

**SECTION A: SERVICE TERMS**

**1. INTRODUCTION AND SCOPE**

- 1.1. The terms under this section A (“Service Terms”) govern your access to and use of the platform(s) owned and operation by or on behalf of The Fabricant Agency B.V. (address: Singel 542, 1017 AZ Amsterdam, the Netherlands, Chamber of Commerce number 77357744, VAT number NL860982634B01 (“The Fabricant”), including APIs, and any other software or tools provided on or in connection with our services; which include but are not limited to (co-) create digital fashion, to view, and create (mint) NFTs and to use our tools to connect directly with others to purchase, sell, or transfer NFTs on blockchains via a marketplace (collectively, the “Service”).
- 1.2. If The Fabricant acts as a seller of NFTs (and only then) section B containing additional terms of sale (Sales Terms) shall apply. Any reference in this document to Terms shall mean both these Service Terms and Sales Terms.
- 1.3. “NFT” in these Terms means a non-fungible token implemented on a blockchain (such as the Flow blockchain) associated with certain content or data. Such content may (and in most cases will) be protected by intellectual property rights. Such intellectual property rights include but are not limited to copyrights, trademarks and design rights. The legal landscape with respect to NFT ownership has yet to develop in many jurisdictions, however it is commonly accepted that it is not the same as ownership of intellectual property rights. Intellectual property rights may arise as a result of creation of content or registration. NFTs exist by virtue of ownership record as maintained on the associated blockchain. There is no global consensus yet if NFTs are considered securities, but for the purpose of these Terms we assume that this is not the case.
- 1.4. For purposes of these Terms, “user” or “you” means you as the user of the Service, including without limitation co-creators, minters, buyers and sellers. For the avoidance of doubt: garment designers and material designers that provide content to the Services (which include but are not limited to elements of the content associated to an NFT) are not users, however they are considered creators for the purpose of the royalty split specified in clause 4. The Fabricant is also not a user under these Terms. For the avoidance of doubt, if The Fabricant acts as a seller of NFTs, The Fabricant is bound by the Sales Terms.
- 1.5. If you use the Service on behalf of a company or other entity then “you” includes you and that entity, and you warrant that you are an authorized representative of the entity with the authority to bind the entity to these Terms. Users may be protected under applicable consumer law. The following clauses of the Terms provide additional rights for users that may be protected under applicable consumer law: 17, 20.5, 22 and 23.
- 1.6. By clicking to accept and/or using our Service, you agree to be bound by these Terms. If you do not agree to these Terms, you may not access or use the Service. These Terms are provided in such a way that users can store them in a readily accessible manner on a durable medium.
- 1.7. The Fabricant does not execute purchases, transfers, or sales of NFTs, unless we act as a seller of an NFT, in which case we execute the sale subject to the Sales Terms as set out in section B.
- 1.8. The Fabricant designs smart contracts that apply to the sale and purchase of NFTs on or through the Service. These smart contracts contain (encoded) conditions that apply between buyers and sellers. The Fabricant is not party to any agreement between any users and users need to settle disputes between themselves, unless The Fabricant acts as a seller as mentioned in clause 1.7).

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- 1.9. To use our Service, you must use a third party wallet (currently Blocto, but this may be amended in the future) which allows you to engage in transactions on blockchains (currently the Flow blockchain, but this may be amended in the future).
- 1.10. The Fabricant reserves the right to amend these Terms. Amendments to these Terms will only come into effect after they have been published in an appropriate way.
- 1.11. The Service is available globally and equally available to all residents of the European Union. The Service and/or other information or materials provided thereunder, may not be exported or re-exported to any country or state or person that is subject to trade sanctions, embargoes or similar restrictions, without obtaining the relevant approvals. By using the Service, you warrant that you are not such a person and you are not located in such country or state.

### 2. SERVICE AND ACCOUNT

- 2.1. You will need a blockchain address and a third-party wallet to access the Service. Your account on the service ("Account") will be associated with your blockchain address.
- 2.2. Your Account will be associated with your linked blockchain address and display the NFTs purchased or sold on or through the Service for that blockchain address (and, if applicable, any content associated with such NFTs). By using your wallet in connection with the Service, you agree that your use of that wallet is subject to and that you shall comply with the terms and conditions of the applicable provider of the wallet. Wallets are not operated by or maintained by The Fabricant and The Fabricant does not have control over the contents of your wallet, has no ability to retrieve or transfer its contents and does not accept any liability as a result of such use.
- 2.3. You are solely responsible for keeping your wallet secure and you should never share your wallet credentials or seed phrase with anyone.
- 2.4. You represent that you comply will all applicable laws (including without limitation export laws and regulations) when using the Service and that you are an adult of the legal age of majority in your country of residence. If you are under the legal age of majority, your parent or legal guardian must consent to these Terms.

### 3. CHANNEL FEES AND ROYALTIES

- 3.1. The Fabricant charges over the total sale price of an NFT a 10% (ten percent) channel fee for the first NFT sale and 5% (five percent) for subsequent NFT sales on or through the Service, which fees may be amended from time to time.
- 3.2. All proceeds, after channel fees, are equally split among all creators involved in the creation of content associated to an NFT on or through the Services, unless agreed or indicated otherwise. Calculation example for first NFT sales on or through the Service: if the price for an NFT is 100 tokens ; 10 tokens are channel fees; the remaining 90 tokens will be equally split amongst the co-creator (user), garment designer and material designer, meaning 30 tokens each.
- 3.3. Users that buy an NFT on or through the Service may resell the purchased NFT provided they comply and act in accordance with these Terms. Furthermore, such users shall use best efforts to (a) ensure that subsequent buyers respect the relevant intellectual property rights that might vest in the content associated with such NFT and (b) resell the purchased NFT on a market place which provides for a percentage of the resale price to be automatically granted to all creators in accordance with clause 4.2.

#### **4. LICENSE TO USE AND ACCESS THE SERVICE**

- 4.1. We hereby grant you a limited, non-exclusive, non-transferable and non-sublicensable license to access and use the Service, provided that you comply with these Terms.
- 4.2. If any software, content, or other materials owned by, controlled by, or licensed to us are distributed or made available to you as part of your use of the Service, we hereby grant you a non-commercial, personal, non-assignable, non-sublicensable, non-transferrable, and non-exclusive right and license to access and display such software, content, and materials provided to you as part of the Service, in each case for the sole purpose of enabling you to use the Service as permitted by these Terms, provided that your license in any content linked to or associated with any NFTs is solely as set forth by the applicable seller or creator of such NFT (as applicable). If The Fabricant acts as a seller, the aforementioned license applies to such content.

#### **5. INTELLECTUAL PROPERTY**

- 5.1. The Service and all content and information therein (including without limitation 3D files) are the proprietary content of The Fabricant, licensors, garment designers, material designers or users, as applicable, and you agree not to take any action inconsistent with such ownership interests.
- 5.2. The trademarks and logos (the "Trademarks") used and displayed on or through the Services are registered and unregistered Trademarks of The Fabricant and others. Nothing in these Terms should be construed as granting any license or right to use any Trademark displayed on or through the Services without the written permission of the trademark owner.
- 5.3. By using the Service you grant The Fabricant and its affiliates a worldwide, non-exclusive, sublicensable, royalty-free license to use and display any content, that you (co)-create, submit or post on or through the Service for its current and future business purposes, including to provide, promote, and improve the Service. You warrant that you have obtained all rights and permissions necessary to grant the rights granted herein for any content you (co)-create, submit, promote or display on or through the Service.
- 5.4. The Fabricant will take down works that infringe third party intellectual property rights. You may report an infringement to us by sending an e-mail to [studio@thefabricant.com](mailto:studio@thefabricant.com). Please ensure that the e-mail contains all the information necessary for us to assess the infringement, including a statement that you are the owner or an agent authorized to act on behalf the owner, your full name, address and contact details and a copy of the allegedly infringing advertisement. Once all the relevant information is received, The Fabricant will remove the NFT and associated content from its Service as soon as reasonably possible.

#### **6. THIRD PARTY INTELLECTUAL PROPERTY AND THIRD PARTY SERVICES**

- 6.1. Third party intellectual property rights (including without limitation trademarks and design rights) may be contained in the content linked to or associated with any NFTs displayed on the Service and are the property of their respective owners and may not be copied, imitated or used, in whole or in part, without the permission of the applicable intellectual property rights holder.
- 6.2. The Fabricant allows you to (i) (co)-create content (such as digital fashion) and (ii) create (mint), sell and buy NFTs through its Service. The Fabricant does not make any warranty about third-party content visible through our Service, including any content associated with NFTs displayed on the Service.
- 6.3. An (purchase, transfer or sale of an) NFT may be subject to written terms (in addition to the terms covered by a smart contract) that apply between buyers and sellers directly. The Fabricant has no control over that and is not subject to such written terms (unless it is a

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seller, in which case the Sales Terms in section B apply). However, The Fabricant generally promotes users to use terms and grant (intellectual property) rights that, to the extent permitted under these Terms, third party rights and applicable law, allow for a free distribution of the NFT and the content associated therewith.

- 6.4. The NFT or content associated therewith may have utilities that rely on third party services (including without limitation the ability to wear co-created content in metaverses). The Service may also contain (embedded) third party functionality, source code and/or applications. When you use a third party service, source code and/or application you are subject to any applicable third party terms and conditions.

### 7. USER BEHAVIOR

- 7.1. Users shall not: violate the law, contract or intellectual property rights of third party's or these Terms; use another users account without authorization from such user; create multiple NFTs for the same content; use the Service in a manner that could damage or overburden the function of the Service; duplicate, decode or reverse engineer any aspect of the source code used in the Service; attempt to circumvent the channel fees charged by The Fabricant; use the Service for money laundering, fraud, price manipulation or other (financial) crimes; use the Service to create (mint), sell, or buy NFTs that give owners rights to participate in an ICO or any securities offering; use the Service to carry out regulated financial activities; (co)-create or display illegal content.
- 7.2. If you violate clause 8.1, we may, without prejudice to any other rights, suspend or disable your ability to access the Service.

### 8. USER RISKS

- 8.1. Users fully accept, understand and acknowledge that (i) new NFT and crypto regulations may arise, which could (adversely) impact the development of the Service and utility of NFTs; (ii) the value of NFTs is subjective and that you may lose money; (iii) you are responsible for determining what taxes apply to your transactions to indicate prices including VAT in an advertisement); (iv) blockchain transactions are (generally) irreversible; (v) The Fabricant does not control blockchains that you are interacting with, nor smart contracts and protocols that may be relevant for your ability to complete transactions on blockchains.

### 9. DISCLAIMER

- 9.1. To the extent permitted under applicable (consumer) law, users agree that:
- i. the Service is provided "as is" without warranties of any kind either express or implied;
  - ii. The Fabricant does not warrant that the Service is uninterrupted or error-free;
  - iii. The Fabricant will not be responsible or liable for any loss and any use of NFTs, or content associated with NFTs, including losses or claims arising from: (i) incorrectly constructed transactions or mistyped addresses, (ii) server failure or data loss; and (iii) infringement of third party intellectual property rights;
  - iv. The Fabricant does not control the transfer of title or right in any NFTs;
  - v. The Fabricant is not responsible for losses due to failure of (third party) software (including wallets and smart contracts), blockchain or any other features of the NFTs.

### 10. LIMITATION OF LIABILITY

- 10.1. To the extent permitted under applicable (consumer) law, you agree that:

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- i. The Fabricant shall not be liable for any indirect or consequential damage (*gevolgschade*) arising in relation these Terms.
  - ii. The maximum aggregate liability of The Fabricant for direct damages in relation to these Terms shall not exceed the greater of (i) 50% of the fees you paid to The Fabricant in the 12 months prior to the action giving rise to the liability; or (ii) EUR 100 (hundred euro).
- 10.2. The limitation in clause 11.1 does not apply for claims arising out of gross negligence (*grove nalatigheid*) or willfull misconduct (*opzet*) of The Fabricant.

### 11. USER INDEMNIFICATION

- 11.1. To the extent permitted under applicable (consumer) law, you shall indemnify The Fabricant and its affiliates for any costs and damages resulting from claims related to (i) your use of the Service, NFTs or content associated with any NFTs; (ii) your violation of rights of third parties; or (iii) entering into agreements on or through the Service.
- 11.2. You shall inform us of any third party claims promptly and cooperate with us in defending against such claims.

### 12. SUPPORT

- 12.1. If you experience a (technical) issue in relation to the Service or if you have a complaint, please report it to our Discord channel or contact one of our Discord admins for help at: <https://discord.gg/txjhtkJ7>. Further details about the complaint handling procedure will be communicated via the aforementioned Discord channel. You can also send an e-mail to [studio@thefabricant.com](mailto:studio@thefabricant.com).
- 12.2. The Fabricant shall respond as soon as reasonably possible to any request for support or any complaint, within 14 days if reasonably possible.

### 13. CONFIDENTIALITY

- 13.1. The parties acknowledge that each may disclose certain valuable confidential and proprietary information to the other party. For clarity, the information contained in public blockchain transactions is not confidential information. The receiving party may only use the disclosing party's confidential information to fulfill the purposes of these Terms. The receiving party will protect the disclosing party's confidential information by using at least the same degree of care as the receiving party uses to protect its own confidential information.
- 13.2. The Fabricant may disclose confidential information to its affiliates, employees, advisors, consultants, and agents on a need-to-know basis.
- 13.3. Information will not be deemed confidential information if it: (i) becomes known (independently of disclosure by the disclosing party) to the receiving party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (ii) is known to the receiving party prior to receipt from the disclosing party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (iii) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of these Terms by the receiving party; or (iv) is independently developed by the receiving party without use of the disclosing party's confidential information. The receiving party may disclose confidential information pursuant to the requirements of a court, governmental agency or by operation of law but shall (to the extent permissible by law) limit such disclosure to only the information requested and give the disclosing party prior written notice sufficient to permit the disclosing party to contest such disclosure.

#### **14. PRIVACY**

- 14.1. When you use the Service, The Fabricant might collect personal information from you, including your email, name and usage data through cookies.
- 14.2. The Fabricant truly care about its users' privacy and take all steps to ensure secure storage and processing of your personal information in compliance with applicable laws. The Fabricant recommends that you carefully read through our Privacy Policy Statement (accessible here: [Privacy Policy — The Fabricant.Studio](#)), which states the rules under which The Fabricant collects, stores and processes personal information about you when accessing and using the Service.

#### **15. TERMINATION AND SUSPENSION**

- 15.1. If you breach any of these Terms, all licenses granted by The Fabricant may be immediately terminated by The Fabricant.
- 15.2. We reserve the right to suspend, disable or delete your Account and/or your ability to access or use the Service. The Fabricant shall promptly inform you about such action and the reasons thereof.
- 15.3. A user may terminate his agreement with The Fabricant at any time by deleting his Account.
- 15.4. Termination shall not affect clauses which by their nature are intended to continue to apply after termination.

#### **16. MISCELANNEOUS**

- 16.1. These Terms and any rights granted to you hereunder, may not be assigned by you to a third party without prior written consent of The Fabricant. These Terms and any rights granted hereunder to The Fabricant may be assigned by The Fabricant to its affiliates without your prior consent.
- 16.2. No failure or delay by The Fabricant in exercising any right or remedy provided by law or these Terms shall impair the right or remedy, or operate as a waiver or variation of it, or preclude its exercise at any subsequent time. No single or partial exercise of any right or remedy shall preclude any further exercise of the right or remedy or the exercise of any other right or remedy.
- 16.3. If any provision of these Terms, or portion thereof, is held to be void, invalid, illegal or unenforceable, this shall not affect the legality, validity or enforceability of the remaining provisions. The invalid provisions shall, if required, be modified or amended to the fullest extent possible under applicable law so as to reflect the original meaning and intent of the parties.

#### **17. APPLICABLE LAW AND DISPUTE RESOLUTION**

- 17.1. The formation, construction, performance and enforcement of these Terms shall be made in accordance with the laws of The Netherlands without regard to its conflict of law provisions. If The Fabricant directs its activities to a consumer's country of residence, a consumer can also always invoke the mandatory consumer law of his country.
- 17.2. In case of a dispute, the District Court of Amsterdam, The Netherlands, shall have exclusive jurisdiction over such dispute. Consumers will have the option, after The Fabricant invokes the jurisdiction of the District Court of Amsterdam, to opt for resolution of the dispute by the court that is competent under mandatory applicable law.
- 17.3. For more information about your rights as a consumer and settling disputes, we refer to the European website of online dispute resolutions: <https://ec.europa.eu/>.

## **SECTION B: TERMS OF SALE**

### **18. INTRODUCTION AND APPLICABILITY**

18.1. The terms under this section B (“Sales Terms”) apply to the sale and purchase of an NFT for which The Fabricant qualifies as the seller and you as the buyer (in addition to the terms contained in applicable smart contracts). For the purpose of these Sales Terms a “buyer” means a user that purchases an NFT on or through the Service. References to users in these Sales Terms shall mean buyers. If you access and/or use the Service, the Sales Terms are without prejudice to the Service Terms which: (i) continue to apply to the Service and; (ii) apply mutatis mutandis to the Sales Terms, unless such Service Term is by nature limited to application to the Service only, for example a license to access the Service.

### **19. DEVIATIONS FROM THE SERVICE TERMS**

19.1. Notwithstanding the applicability of the following terms in relation to (the use of) the Service:

19.1.1. The indemnifications referred to under (i) and (iii) in clause 12.1 of the Terms do not apply in relation to the sale of an NFT by the Fabricant. For the avoidance of doubt, the remainder of clause 12.1 applies mutatis mutandis to the sale of an NFT by The Fabricant.

19.1.2. The disclaimer referred under (iv) in clause 10.1 of the Terms does not apply in relation to the sale of an NFT by the Fabricant. For the avoidance of doubt, the remainder of clause 10.1 applies mutatis mutandis to the sale of an NFT by The Fabricant.

### **20. AN OFFER**

20.1. The Fabricant shall make offers on or through the Service.

20.2. If an offer is subject to a limited period of validity or is made subject to conditions, this will be explicitly mentioned in the offer.

20.3. The offer contains a complete and accurate description of the NFTs and/or content associated therewith, products, digital content and/or services being offered. The description is sufficiently detailed to enable the user to make a proper assessment of the offer. If The Fabricant makes use of illustrations, these will be a true representation of the NFTs and/or content associated therewith, products and/or services being offered. The Fabricant is not bound by obvious errors or mistakes in the offer.

20.4. Every offer contains information that makes it clear to a user what rights and obligations are related to the acceptance of the offer.

20.5. If the Fabricant saves data provided by the consumer during the ordering process, The Fabricant will explain how such consumer may review such data.

### **21. THE CONTRACT**

21.1. The sales contract will be concluded, subject to that which is set out in clause 22 at the moment at which the user accepts the offer by clicking on the [“Order and Pay”] (or wording of a similar nature) button and fulfils the related conditions.

21.2. If the user has accepted the offer electronically, The Fabricant will as soon as possible confirm receipt of acceptance of the offer electronically.

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- 21.3. Contracts will be concluded and users shall pay electronically. The Fabricant will take suitable technical and organizational measures to secure the electronic transfer of data. Users shall pay electronically, and The Fabricant will take suitable security measures.

### **22. CONSUMER RESCISSION RIGHT**

- 22.1. The purchase of an NFT and/or associated content cannot be revoked once the order process is completed. By completing the order process and clicking on “[Order and Pay]” (or wording of a similar nature) you agree with the direct delivery of the NFT and/or associated content and you waive your rescission right as a consumer. You will be informed hereof during the ordering process.

### **23. WARRANTY**

- 23.1. The Fabricant warrants towards consumers that the NFTs and/or content associated therewith sold by The Fabricant are in conformity with consumer expectations pursuant to applicable law.
- 23.2. if The Fabricant failed to fulfil its part in the sales contract, consumers may, subject to the conditions and restrictions of applicable law, ask for a repair, replacement, refund or rescission of the contract.

### **24. PAYMENT AND PRICE**

- 24.1. Users shall pay The Fabricant for any NFTs sold by The Fabricant in tokens (currently only the Flow token, but this may be changed). .
- 24.2. Prices as shown on the Service may not differ from prices that appear once a buyer has clicked on an NFT it intends to buy. Similarly, prices of an NFT may not change once a buyer initiated the ordering process for such NFT.
- 24.3. Sums payable by users are processed directly via the blockchain after the contract is concluded.
- 24.4. The Fabricant will indicate prices including VAT and additional costs (such as channel fees).
- 24.5. Users throughout the world may purchase NFTs on or through the Service, subject to clause 1.11. Buyers with residence in the European Union are treated equally, meaning, for example, that prices will not deviate between buyers from different European Union member states and that NFTs are equally available regardless of the nationality of a buyer.

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