



## Own Art Scheme Rules

### 1. The Scheme

- 1.1 The Own Art Scheme (“the Scheme”) is an Arts Council England initiative operated by ArtCo Trading Limited (“we/us”) to provide approved retailers of contemporary art and craft (“Member Galleries”) with the ability to offer their customers interest free loans or loans at preferential rates of interest to enable them to purchase works of art.
- 1.2 The Scheme is run and operated by ArtCo Trading Limited, a subsidiary trading company of Arts Council England, in partnership with Hitachi Capital Consumer Finance (“Hitachi”) which provide the loans to customers.
- 1.3 “Work/s of Art” shall mean any two or three-dimensional objects created by a living artist and commonly understood to be a Work of Art. This shall include fine art (including paintings, limited edition prints (editions of up to 150), drawings, sculptures, photographic, and mixed-media installations), crafts (including ceramics, glasswork, textiles, metalwork, woodwork and jewellery), unique items of designer-made furniture, artist-made film and video and work in new media.
- 1.4 In the case of limited edition prints, if a Member has any doubt about the eligibility of a print, the Member should contact the Scheme Co-ordinator for a final decision on eligibility for the Scheme. Works of Art are not deemed to include signed reproductions and/or posters.
- 1.5 The decision of Hitachi as to whether to grant or decline a loan application is final.



- 1.6 We may terminate a Member Gallery's participation in the Scheme if:
- 1.6.1 we establish that a Member Gallery has repeatedly included in loan agreements products and/or services other than those referred to in paragraphs 1.3 and 1.4 above; or
  - 1.6.2 a Member Gallery persistently fails to procure and forward to Hitachi completed questionnaires in accordance with the Scheme Rules.

## 2. **Consumer Credit Licence**

- 2.1 As a participant in the Scheme, Members will be involved in activities relating to credit and therefore as required by the Consumer Credit Act 1974 ("the Act"), all Members must hold a Standard Licence under the Act, at least covering the category of credit brokerage ("the Licence"). Failure to hold a Licence at all times could result in:-
- (a) refusal of entry to the Scheme;
  - (b) as a current Member, being expelled from the Scheme;
  - (c) committing a criminal offence; and
  - (d) the inability of the Member Retailer in future to carry out any consumer credit business.

## 3. **Unfair Business Practice**

- 3.1 Whilst it is not possible to give a full list of business practices that we consider to be unfair examples of unfair business practices are any breach of the Rules in paragraph 3.2 below.
- 3.2 Members:
- (i) must not apply unreasonable pressure on customers to sign a loan;
  - (ii) must not visit customers at their home in order to carry out the consumer credit activity under the Scheme;
  - (iii) must advise the customer that the loan agreement is a legally binding agreement, and therefore they should take independent legal advice before entering into any loan agreement which causes them concern or uncertainty;
  - (iv) must ensure that customers are given an opportunity to read the loan terms before signing the loan agreement;
  - (v) must not make false representations to persuade the customer to agree more quickly, for example by saying the price will rise if the customer does not sign straight away;

- (vi) must deal fairly, openly and honestly with customers and customer complaints;
- (vii) in all correspondence or agreements the Member must give the Member's full name and address, giving the Member's status as a company, partnership or sole trader;
- (viii) must not use false or misleading statements in order to induce customers to enter into a sale;
- (ix) must not use misleading advertising whether relating to finance or financial products;
- (x) must comply with the requirements of the Act in relation to the completion and execution of the loan agreements;
- (xi) must not give misleading price indications or claims in relation to warranties (contrary to s20(1) of the Consumer Protection Act 1987);
- (xii) must deal appropriately and honestly with monies having due regard to the rights of all relevant parties;
- (xiii) must not encourage customers to give false or misleading information or to provide positive information that will allow them to set aside County Court judgments simply to improve their credit ratings and thus to obtain loans under the Scheme.

#### **4. What we will warrant**

We warrant that :-

- 4.1 in relation to any credit advertisement, the contents of the advertisements provided to our Members by us, or by Hitachi, have been approved by us or by Hitachi.
- 4.2 The Scheme advertisements are legal, decent, honest and truthful and comply with the British Code of Advertising Practice and all other relevant codes under the supervision of the Advertising Authority.
- 4.3 We will use our reasonable endeavours to ensure that the Scheme and each Member complies with the Data Protection Act 1998 and all other applicable laws and regulations (such as money laundering regulations) and with any guidelines issued by Hitachi applicable to the arrangements contemplated by the Scheme.



## 5. **Data Protection**

- 5.1 Members must be independently registered with the Office of the Information Commissioner for data protection activities particular to their business.
- 5.2 The information given by any prospective Member in the course of the application for Membership and any information subsequently updated whilst a Member of the Scheme, will be held on computer at our registered office and that of Arts Council England (our parent charity).
- 5.3 Any Member's information and our own information may be used in the administration of the Scheme and will be shared with Arts Council England. Both sets of information may be used to make our decision as to whether to grant the Member membership of the Scheme.
- 5.4 By signing the application form the prospective Member consents to our using the Member's information about them to carry out credit reference enquiries of credit agencies and to undertake enquiries of the bankruptcy registers, electoral roll registers and Companies House registers.
- 5.5 The database of the Member's details vests in us absolutely. We intend retaining the details which our Members provide to us about their businesses and/or themselves on our database in order to be able to contact our Members in relation to events, opportunities and services that we feel may be of interest to our Members from time to time.
- 5.6 The database of customer's details is the responsibility of the Member who holds or processes such customer information. We will not pass the personal data about a Member or customer on to any third parties other than as listed above.
- 5.7 Notwithstanding any provision in these Rules to the contrary, if we are required by law, including by any Trading Standards Officer, the police or any other regulatory body or person to disclose information relating to any advertisement or personal data or database information held or managed by us, we may disclose such information.
- 5.8 Customers' consent is required if Members wish to retain the Customer personal data on the Member's database including for the purpose of notifying Customers of the Member's future services and offers.

## **6. Application for Membership**

- 6.1 Scheme Membership is open to sole traders, partnerships or companies operating in England and Scotland. Where an applicant is a sole trader, the Member must be over 18 years of age.
- 6.2 Members must operate a UK bank account, and be capable of administering standard banking procedures on regular payments and BACS payments from their trading premises or registered offices.
- 6.3 Upon application, we shall make enquiries of prospective Members, individuals or employees or officers of a company applying for membership in order to ensure that applicants are not undischarged bankrupts, disqualified directors or persons with unsatisfied County Court Judgments or police convictions.
- 6.4 Subject to the Data Protection Act and Regulations, we shall upon request disclose to the prospective Member concerned the results of our enquiries or searches undertaken about them. All applications will be subject to assessment against the published criteria for membership of the Scheme. Membership of the Scheme is granted and maintained at our absolute discretion and we may suspend or terminate any existing membership if the Member fails to comply fully with the Scheme Rules.
- 6.5 The Member must be willing to attend a mandatory Consumer Credit Act training course at a venue and on a date to be arranged by us at our discretion. A failure to attend any mandatory training may lead to a suspension of membership until the training is completed.

## **7. Criteria for Membership of the Scheme**

- 7.1 The overall criterion is that the prospective member should be committed to promoting and selling quality works of art by living artists. By doing so, the Membership help to raise the profile of the contemporary visual arts in England and encourage new buyers, patrons and wider audiences for the visual arts.

For assessment of applications, prospective members will be expected to meet the following criteria:

- 7.1.1 To specialise in the sale of high quality original works of art by living artists. Galleries/outlets stocking reproduction prints/posters or other mass-produced items will not normally be accepted for membership of the scheme;
- 7.1.2 to have been trading for a minimum of 12 months at the time of application and to be able to supply audited or independently inspected accounts for the previous year's trading demonstrating that the company has a positive net worth;
- 7.1.3 To maintain a clearly differentiated exhibition space, properly signed and advertised as such. The general appearance, style and standard of display in that space to suitably reflect and underpin the quality of the work on show. For galleries selling work online, the design and layout of the website must suitably reflect and underpin the quality of the artists work being represented;
- 7.1.4 To undertake regular marketing activities in the promotion of the profile of the gallery/outlet and the work of the artists represented. These activities should include an appropriate mix of:
  - maintaining an up to date visitor mailing list
  - production of appropriate advertising and publicity material for all exhibitions and events
  - regular mail shots
  - regular press releases
  - maintenance of a website for the gallery/outlet or web presence on appropriate shared sites;
- 7.1.5 to actively encourage new buyers of contemporary art and craft by providing appropriate customer service and advice when needed;
- 7.1.6 to operate from retail premises based in England or Scotland which are open and available for customers to attend in person, or to maintain a website through which customers can access appropriate information online
- 7.1.7 to have regular, advertised opening/office hours and not be open solely on an appointment basis;
- 7.1.8 to employ fully trained and well informed staff available during published working/office hours to talk to customers about Own Art as well as being able to effect a sale. Internet based businesses must provide contact information on their website including a telephone number for enquiries and the hours during which staff are available;



- 7.1.9 to make available to all customers accurate and detailed information about the artists and artworks being shown, including price lists and other information that may assist the customer in making their purchase
  - 7.1.10 to operate a UK bank account capable of accepting payments by BACS;
  - 7.1.11 to hold or be capable of holding a Standard Licence under the Act covering the category of credit brokerage. This is a legal requirement. (Please note: Arts Council England advises that a prospective Member which does not hold such licence should not apply until formally accepted for membership of the scheme. Any acceptance will be conditional upon the member obtaining such licence);
  - 7.1.12 to be prepared to attend training days as required
  - 7.1.13 to participate in ongoing evaluations of the Scheme to monitor achievements against objectives (i.e. share information and statistics with Arts Council England on audiences, turnover and payments relating to "Own Art") including ensuring the return of customer surveys that are to be completed by all customers applying successfully for an "Own Art" loan at the point of sale;
  - 7.1.14 to effectively advertise and promote the retailer's membership of the Scheme by displaying appropriate signage and customer information about the scheme both in the venue itself and on the retailer's website (if applicable);
- 7.2 Artco Trading Ltd reserves the right to suspend or terminate membership of the Scheme in respect of any member who fails to comply with the terms and conditions of the Scheme or whose business activities subsequently fall below the standards set out in the criteria above.

## 8. **Restrictions on Credit available**

- 8.1 The Scheme is intended to offer interest free credit on a sum between £100 and £2000 to individuals subject to status. We hope to support all loan applications, but this will always depend on the balance of demand for loans from all our Members and pressures on the Scheme's resources.
- 8.2 The Scheme does not extend low or interest free credit to sole traders, partnerships or companies. It is incumbent upon our Members to ensure that all applications for credit are only completed by individuals (i.e. natural

persons) and then to make it clear that the application for consumer credit is subject to acceptance by and at the discretion of Hitachi. (The Member should please make clear to the customer that it is not the Member's decision whether the customer is offered interest free credit under the Scheme but a decision of Hitachi which decision is final.)

- 8.3 Loans are not available to customers who have disclosed to a Member in the course of enquiry about Own Art, that they
- intend to reside abroad or
  - intend to relocate abroad for a substantial period of time, or
  - are persons domiciled abroad, or
  - are persons who are under the age of 18 years of age or
  - are non-UK citizens, or
  - trade as sole traders.

If a Member is in any doubt, the Member should raise its concern with Hitachi by inserting a covering note with the loan application when submitting the form to Hitachi for approval.

- 8.4 Loans are available to staff of Members provided that the relationship of the applicant to the Member is made known to Hitachi at the time of submitting the loan for approval.
- 8.5 Any loan application must contain the full particulars of the customer in order to identify the customer accurately. A customer may apply for one or more concurrent or consecutive loans under the Scheme to buy one or more works of art, provided the total money financed by the Scheme at no time exceeds the customer's personal credit limit notified to Members or the customer by Hitachi.
- 8.6 Members should advise the customer that there are several factors involved in the Scheme's decision to offer interest free or low rate credit on any particular sale, only some of which relate to customer's personal circumstances. Members should keep the reason for any rejection of any loan strictly confidential. Any enquiries by the customer as to the reason for refusal should be referred to Hitachi to answer.
- 8.7 Loans are repayable by the customer to Hitachi by direct debit only, commencing in accordance with the terms of the loan agreement, in equal monthly instalments (subject to a minimum monthly repayment of £10).



- 8.8 A sale will be complete when the loan has been approved and the customer has signed the agreement and direct debit mandate. Once the sale has been concluded, the member may release the goods purchased to the customer to take away.
- 8.9 If the work/s of art cost more than the particular loan available to the customer, the customer must pay the balance of the purchase price to the Member before the goods are released to the customer. If the Member releases the goods before the full price is paid, the Member shall bear the risk of any amount unpaid.
- 8.10 A customer may pay off the loan at any time without penalty for early repayment except for any allowance that may be permitted to the creditor by the Consumer Credit (Early Settlement) Regulations 2004.

## 9. **Hitachi Loan Agreement**

- 9.1 Only authorised and approved current edition versions of the Hitachi loan agreement can be used for the Scheme. We or Hitachi will notify Members, in writing, of any new issues of the loan agreement from time to time.
- 9.2 The Member should check the availability of the work/s of art once the loan application has been approved by Hitachi and before the Loan Agreement is signed by the customer.

## 10. **Interest Free Credit and Hitachi handling charge**

- 10.1 Members will be required to pay Hitachi an administration and credit approval charge of 2.5% of the amount of each loan, or as otherwise notified by us to Members in writing from time to time.
- 10.2 The customer must not be charged directly or indirectly for any administration charges or retail service fees. The fee will be deducted from the loan amount financed under the loan agreement by Hitachi. The customer may not be charged any amount by the Member other than the Total Cash Price of the goods. (Any charge levied will render the loan agreement potentially unenforceable).
- 10.3 The handling charge is subject to review and may change from time to time at our sole discretion. We will notify Members of any changes in writing. If at any time a Member does not wish to pay the handling charge or other



charges, that Member may simply give us notice to withdraw from the Scheme.

10.4 All sums must be invoiced in sterling.

## 11. **Death or bankruptcy of the customer**

11.1 If a sale of a work of art has been concluded in accordance with these Rules, the death or bankruptcy of the customer should not affect the Member. The loan agreement will continue to bind the estate of the deceased or bankrupt, and the personal representatives.

## 12. **Promotional Literature**

These Rules describe the Scheme and the conditions and procedure governing its operation. All descriptions of the Scheme and all advertisements, statements and announcements relating to it must be consistent with the Scheme as outlined in these Rules and include the Scheme logo and the logo of Arts Council England.

## 13. **Member's default**

If a Member fails to remedy any breach of these Rules, we shall be entitled, after giving the Member at least 28 days notice in writing, to:

- terminate the Member's membership of Scheme.
- if any monies are owed, charge the Member interest (both before and after judgment) on any amounts due to us and unpaid at the rate of 4% per annum above the Bank of England's base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest);
- set off any sums owed by the Member to us against any sums payable by us to the Member.



#### **14. Management Information**

Our duly authorised representatives may from time to time visit any Member without prior notice during working hours to monitor the Member's compliance with the Rules of the Scheme. The Member will co-operate fully with the authorised representatives' reasonable requests.

#### **15. Variation and Termination**

- 5.1 We may from time to time amend these Rules as we deem necessary, expedient or convenient for the proper management of the Scheme or to take into account changed circumstances. We will give the Members at least 30 days' written notice of any amendment to these Rules.
- 5.2 Arts Council England may, in its discretion, at any time resolve to terminate this Scheme:
- (a) on 30 days' written notice to Members, to be given by us on its behalf;  
or
  - (b) immediately by written notice to Members, to be given by us on its behalf if, for any valid reason notified to Members, Arts Council England determines in its discretion to end the Scheme forthwith.

*Last amended 09 March 2010*