SALE OF ART WORK

Agreement between

_____

(hereinafter called "the Artist")

Residing at:

_____.

And

_____

(hereinafter called "the Client")

Residing at:

_____.

WHEREAS, the Artist is a recognized professional artist.

WHEREAS, the Client acknowledges sufficient familiarity with the style and quality of the Work of the Artist.

WHEREAS, the Client desires the Artist to create a Work of art (hereinafter called "the Work") in the Artist's unique style.

WHEREAS, both parties wish the integrity and clarity of the Artist's ideas and statement in the Work to be maintained.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. **DESCRIPTION OF WORK**

The artist shall create the following Work of art:

TITLE:
MATERIALS:
SIZE UPON COMPLETION:
DESCRIPTION OF THE ARTWORK:
SCOPE OF THE ARTIST'S WORK:
FRAMING OR MOUNTING:

It is hereby understood and agreed that it may not be possible to create the Work exactly as described herein or as depicted in preliminary designs, and the Artist shall only be bound to use his best aesthetic judgment to create the Work according to the style and intent of the design. The Artist is hereby free to make design modifications as the Work progresses.

2. **PRICE AND PAYMENT SCHEDULE**

2.1. The Artist shall sell the work to the Client, subject to the conditions herein, for a purchase price of R_____ (_____ rand), payable as follows.

2.2. The Client pays a deposit in the sum of R_____, being 50% of the purchase price before commencement of the work. The deposit is non-refundable, subject to clause 5.3.

2.3. The Client agrees that the balance of the purchase price in the sum of R_____ shall be paid within five (5) days of notice of completion of the work.

2.4. Parties agree that in the event that the balance of the purchase price is not be paid within the stipulated period on completion of the work as in 2.3 above, the Artist reserves the right to charge interest of the then prevailing interest rate for banks on the amount due.

3. **DATE OF DELIVERY OF COMPLETED WORK**

3.1. The Artist agrees to complete the Work within _____ (_____) (days / weeks / months) of the signing of this agreement (hereinafter referred to as the "completion date")

3.2. The completion date shall be extended for such period of time in the event that the Artist may be disabled by illness and/or any other incapacity preventing the continued progress or completion of the Work.

3.3. The completion date shall also be extended in the event of delays caused by events beyond the control of the Artist, including but not limited to fire, thefts, strikes, shortage of materials, and Acts of God. Time shall not be considered of the essence with respect to the completion of the Work.

3.4. Notwithstanding Clause 3.3, the Artist undertakes to notify the Client of any delays occurring or anticipated.

3.5. Completion of the Work is to be determined by the Artist who shall use his professional judgment to deviate from any preliminary designs as he in good faith believes necessary to create the Work.

3.6. Upon nearing completion of the Work, the Artist will give the Client five (5) days advance notice of specific date of delivery.

4. **DELIVERY**

4.1. The Work will be delivered to the Client only after full payment has been received by the Artist into the nominated account of the Artist. Delivery shall be by courier service unless collected personally by Client. The cost of packaging and delivery will be for the account of the Client, who will make the necessary arrangements with a suitable courier service to collect the Work/s from the Artist.

4.2. If the Client fails to collect the Work after full payment has been made, then the Artist is entitled to sell the Work if the Client does not collect the Work within (1) one year after notice was provided to the Client in terms of Clause 2.3.

5. **TERMINATION**

This Agreement may be terminated on the following conditions:

5.1. The Client shall have the right to terminate this Agreement if, pursuant to Clause 3, the illness of the Artist causes a delay of more than six (6) months in the completion date, or if events beyond the Artist's control cause a delay of more than one (1) year in the completion date. In both instances, the Artist shall return all payments made pursuant to Clause 2, and shall not be liable for any additional expenses, damages, or claims of any kind based on the failure to complete the work.

5.2. This Agreement shall automatically terminate on the death of the Artist, provided however, that the Artist's estate shall retain all payments made pursuant to Clause 2.

5.3. If for any reason, the Client cancels the order for the Work, then he must immediately notify the Artist in writing. If the Artist only receives notice of cancellation after 14 days from the date of the Order, then the Artist shall be entitled to retain the deposit. The exercise of the right of termination under this clause shall be written and set forth the grounds for termination.

6. **OWNERSHIP**

6.1. The Client shall have no claim against the Artist's estate if for any reason the Work is not completed prior to his death.

6.2. It is specifically agreed that ownership of the Work/s remain vested in the Artist until such time as it has been fully paid for.

7. **COPYRIGHT**

7.1. All rights of copyright in and to the material comprised in the copyrighted work shall vest in the Client 20% and the Artist 80% in shares to be held in their names, as co-proprietors thereof, together with all other items of intellectual property and any other rights in the artwork. The foregoing shall include all rights of whatsoever nature in any materials or items prepared for by the Client or the Artist in connection with the making of the copyrighted work.

7.2. Neither party shall have the right to dispose of or exploit the copyrighted work and the rights in and to it in any manner unless the other party gives his written approval, which approval shall not be unreasonably withheld.

8. **INDEMNITY**

The Artist shall not be required to produce any artwork, which in his opinion is illegal or defamatory. The Artist hereby indemnifies the Client against any claims, costs and expenses arising out of infringement of copyright, trade marks, patents and designs.

9. **WARRANTIES**

9.1. It is the Client's sole responsibility to determine whether the artwork/s ordered by him is suitable for the purpose for which he intends it. The Artist gives no warranties, express or implied, concerning the suitability of the artwork/s supplied for any purpose whatsoever. The Artist shall not be liable for any direct, indirect, consequential or other loss, including loss to third parties, arising out of errors in carrying out a commission or by delays in delivery or by unsuitability of artwork/s or framing for use as intended.

9.2. The Artist warrants and undertakes unto and in favour of the Client that the Work will, upon delivery, be the sole and exclusive property of the Artist and that no other person or company will have any rights therein or thereto.

9.3. The Artist warrants that the design being purchased is the original product of his own creative efforts. The Artist warrants that unless otherwise stipulated, the Work is unique, that it is an edition of one (1), and that it has not been accepted for sale elsewhere.

10. **EQUIPMENT TO BE USED**

All equipment, canvas, brushes etc will be the responsibility of the Artist, who will purchase these items for his own account and which will be included in the compensation the Artist receives for any painting commissioned.

11. **PASSING OF RISK**

The parties agree that the risk in the work/s shall not pass immediately upon the conclusion of this Agreement, but only upon the delivery of an item to the delivery address. The risk passes to the Client in the Work at the time when the Work is posted by the Artist or collected by the courier company. The Artist will not be held responsible for any damage sustained to the Work and/or the frame/s in the course of handling, packaging, storing etc. whether by the Client, a worker, a member of the public, a contractor or employee.

12. **NON-DESTRUCTION/ALTERATION**

The Client agrees that he/she will not intentionally destroy, alter, damage, modify, or otherwise change the Work in any way whatsoever, without the Artist's written permission.

13. **MORAL RIGHT**

The Artist retains all moral rights in the Work and the Client undertakes not to distort and /or mutilate the Work or modify the Work where such action is prejudicial to the honour or reputation of the Artist.

14. **ARBITRATION**

14.1. Any controversy or claim arising out of or relating to this agreement or any breach thereof, or any delict relating thereto, shall be settled by arbitration.

14.2. Such arbitration will be held in Cape Town, unless otherwise agreed by the parties in writing and will be adjudicated on the basis of Alternative Dispute Resolution (ADR) by a competent and impartial attorney or advocate.

14.3. The Arbitrator may make any order, decision, determination or award which he deems just and equitable and within the scope of the Agreement of the parties, including, but not limited to, requiring any party to perform any of its obligations or undertakings. The Arbitrator may also make any interim order, decision, determination, or award he deems necessary to preserve the status quo until he can render a final order, decision, determination or award.

14.4. Any final order or interim order, decision, determination or award made by the Arbitrator shall be conclusive and binding upon the parties and judgment upon any such order, decision, determination or award may be enforced and entered by any South African court having jurisdiction there over.

15. **NON-VARIATION CLAUSE**

This Agreement expresses the entire contract between the parties, and the parties agree that no oral undertakings have been made with regard thereto. The parties agree that any variation of their agreement must be made in writing and acknowledged by both parties.

16. **NO WAIVER**

No relaxation or indulgence granted by the Artist and no omission by the Artist timeously or diligently to enforce any right under this agreement, shall be deemed to amount to a waiver of that or any other right.

17. **NOTICES AND CHANGES OF ADDRESS**

All notices shall be sent to the Artist at the following address:

_____

All notices shall be sent to the Client at the following address:

_____

Each party shall give written notification within sixty (60) days of any changes of address.

18. **SEVERABILITY**

If any part of this Agreement is held to be illegal, void, or unenforceable for any reason, such holding shall not affect the validity and enforceability of any other part.

19. **DOMICILIUM CITANDI ET EXECUTANDI**

The Artist chooses the address stipulated on page 1 under their name, as its chosen domicilium citandi et executandi for the service of all notices. The Client chooses the address on page 1 under their name, as the chosen domicilium citandi et executandi for the service of all notices. All notices shall be deemed to be received by the addressee on the third business day after the posting thereof or forthwith upon telefax notice. The parties may change their domicilia to another address in the Republic of South Africa of which they may advise each other by written notice.

DATED AT **THIS** **DAY OF** **2010**

WITNESS:

1. _____

2. _____ _____

FOR:
ARTIST

DATED AT **THIS** **DAY OF** **2010**

WITNESS:

1. _____

2. _____ _____

FOR:
CLIENT