

TERMS AND CONDITIONS

BY VISITING WWW.MARTYCULTURAL.COM, YOU ARE CONSENTING TO OUR TERMS AND CONDITIONS.

OVERVIEW

Martycultural Art Inc. is the owner of the Sites (as defined below).

The terms “we,” “us,” “our,” “The Artist”, and “Martin Machacek” refer to **MARTYCULTURAL ART INC.** The term the “Site” refers to the website domains of WWW.MARTYCULTURAL.COM and/or **MARTYCULTURAL.BIGCARTEL.COM**. The terms “user,” “you,” and “your” refer to site visitors, customers, and any other users of the site.

The Site features an online gallery of artwork completed by Martin Machacek, including some original paintings and/or reproductions (the “Products”) that are offered for sale through our Online Store, **martycultural.bigcartel.com**. We have listed information on where the artwork can be viewed in person (“Current Exhibitions”) and have included an artist biography (“About the Artist”). The artwork itself has been grouped into several categories based on theme (“Victoria”, “Lighthouses”, “Europe”, etc.), and the availability of each image is clearly stated as applicable on the Site. There is a blog on the Site, which is updated periodically and to which users of the Site can submit comments (the “Service”).

Use of the Site, including all materials presented herein and all online services provided by **MARTYCULTURAL ART INC.**, is subject to the following Terms and Conditions. These Terms and Conditions apply to all site visitors, customers, and all other users of the site. By using the Site or Service, you agree to these Terms and Conditions, without modification, and acknowledge reading them.

USE OF THE SITE AND SERVICE

To access or use the Site, you must be 18 years of age or older and have the requisite power and authority to enter into these Terms and Conditions. Children under the age of 18 are prohibited from using the Site. Information provided on the Site and in the Service related to artwork, exhibitions, availability of art reproductions, and other information are subject to change without notice to you. Martycultural Art Inc. makes no representation or warranty that the information provided, regardless of its source (the “Content”), is accurate, complete, reliable, current, or error-free. Martycultural Art Inc. disclaims all liability for any inaccuracy, error, or incompleteness in the Content.

ACCOUNT CREATION

In order to use the Service and/or purchase Products, you may be required to provide information about yourself including without limitation your name, email address, username and password, and other personal information. You agree that any registration information you give to us will always be accurate, correct, and up to date. You must not impersonate someone else or provide account information or an email address other than your own. Your account must not be used for any illegal, deceitful, fraudulent or unauthorized purpose. You must not, in the use of the Service, violate any laws in your jurisdiction.

LAWFUL PURPOSES

You may use the Site and Service for lawful purposes only. You agree to be financially responsible for all purchases of Products made by you or someone acting on your behalf through the Site. You agree to use the Site and to purchase Services or Products through the Site for legitimate, non-commercial purposes only. You shall not post or transmit through the Site any material which violates or infringes the rights of others, or which is threatening, abusive, defamatory, libelous, invasive of privacy or publicity rights, vulgar, obscene, profane, or otherwise objectionable, contains injurious formulas, recipes, or instructions, which encourages conduct that would constitute a criminal offense, give rise to civil liability, or otherwise violate any law.

REFUSAL OF SERVICE

The Services and Products are offered subject to our acceptance of your order or requests. We reserve the right to refuse service to or to fulfill any order for Products from any person or entity, without the obligation to assign reason for doing so. No order is deemed accepted by us until payment has been processed and received by us. We may at any time change or discontinue any aspect or feature of the Site or Service.

ORDER CONFIRMATION

We will email you to confirm the placement of your order and with details concerning product delivery. In the event that there is an error in or you fail to receive an email confirmation, it is your responsibility to inform us immediately.

CANCELLATIONS, REFUNDS & RETURNS

We trust you to make informed decisions up front about your purchases and are always available to answer any questions you have about our Products. In the unlikely event that you receive damaged or otherwise defective Products after placing an order through the Site, please contact us **within 24 hours of your receipt of the Products to discuss your options**. We can be reached by e-mail, marty@martycultural.com, or by phone: +1 (250) 686-3266.

Please note that **Martycultural Art Inc. does not offer any returns on artwork or Products**. We will consider an exchange of your items or store credit, on a case by case basis, at our sole discretion.

PRODUCT DESCRIPTION

We offer the highest quality artwork possible and stand behind our Products. Martycultural Art Inc. original paintings are created using Golden Acrylics paint and are coated with a UV-resistant varnish upon completion. Our photographic prints are considered 'archival-quality' in that they will not fade or stick to glass for decades after purchase, and our block-mounted prints have been laminated to wood to protect against humidity and fading. All of our canvas giclées are protected against UV rays and are printed using the superior standards that set giclées apart from other forms of reproductions (canvas transfers, lithographs, etc.).

We endeavor to describe and display the Products and Service as accurately as possible. While we try to be as clear as possible in explaining the Products and Service, we do not warrant or represent that the Site is entirely accurate, current, or error-free. From time to time, we may correct errors in pricing and descriptions of Products and Services. We reserve the right to refuse or cancel any order with an incorrect price listing or any other error at our sole discretion.

MATERIAL YOU SUBMIT TO THE SITE

You shall not upload, post or otherwise make available on the Site any artwork, photos, or other materials (collectively “Materials”) protected by copyright, trademark, or other proprietary right without the express written permission of the owner of the copyright, trademark, or other proprietary right, and the burden of determining that any Materials are not so protected rests entirely with you. You shall be liable for any damage resulting from any infringement of copyrights, trademarks, or other proprietary rights, or any other harm resulting from such a submission. For all Materials submitted by you to the Site, you automatically represent or warrant that you have the authority to use and distribute the Materials, and that the use or display of the Materials will not violate any laws, rules, regulations, or rights of third parties.

INTELLECTUAL PROPERTY RIGHTS TO YOUR MATERIALS

We claim no intellectual property rights over the material you supply to us. You retain copyright and any other rights you may rightfully hold in any content that you submit through the Site or Service. Content you submit to us remains yours to the extent that you have any legal claims therein. You agree to hold us harmless and fully release us from and against all claims, liabilities, and expenses arising out of any potential or actual copyright or trademark misappropriation or infringement claimed against you. By posting material on the Site, you grant us a worldwide, nonexclusive, irrevocable license to use the material for promotional, business development, and marketing purposes.

OUR INTELLECTUAL PROPERTY

The Site, Products and Service contain intellectual property owned by Martycultural Art Inc., including trademarks, copyrights, proprietary information, and other intellectual property. You may not modify, publish, transmit, participate in the transfer or sale of, create derivative works from, distribute, display, reproduce or perform, or in any way exploit in any format whatsoever any of the Site or Service, whether for profit or not for profit, any Content or intellectual property, in whole or in part, without our prior written consent. We reserve the right to immediately remove you from the Service, without refund, if you are caught violating this intellectual property policy and such removal shall not be a waiver of any other rights or remedies available to use at law or equity.

CHANGED TERMS

We may at any time amend these Terms and Conditions. Such amendments are effective immediately by us posting the new Terms and Conditions on this Site which such posting shall be deemed notice to you. Any use of the Site or Service by you after such posting of amendments means you accept these amendments. We reserve the right to update any portion of our Site, Products and Service, including these Terms and Conditions, at any time. We will post the most recent versions to the Site and list the effective dates on the pages of our Terms and Conditions.

LIMITATION OF LIABILITY

YOU AGREE THAT UNDER NO CIRCUMSTANCES SHALL WE BE LIABLE FOR DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, EXEMPLARY, OR ANY OTHER DAMAGES ARISING OUT OF YOUR USE OF THE SITE OR SERVICE. ADDITIONALLY, MARTYCULTURAL ART INC. IS NOT LIABLE FOR DAMAGES IN CONNECTION WITH (I) ANY FAILURE OF PERFORMANCE, ERROR, OMISSION, DENIAL OF

SERVICE, ATTACK, INTERRUPTION, DELETION, DEFECT, DELAY IN OPERATION OR TRANSMISSION, COMPUTER VIRUS, OR LINE OR SYSTEM FAILURE; (II) LOSS OF REVENUE, ANTICIPATED PROFITS, BUSINESS, SAVINGS, GOODWILL OR DATA; AND (III) THIRD PARTY THEFT OF, DESTRUCTION OF, UNAUTHORIZED ACCESS TO, ALTERATION OF, OR USE OF YOUR INFORMATION OR PROPERTY, REGARDLESS OF OUR NEGLIGENCE, GROSS NEGLIGENCE, FAILURE OF AN ESSENTIAL PURPOSE AND WHETHER SUCH LIABILITY ARISES IN NEGLIGENCE, CONTRACT, TORT, OR ANY OTHER THEORY OF LEGAL LIABILITY. THE FOREGOING APPLIES EVEN IF MARTYCULTURAL ART INC. HAS BEEN ADVISED OF THE POSSIBILITY OF OR COULD HAVE FORESEEN THE DAMAGES. IN THOSE AREAS THAT DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR THE DAMAGES, OUR LIABILITY IS LIMITED TO THE FULLEST POSSIBLE EXTENT PERMITTED BY LAW. IN NO EVENT SHALL MARTYCULTURAL ART INC.'S CUMULATIVE LIABILITY TO YOU EXCEED THE TOTAL PURCHASE PRICE OF THE PRODUCT OR SERVICE YOU HAVE MOST RECENTLY PURCHASED FROM MARTYCULTURAL ART INC., AND IF NO PURCHASE HAS BEEN MADE BY YOU THEN MARTYCULTURAL ART INC.'S CUMULATIVE LIABILITY TO YOU SHALL NOT EXCEED \$100.

THIRD PARTY RESOURCES

The Site and the Service contain links to third party websites and resources. You acknowledge and agree that we are not responsible or liable for the availability, accuracy, content, or policies of third party websites or resources. Links to such websites or resources do not imply any endorsement by or affiliation with Martycultural Art Inc.. You acknowledge sole responsibility for and assume all risk arising from your use of any such websites or resources.

INDEMNIFICATION

You shall fully indemnify and hold us harmless from and against any and all losses, damages, settlements, liabilities, costs, charges, assessments, and expenses, as well as third party claims and causes of action, including, without limitation, attorney's fees, arising out of any breach by you of any of these Terms and Conditions, or any use by you of the Site, Products or Service. You shall provide us with such assistance, without charge, as we may request in connection with any such defense, including, without limitation, providing us with such information, documents, records, and reasonable access to you, as we deem necessary. You shall not settle any third party claim or waive any defense without our prior written consent.

EFFECT OF HEADINGS

The subject headings of the paragraphs and subparagraphs of this Agreement are included for convenience only and shall not affect the construction or interpretation of any of its provisions.

WAIVER

No waiver of any of the provisions of this Agreement by Martycultural Art Inc. shall constitute a waiver of such provision or any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by Martycultural Art Inc..

NOTICES

All notices, requests, demands, and other communications under this Agreement shall be in writing and properly addressed by registered mail as follows:

Martycultural Art Inc.
Upper- 2470 Bowker Avenue
Victoria, BC V8R 2G1
CANADA

GOVERNING LAW; VENUE; MEDIATION

This Agreement shall be construed in accordance with, and governed by, the laws of the Province of British Columbia, and Canada, as applied to contracts that are executed and performed entirely in British Columbia. The exclusive venue for any arbitration or court proceeding based on or arising out of this Agreement shall be Victoria, British Columbia. The parties agree to attempt to resolve any dispute, claim, or controversy arising out of or relating to this Agreement by mediation, which shall be conducted by a member of the roster of the Mediate BC Society. The parties further agree that their respective good faith participation in mediation is a condition precedent to pursuing any other available legal or equitable remedy, including litigation, arbitration, or other dispute resolution procedures.

RECOVERY OF LITIGATION EXPENSES

If any legal action or any arbitration or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees and other costs incurred in that action or proceeding, in addition to any other relief to which it or they may be entitled.

SEVERABILITY

If any term, provision, covenant, or condition of this Agreement is held by an arbitrator or court of competent jurisdiction to be invalid, void, or unenforceable, the rest of the Agreement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

INURE AND BENEFIT

These Terms and Conditions bind and inure to the benefit of the parties' successors and assigns.