

Agreement

Thank you in advance for submitting your sample artwork (the “Artwork”) to Woot, Inc. (“Woot”). This Agreement details the terms and conditions between Woot and you (the “Artist”) concerning your submission of Artwork to Woot.

1. Consideration of Artwork. Artist grants Woot a 60-day exclusive right to review and consider the Artwork. During this 60-day period, Artist shall not use the Artwork in any manner or submit the Artwork to anyone else to be used in any manner. All materials sent to Woot will be treated as non-proprietary and non-confidential. Because Woot receives many submissions, Woot cannot be held liable if it reproduces or commissions artwork similar to yours but which has come from another source.

2. Withdrawal of Artwork by Artist. Artist may, at Artist’s discretion, withdraw from further voting in Woot’s Derby an Artwork previously submitted for voting in Woot’s Derby within 24 hours from the time of submission of Artwork by Artist or no later than the published close of the submission period, whichever occurs first. Withdrawal of an Artwork by Artist within the provisions stated herein shall not diminish, void or otherwise affect Artist’s grant of rights to Woot in Sections 1, 5, or 6 of this Agreement nor any of Artist’s obligations and assurances to Woot under this Agreement.

3. No Obligation. Use of the Artwork by Woot is at Woot’s sole discretion. Woot is under no obligation to use the Artwork, or to use the Artwork in any specific manner or for any specific period or duration of time.

4. Term of Agreement.

- (a) This Agreement terminates 60 days from the submission of the Artwork if during that 60-day period Woot disclaims any interest in using the Artwork or does not inform Artist of its intent to use the Artwork. If this Agreement is terminated during the initial 60-day period, neither Artist nor Woot shall retain any obligations under Sections 6, 7, or 8 of this Agreement.
- (b) If during the 60-day period Woot informs Artist of Woot’s intent to use the Artwork, then this Agreement becomes perpetual unless subsequently terminated by Woot.

5. Copyright Ownership. Artist retains copyright ownership of the Artwork submitted to Woot. Woot may, at Woot’s discretion and expense, register the Artwork with the U.S. Copyright Office in the Artist’s name. Woot may record the license granted to it in this Agreement, and Artist agrees to assist Woot as necessary with such recordation, including by executing any documents related to the recordation that Woot may reasonably request.

6. Grant of Rights. Artist grants Woot the exclusive, perpetual, irrevocable, world-wide, right and license to use, reproduce, print, publish, publicly display, transmit, market, sell, distribute, and sublicense the Artwork in all forms and media now known or hereafter developed. Woot may make or authorize non-substantive changes to the Artwork to prepare it for production use.

7. Use of Registered Mark. Woot grants Artist non-exclusive use of the trademark Woot, U.S. Registration number 3,397,587 (the “Mark”), such use limited to incorporation of the Mark in the Artwork and without warranty of title. Artist acknowledges and agrees that Woot is the owner of all rights in the Mark, that all use of the Mark by Artist shall inure to the benefit of Woot and that upon termination of this Agreement, all rights in the Mark, including the goodwill connected therewith, shall remain the property of Woot. Artist admits enforceability and validity of the Mark and agrees to take no action or assist others in taking action to contest ownership, enforceability or validity of the Mark.

8. Non-competition. Artist shall not use the Artwork in any manner with the sole exception that Artist may display or incorporate the Artwork in a personal portfolio or collection for promotional purposes related to Artist’s work.

9. Artist Compensation. Woot shall pay Artist a flat fee of One Thousand Dollars (\$1,000.00) for use and reproduction of the Artwork on **mailing bags**, regardless of the number of such uses or reproductions. If Woot uses or licenses the use of the Artwork in a form or media other than **mailing bags**, Woot shall pay Artist a fee in an amount to be determined separate from and subsequent to this Agreement by the parties in good faith, but not to exceed Two Dollars (\$2.00) per item. Such payments shall be made on a calendar quarter basis, within 30 days of the end of each calendar quarter.

10. Independent Contractor; Payment of Taxes. Artist is an independent contractor and is solely responsible for, and shall pay when due, any fees and/or dues, or contributions due to any unions or guilds, all estimated tax, withholding, social security, disability, unemployment, self employment, and other taxes imposed on Artist by the U.S. government or any state or local tax jurisdiction.

11. Credit. Woot shall provide Artist with appropriate credit in the Artwork, at Woot’s discretion.

12. Artist Representations. Artist represents and warrants that he/she has the right to enter into this Agreement, that the Artwork is original and has not been previously used commercially, and shall not infringe upon or violate any copyright, or any other personal or proprietary right of any kind of any third party. Artist indemnifies Woot, its officers, directors, employees, successors and assigns, against any and all losses, expenses (including attorney’s reasonable fees), or damages arising out of any breach of Artist’s warranties, representations, and obligations hereunder. This paragraph shall survive the expiration or termination of this Agreement for any reason.

13. Termination. Woot may terminate this Agreement for any reason immediately upon written notice to Artist. If Woot terminates this Agreement for any reason other than Artist’s breach of the Agreement, Artist shall be entitled to retain the amounts paid to Artist up to the date of such termination and shall not be entitled to any further compensation. If Woot terminates this Agreement as a result of Artist’s breach of the Agreement, Artist shall return all amounts paid to Artist hereunder. Upon such repayment, all rights granted to Woot under this Agreement shall terminate, and Woot shall have no further obligation of any kind to Artist.

14. General Provisions. This Agreement is binding upon and inures to the benefit of the executors, administrators, heirs, and assigns of the Artist and Woot. Any notices permitted or required under this Agreement shall be deemed sufficient if sent via email to shirtlegal@woot.com and email receipt is acknowledged by Woot. Woot shall communicate with Artist via email address provided by Artist. This Agreement represents the entire agreement between parties, and may not be modified or terminated other than by a writing executed by both parties. If one or more of the provisions contained in this Agreement is held invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired. The waiver of any breach of any provision of this Agreement, regardless of the number or extent of such waivers, shall not be construed as a modification of this Agreement or as a waiver of any other breach of that provision or of any other provision of this Agreement. If, in the opinion of either party, the other has breached this Agreement, the such party shall notify the other in writing of that breach, which shall not be a ground for any action, claim, or proceeding unless the alleged breach has not been substantially cured within thirty (30) days after receipt of notice. In the event of Woot's breach, Artist may seek damages only; in no event shall the Artist be entitled to interfere with, enjoin, or otherwise restrain Woot's exclusive right to use and incorporate the Artwork on or in apparel, garments, and other items. This Agreement shall be interpreted according to the laws and in the state and federal courts of the State of Texas, and both parties consent to the exclusive personal jurisdiction, and waive any objections to the venue, of such courts.