

# TERMS AND CONDITIONS FOR USING HEFFEL.COM

## Acceptance

Heffel and its controlled affiliates located across Canada (Heffel Gallery Limited and Galerie Heffel Québec Ltée., Montréal) and its international operating division Heffel Fine Art Auction House (collectively, “Heffel”) own, operate and maintain, the website located at the domains heffel.com, and related Heffel domains (collectively the “Website”). By using the Website you agree to both these Terms and Conditions (“Terms of Use”) and the Terms and Conditions of the Heffel Website *Privacy Policy*, which are incorporated herein by reference. If you do not agree to any of these terms, please do not use the Website. These Terms of Use apply to all users of the Website, including users who are contributors of pictorial, video content, information, and other materials or services on the Website.

## Website Access

The content of the Website is not intended for minors (people who have not reached their eighteenth birthday). Such content extends to a wide range of art, is generally uncensored and may include nudity and /or other graphic or literary content that some people may consider offensive, as well as access to live or electronic bidding on articles that may contain such sensitive content. Such content may be harmful and /or illegal for minors or children and /or inappropriate for them to view or have access to. If you allow your child to use your computer, it is your responsibility to determine whether any of the Heffel services, content and subject matter displayed on the Website is harmful or inappropriate for your child, and to control the child’s use of the computer accordingly. If you yourself find such sensitive content offensive, you should not use the Website. Heffel does not grant permission and specifically bars minors from accessing the auction and commerce portions of the Website.

Heffel hereby grants you permission to use the Website in accordance with these Terms of Use, provided that:

- 1) you are not a minor;
- 2) your use of the Website is solely for your personal use;
- 3) you will not copy or distribute any part of the Website in any medium or manner inconsistent with these Terms of Use without Heffel’s prior written consent;
- 4) you will not alter or modify any part of the Website other than as may be reasonably necessary to use the Website for its intended purpose; and
- 5) you will otherwise comply with these Terms of Use.

## Account

In order to access some features of the Website, you will have to create an account. You are not permitted to use another’s account without Heffel’s prior written permission. When creating your account, you must provide accurate and complete information. You are solely responsible for the activity that occurs on your account, and you must keep your account password secure. You must notify Heffel immediately of any breach of security or unauthorized use of your account. Although Heffel will not be liable for your losses caused by any unauthorized use of your account, you may be liable for the losses of Heffel or others due to such unauthorized use.

Heffel reserves the right to establish data transfer restrictions and /or limit the total amount of data transfer associated with your account. User accounts may be closed by Heffel should the total amount of data transfer exceed an amount deemed excessive in Heffel’s sole discretion.

You agree not to use or launch any automated system, including without limitation, “robots,” “spiders,” “offline readers,” etc., that accesses the Website in a manner that sends more request messages to the Heffel servers in a given period of time than a human can reasonably produce in the same period by using a conventional online web browser. Notwithstanding the foregoing, Heffel grants the operators of public search engines permission to use spiders to copy materials from the site for the sole purpose of creating publicly available searchable indices of the materials, but not caches or archives of such materials. Heffel reserves the right to revoke these exceptions either generally or in specific cases. You agree not to collect or harvest any personally identifiable information, including account names, from the Website.

In order to access or use certain parts of the Website, you may be required to encode your media data by downloading and installing Heffel software. For these limited purposes only, you are hereby granted a revocable non-exclusive licence to use the Heffel software for the sole purpose of encoding digital audiovisual material in order to access or use certain parts of the Website. Heffel makes no warranty concerning the functionality of the Heffel software on any individual computer and expressly disclaims any and all liability for any problem which may be caused to your computer or damage of any kind incurred by you resulting from your use of the Heffel software. You hereby waive any legal or equitable rights or remedies you may have against Heffel with respect to your use thereof.

## Intellectual Property Rights

The content on the Heffel Website, except for User Submissions, including the text, software, scripts, graphics, photos, sounds, music, videos, and interactive features (“Content”) and the

trademarks, trade names, service marks and logos contained therein ("Marks"), are owned by or licensed to Heffel, subject to copyright and other intellectual property rights under Canadian law and international conventions. Content on the Website is provided to you AS IS for your information and personal use only and may not be used, copied, reproduced, distributed, transmitted, broadcast, displayed, sold, licensed, or otherwise exploited for any other purposes whatsoever without prior written consent and /or payment of the applicable licence fee to the owners. Heffel reserves all rights not expressly granted in and to the Website and the Content. You agree not to engage in the use, copying, or distribution of any of the Content other than expressly permitted herein, including any use, copying, or distribution of User Submissions of third parties obtained through the Website. You agree not to circumvent, disable or otherwise interfere with security related features of the Website or features that prevent or restrict use or copying of any Content or enforce limitations on use of the Website or the Content therein.

### **User Submissions**

The Website may permit the submission of digital material submitted by you and other users ("User Submissions") and the hosting, sharing, and publishing of such User Submissions. Heffel may also establish categories for User Submissions based on intended use, such as Private where User Submissions are not shared, Invited where there is an invitation to view and /or share and Public. You understand that whether or not such User Submissions are published and regardless of category, Heffel does not guarantee any confidentiality with respect to any such submissions. You also understand and agree that Heffel may place advertising on the Website in conjunction with User Submissions.

You are solely responsible for your own User Submissions and the consequences of posting or publishing them. For all User Submissions you submit which are intended for public use, you represent and warrant that:

- 1) you own or have the necessary licenses, rights, consents, and permissions to use and authorize Heffel to use all copyright, trademark, trade name, service mark, logos and intellectual property and other proprietary rights in and to any and all User Submissions to enable inclusion and use of the User Submissions in the manner contemplated by the Website and these Terms of Use; and
- 2) you have the written consent, release or permission of each and every identifiable individual person in the User Submission to use their name or likeness to enable inclusion and use of the User Submissions in the manner contemplated by the Website and these Terms of Use. You retain all of your ownership rights in your User Submissions. However, by submitting the User Submissions to Heffel for public use, you hereby grant Heffel a worldwide, non-exclusive, royalty-free, transferable license to use, reproduce, distribute, prepare derivative works of, display, and perform the User Submissions in connection with the Website and Heffel's business, including without

limitation for promotion and redistribution of part or all of the Website (and derivative works thereof) in any media formats and through any media channels. You also hereby grant each user of the Website a non-exclusive license to access your User Submissions, if submitted for public use, through the Website, and to use, reproduce, distribute, prepare derivative works of, display and perform such User Submissions as permitted through the functionality of the Website and under these Terms of Use.

For User Submissions you submit, you further agree that you will not:

- 1) submit material that is copyrighted, protected by trade mark or otherwise subject to third party proprietary rights, including privacy and publicity rights, unless you are the owner of such rights or have permission from their rightful owner to post the material and to grant Heffel all of the license rights granted herein;
- 2) publish falsehoods or misrepresentations that could damage Heffel or any third party;
- 3) submit material that is unlawful, obscene, defamatory, libelous, threatening, pornographic, harassing, hateful, racially or ethnically offensive, or encourages conduct that would be considered a criminal offence, give rise to civil liability, violate any law, or is otherwise inappropriate;
- 4) post advertisements or solicitations of business;
- 5) impersonate another person.

Heffel does not endorse any User Submission or any opinion, recommendation, or advice expressed therein, and Heffel expressly disclaims any and all liability in connection with User Submissions. Heffel will remove all Content and User Submissions if properly notified that such Content or User Submission infringes another's intellectual property rights. Heffel also has sole discretion to decide whether Content or a User Submission is appropriate and complies with these Terms of Use as concerns pornography, obscene or defamatory material, or excessive length. Heffel reserves the right to remove Content and User Submissions without prior notice and to terminate a User's access to the Website, if such User is in violation of these Terms of Use. Heffel reserves the right to change, amend, alter, limit, expand or discontinue any aspect of the Website at any time.

You understand that when using the Website, you will be exposed to User Submissions from a variety of sources, and that Heffel is not responsible for and makes no warranties concerning the accuracy, usefulness, safety, or intellectual property rights of or relating to such User Submissions. You further understand and acknowledge that you may be exposed to User Submissions that are inaccurate, offensive, indecent, or objectionable, and you hereby waive any legal or equitable rights or remedies you may have against Heffel with respect thereto.

### Third Party Websites

The Website may contain links to third party websites that are not owned or controlled by Heffel and Heffel assumes no responsibility for any third party websites accessed through the Website. By using the Website, you expressly discharge Heffel from any and all liability arising from your use of any third-party website.

During live auctions Heffel reserves the right to utilize a third party streaming server to broadcast live video. Heffel assumes no responsibility for such third party server and you expressly discharge Heffel from any and all liability resulting from the use of such third party server.

### Warranty and Indemnity

You agree that your use of the Website is at your sole risk. Heffel makes no warranty concerning bugs, viruses, Trojan horses or similar problems which may be transmitted to or through the Website by any third party, or concerning damage of any kind incurred resulting from use of the Website. Heffel does not endorse and is not responsible for any product or service advertised or offered by a third party through the Website or any hyper-linked website.

If you are dissatisfied with any portion of the Website, or with any provision of the agreement, your sole and exclusive remedy is to discontinue using the Website. Under no circumstances shall Heffel be liable to any user or any third party on account of that user's use of the Website.

In no event shall Heffel, its officers, directors, employees, agents, technical support staff or its suppliers, be liable to you or any such third party for any direct, indirect, incidental, special, punitive or consequential damages resulting from any claim, injury or damage incurred by you from your use of the Website, Content or Heffel software, including, without limitation, damages for loss of use, data or profits, arising out of or in any way connected with the use or performance of the Website, any claim, injury or damage that resulted from assistance provided by Heffel's technical support staff, the delay or inability to use the Website, the provision of or failure to provide services, or for any information, software, products, services and related graphics obtained through the Website, or otherwise arising out of the use of the Website, whether based on contract, tort, strict liability or otherwise, even if the company or any of its suppliers has been advised of the possibility of damages.

You agree to defend, indemnify and hold harmless Heffel, its officers, directors, employees, agents and technical support staff, from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to legal fees) arising from:

- 1) your use of and access to the Website;
- 2) your violation of any aspect of these Terms of Use;
- 3) your violation of any third party right, including without limitation any copyright, property, or privacy right;

4) any assistance or technical support services sought or obtained through the Website; or

5) any claim that one of your User Submissions caused damage to a third party.

These defence and indemnification obligations will survive these Terms of Use and your use of the Heffel Service.

### General

You confirm that you are either at least eighteen (18) years of age, or possess legal parental or guardian consent, and are fully able to enter into the terms, conditions, obligations, representations, and warranties described in these Terms of Use, and to abide by and comply with them.

You agree that the Website shall be deemed solely based in British Columbia, Canada and that these Terms of Use shall be governed by the laws of the Province of British Columbia, Canada whose courts shall have exclusive jurisdiction. You agree that any cause of action in relation to the Website must be commenced within one (1) year after the cause of action accrues, or such cause of action is permanently barred.

### Disclaimer

The information and material (the "Material") set out on this or other websites maintained by Heffel (the "Website") may contain inaccuracies or typographical errors. Heffel makes no representations about the accuracy, reliability, completeness, or timeliness of the Material or about the results to be obtained from using the Website and the Material. Any use of the Website and the Material is at your own risk.

The Website and Material are provided on an "as is" basis without any warranties of any kind. Heffel and its suppliers, to the fullest extent permitted by law, disclaim all warranties, including the warranty of merchantability, non-infringement of proprietary or third-party rights, and the warranty of fitness for particular purpose.