



ACHAA

NSW ABORIGINAL CULTURE, HERITAGE & ARTS ASSOCIATION INC

WEBSITE TERMS OF USE

1. INTRODUCTION, WHO ARE WE AND HOW TO CONTACT US

Welcome and thank you for visiting our website.

www.achaa.com.au contains an online store that offers NSW Aboriginal artworks, 3D works, weavings, carvings, textiles and other merchantable items for sale (**Website**).

The Website is operated by the NSW Aboriginal Culture, Heritage & Arts Association Incorporation Number INC1401066 (**ACHAA, we, us or our**).

The online store accessible via the Website operates as a marketplace for ACHAA Art Centre members (**Vendors**) to advertise and sell merchantable items created by the Aboriginal artists the Vendors' represent. These terms of use (**Terms**) govern your use of the Website and the transactions you enter into with Vendors via the Website.

To contact us, please email achaa@mgnsw.org.au.

2. CONSENT AND CHANGES TO THESE TERMS

By accessing and/or using the Website, you confirm that you accept these Terms and you agree to comply with them (**Agreement**).

ACHAA may amend these Terms from time to time. Every time you wish to access and/or use the Website, please check the current version to ensure you understand the terms that apply at that time. The most current version of the Terms can be reviewed by clicking on the "Terms of Use" link at the bottom of our web pages. ***Should you object to these Terms or any subsequent amendment of these Terms, you must immediately discontinue accessing and using the Website.***

These Terms were most recently updated on 10 October 2022.

3. WE MAY SUSPEND OR WITHDRAW THE WEBSITE

We do not guarantee or give any warranties or promises (whether express or implied) that the Website, or any content accessed via the Website, will always be available, uninterrupted or error-free.

We may modify, suspend, withdraw or restrict the availability of all or any part of the Website, at any time and for any reason, with or without notice to you. We

will not be liable to you for any such modification, suspension, restriction or withdrawal of the Website.

4. YOUR ACCOUNT WITH ACHAA

4.1 Creating an account

You may need to create an account with ACHAA to purchase products through the Website (**User Account**). If you create or use a User Account on behalf of a business entity, you represent and warrant that you are authorised to act on behalf of the business entity and bind the business entity to these Terms.

4.2 Account details

If you choose, or you are provided with, a user identification code, password or any other piece of information as part of our security procedures in connection with the User Account, you must treat such information as confidential and must not disclose it to any third party.

If in our reasonable opinion you have failed to comply with any of the provisions of these Terms, we have the right to disable any user identification code or password at any time, whether chosen by you or allocated by us.

4.3 Account rules

- (a) You must be over 18 years of age to create a User Account.
- (b) User Accounts are not transferable.
- (c) You are responsible for all account activity conducted by a minor and/or by a third party on your User Account, whether or not authorised by you.

5. USE OF THE WEBSITE AND MATERIAL ON THE WEBSITE

Unless otherwise indicated, we are the owner or licensee of all intellectual property rights in the Website and in the material published on Website. You cannot use or reproduce any images, artworks or material on this Website unless you have obtained written permission from us. These rights are protected by copyright laws and treaties around the world. All such rights are reserved.

You must not delete or alter any copyright, trade mark or other proprietary rights notices from copies of materials on, or downloaded from, the Website.

We grant you a limited, revocable, non-exclusive and non-transferrable license to access the Website, subject to the Terms. Any use of the Website beyond the scope of authorised access granted by us to you, immediately terminates your licence.

6. PROHIBITED USES

You may use the Website **only** for lawful purposes and in accordance with these Terms. You agree not to use the Website:

- (a) in any way that violates any applicable federal, state, local or international law or regulation; or
- (b) to engage in any other conduct that restricts or inhibits anyone's use or enjoyment the Website, or which, as determined by us, may harm us or users of the Website or expose them to liability.

Additionally, you agree not to:

- (c) use the Website in any manner that could disable, overburden, damage, or impair the Website or interfere with any other party's use of the Website including their ability to engage in real time activities through the Site;
- (d) use any robot, spider or other automatic device, process or means to access the Website for any purpose, including monitoring or copying any of the material on the Website;
- (e) use any manual process to monitor or copy any of the material the Website or for any other unauthorised purpose without our prior written consent;
- (f) use any automatic or manual process to reverse engineer or decompile any part of the Website;
- (g) introduce any viruses, trojans, worms, logic bombs, spyware, computer code, file, program or material which is malicious or technologically harmful;
- (h) attempt to gain unauthorised access to, interfere with, damage or disrupt any part of the Website, the server on which the Website is stored, or any server, computer or database connected to the Website;
- (i) attack the Website via a denial-of-service attack or a distributed denial-of-service attack; or
- (j) otherwise attempt to interfere with the proper working of the Website.

We may report any of the above activities to the relevant law enforcement authorities and we will cooperate with those authorities by disclosing your identity to them. In the event you breach this clause 6, your right to use the Website will cease immediately.

7. USER ACKNOWLEDGEMENTS

You acknowledge and agree that:

- (a) ACHAA is not responsible for Vendor generated content posted on or through the Website. We will use all reasonable efforts to support successful transactions but make no claims to the availability and accuracy of the works for sale at the time of purchase. Should the work no longer be available, you will be notified and your money refunded;
- (b) you must not use the Website if you are not able to form legally binding contracts (for example, if you are under 18 years old), or are temporarily or indefinitely suspended from using our Website; and
- (c) you must not manipulate the price of any item.

8. PURCHASING POLICY

Purchasers acknowledge that until such time they have processed the payment for an item(s), the item(s) can be sold to someone else. Holding items in the shopping cart does not guarantee that the item will be still available at the time of purchase.

When you place an order for a product via the Website, you will receive from us an order confirmation by email. This email is only an acknowledgement and does not constitute acceptance of your order.

A contract for the purchase of a product will not be formed until you receive a shipment confirmation email from the relevant Vendor. The Vendor is not obliged to supply the product to you until the Vendor has accepted your order.

The Vendor may, in its discretion, refuse to accept an order from you for any reason, including but not limited to:

- (a) unavailability of stock;
- (b) if ACHAA, the Vendor or our third-party payment gateway provider suspects your order is fraudulent, or suspect credit card or payment-related fraud; or
- (c) if there has been an error in the imagery, price or product description on the Website.

In the unlikely event a Vendor does not accept your order, ACHAA will promptly refund any payment already made by you to your original payment method.

9. SHIPPING POLICY

- (a) Vendors are solely responsible for:
 - (i) the negotiation, coordination and shipping of purchases made via the Website;
 - (ii) transaction processing times and delivery times; and
 - (iii) damaged or lost items.
- (b) The purchaser acknowledges and agrees:
 - (i) it may not be possible for the Vendor to deliver to some locations. If a Vendor is unable to deliver to your location, the Vendor will contact you and arrange for delivery to an alternative delivery address or cancellation of your order;
 - (ii) all risk in the product passes to the purchaser on delivery; and
 - (iii) that the purchaser must take reasonable care when opening a product so as not to damage it.

10. RETURNS POLICY

- (a) In compliance with the Australian Consumer Law, you are not entitled to a refund or exchange if you simply make a wrong selection or change your mind.
- (b) You may request a refund only in the following circumstances:
 - (i) you receive the incorrect product or a product that is materially different to what was depicted by the Vendor on the Website; or
 - (ii) you receive a damaged product.

- (c) If you wish to request a refund under clause 10(a), you must promptly notify ACHAA in writing via the Website. ACHAA will forward your refund request to the relevant Vendor and will advise you of the return address (where relevant). To assist the return process, you may be required to send the Vendor images of the product / damage for preliminary assessment. You may also be asked to provide further information to support your claim to assist the Vendor with its assessment of the product.
- (d) In order to receive a refund, you must return the product to the returns address notified by ACHAA within 30 calendar days of receiving your order. Once the product is received by the Vendor, the Vendor will inspect the product and promptly notify you if your refund request is accepted. If your return is:
 - (i) accepted, the Vendor will refund the sale price of the product to your nominated bank account by way of electronic funds transfer; or
 - (ii) not accepted, the Vendor will contact you to determine whether you want the Vendor to dispose of the product or return the product to you at your expense.
- (e) All refund requests are assessed on an individual basis and the outcome of a refund is at the relevant Vendor's sole discretion.
- (f) You acknowledge and agree that ACHAA takes no responsibility for the refund of purchases made by the Website.

11. COMPLIANCE

We may monitor the use of the Website and conduct of your User Account to determine whether these Terms are being followed.

If we reasonably believe that your use of the Website may break the law or that you have not complied with these Terms, we may, in our sole discretion and without limiting other remedies:

- (a) warn you by email (but we are not obliged to do so);
- (b) limit, suspend, or terminate your access to the Website; and/or
- (c) notify and provide information to the relevant government or regulatory authorities, as appropriate in the circumstances.

In the event of taking action under clause 11(b), we reserve the right to delete any or all of your information, material, or other content stored on our system at our sole discretion.

12. COPYRIGHT AND TRADEMARK INFRINGEMENT

ACHAA respects the intellectual property rights of others and takes intellectual property rights very seriously.

ACHAA cannot speak on behalf of intellectual property owners, nor is ACHAA in a position to offer legal advice or make legal determinations as to whether a person's content infringes someone else's intellectual property rights.

ACHAA may remove material cited for alleged intellectual property infringement when provided with a proper notice to the following email address accha@mgns.w.gov.au. ACHAA may reject notices that contain information we believe is false, fraudulent, incomplete, or otherwise submitted in bad faith.

13. LINKS TO THIRD PARTY SITES

The Website contains links to other sites (including banner advertisements and sponsored links) and resources provided by third parties. You access third party websites entirely at your own risk and subject to the terms and conditions of use for those websites. Links to third party websites should not be interpreted as an approval or endorsement by us of those linked websites or the information or services you may obtain from them. The linked sites are not under the control of ACHAA and ACHAA is not responsible for the contents of any linked site, any webcasting or any other form of transmission received from any linked site, any link contained in a linked site, or any changes or updates to such sites.

14. LIMITATION OF LIABILITY

14.1 Items you purchase

You acknowledge and agree that ACHAA does not manufacture, store, or inspect any of the items sold through the Website. While we provide the online marketplace venue, the items on the Website are listed and sold directly by independent Vendors. Any legal claim related to an item you purchase must be brought directly against the Vendor of the item. You release ACHAA from any claims related to items sold through the Website, including for defective items, misrepresentations by Vendors, or items that caused physical injury.

14.2 Content you access

You may come across materials that you find offensive or inappropriate while using the Website. We make no representations concerning any content uploaded to or posted by users through the Website. You agree not to hold us responsible and release us from all liability relating to that content.

14.3 Liability limits

Under no circumstances will we, our related entities, licensors and service providers or our or their respective officers, agents, employees or directors be liable for damages of any kind, under any legal theory, arising under or in connection with this Agreement, the Website or the supply of goods or services, including any direct, indirect, special, incidental, consequential or punitive damages, including but not limited to, personal injury, pain and suffering, emotional distress, loss of revenue, loss of profits, loss of business or anticipated savings, loss of use, loss of goodwill, loss of data, and whether caused by tort (including negligence), breach of contract or otherwise, even if foreseeable.

Nothing in these Terms (including this clause) is intended to have the effect of excluding, restricting or modifying any liability to you which cannot be excluded, restricted or modified under applicable law. Where our liability cannot be excluded, we limit our liability to you to the fullest extent permitted by applicable law, including as provided under the Australian Consumer Law.

Subject to this clause 14, our maximum aggregate liability to you for any loss, damage or injury arising out of or in connection with the performance or non-performance of this Agreement, including any breach by us of this Agreement

however arising, in tort (including negligence), under any statute, custom, law or on any other basis, is limited to the amount of AUD\$100.

15. INDEMNITY

You agree to defend, indemnify and hold us, our related entities, licensors and service providers, and each of our and their respective officers, directors, employees, contractors, agents, licensors, suppliers, successors and assigns (each an **Indemnified Party**), harmless from and against any claims, liabilities, damages, judgments, awards, losses, costs, expenses or fees (including reasonable lawyers' fees) incurred by any of the Indemnified Parties, arising out of or relating to your:

- (a) violation (or alleged violation) of these Terms;
- (b) use of the Website;
- (c) use of any information obtained from the Website;
- (d) violation (or alleged violation) of any applicable law or regulation; or
- (e) violation (or alleged violation) of the rights of any third party.

16. DISPUTES WITH OTHER USERS

If you find yourself in a dispute with a Vendor, we encourage you to lodge your complaint via the contact details on the ACHAA website and we will forward your complaint to the relevant Vendor. You agree to negotiate in good faith to resolve the dispute, and release ACHAA (and our affiliates and subsidiaries, and our and their respective officers, directors, employees and agents) from any 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.

17. PERSONAL INFORMATION AND PRIVACY

Any personal information we collect from individuals through the Website will be handled in accordance with our Privacy Policy and applicable legislation. Please see our Privacy Policy for further details.

18. VIRUSES

You should use your own antivirus software. We do not guarantee that the Website will be secure or free from bugs or viruses or any other type of malicious code or software. You are responsible for configuring your technology to access our Website.

19. GENERAL

19.1 Other terms and conditions

Additional terms and conditions may also apply to specific portions, services or features of the Website. All such additional terms and conditions will be made available on the Website and are incorporated by this reference into these Terms.

19.2 Survival

The Terms will remain in effect even after your access to and/or use of the Website ends.

19.3 Severability

If any part of the Terms is found to be unenforceable, that part will be limited to the minimum extent necessary so that the Terms will otherwise remain in full force and effect.

19.4 No waiver

Our failure to enforce any part of the Terms is not a waiver of our right to later enforce that or any other part of the Terms.

19.5 Assignment

We may assign any of our rights and obligations under the Terms.

19.6 Governing law

These Terms, their subject matter and their formation, are governed by Australian law, specifically the laws of the State of New South Wales. You and we both agree that the courts having jurisdiction in that State will have exclusive jurisdiction over any dispute arising under or in any way related to these Terms and their subject matter.