

(ENG) KINERXY'S ART T.O.S

# KINERXY's Online Digital Arts Commissions

## Terms Of Service

The Client must read and understand these terms before entering into a Commission Agreement with the Artist. Once the Client enters into a Commission Agreement with the Artist, it is assumed the Client has agreed to all Terms and Conditions.

### 1. Definitions

#### **Artist**

The individual providing the Commission.

#### **Client**

The individual purchasing the Commission.

#### **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.

#### **Commission Agreement**

The discussion, documented via email (or via any other communication service, e.g. Discord), in which the Artist and the 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, and/or whether or not the Commission can be immediately displayed on 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. Ultimately, the Commission Agreement will usually conclude with:

This Agreement is the sole and complete agreement between the parties, superseding all previous communications on the subject of the present.

### ***Start of Work***

The point in time by which the Client has approved the Artist to start work on the Commission (i.e. The price quote is approved by the Client and the invoice is paid, this is when the Artist begins to create the Commission).

### ***Initial sketch***

The initial sketch is the first part of the commission, and it is finalized before payment is issued. In this stage, the client provides the artist with all the specifications for the commission. This includes the pose of the character/s, the expressions of the character/s, the design of the character/s (e.g Clothing, Markings, patterns, etc.) as well as, if applicable, the design of the background scenography.

### ***Profile(s)***

Online locations where the Commission may be displayed (e.g. “galleries,” such as Tumblr, Bluesky, Instagram, DeviantART, 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.

### ***Commercial Purpose***

Any image or project to be commissioned that does not fall under the type of use specified in these Terms of Service. New Terms of Service may be developed and agreed upon in a Commercial Purpose Commission Agreement prior to Start of Work.

### ***Commercial Purpose Commission Agreement***

A Commission Agreement developed specifically for Commercial Purpose Commissions. A Commercial Purpose Commission Agreement requires separate Terms of Service, developed on a case-by-case basis.

## 2. Terms

1. The Client hereby must pay after the Artist completes the Initial sketch and is already approved, starting the work and later to be delivered once it is finished.

1a. The Artist has the right to post finished commissioned works on sites like Tumblr, unless The Client indicates otherwise.

2. The Artist has the right to refuse any Commission request, without needing to explain the reason.

3. The Artist reserves the right to stop work on a Commission, or cancel a Commission request due to poor communication, rude/inappropriate behavior, an inability to effectively communicate in the English and/or Spanish language, or a breach of these Terms of Service.

3a. If at any point the Client has failed to respond to messages or status updates provided by the Artist for a period of longer than one month, the contract may be rendered void and further work will require renegotiation.

4. The Artist will not create any depiction of sexually explicit materials, fetishes, or any form of hateful or racist imagery.

5. The Artist will not reproduce a copyrighted image or character without consent of its copyright owner, and as it pertains to the Copyright Laws.

6. 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, or as it applies to new Terms of Service agreed upon in a Commercial Purpose Commission Agreement as defined in the Definitions section herein.

7. The Client must specify the content of their Commission to the best of their ability prior to a Commission Agreement. A complex Commission may incur additional illustration fees, to be defined and agreed upon in the Commission Agreement prior to Start of Work.

8. The Client must specify the desired display size of the Commission (2000x2000px (square) / 2000x2600px (tall) / 2600x2000px (wide) 300p), which can be asked to be modified depending on the pose of the character in the illustration.

9. If the Commission is time-sensitive, a rush fee may be applied, to be defined and agreed upon in the Commission Agreement prior to Start of Work.

10. If the Commission is defined as confidential in the Commission Agreement, the Artist will temporarily delay 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 timespan in the Commission Agreement to eventually allow the Artist to publicly display the image.

11. The Client may not distribute, reproduce, or otherwise profit from the Commission, beyond the resale of the original [the purchased print of a digital art] Commission or as it applies to new Terms of Service agreed upon in a Commercial Purpose Commission Agreement as defined in the Definitions section herein.

11a. The client may not trace the Commission, simple edits are permitted, as agreed upon in the Commission Agreement prior to Start of Work.

12. The Client may display the Commission in Profiles as long as the Artist's name is displayed. Additionally, The profile display of the Artist's Commission is not necessary to be notified. Commissions in Profile displays cannot breach Term 10, or Term 14.

12a. Under no circumstances may the Client submit a Commission to any kind of online or offline contest.

13. Digital art Commissions will be provided to the Client via email or an online download location in .png format; this does not include the Commission native files (e.g., .clip, etc.), unless agreed upon in the Commission Agreement, or thereafter, the Client obtains written permission from the Artist.

The Artist is not responsible for the cost of shipping a Commission (a print of a digital art Commission); the Client is responsible for all shipment costs.

14. The Artist is not responsible for printing [creating a hard copy of] a digital art Commission for the Client. The Client may use the digital (.png) file for local printing, so long as it does not breach Term 11, Term 11a, Term 11b, or Term 16, and the Client obtains written permission from the Artist prior to printing.

15. If the Commission is for Commercial Purpose, the Artist must be notified prior to the Start of Work. Commercial use of the Commission will be decided on a case-by-case basis. New Terms of Service may be written and agreed upon in a Commercial Purpose Commission Agreement before the Start of Work.

16. At any time during the creation process, the Client may request a preview of the Commission. However, after the Start of Work, the Client may not request significant changes to the Commission, including, but not limited to, total modifications to the character/s poses, expressions, design, or major modifications to the background scenography, if applicable.

17. The Client may not incorporate the Commission in another work of art (or another Artist's Commission). A take-down notice will be issued in such cases and Term 18 will be applied as necessary.

18. Refunds may only be issued if the Client notifies the Artist prior to Start of Work. No refunds will be issued after Start of Work, nor will a refund be issued before or after Start of Work if any of these Terms of Service are breached. Additionally, the Artist has the right to revoke access to, and stop work of, the Commission at any time after Start of Work if these Terms of Service are breached.

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

20. The Artist reserves the right to collaborate with, or supervise, other artists to deliver the Commission.

21. The Artist has the right to pursue damages under the Copyright Laws, should there exist a violation in addition to a breach of these Terms of Service.

22. The Client agrees that it shall not hold Artist or any agent thereof liable for any damages arising from Artist's failure to complete the Work in a timely manner, regardless of whether such failure was caused by intentional or negligent acts or omissions of the Artist or of any third party.

23. The Client agrees to indemnify the Artist against any and all claims and expenses, including but not limited to attorneys' fees and costs, incurred as a result of the Client's unauthorized use of the Work under this Agreement, including the enforcement of this Agreement by Artist.

### 3. Required Client Information

**Email Address:** The Client is encouraged to contact the Artist via email ([svcker.art@gmail.com](mailto:svcker.art@gmail.com)).

**Other Forms of Communication:** The Client may request a different form of communication (e.g., Discord) to discuss a project before signing a Commission Agreement, by initially using the quote form on this website. However, the Artist must have the Client's email address when entering into a Commission Agreement after query and discussions are complete.

**Age:** If the Client is under 18, the Client must supply contact information for a parent or guardian. The Artist reserves the right to contact the parent/guardian of an under-aged Client, to ensure that there is no breach in the Terms of Service, and the Client is able to pay for the Commission.

**Specifications for Commission:** Please refer to Term 3, Term 4, Term 6, Term 7, Term 8, and Term 9 for guidance.

### 4. Payment

**Payment:** Unless stated otherwise, The Artist requires 100% of the payment up front before the formal Start of Work, this payment must be made after the initial sketch is completed, unless otherwise agreed upon in the Commission Agreement.

When work on the final Artwork is complete, the final drawing will be sent to the client.

Once the price is paid in full, the Commission will be provided in the form agreed upon in Term 12.

**Currency:** All prices are expressed in U.S. dollars (USD), and payments are expected to be made as such. An invoice with the correct price of the commission will be sent.

**Method:** The Artist's preferred method of payment is via PayPal services.

- The Client will receive an Invoice with the assigned payment price upon previous agreement.
- Other payment methods can be made available to the Client upon request.

**Cancellation:** Please refer to Term 18 for refund policy.

### 5. Modifications

These Terms and Conditions are subject to revision without notice.