

Online Viewing Rooms – Terms and Conditions for Gallery's Participation

MCH Messe Schweiz (Basel) AG, Basel/Switzerland ('Art Basel'), operates the Online Viewing Rooms ('Art Basel OVR'), in particular the OVR: Portals in June 2021, as an online service for a limited number of participants admitted to it, which allows you, if admitted and subject to the payment of a service fee of CHF 5,000.00 including Swiss Value Added Tax of 7.7 %, to display a limited number of artworks to collectors and the public ('Users'), to have live communications with and to receive sales inquiries by email from Users.

1. Admission Procedure

You show your interest in booking your room and participating in the Art Basel OVR by submitting your request for admission in the provided online registration form to Art Basel within the deadline set by Art Basel. **With submission of your registration form, you accept without limitation or qualification these Terms and Conditions and the Art Basel Market Principles and Best Practices (artbasel.com/art-market-principles-and-best-practices) and you agree to fully comply.** Please fill in all information requested by Art Basel in order to avoid any iterations in the admission procedure. After submission of your registration form, Art Basel will assign to you a room where you must upload those artworks which you propose to be displayed; such room is only provided temporarily during the admission procedure. The upload of artworks must follow and be in compliance with the requirements set out in these Terms and Conditions, otherwise your request for admission will be denied. Once all artworks are uploaded and you submit the room, your request for admission to the Art Basel OVR is completed.

You understand and accept that the submission of your registration form, the upload of artworks to your temporarily provided room and your compliance with the other admission conditions stipulated herein does not bestow any right on you to be admitted to the Art Basel OVR. Furthermore, you acknowledge and accept that admission to any previous Art Basel OVR does not constitute a right to be admitted to any further edition of the Art Basel OVR. MCH may revoke your admission or expel you at any time from the Art Basel OVR if (i) your admission was granted on false information or preconditions, or (ii) the admission conditions are no longer fulfilled.

The artworks that you uploaded in your temporarily provided room will be examined by the OVR Selection Committee (the 'Committee') which decides on your request for admission by simple majority. The Committee is composed of gallery owners regularly participating in Art Basel as well as a team of curators, who are selected on their integrity and expertise. The decision of the Committee on admission or non-admission is made namely based on:

- the quality and dynamism of your work with the artists represented, especially those proposed for display;
- the compliance with the conditions for admission as specified herein;
- the compliance with the Art Market Principles and Best Practices guidelines.

The Committee's decision is communicated by Art Basel by email. The decision is made by and at the sole discretion of the Committee and is binding upon you. The Committee does not give any reasons for admitting or not admitting you. The Committee's meeting may be attended by Art Basel Directors, who conduct the admission procedure without the right to vote. Art Basel and the members of the Committee do not engage in any correspondence or discussions relating to the Committee's decisions on admission or non-admission.

When you are not admitted to the Art Basel OVR, Art Basel will notify you thereof by email. Any claims you may have, including but not limited to, claims for damages and reimbursement of expenses which you have already incurred shall be, and hereby are, released, waived and forever discharged. Any uploaded artworks and content will remain in your temporarily provided room unless you remove it yourself or request from Art Basel the definite closure of the temporarily provided room. Any artworks and content which remain in the temporarily provided room will not be displayed to Users and Art Basel agrees not to make use of such material in any way whatsoever.

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2. Conditions for Admission and General Content Terms

You are fully responsible for uploading artworks and content to your room within the deadlines set by Art Basel. If you fail to comply, Art Basel will deem your failure as withdrawal from your request of admission to the Art Basel OVR and may dispose of your room otherwise.

You agree to upload only artworks to your room which you intend to offer for sale. As part of your request for admission, you will be required to upload a cover and image for your room, to enter a room title, a teaser description, a room description, and to upload all artworks (max. 8) you would like to display. The room description should be a short curatorial statement about the selection of works in your room. All artworks you wish to display should be uploaded with at least basic information (image, artist, title, date, medium, price). If you do not have a final image of the artwork in time for the submission deadline, please add a placeholder image of a similar artwork and add thereto ‘PLACEHOLDER’ (in capital letters) as the title. Be assured that you will have enough time after your notification to be admitted to finetune your room (add additional images and videos for each artwork, replace all placeholder images by final images, add and finalize artwork descriptions etc.). Please note that upon admission any artwork uploaded might be used by Art Basel for marketing and promotional purposes. You are therefore required to display the originally selected artwork for a minimum of 3 hours from the official going live date and time of the Art Basel OVR. You may exchange artworks by other artworks during the Art Basel OVR as long as the new artworks are in line with your original selection .

You guarantee to Art Basel that you will upload only artworks that you are duly authorized by the owner of the artwork to sell and on the terms the owner has approved. Upon request of Art Basel, you shall give evidence on this. Art Basel will treat any information submitted to it upon such request confidential. However, if you are in breach with this paragraph, Art Basel may exclude you from the Art Basel OVR with immediate effect. Any claims you may have, including but not limited to, claims for damages and reimbursement of expenses which you have already incurred shall be, and hereby are, released, waived and forever discharged. You further guarantee that the artworks and content uploaded do not infringe any intellectual property rights of third parties, such as copyrights and related rights, designs, trademarks, trade names, insignia, service marks, patents, utility models, rights to inventions, moral rights, business names and domain names, rights in get-up, the right to sue for passing off or unfair competition, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), image rights, rights of personality and other similar rights, and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world

You accept and assume full responsibility and liability for all artworks and content uploaded and displayed, including but not limited to any erroneous, incomplete, or unlawful upload of artworks and/or content, as well as uploaded artworks and/or content that violate the rights of third parties. You shall defend, indemnify, and hold Art Basel and any of its affiliated companies harmless from and against any and all claims, actions, proceedings, losses, liabilities, damages, fees, expenses and costs (including reasonable attorney’s fees and court costs) in relation to artworks and/or content uploaded by you. You or you on behalf of the artist – as the situation may require – grant Art Basel for its promotion of their Art Basel OVR service a perpetual, royalty-free, nonexclusive, unrestricted, sublicensable, and worldwide right to use, license, publish, reproduce (which also include to reproduce just parts), and translate pictures of the artworks and/or texts uploaded for Art Basel’s online and print publications known now or in the future (e.g. catalog, Yearbook, press releases, website, smartphone app, and social media channels).

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You understand and accept that Art Basel cannot prevent Users from making use of pictures and content (e.g. citing text and prices) which you have uploaded for private and commercial reasons, although Art Basel points out in its Terms and Conditions for Users that Users are not allowed to make use of pictures and content uploaded to any Art Basel OVR for private and commercial reasons of any kind or nature without the prior written consent from the gallery which uploaded such artworks and content. You further understand and agree that Art Basel cannot be held responsible and liable for any misconduct or violation that may occur in that regard.

3. Payment Terms

You are requested to pay the service fee of CHF 5,000.00 (including Swiss Value Added Tax of 7.7 %) and as set out on the registration form in full within the deadline set by Art Basel once you receive the email on your admission to the Art Basel OVR from Art Basel.

If you fail to make payment until the last day of the payment deadline, Art Basel may terminate the participation contract with immediate effect and dispose of your room otherwise. Any uploads of artworks and other content will be irreversibly deleted after the Art Basel OVR has been closed, however, your artworks and content uploaded will not be displayed to Users. Any claims you may have, including but not limited to, claims for damages and reimbursement of expenses which you have already incurred shall be, and hereby are, released, waived and forever discharged.

4. Communication Features and Sales Inquiries

Art Basel is not involved in any communication, sales or other transaction, or sales process between you and Users; all these happen exclusively and only between you and Users. You are advised to obtain in due course professional tax advice in order to properly comply with all tax law obligations applicable to you and your transactions contemplated.

In order to use the communication features of the Art Basel OVR, all Users need to log in to the Art Basel OVR either with their VIP login or as a registered User. By registering on the Art Basel OVR, all Users are requested to submit true and accurate information with their User profile, which will be shared with you (cf. this Section 3, para. 4, below). Art Basel does not verify the data submitted by Users and therefore Art Basel cannot be held liable for any incorrect or untrue data submitted.

Every Art Basel OVR includes live communication features (message board and private chat) and other communication features (sales inquiry, contact and newsletter feature) that enable Users to get in direct contact with you, start a live conversation with you, submit sales or general inquiries to you and/or to be added to your newsletter list. You may interact with the Users by sending them a text message via private chat. By using the live communication features, the Users automatically disclose their first and family name to you. Your text messages on the message board can be read by all Users, whereas text messages sent by you in private chats can only be read by Users receiving them. Art Basel does not record any conversations or chats; any data submitted by you through one of the live communication features will be irretrievably deleted 24 hours after the Art Basel OVR is officially closed.

Art Basel encourages Users to submit their sales inquiries to you by email through the Art Basel OVR instead of the live communication features. In so doing, they automatically submit via unencrypted email the following information to you: first and family name as well as registered email. Every User may disclose to you and at their sole discretion additional information (such as job title, previous Art Basel invitations, etc.). Art Basel does not guarantee this information to be accurate and complete, and Art Basel cannot be held liable for any information submitted to you by Users (e.g. fake profile). However, only the first inquiry made by Users to you happens via unencrypted email from the Art Basel OVR. After such first inquiry, any further communication is directly happening between you and the User outside the Art Basel OVR. Art Basel is not involved in any

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transaction between you and Users. If you receive an inquiry from Users via email, you shall respond to it within 24 hours at maximum.

You understand and agree that Art Basel shall have no responsibility or liability whatsoever for any content provided by you and Users in any of the Art Basel OVRs communication features. Art Basel will not access, view or process content on the Art Basel OVR’s communication features except (i) as provided for in these Terms and Conditions and in Art Basel’s Data protection principles; (ii) as authorized or instructed by you; or (iii) as required by applicable law. However, Art Basel will not tolerate any harassment, bullying or any form of discrimination. If you experience harassment, bullying or any form of discrimination or notice that someone else is being harassed, bullied or discriminated in any form please contact immediately Art Basel at digital@artbasel.com. Art Basel may investigate any complaints and violations that come to its attention and may take any action that it believes is appropriate.

Art Basel will maintain reasonable technical safeguards to prevent unauthorized disclosure of or access to its live communication features. You understand and acknowledge that Art Basel does not guarantee full integrity of confidentiality over any Art Basel OVR. Therefore, Art Basel highly encourages you to move strictly confidential conversations (e.g. account numbers, prices etc.) between you and Users to secure communication channels outside the Art Basel OVR. In any case, Art Basel acts solely as the provider of the Art Basel OVR and its communication features. Art Basel is not involved in any sales or other transaction or sales process between you and Users; all these happen exclusively and only between you and Users

5. Pricing and Availability

All artworks in the Art Basel OVR must be displayed with the exact price or a price range. You are solely responsible and liable to the Users that your price tag or price range is accurate. Prices should be indicated as net amounts and in US dollars. In addition, you have the option to display prices also in EUR, GBP, CNY, HKD and CHF.

You must also keep the availability status of each artwork up to date. If you have sold an artwork, you are required to mark the artwork as ‘sold’ or remove it entirely from the Art Basel OVR within 24 hours from the time of the sale.

6. Accessibility and Limitation of Liability

You must report any technical problems with the Art Basel OVR at the time of occurrence in writing (email is sufficient) to digital@artbasel.com. Art Basel will try to fix any technical problems within 12 hours upon receipt of such report. You understand and agree that you bear the sole responsibility for the functionality of your internet access.

Art Basel shall not be liable for any indirect or consequential loss or damage, including, without limitation, loss of profit, loss of sales, loss of business, loss of goodwill or reputation (including damage to reputation), loss of product, loss of expected savings, loss of income or holding costs, loss of expected production, opportunity costs or pure economic loss whether actual, direct, indirect, anticipated, or otherwise, in regards to any unavailability, inaccessibility, or other form of interruption of the Art Basel OVR by you due to occurrence of any technical problems. However, if the Art Basel OVR should be inaccessible for the full period of the scheduled official opening dates and time of the Art Basel OVR due to the occurrence of any technical problem, Art Basel will refund the service fee in full.

7. Monitoring

Art Basel collects movement data on the Art Basel OVR of you and Users in accordance with its [Data Protection principles](#) for statistical purposes.

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8. Dispute and Resolution

You understand and accept that Art Basel is not acting on behalf of you in relation to the Users, nor vice versa. Therefore, Art Basel will not resolve or help to resolve any disputes that arise between you and Users.

If you have any dispute with one or more Users, you release Art Basel (and its directors, officers, employees and agents) and any of its affiliated companies from claims, demands, and damages (actual and consequential) of every kind and nature, known and unknown, arising out of or in any way connected with such disputes.

9. Additional Property Terms

You may choose to communicate to a potential buyer your general terms and conditions of sale that are unique to your gallery. You must leave the Users in no doubt on you acting as a separate business from Art Basel and acting as the Users' sole counterparty in any sales discussions, sales processes and sales transactions. You must take all necessary measures that Users understand and agree that your general terms and conditions do not constitute any representation, warranty, or assumption of liability of any kind by Art Basel.

10. Abuse of the Art Basel OVRs

Art Basel is neither responsible nor liable for the conduct and behavior of you or that of Users. Users are requested by Art Basel to (i) contribute to the Art Basel OVR through its live communication features in a manner consistent with applicable law and Art Basel regulations and to (ii) forward only serious sales inquiries by email to you, but Art Basel cannot guarantee this will be always the case. Art Basel cannot be held responsible and liable for any misconduct that may occur. Please report to Art Basel any problems with Users and offensive content received through any live communication feature and in inquiries from Users.

Without limiting other remedies of Art Basel, Art Basel may limit, suspend, or terminate the Art Basel OVR, prohibit access to it, remove content, and take all technical and legal steps to keep you off the Art Basel OVR if Art Basel thinks that you are creating problems or acting inconsistently with the spirit of the Art Basel OVR, in particular but without limitation if you do not comply with these Terms and Conditions or the Art Basel Market Principles and Best Practices, or if your conduct of business or behavior defames or harms the reputation of Art Basel. In this case Art Basel shall not be liable for any indirect or consequential loss or damage, including, without limitation, loss of profit, loss of sales, loss of business, loss of goodwill or reputation (including damage to reputation), loss of product, loss of expected savings, loss of income or holding costs, loss of expected production, opportunity costs or pure economic loss, and whether actual, direct, indirect, anticipated or otherwise. Any claims you may have, including but not limited to, claims for damages and reimbursement of expenses which you have already incurred shall be, and hereby are, released, waived and forever discharged

11. Right to Cancel or Modify

MCH reserves the right to modify the operations of or any term or provision relating to the Art Basel OVR due to any reason whatsoever and it may take measures, including but not limited to changing the opening hours, closing temporarily, shortening the performance time, closing prematurely, and postponing or cancelling the Art Basel OVR, etc.

If the Art Basel OVR is rescheduled or materially adapted in another manner before its official going live date (e.g., meaningful changes to opening and closing hours, etc.), Art Basel shall inform you about such changes. In such event, Art Basel shall not be in breach of the participation contract and these Terms and Conditions by virtue of any change to the Art Basel OVR. Your participation contract for the Art Basel OVR and these Terms and Conditions shall remain in full force with the adaptations and

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their effects (as communicated to you) as amendments thereto, so long as you do not object in writing within 14 calendar days after receiving the information about the adaptations. If you timely object within the deadline, Art Basel shall reimburse you for any portion of your service fee insofar as the corresponding Art Basel services have not yet been rendered to you at the time of rescheduling or adaption. At the time of receipt of your declaration of objection, Art Basel is exempt from the contractual obligation to perform. In the event of changes pursuant to this paragraph, any claims you may have against MCH, including but not limited to claims for damages and reimbursement of expenses which you have already incurred in connection with the Art Basel OVR shall be, and hereby are, released, waived and forever discharged.

You must accept and have no right of withdrawal or termination if the Art Basel OVR is adapted or changes are made once the Art Basel OVR is live, including but not limited to closing prematurely, shortening the performance time, temporary interruption, partial closure, late opening, etc. Your participation contract for the Art Basel OVR and these Terms and Conditions shall remain in full force with the adaptations and changes and their effects (as communicated to you) as amendments thereto. In the event of changes pursuant to this paragraph, any claims you may have, including but not limited to claims for damages and reimbursement of expenses which you have already incurred in connection with the Art Basel OVR shall be, and hereby are, released, waived and forever discharged.

In the event of cancellation, Art Basel shall reimburse you for any portion of your service fee insofar as the corresponding Art Basel services have not yet been rendered to you at the time of cancellation. From the time you receive Art Basel’s notice of cancellation, Art Basel and you each is exempt from the contractual obligations related to the Art Basel OVR, other than as may be set forth herein (and exclusive of general obligations between Art Basel and you contained in the participation contract and these Terms and Conditions, which shall survive termination of any Art Basel OVR). Any claims you may have, including but not limited to claims for damages and reimbursement of expenses which you have already incurred in connection with the Art Basel OVR shall be, and hereby are, released, waived and forever discharged.

12. Applicable Law, Place of Performance and Place of Jurisdiction

These Terms and Conditions and if admitted to the Art Basel OVR, also your participation contract, shall be governed exclusively by the substantive laws of Switzerland, excluding its conflict of law regulations and the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG). Place of performance is Basel, Switzerland. Any dispute arising from these Terms and Conditions and from your participation contract relating to the Art Basel OVR shall be submitted exclusively to the courts in Basel, Switzerland.

13. Jury Waiver

You voluntarily, knowingly and intentionally waive any right that you or your affiliates, agents and/or employees may have to a trial by jury of any matter arising under or in connection with your participation contract for the Art Basel OVR and these Terms and Conditions. This provision is a material inducement to enter into the participation contract for the Art Basel OVR and these Terms and Conditions.

These Terms and Conditions may be amended by MCH from time to time to be applied for any future Art Basel OVR at its sole discretion.

Basel, March 2021

MCH Swiss Exhibition (Basel) Ltd.
Messeplatz, CH-4005 Basel, Switzerland

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