



## **START (2013) LIMITED**

### **TERMS & CONDITIONS OF PARTICIPATION IN START 2018**

#### **1. DEFINITIONS**

**1.1** The defined expressions contained in these Terms and Conditions shall have the meanings set out below:

“Application Form” means the form overleaf;

“Art Fair” means the “START Art Fair at the Saatchi Gallery”;

“Exhibitor Manual” means the handbook to be produced by the Organiser containing such regulations as the Organiser may deem reasonable relating to the Art Fair, the Venue and the Exhibitor’s attendance and conduct at the Art Fair;

“Fee” means the booth fee for the Art Fair to be paid by the Exhibitor to the Organiser for the Space as set out in the Application Form;

“Given Date” means the dates for payment in the respective instalments outlined within the Application Form;

“Organiser” means START (2013) Limited and its successors, licensees and assigns;

“Space” means the area of the floor space at the Art Fair licensed by the Organiser to the Exhibitor.

“Selection Panel” means the selection panel for START made up of representatives from the art world;

“Stand” means any structure, platform or other erection located in the Space for the Exhibitor’s purpose at the Art Fair;

“Terms” means these terms and conditions together with the contents of the Exhibitor Manual;

“Warehouse” means the warehouse / clearing facility in London designated by the Organiser; and

“Venue” means the venue where the Art Fair takes place, being the Saatchi Gallery in London.

#### **2. AGREEMENT**

**2.1** These Terms shall govern the provision of the Space by the Organiser to the Exhibitor to the exclusion of any other terms and conditions.

**2.2** A binding contract shall come into existence between the Exhibitor and the Organiser only if the Exhibitor is chosen by the Selection Panel and upon receipt by the Exhibitor of the Confirmation of Participation signed by the Organiser, as provided in the Application Form.

**2.3** No changes to these Terms shall be valid unless in writing and signed on behalf of the authorised representatives of both the Exhibitor and the Organiser.

#### **3. FEE**

**3.1** The Exhibitor shall pay the Fee on the Given Dates in accordance with the payment provisions set out in the Application Form.

**3.2** If the Exhibitor uses the Venue’s technicians to install and/or remove the Exhibitor’s artworks, the Exhibitor shall pay an additional charge of £1,000 (inclusive of VAT) for the installation or the removal (as the case may be) of the artworks. Such additional charge shall be payable by the Exhibitor, upon presentation of the appropriate invoice. For the avoidance of doubt, however, the Exhibitor shall have the right to use its own service technicians to install and/or remove its artworks in which case such additional charge shall not apply. Also, if the Exhibitor requires furniture and/or lighting at its Stand in addition to the lighting and furniture referred to in the Exhibitor Manual, the Exhibitor

# START

shall pay for the use of such additional furniture and/or for any additional lighting, upon presentation of the appropriate invoice.

**3.3** The Exhibitor shall, in addition to the Fee, promptly pay all charges relating to the Exhibitor's participation in the Art Fair in accordance with the Exhibitor Manual or in respect of all goods and services supplied at the request of the Exhibitor.

**3.4** The Fee is payable without any deduction, withholding or set-off whatsoever.

**3.5** If the Fee, or any part of the Fee, is not paid when due or within ten (10) working days of the Given Date in accordance with the Application Form, then without prejudice to the Organiser's other rights or remedies:

**3.5.1** the Organiser reserves the right to revoke the Exhibitor's Space without any refund of previous payments;

**3.5.2** the Exhibitor shall be liable to pay interest on the overdue amount at an annual rate of 4% above the base lending rate of Coutts & Co. from time to time, such interest to accrue on a daily basis from the date on which payment becomes overdue until the date the payment is made; and

**3.5.3** the Exhibitor shall be liable for the Organiser's incidental costs of collection and recovery of amounts due, including but not limited to all legal costs and disbursements on a full indemnity basis before and after commencement of legal proceedings, incurred by the Organiser in relation to the non-payment by the Exhibitor of the Fee (in whole or in part).

## 4. CANCELLATION

**4.1** Subject to this Clause, the Exhibitor may, by notice in writing delivered to the Organiser by registered post (if within the UK) or by international courier service (if outside the UK) ("Cancellation Notice"), cancel its booking and liquidated damages shall be payable by the Exhibitor in accordance with Clause 4.2 by way of a cancellation fee (which shall not, for the avoidance of doubt, constitute a penalty).

**4.2** Upon cancellation in accordance with Clause 4.1 the cancellation fee payable by the Exhibitor to the Organiser ("Cancellation Fee") will be as follows:

### Cancellation Date

### Cancellation Fee

between 1<sup>st</sup> January 2018 and 13<sup>th</sup> June 2018 (inclusive):

65% of the Fee; or

between 1<sup>st</sup> May 2018 and 16<sup>th</sup> September 2018 (inclusive):

100% of the Fee.

If the total amount of the Fee received by the Organiser from the Exhibitor on the Cancellation Date is less than the Cancellation Fee, the Exhibitor shall immediately pay the Organiser the balance due.

**4.3** Upon accepting the Cancellation Notice the Organiser may resell or reallocate the cancelled Space, without any obligation to refund any Fee or cancellation fee or account to the Exhibitor for income from reselling or reallocating the cancelled Space.

## 5. OCCUPATION OF SPACE

**5.1** The Exhibitor shall occupy the whole of its allocated Space at the commencement of the Art Fair and for the entire duration of the opening hours of the Art Fair.

**5.2** The Exhibitor shall not sub-let, share or part with occupation of the Space or any part of it.

**5.3** The Exhibitor shall occupy the Space as the Organiser's licensee and shall not obtain any right of exclusive possession or occupation of or any proprietary interest in the Space.

# START

**5.4** The Exhibitor's Stand shall be constructed in accordance with the regulations set out in the Exhibitor Manual.

**5.5** The location of the Space shall be provisional and subject to change prior to the Art Fair. The Organiser shall be entitled to relocate the Exhibitor's Space at any time prior to the Art Fair.

**5.6** The Exhibitor shall vacate the Space at the end of the period of the Art Fair or otherwise in accordance with the Organiser's request. In the event that the Exhibitor fails to vacate the Space, it shall indemnify and keep indemnified the Organiser and the Venue against any losses, costs incurred as a result of the Exhibitor's failure to vacate.

## **6. EXHIBITOR'S OBLIGATIONS**

**6.1** The Exhibitor shall not supply from the Stand or elsewhere at the Art Fair any food or tobacco.

**6.2** the Exhibitor shall only supply from the Stand or elsewhere at the Art Fair drink which shall be provided to it by an official sponsor of the Art Fair, unless otherwise specifically agreed by the Organiser.

**6.3** At the Art Fair the Exhibitor shall only conduct its business from the Stand and may not display or distribute its promotional publications or articles of any kind other than from the Stand.

**6.4** The Exhibitor shall observe and comply with the Exhibitor Manual at all times.

**6.5** The Exhibitor shall not display its branding (other than its name and logo, the size of which shall be advised by the Organiser) or that of any third party on the Stand or anywhere else at the Venue without the prior written approval of the Organiser and the Venue. In addition the Exhibitor shall ensure that it does not infringe the rights of any third party in its activities being the subject of these Terms.

**6.6** The Exhibitor acknowledges that all or some of its artworks exhibited at the Art Fair (the "Artworks") are to be included in a book and/or catalogue to be published in conjunction with the Art Fair as well as on any smart phone application and on the official website to be developed for the Art Fair (collectively the "Publications"). The Exhibitor irrevocably grants to the Organiser the right (but not the obligation) throughout all territories of the world for the entire period of copyright of the Publications (including all renewals and extensions thereof) and thereafter, as far as possible, in perpetuity, to use the Artworks in the Publications and to distribute, exhibit, advertise, publicise and exploit the Publications by all means and in all media now known or hereinafter devised. The Exhibitor hereby warrants that it has all right and authority to grant the rights referred to in this Clause 6.6.

**6.7** The Exhibitor shall be responsible for: i) transporting its Artworks to the Warehouse (in sufficient time to enable the Organiser to transport them to the Venue prior to commencement of the Art Fair); ii) customs clearance of the Artworks, if applicable; iii) un-packing and storing the Artworks before the Art Fair (upon their arrival at the Venue); iv) re-packing and storing the Artworks after the conclusion of the Art Fair (prior to their return to the Warehouse); v) the storage of all packing cases for the Artworks during the Art Fair; vi) the installation and de-installation of Artworks at the Exhibitor's booth; vii) collecting its Artworks from the Warehouse after conclusion of the Art Fair; and, in each case, for all costs associated therewith. For the avoidance of doubt the Organiser and/or the Venue shall have no liability to pay any costs in relation to the foregoing.

**6.8** If so required by the Organiser, a representative of the Exhibitor shall attend the Preview Day and other Art Fair-related events during the period of the Art Fair, at the Exhibitor's expense.

**6.9** The Exhibitor shall indemnify the Organiser and/or the Venue and hold the Organiser and/or the Venue harmless against all loss, damages, claim and costs resulting from the

# START

Exhibitor's use of the Space and the acts and omissions committed by the Exhibitor and its employees, agents, contractors and invitees.

## 7. ATTENDANCE

**7.1** The Exhibitor acknowledges that the Organiser and/or the Venue shall not be held responsible for the failure of all or any other contracted exhibitors or sponsors to attend the Art Fair or the failure of any number of attendees to attend the Art Fair for any reason.

**7.2** The Exhibitor's attendance at the Art Fair shall not be conditional on the attendance of any other exhibitor or sponsor at the Art Fair.

## 8. LIABILITY AND INSURANCE

**8.1** The Organiser and/or the Venue shall not be responsible for:-

**8.1.1** the theft, damage and safety of any goods, decorations and other items (including, for the avoidance of doubt, the Artworks) whilst in transit to the Venue or brought into the Venue by the Exhibitor, its agents, employees, sub-contractors, the Organiser or the Venue; or

**8.1.2** the supply to the Exhibitor of any goods or services by any third parties at the Art Fair, including the operator and owner of the Venue, designated contractors and the Organiser's contractors; or

**8.1.3** any delay or damage or loss caused by any act of God, terrorist activity, political unrest or other event, fact or circumstance beyond the Organiser's reasonable control.

**8.2** Subject to Clause 8.3, the Organiser and Venue's liability shall be limited as follows:-

**8.2.1** the Organiser and the Venue's maximum aggregate liability under or in connection with these Terms shall not exceed the total amount of the Fee actually paid by the Exhibitor; and

**8.2.2** the Organiser and/or the Venue shall not be liable for any loss of income or profits, loss of contracts or for any indirect or consequential loss or damage of any kind howsoever arising.

**8.3** Nothing in these Terms shall exclude or in any way limit the liability of the Organiser and/or the Venue for fraud or for death or personal injury caused by its negligence or for any other liability to the extent that the same may not be excluded or limited as a matter of law.

**8.4** The Exhibitor shall take out and maintain insurance policies with a reputable and financially stable insurer in respect of all risks and for appropriate sums against which a prudent exhibitor would insure and, in particular, but without prejudice to the generality of the foregoing against loss, theft or damage to the Artworks whilst at the Warehouse and/or the Venue and whilst in transit to and from the Warehouse and/or the Venue. If so requested by the Organiser the Exhibitor shall produce to the Organiser details of such policies and sufficient evidence that they will be in force for such period as is required to provide the abovementioned insurance coverage.

**8.5** The insurance policies referred to at Clause 8.4 shall not entitle the insurers to exercise any subrogation rights against the Organiser and/or the Venue. Without prejudice to the foregoing provisions in this Clause 8, in the event of the Organiser and/or the Venue having any liability, the claimant shall first of all recover or procure to be recovered the money payable by the insurers under the insurance policies between the insurers and/or the relevant parties relating to the subject matter or event from which the Organiser and/or the Venue's liability arises and the claimant's claim against the Organiser and/or the Venue is limited to the extent that the money paid and/or payable by the insurer under such insurance policies is not sufficient to reasonably compensate the claimant.

## 9. TERMINATION

**9.1** The Organiser may terminate its agreement with the Exhibitor forthwith by notice in writing to the Exhibitor or exclude the Exhibitor from the Art Fair, if the Exhibitor:-

**9.1.1** commits a material or persistent breach(es) of any of these Terms and, having received from the Organiser a notice giving full particulars of the breach(es) and requesting that the same be remedied, has failed to remedy such breach(es);

**9.1.2** becomes insolvent, enters into liquidation or bankruptcy, passes a resolution for its winding up, has a receiver or administrator appointed over the whole or any part of its assets, makes any composition or arrangement with its creditors or takes or suffers any similar action in consequence of its debt, or

**9.1.3** ceases, or threatens to cease, to carry on business; and

**9.1.4** in the course of preparation for the Art Fair or during the Art Fair, acts in violation of law, including but not limited to performing any act or committing any omission which is or is likely to infringe the rights of any third party.

**9.2** In the event that the Organiser exercises its right to terminate this agreement, the licence by the Exhibitor over the Space will immediately cease and the Exhibitor shall pay to the Organiser liquidated damages (which shall not, for the avoidance of doubt, constitute a penalty) as follows:

Date of Termination	Liquidated Damages
between 1st January 2018 and 13 <sup>th</sup> June 2018 (inclusive)	65% of the Fee; or
from 14 <sup>th</sup> June 2018 and 16 <sup>th</sup> September 2018 (inclusive)	100% of the Fee

If the total amount of the Fee received by the Organiser from the Exhibitor on the Date of Termination is less than the Liquidated Damages, the Exhibitor shall immediately pay the Organiser the balance due.

**9.3** Failure by the Exhibitor to pay the Fee, in whole or in part, in accordance with the Given Dates referred to at Clause 3.1 shall constitute a material breach entitling the Organiser to terminate this agreement in accordance with its Terms in the event that the Exhibitor fails to remedy said breach pursuant to Clause 9.1.1.

**9.4** The Organiser and/or the Venue shall be entitled to remove any person or thing or exclude the Exhibitor from the Venue in the event that the Organiser and/or the Venue considers such removal or exclusion to be in the interests of the Art Fair, the Venue or the other exhibitors or visitors at the Art Fair. In such event, the Fee shall be forfeited to the Organiser as liquidated damages (which shall not, for the avoidance of doubt, constitute a penalty).

## 10. COMPLIANCE WITH LAWS AND REGULATIONS

**10.1** The Exhibitor shall comply with all applicable laws, regulations and codes of practice relating to the Art Fair and the Exhibitor's attendance at the Art Fair, including without limitation, all health and safety regulations, the rules and regulations set out in the Art Fair Manual and any additional rules imposed by the operator or owner of the Venue or the government from time to time.

**10.2** No highly flammable materials, explosives, detonating or fulminating compounds or other dangerous materials shall be brought into the Art Fair by or on behalf of the Exhibitor.

## 11. LAW AND JURISDICTION

# START

**11.1** These Terms shall be governed in all respects by the laws of England and Wales and the courts of England and Wales shall have exclusive jurisdiction to deliberate any disputes between the parties.

## **12. NOTICES**

**12.1** Save in relation to Clause 4, all notices and other communications served pursuant to or in connection with these Terms shall be sent by first class post, airmail, courier or email (with confirmation of receipt) to the address as specified overleaf for each party or to such other address as either party may notify for such purpose.

**12.2** Subject to Clause 4, notices shall be deemed served in accordance with the following:

**12.2.1** if sent by first class post to an address within the UK two working days after posting and if sent elsewhere, seven working days after posting;

**12.2.2** if sent by courier, on confirmed delivery; or

**12.2.3** if sent by email, on confirmation of receipt.

## **13. GENERAL**

**13.1** The failure of either party to enforce any terms of or right arising pursuant to these Terms does not constitute a waiver of such form or right and shall in no way affect that party's right later to enforce or exercise the term or right.

**13.2** The invalidity or unenforceability of any term of or right arising pursuant to those Terms shall not adversely affect the validity or enforceability of the remaining terms and rights.

**13.3** These Terms constitute the entire agreement and understanding between the parties with respect to its subject matter and supersedes any prior agreement, understanding or arrangement between the parties, whether oral or in writing, with respect to the same. No representation, undertaking or promise whether, without limitation, relating to location of the Space, visitor or exhibitor attendance figures or otherwise, shall be taken to have been given or be implied from anything said or written in communications between the parties prior to these Terms, except as set out herein. Neither party shall have any remedy in respect of any untrue statement made to it upon which it has relied in entering into these Terms (unless such untrue statement was made fraudulently) and that party's only remedies shall be for breach of contract as provided in these Terms.

**13.4** Nothing in these Terms shall confer on any third party any benefit or right to enforce any of the Terms whether pursuant to any statute or otherwise.