

## Terms and Conditions

Artspan LLC ("Company") provides template websites to artist members of PRZM, Jewelspan, and Artspan ("Members"). Its aim is to provide an easy-to-manage website for you to showcase and market your work. At your option, the Company may also provide a shopping cart to be integrated into your site.

As a condition of Membership, you must carefully read and accept all of the terms in this Member Agreement. By accepting this Agreement, you agree that it will apply whenever you use your Member website or Member services and tools. These Terms and Conditions are an integral part of the Membership application, and you agree to be bound by them as a Member.

### **The Terms and Conditions are arranged in three Parts:**

Part One: Terms and Conditions for Membership.

Part Two: Terms and Conditions for Use of the Shopping Cart.

Part Three: Legal disclaimers and limitations which apply to both Parts One and Two.

## **PART ONE: MEMBERSHIP**

### **1(A). YOUR ACCOUNT**

If you use this site, you are responsible for maintaining the confidentiality of your account and password and for restricting access to your computer, and you agree to accept responsibility for all activities that occur with your account or are enabled with the use of your password. We reserve the right to refuse service, terminate accounts, remove or edit content, or cancel orders at our sole discretion.

You agree to keep your contact and billing information current in the Billing Information section of your Control Panel.

We offer free phone support within reasonable limits. For non-North American members, please notify us by email at [ask@artspan.com](mailto:ask@artspan.com) of a good time for a call and we will call you after confirming the time. If you use Skype, tell us your Skype name; if not, give us the best number to reach you.

### **1(B). COPYRIGHT**

You warrant and represent that:

(i) You are the sole artist and author of the work displayed on your Member website and own all rights to it.

*Or*

(ii) You have express written permission from the owner of the copyright to the work to display the work on your website.

You agree to defend, indemnify, and hold Artspan LLC and any affiliated or associated companies harmless from and against any and all claims arising out of or relating to any content that you submit to this site. This includes, but is not limited to any companies that provide print or domain services. The Company makes no express or implied warranties

or representations with respect to copyright protection.

You grant the Company permission to use your artwork in promoting the Company's services. You warrant that all information provided to Artspan is accurate.

### **1(C). TRADEMARKS**

Certain marks used on the Company and Member websites are registered trademarks or service marks of the Company. Certain graphics, logos, page headers, button icons, scripts, and service names are trademarks, service marks, or trade dress of the Company. Our trademarks and trade dress may not be used for any commercial or other purposes by any party other than the Company without our prior written consent. All other trademarks and service marks not owned by Artspan.com that appear on this site are the property of their respective owners, and may not be used without their prior written consent.

### **1(D). DOMAIN NAMES**

You may choose to have a subdomain (i.e. MemberName.przm.com, MemberName.jewelspan.com or MemberName.artspan.com) or use a domain name that you own or purchase. There is no fee levied by the Company for either of these choices. You may elect to register a unique domain name of your choice (i.e. MemberName.com) through the Company. While the Company makes every effort to assist Members with domain issues, it is a reseller of domains and you agree not to hold the Company liable or responsible for any issues which may arise in connection with any domain used on your site or registered through the Company including but not limited to issues relating to expiration of the domain. You agree to be responsible for your domain renewal and for all other issues connected to your domain name registration and use whether the name is registered through the Company or not.

### **1(E). ARTSPAN MEMBERSHIP AND DOMAIN REGISTRATION FEES**

***Monthly Member Fees*** Monthly member fees will be due and debited each month. Members may withdraw at any time without penalty but the unused portion of any debited monthly fee will not be refunded.

***Annual Member Fees*** Annual membership will automatically renew at the end of the membership year unless you expressly notify the Company to the contrary. The Company will attempt, by email or telephone, to alert the member of the membership expiration date but cannot guarantee that it will be successful in reaching the member. The Company will only refund the annual fee, if requested, in the initial 30 day period following the billing date.

***Domain Name Registrations and Renewals*** Domain names registered through the Company after September 20, 2007 are renewed automatically unless members login to their Domain Manager and expressly opt for non-renewal of their domain(s).

Domain names registered through the Company before September 20, 2007 are not automatically renewed. Jewelspan will attempt to notify you of the impending expiration of your domain but cannot be held responsible for its expiration in the event that you do not receive notification of the expiration date for any reason including your changing the email address corresponding to the domain registration and not updating the change on the registration.

Unless otherwise stated, all fees are quoted in U.S. dollars. You are responsible for paying all fees and applicable taxes associated with our website and services in a timely manner with a valid payment method.

#### **1(F). MEMBERSHIP CRITERIA**

You may not use our website services or tools if you are not able to form legally binding contracts, are under the age of 18, or are temporarily or indefinitely suspended from our website, services, or tools.

The Company may accept individual Members and may terminate a membership at any time at its sole discretion.

### **PART TWO: MEMBER WEBSITE SHOPPING CARTS**

#### **2(A). GENERAL**

While the Company may provide you with the integrated shopping cart feature and billing assistance including, at your option, calculation of applicable sales taxes, the Company is not a party to any transaction between you and the buyer(s). Artspan (Jewelspan) is only an Internet-based hosting facility and provider of technical, Internet, billing and marketing services.

#### **2(B). PRICING**

You are responsible for pricing items sold on your website.

#### **2(C). TAXES**

You agree to pay all applicable sales, use, V.A.T. or other taxes that may be due.

For U.S. residents this *generally* means state and local sales taxes will be due the tax jurisdiction that you are shipping to *only* when that jurisdiction is the same as the one you are shipping from. That is, for sales tax(es) to be due, the "ShipTo" address (that you are shipping to) will be the same as the "ShipFrom" address (that you are shipping from). However, if the ShipTo and ShipFrom addresses are not the same and if tax is due, you agree to assume all responsibility for payment of any taxes due. You agree to secure any tax certificates that may be necessary. We suggest that you call your state and local tax authorities to ascertain requirements that you may need to follow.

An exception to the rule above regarding ShipTo and ShipFrom addresses, occurs in the case of sales resulting from the Prints-on-Demand feature. The prints will be printed in North Carolina and, when the ShipTo address is also a North Carolina address, you will be responsible for paying sales taxes on any prints shipped even though you may be residing in another state. Should you wish to sell prints to a buyer in North Carolina, you agree to file a tax registration form and pay sales tax(es). The tax registration form is found here: [http://www.dorn.com/downloads/fillin/NCBR\\_webfill.pdf](http://www.dorn.com/downloads/fillin/NCBR_webfill.pdf)

In the United States, the Company and its partner in providing sales tax calculation services, Exactor, may calculate taxes for you but ONLY on those transactions in which the "ShipTo" address (that you are shipping to) is the same as the "ShipFrom" address (that you are shipping from). For all other transactions, Exactor will return \$0 taxes owing. You understand and expressly acknowledge that neither the Company nor Exactor

are making any representation as to whether or not sales, use, V.A.T. or other taxes should be owing on other transactions in which the ShipTo address is different from the ShipFrom address, and in no event shall the Company or Exactor be liable for any direct, indirect, incidental, special, consequential or exemplary damages arising from, or in connection with, taxes which may be owing on any transactions.

With regard to Artspan members located outside the United States, you agree to assume full responsibility for calculation and payment of any applicable sales, use, V.A.T, or other taxes.

## **2(D). CONTACT WITH BUYERS**

You will be responsible for contact with your customers, and agree to respond to any buyer who has purchased items from your site within 3 business days to answer any questions or concerns related to the order. If you do not respond to the customer in a timely fashion, Artspan reserves the right to cancel the order and refund the customer.

## **2(E). TERMS OF SALE**

The following are the Terms of Sale that you agree to abide by:

### **ORIGINAL SALES:**

a. You will grant your buyers the unconditional right to return any item(s) purchased, with no explanation required, within a 7 (ten) day period following *delivery* of the purchased item(s).

b. You agree to pay any refunds due within a 5 (five) day period following the return of the item(s) in question and you agree that the amount refunded will include any taxes, shipping & handling and any other charges that have been debited but that any amount refunded **not** include the charge for shipping the item back from the Buyer to you unless the item was received by the Buyer damaged or the image and description on your website did not accurately represent the item received.

c. Work that has been commissioned by the buyer can be non-refundable.

In the event of any dispute regarding damaged items or other issues with buyers, you and the buyer may ask the Company to mediate said dispute. If so, you agree to abide by the decision and/or recommendation(s) made by Artspan.

### **PRINTS-ON-DEMAND SALES:**

In the event that you participate in the Prints-on-Demand (“PoD”) program:

a. You will grant your buyers the unconditional right to return any item(s) purchased, with no explanation required, within a 7 (seven) day period following *delivery* of the purchased item(s).

b. You agree to pay any refunds due within a 5 (five) day period following *receipt* of the returned item(s) in question and you agree that the amount refunded will include any taxes, shipping & handling and any other charges that have been debited but that any amount refunded not include the charge for shipping the item back from the Buyer to you unless the item was received by the Buyer damaged or the image and description on your website did not accurately represent the item received. In the event that the printer has made a mistake in printing or that the shipper has damaged the goods in transit, a

replacement item will be shipped out at no cost to you. The Company must be informed as to the nature of the damage and may require that the buyer provide a digital photograph of the damaged print as received.

#### **2(F). PROCEEDS OF SALES AND DISBURSEMENT OF FUND**

All proceeds of your sales will be remitted directly to you as the seller. You are responsible for payment of all taxes due.

#### **2(G). FEES FOR THE USE OF THE SHOPPING CART AND PRINTS-ONDEMAND FEATURES**

If you opt to use a Member integrated shopping cart and/or the PoD feature on your website, you agree to pay the credit card processing fee on any sales.

With regard to any commission(s) on sales payable to the Company, there is NO commission on sales when the buyer has gone directly to your website - that is, not through the various Company Shops or by using Company search and/or category results. If the buyer finds and accesses your website and artwork through Przm.com, Artspan.com or Jewelspan.com, then a 10% commission on sales will be applied.

#### **2(H). PRESERVATION OF SALES RECORDS**

You agree to retain full records of all sales for a period of six (6) years and to promptly respond to any requests by the Company, PayPal or by tax authorities for information and documentation concerning any sale(s).

#### **2(J). SHOPPING CART REMOVAL**

The Company may terminate your use of your website shopping cart feature at any time at its sole discretion for reasonable cause, to be defined as including, but not be restricted to, any violation of law or of the terms of this document.

### **PART THREE: DISCLAIMERS AND LIMITATIONS**

#### **3(A) MODIFICATIONS OF TERMS**

The Company reserves the right to change or modify the terms and conditions of this Agreement at any time, with such changes or modifications effective immediately upon posting on Przm.com, Artspan.com and Jewelspan.com. You agree that all agreements, notices, disclosures and other communications that we provide to you electronically satisfy any legal requirement that such communications be in writing. You consent to receive communications from us by e-mail.

#### **3(B) DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY**

The Company makes no express or implied warranties or representations of any kind, including but not limited to the sale of your work or that the operation of your site or of any of its websites or member websites or of the shopping cart and the print-on-demand features will be uninterrupted or error-free, and the Company will not be liable for the consequences of any service interruptions or errors, or the information, content, materials or products included on your site. The Company will not be liable for indirect, special, or consequential damages or any loss of revenue, profits, or artwork arising from or in connection with the operation of Przm.com, Artspan.com or Jewelspan.com and/or your member site, even if it has been advised of the possibility of such damages. Artspan will not be liable for the consequences of your use of the website. You may not use the

website in order to transmit, distribute, store, or destroy any materials or content in violation of applicable law, to infringe others' intellectual property rights or to defame or disparage another person. You expressly agree that your use of this site is otherwise at your sole risk." Certain U.S. state laws do not allow limitations on implied warranties or the exclusion or limitation of certain damages. If these laws apply to you, some or all of the disclaimers, exclusions or limitations may not apply to you and you may have additional rights.

### **3(C) APPLICABLE LAW**

This Agreement will be governed and construed in the courts with the laws of the State of New Jersey, and, to the extent applicable, of the United States of America, without giving effect to its conflict of laws provisions. You hereby submit, through use of Jewelspan.com and/or the services provided by Artspan, to the exclusive jurisdiction of the courts of the State of New Jersey and any United States courts located within its jurisdiction for purposes of any and all litigation arising out of the use of this website or any Artspan service. You waive any objections to the forum of New Jersey for lack of venue, *forum non conveniens*, or any other jurisdictional ground.

### **3(D). PRIVACY AND SECURITY**

Arspan will not be held liable for your selling, leasing, or disclosing your buyer's personal information and you must adequately secure all personal and confidential information.

### **3(E). INDEMNIFICATION**

You agree to indemnify and hold harmless Artspan LLC, its contractors, and its licensors, and their respective directors, officers, employees and agents from and against any and all claims, demands, and expenses, including attorney's fees, arising out of your use of the website, and Company services and tools, including, but not limited to, your violation of this Agreement or your violation of any law or the rights of a third party.