

## **Art Commissions Terms and Agreement**

The following Terms & Agreement are for the Commission of original artwork or designs from Madeleine Marcial. The following information must be read fully and accepted before signing and dating the final Commission Agreement, which is legally binding.

### **Definitions**

**I. Artist**

The individual producing the commission. (Madeleine B. Marcial)

**II. Client**

The individual purchasing the commission

**III. Commission**

The form of service provided by the Artist to the Client per the Commission Agreement. “Commission,” “Art[work],” “Image[ry],” and “Project[s]” are used interchangeably herein and in Commission correspondence.

**IV. Commission Agreement**

The discussion, documented via email in which the Artist and Client agree to the subject matter and type of Commission to be produced, the Commission price, the point in time in which the Artist is expected to commence in Start of Work, and – if applicable – the Commission deadline, early termination circumstances, rush fees, Transfer of Copyright, and/or whether or not the Commission can be immediately displayed in the Artist’s portfolio. This Commission Agreement shall remain on record with the Artist, along with any other documents related to the Commission, for at least two years.

**V. Start of Work**

The point in time by which the Client has approved the Artist to start work on the Commission (e.g., Artist begins to create the Commission).

**VI. Profile(s)**

Online locations where the Commission may be displayed (e.g., “galleries,” such as [renecampbellart.com](http://renecampbellart.com), Facebook and Instagram albums,

[DeviantART.com](http://DeviantART.com), [Tumblr.com](http://Tumblr.com), [Reddit.com](http://Reddit.com), etc.). “Profile(s)” do not include any sites that display hateful or racist imagery, illegal activities, or sites known to display, reproduce, and/or sell works without crediting the Artist. Additionally, no Commission may be displayed without notifying the Artist first, or as agreed upon in the Commission Agreement.

**VII. Personal Space**

Non-public, offline locations (e.g., home or office); i.e., no business involving the Commission is being conducted.

**VIII. Public Space**

Offline locations that do not fall under “Personal Space” above.

**IX. Licensing Agreement**

The discussion, documented via email, in which the Artist and Client agree to a Licensing Agreement of the Commission from the Artist to the Client. This does not include Trademark.

**Terms**

## **I. Sale**

The Artist hereby sells or transfers the Commission to the Client at the agreed value written in the Commission Agreement before the Start of Work.

## **II. Payment**

Full payments must be made in the signing of the Commission Agreement before the Start of Work, or a 50% up-front fee can be paid. If payment is made in installments (i.e. 50% up-front), ownership of the Commission will only pass from the Artist to the Client on receipt of payment in full. The Commission will not be sent to Purchaser until the agreed payment amount has been received. The payment method is determined as written in the Commission Agreement before the Start of Work (i.e. bank account transfer, PayPal). The Artist will confirm payment once drafts have been seen and agreed upon by the Client; any further work on the Commission will be withheld until this agreement is made and payment received.

NOTE: All prices are specified as US Dollars (\$USD) for international clients and Philippine Peso (PHP) for local clients. It is the Client's responsibility to ensure that they have converted currencies based on current exchange rates.

## **III. Decline of Offers**

The Artist has the right to refuse any Commission request, without needing to explain the reason (however, the Artist will likely explain the reasoning for decline out of courtesy).

## **IV. Priority Offers**

Due to the Artist's full-time university study, and the nature of said work hours, the Artist will prioritize each Commission request accordingly. Commission offers that satisfy the following components are placed as a

higher priority than other offers. These components include availability, the flexibility of deadlines, subject matter, pricing, and shipping.

NOTE: The Artist will not create any depiction of sexually explicit (i.e., “x-rated”, “pornographic,” simulated sex, or sexual arousal) materials, fetishes, or any form of hateful, racist, violent, or imagery.

#### **V. Artist’s Cancellation of Commission**

The Artist reserves the right to stop work on a Commission or cancel a Commission request due to poor communication, rude/inappropriate behavior, or a breach of these Terms of Service.

#### **VI. Copyright/Trademarked Characters**

The Artist will not reproduce a Copyrighted or Trademarked image or character without expressed written permission of its Copyright or Trademark owner

#### **VII. Artist Copyright and Reproduction**

By commissioning the Artist, the Client is purchasing the Artist’s labor only. The Artist retains all rights to the Commission, which includes but is not limited to: Distribution, reproduction, use of the Commission for Artist promotion (e.g. Profiles, Personal Space, Public Space, as defined in the Definitions section herein, etc.). The Client may not distribute, reproduce, or otherwise profit from the Commission, beyond the resale of the original. The client may not edit, alter, or trace the Commission without the Artist’s expressed written permission, or as agreed upon in the Commission Agreement before the Start of Work. Artist also retains full copyright for any preliminary designs and incidental works made in the creation of the Commission, unless otherwise agreed upon by the “Licensing Agreement”.

#### **VIII. Licensing**

In the case that the Client wants to use the Commission for any public agendas under the Client’s name, they may be able to top up the

Commission's price with a licensing fee that will allow them to: receive a copyright license from the Artist for a specific length of time only. The license fee will depend on the length of time that the Client agrees upon new terms and Agreement "Licensing Agreement". The copyright license is limited for 1 year only unless otherwise stated in the "Licensing Agreement", and if the Client wants to extend, they must renew a contract of the "Licensing Agreement" from the artist.

NOTE: The client will receive a licensing agreement after they return this Commission Agreement to the Artist.

**IX. Commission Description**

The Client must specify the content of their Commission to the best of their ability before a Commission Agreement. A complex Commission will incur additional illustration fees, to be defined and agreed upon in the Commission Agreement before the Start of Work. The Client must specify the desired display size of the Commission, regardless of whether the Commission is completed digitally or traditionally. The large display size will incur additional illustration fees, to be defined and agreed upon in the Commission Agreement before the Start of Work. Commission pricing details can be viewed here; all prices are as a guide only and may not represent the final price of a particular Commission. The details and information given by the client will remain confidential.

**X. Deadlines and Flexibility**

The Artist will NOT take on Commissions that have a) strict or short deadlines, and b) if the Client is not flexible on deadlines. This is due to the nature of the Artist's full-time university study and is non-negotiable. If the Commission is time-sensitive, a rush fee may be applied, to be defined and agreed upon in the Commission Agreement before Start of Work. The Artist, to the best of their ability, can give a general indication of how long the Commission will take to complete, and when the Client can expect to receive the finished product before the Start of Work. The Artist will inform

the Client regularly of the progress (including photos) or if changes to completion times have occurred. The Artist is not obliged to explain the reasoning behind extensions or delays for the completion of a Commission, but will often do so out of courtesy.

#### **XI. Confidentiality**

If the Commission is defined as confidential in the Commission Agreement, the

Artist will temporarily delay the public display of the image at the request of the Client and as defined in the Commission Agreement until such time the Commission Agreement specifies public display is permitted. A Client may not request the Artist to complete a Commission without defining the time-span in the Commission Agreement to eventually allow the Artist to publicly display the image.

#### **XII. Public Display and Use**

The Client may display the Commission in Profiles as long as the Artist's name ("Madeleine Marcial") is prominently displayed along with a link to [dindindraws.carrd.co](https://dindindraws.carrd.co) or "@\_dindindraws" for social media accounts.

Additionally, any Profile display of the Artist's Commission must notify the Artist, unless already defined in the Commission Agreement before the Start of Work. The Client cannot display a Commission outside of Personal Space or in a Public Space unless the Commission is executed under new Terms of Service agreed upon in the Commission Agreement before the Start of Work. The Client must obtain written permission from the Artist before displaying the Commission in a Public Space if not already defined in the Commission Agreement; additional fees may apply.

#### **XIII. Competitions**

Under no circumstances may the Client submit a Commission to any kind of online or offline contest.

#### **XIV. Digital Commissions**

Digital art Commissions will be provided to the Client via email or an online download location in .jpeg or .png format (PDF possible); this does not include the Commission native files (e.g., .psd, .tif, etc.), unless agreed upon in the Commission Agreement, or thereafter, the Client obtains written permission from the Artist. Files will be of the highest resolution and include both signed/watermarked and un-watermarked copies of the finished product. The Artist is not responsible for the cost of shipping a Commission (traditional art Commissions or any digital media device [e.g. CD, DVD, flash drive, etc.] or print of a digital art Commission) unless signed and agreed upon in the Commission Agreement before the Start of Work. A "Certificate of Authenticity" will be provided to the Client as a . PDF file as proof and documentation of original work by the Artist.

#### **XV. Prints & Products**

The Artist is not responsible for printing [creating a hard copy of] a digital art Commission or reproducing prints of a traditional art Commission for the Client unless agreed upon in the Commission Agreement. The Client may use the digital (.jpeg, .png, or . PDF) file for local printing, so long as it does not breach Term VII, Term XI, Term XII, and the Client obtain expressed written permission from the Artist before printing.

#### **XVI. Promotion**

The Artist may use any images of the Commission for promotional purposes unless otherwise agreed upon in the Commission Agreement (see Term 10 - Confidentiality). The Artist may also sell Limited Edition Prints or merchandise of the Commission (i.e. art books) only with written agreement from the Client.

#### **XVII. Contact and Address Notice**

The Client is responsible for ensuring that their contact details are true and correct. Either party shall notify the other party in case of a change of address before such change.

#### **XVIII. Non-Destruction**

The Client will not permit any intentional destruction, damage, or modification to the Commission.

#### **XIX. Authenticity and Provenance**

Upon request, the Artist will furnish the Client [and their successors] a written history and provenance of the Commission, based upon the Artist's best information as to shows. A Certificate of Authenticity (signed and dated by the Artist) is provided with each original artwork, limited edition prints, or digital copy.

#### **XX. Artist's Access**

The Artist may have access to photograph or share the Commission at no expense to the Client and upon reasonable notice to Client.

#### **XXI. Notice**

A Notice, in the form below, must be permanently affixed to the Commission, warning that ownership, etc., is subject to this contract. If, however, a document represents the Commission or is part of the Commission, the Notice must instead be a permanent part of that document.

#### **XXII. Expiration of Terms**

This contract binds the parties, their heirs, all their successors in interest, and all Client's obligations are attached to the Commission and go with ownership of the Commission, all for the life of the Artist and Artist's surviving spouse plus twenty-one (21) years unless otherwise stated.

### **XXIII. Moral Right**

The Client will not permit any use of the Artist's name or misuse of the Commission which would reflect discredit on his/her reputation as an artist, or which would violate the spirit of the Commission.

### **XXIV. Refund Policy**

If the Client is unsatisfied with the Commission for an appropriate reason, they must contact the Artist within seven (7) days of receiving the final Commission. Disliking the Commission or change of mind are not considered for a refund; this is minimized by providing drafts and progress photos throughout the Commission process.

### **XXV. Commission Conflict**

The Client may not incorporate the Commission in another work of art (or another Artist's Commission).

### **XXVI. Preview Requests**

The Client may request a preview of the Commission at any time during the creation process, but may not request changes to the Commission after the Start of Work or approval of the draft unless agreed upon in the Commission Agreement before the Start of Work.

### **XXVII. Miscellany**

This Agreement constitutes the entire understanding between the parties. Its terms can be modified only by an instrument in writing signed by both parties. A waiver of any breach of any of the provisions of the Agreement shall not be construed as a continuing waiver of other breaches of the same or other provision hereof. This Agreement shall be governed by the laws of the Republic of the Philippines.

### **Payment**

## **I. Installments**

The Artist requires payments to be made either a) completely up-front before Start of Work; b) 50% up-front before Start of Work and 50% after the Commission; or c) unless otherwise agreed upon in the Commission Agreement.

## **II. Currency**

For international clients, all prices are expressed in US Dollars (USD), and payments are expected to be made as such. The Client is responsible for providing the correct amount, equal to the USD amount. For local clients, all prices are expressed in Philippine Peso (PHP), and payments are expected to be made as such. The Client is responsible for providing the correct amount, equal to the PHP amount.

## **III. Method**

The Artist's preferred method of payment is via Paypal for international clients and GCash for local clients. A bank transfer may be an alternative for local clients. The Artist will provide their payment details in the Commission Agreement and Invoice.

## **IV. Invoice**

The Artist will provide an Invoice to the Client to be completed during the Commission Agreement and before Payment. The Artist will not conduct work on the Commission or send through the final Commission until both the completed Invoice and Payment have been received by the Artist.

## **V. Payment Deadlines**

Payments are to be made within 15 days of receiving the invoice unless otherwise stated in the Commission Agreement.

## **VI. Cancellation and Refunds**

If the Client who already paid up-front wishes to cancel their Commission, and the Artist has not yet started the Commission based on the Start of

Work date, the client is reasonable to receive a refund. However, if the Client wishes to cancel within the period of Start of Work and draft submission, the Client will not pay any cancellation fee, yet shall not receive any refund. Furthermore, if the Client wants to cancel within the period of draft submission and deadline, the client will pay 20% of the Commission's price and will not receive any refund.

In witness thereof, both parties agree and execute the agreement stated and amended above as follows:

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Signature of Madeleine Marcial, Artist

Date:

\_\_\_\_\_

Signature of \_\_\_\_\_, Client

Date: \_\_\_\_\_

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(optional)

Please check the box if you wish to pursue a license agreement, otherwise, leave it blank.

- I have read Definition IX and Term VIII, and I would like to receive a copy and review the licensing agreement to further obtain a copyright license to my commission. This does not guarantee my approval of the license agreement and may decline afterward. However, in the matter of interest, I shall immediately inform the artist.