders in compliance with the Kickstarter Terms of Use and policies.

**7.**

Although the jury or Art Basel may make suggestions concerning the development of your Project, these suggestions are made without consideration and there is no assurance that they will assist with either approval or funding. Neither Art Basel nor the jury is acting as a consultant or advisor to you, but only providing the Service of considering your Project and as such cannot be made liable for the success or failure of your fundraising campaign.

**8.**

You will not post any information on the Site that is inaccurate or misleading.

**9.**

Art Basel may interrupt, remove, or suspend your campaign at any time and for any reason, and will not be liable to you for any damages you incur as a result, including an inability to obtain funding.

**10.**

If your Project is funded and later sold, you commit to applying the proceeds of sale as described in the Terms of Use. If asked, you will provide information to Art Basel as requested to assure compliance.

**11.**

Art Basel cannot guaranty that other Users will not infringe on your rights, e.g., by copying your Project. Art Basel does not seek to monitor the Site for infringement.

**12.**

You grant to Art Basel the right to use your Project, name, likeness, trademarks, service marks, slogans, logos, and similar proprietary rights to promote Art Basel, the Site, your project and the respective businesses of Art Basel worldwide, including but not limited to through social media (e.g., Instagram, Facebook, Tumblr, Twitter), emails, press releases, newsletters and otherwise, without consideration. If you did not create the Project, then you represent that you have obtained the same grant from the Artist, in writing.