

**Queensland Art Gallery | Gallery of Modern Art**  
**PURCHASE AGREEMENT**

**ADJUSTABLE TERMS**

<b>1. Seller</b> <i>(include full name, address, and any ABN/ACN)</i>	
<b>2. Work</b> <i>Short description/Title</i>	[insert] (As further described in Schedule 1 attached.)
<b>3. Purchase Price</b>	[insert]
<b>4. Payment Schedule<sup>1</sup></b> (see footnote 1)	Within 30 days of the Gallery receiving a tax compliant invoice
<b>5. Basis on which Seller is entering into this Agreement<sup>2</sup></b> (see footnote 2)	
<b>6. Does the Seller own copyright in the Work?<sup>3</sup></b> (see footnote 3)	<input type="checkbox"/> <b>YES</b> , as ..... together with ..... <input type="checkbox"/> <b>NO</b>
<b>7. If the Seller owns or part owns copyright in the Work, is that copyright included in the sale?</b>	<input type="checkbox"/> <b>YES</b> <input type="checkbox"/> <b>NO</b>
<b>8. Does the Work contain any confidential or culturally sensitive material?</b>	<input type="checkbox"/> <b>YES</b> (as further described in Schedule 1 attached) <input type="checkbox"/> <b>NO</b>
<b>9. Supporting documentation &amp; information if known and available</b>	As listed in Schedule 2 attached.
<i>Receipt/s</i>	<input type="checkbox"/> <i>Insurance/valuation report/s</i> <input type="checkbox"/>
<i>Exhibition history</i>	<input type="checkbox"/> <i>Conservation treatment/s</i> <input type="checkbox"/>
<i>Publications, Catalogues (including auction catalogues)</i>	<input type="checkbox"/> <i>Condition report/s</i> <input type="checkbox"/>
<i>Academic references</i>	<input type="checkbox"/> <i>Other</i> <input type="checkbox"/>
<i>Previous ownership</i>	<input type="checkbox"/>
<b>10. Special conditions<sup>4</sup></b> (see footnote 4)	

**GALLERY USE ONLY:**

<b>Date of Agreement</b>	
<b>Accession number</b>	
<b>Meeting date</b>	

<sup>1</sup> For example, if payment is to be by instalment.  
<sup>2</sup> For example, as owner of the Work/s or as executor of an estate or as trustee of a specified trust.  
<sup>3</sup> If yes, state the basis of ownership, such as “creator”, “heir”, and so on.  
<sup>4</sup> If particular clauses of the following standard terms are not to apply, specify this here as “Special conditions”.

**DATE:**

*(to be inserted by Seller on date of signing)*

**GENERAL TERMS**

**1. SALE**

- 1.1 The Seller hereby sells, and Queensland Art Gallery (**the Gallery**) hereby purchases the Work for the Purchase Price set out in **Item 3** of the Adjustable Terms.
- 1.2 The Gallery will pay the Purchase Price to the Seller in accordance with the Payment Schedule set out in **Item 4** of the Adjustable Terms.
- 1.3 The Seller promises that:
- (a) the Seller is the owner of the Work;
  - (b) the Seller is entitled to make this sale;
  - (c) no other person's consent or permission is required to make this sale;
  - (d) to the best of the Seller's knowledge:
    - (i) if the Work has been exported from any country, that export conformed with the laws of such country and its importation into Australia conformed with Australian law;
    - (ii) export of the Work from its current location to Australia will not breach any law; and
    - (iii) all statements of fact in this Agreement are true and accurate;
  - (e) the Seller:
    - (i) has received no notice of any claim that may affect any of the promises and warranties the Seller makes in this Agreement;
    - (ii) knows of no adverse claim relevant to ownership of the Work;
    - (iii) is not aware of any circumstances that may form the basis of a claim;
    - (iv) has informed the Gallery of all information of which it is aware and provided to the Gallery all documentation that it possesses relating to the provenance of the Work including, without limitation, from whom the Seller acquired the Work, when the Seller acquired the Work and the nature of that acquisition (for example, by purchase, gift or inheritance);
  - (f) unless otherwise indicated in **Item 2** of the Adjustable Terms, the Work is original, authentic and the work of the named artist;
  - (g) to the best of the Seller's knowledge, and except as already stated to the Gallery in writing:
    - (i) the Work has not suffered any damage;
    - (ii) the Work has not previously been the subject of any conservation or repair; and
    - (iii) no concerns in relation to attribution of the Work have been raised;and
  - (h) the Work is free and clear of all encumbrances and restrictions.
- 1.4 Any Documentation that the Seller has provided is included in the sale and the Seller promises that, to the best of the Seller's knowledge, the Documentation is true and authentic.
- 1.5 If an assignment of copyright in the Work is included in the Sale, the Seller hereby assigns the Seller's interest in the copyright to the Gallery and warrants that the Seller is:
- (a) the owner of the copyright;

- (b) entitled to assign the copyright; and
- (c) no other person's consent or permission is required to make this sale except as indicated in the Adjustable Terms.

## **2. CONTINUING OBLIGATION OF DISCLOSURE**

2.1 The Seller will immediately notify the Gallery in writing if the Seller at any time becomes aware of any fact or matter which indicates that the Work and/or the Documentation:

- (a) is not in whole or in part as described in this Agreement; or
- (b) is not as otherwise stated to the Gallery by the Seller or by someone acting on behalf of the Seller.

(For example, the Seller will immediately notify the Gallery in writing if the identity, quality, history, provenance, state of authenticity, legal status or general character is not as described or stated.)

## **3. INDEMNITY**

3.1 Each party indemnifies the other (including its directors, officers, employees and agents) against all actions, claims, suits, demands, liabilities, losses, damages and costs (including all legal costs on a solicitor-client basis) directly or indirectly arising out of, relating to or in any way connected with any breach by it of this Agreement or any breach of its promises under this Agreement.

3.2 The Seller will return to the Gallery the Purchase Price plus 10% interest computed from the date of this Agreement, or the fair market value of the Work as of the date the title's invalidity is declared or agreed (whichever is greater) if either of the following occur:

- (a) the Gallery's title in the Work is declared or agreed to be invalid; or
- (b) the Seller is in breach of its promise in 1.3(d)(i) of this Agreement and the Work is forfeited to the Australian Commonwealth government under the *Protection of Movable Heritage Act 1985* (Cth).

## **4. PROPERTY**

4.1 As from the date of this Agreement, the Gallery will own all legal and beneficial right, title and interest in the Work and the Documentation.

## **5. INSURANCE, PACKING AND DELIVERY**

5.1 Insurance, packing and delivery of the Work will be undertaken by the Gallery in accordance with correspondence between the Gallery and the Seller.

## **6. LICENCE**

6.1 If the Seller is the owner of copyright in the Work, and to the extent that the Seller's interest in the copyright is not included in the sale, the Seller:

- (a) licenses the Gallery to use and authorise the use of the copyright in the Work (including as a possible detail) in and/or for:
  - (i) exhibitions (including online exhibitions);
  - (ii) publishing in all media;
  - (iii) the Gallery's website and social media platforms, including third party platforms (eg. Youtube, Twitter, Facebook, Instagram etc);
  - (iv) Promotional, publicity and advertising purposes;
  - (v) television programs that involve or relate to the Gallery or the subject of the interview;

- (vi) research or study;
  - (vii) educational purposes; and
  - (viii) the Gallery's archival and preservation purposes
- and

- (b) acknowledges that, while the Work is on display, it will be impracticable for the Gallery to prevent visitors taking photographs of it (including on their smartphones) and that the Seller will not hold the Gallery liable for such photography.

## **7. SPECIAL CONDITIONS**

- 7.1 In addition to any other terms and conditions set out in this Agreement, the Seller and the Gallery also acknowledge that any special conditions set out in **Item 10** of the Adjustable Terms apply to the sale and purchase of the Work.

## **8. APPLICABLE LAW**

- 8.1 This Agreement is governed by, and must be construed in accordance with, the law in force from time to time in Queensland and the parties submit to the jurisdiction of the courts of Queensland, Australia.

## **9. GENERAL**

- 9.1 This Agreement may be signed electronically and in any number of counterparts (including copies, facsimile copies and scanned email copies) each of which is deemed to be an original, but all of which together will constitute one document.
- 9.2 A provision of this Agreement must not be interpreted to disadvantage a party merely because that party was responsible for preparing the Agreement or including a provision in the Agreement.
- 9.3 If a party consists of more than one person, this Agreement binds each of them separately and any two or more of them jointly.
- 9.4 An obligation, representation or warranty in favour of more than one person is for the benefit of them separately and jointly.
- 9.5 If a party is a trustee, that party is bound both personally and in its capacity as a trustee.
- 9.6 If any provision in this Agreement is unenforceable, illegal or void, it is severed and the rest of this Agreement remains in force.
- 9.7 This Agreement contains all the terms and conditions of the sale of the Work and the Documentation, and supersedes any other agreement, discussion or negotiation between the parties in relation to the sale.

## **10. DEFINITIONS**

- 10.1 "**Adjustable Terms**" means the Adjustable Terms attached to and forming part of this Agreement.
- 10.2 "**Agreement**" means this document, including the Adjustable Terms and any schedule or annexure.
- 10.3 "**Documentation**" means documentation that has been provided by the Seller and listed in Schedule 2.

**EXECUTED AS AN AGREEMENT:**

**EXECUTED** by the Seller:

Date:

X.....

Full Name:

**EXECUTED** on behalf of Queensland Art Gallery

Date:

.....  
Full Name:

**SCHEDULE 1: WORK DETAILS**  
**For completion or review if known**

**WORK 1:**

<i>Artist name</i>	
<i>Artist's dates of birth and death</i>	
<i>Country of Artist</i>	
<i>Title</i>	
<i>Medium/Support</i>	
<i>Dimensions</i>	
<i>Date or period of execution</i>	
<i>Place of execution (if known)</i>	
<i>Description/signatures</i>	

Any confidentiality/cultural sensitivity concerns:

.....

.....

.....

.....

.....

.....

Condition concerns (including any earlier conservation, any repairs and any damage):

.....

.....

.....

.....

.....

.....

**SCHEDULE 2: DOCUMENTATION**  
**Refer to item 9 in the Adjustable Terms**

**WORK 1**

*[list titles/descriptions of any documents referred to in Item 2 of the Adjustable Terms]*

**WORK 2**

*[list titles/descriptions of any documents referred to in Item 2 of the Adjustable Terms]*

etc