

**TERMS AND CONDITIONS FOR THE ACTIVATION OF IN-APP PURCHASES WITHING THE AR BIENNALE APP
(As of July, 2021)**

1. Object of this Agreement, Validity of the Terms and Conditions

- 1.1** Within the AR Biennale App (hereinafter “app“) of the Stiftung Museum Kunstpalast, NRW-Forum Düsseldorf (hereinafter referred to as „Stiftung Museum Kunstpalast“ or „we“), Ehrenhof 4-5, 40479 Düsseldorf, Phone: (+49) (0)211 56642100, info@kunstpalast.de, users can view a total of 36 Augmented Reality works (AR-works“) within the framework of the Augmented Reality Biennale, which will take place from August 22, 2021 until February 20, 2022 (hereinafter „Biennale“).
- 1.2** Within the app, users have access to a total of 36 AR-works. Users can activate and view 13 AR-works free of charge and a further 23 AR-works, situated at the Ehrenhof and Hofgarten locations in Düsseldorf, can be activated via in-app purchase and viewed thereafter. AR-works available exclusively as fee-based in-app purchases are marked as such in the app. At various reference points in the cities of Düsseldorf, Essen and Cologne, markers have been installed by the Stiftung Museum Kunstpalast. Their precise locations are clearly evident in the app and they are identified as markers of the Stiftung Museum Kunstpalast. Within the app, users can scan these markers to display the corresponding AR-work if it is available free of charge. Fee-based AR-works must first be activated to be viewed in the app.
- 1.3** Activation of fee-based AR-works is subject to the following terms and conditions (hereinafter “T&C“). These T&C are conclusive and only applicable for the in-app activation and use of AR-content available via in-app purchase. By accepting these T&C, users accept them as definitive.

2. Activation of AR-works, Price

- 2.1** Users can either activate fee-based AR-works in advance by purchase or after scanning the marker for a fee-based AR-work with their mobile devices. To this end, users can activate the fee-based AR-works at both the Google Play Store and Apple Store payment platforms, using the “purchase activation” button (so-called “in-app purchase“). The providers of the aforementioned payment platforms have mandatory regulations for in-app purchases that user must accept before purchasing and over which the Stiftung Museum Kunstpalast has no control.
- 2.2** The activated AR-works can be viewed in the app during the duration of the Biennale until February 20, 2022. The AR-works can only be viewed at the location of the corresponding marker. It is not possible for users to store the AR-works in their devices.
- 2.3** All fee-based AR-works can be activated at a one-time fee of EUR 5.49. AR-works can be activated in advance or users can activate any fee-based AR-work at its location, thereby automatically activating all other fee-based AR-works for the duration of the Biennale until February 20, 2022.

3. Scope and Authorisation of Usage

3.1 Users are authorised to make use of the AR-works provided within the app according to the aforementioned regulations in clause 2. Insofar, the Stiftung Museum Kunstpalast grants users a revocable, simple and non-transferable right of use of the AR-works available in the app, limited to the term of this agreement.

3.2 Users may only use the AR-works within the app. Any other usage, in particular copying, extracting and processing or editing of AR-works exceeding the aforementioned processes, is prohibited.

4. Data Protection

The Stiftung Museum Kunstpalast will maintain the relevant statutory provisions regarding users' personal data, in particular the General Data Protection Regulation (DSGVO). Further information on data protection can be found in the separate privacy statement.

5. Availability of AR-works

5.1 The Stiftung Museum Kunstpalast has no control over whether users, in any environment, will be able to access a telecommunications network and/or internet connection. Users themselves are responsible for establishing and maintaining the technical prerequisites for the usage of the AR-works on their mobile devices. For example, users themselves are responsible for sufficiently charging their mobile devices so that the app and the available AR-works can be used.

5.2 While downloading the app, connection charges during data transfer may be incurred. These charges must be borne by the users and the amount incurred depends on the contract between the user and the mobile provider. The costs incurred while using the app on a wireless LAN connection relative to the internet provider will also be borne by the users.

6. Warranty

Users acknowledge and accept that access to AR-works may be subject to interruptions, errors or delays. These may be caused among others by necessary repair or maintenance works to ensure correct operation or further development of the app, by technical problems during its application or operation, by high volumes of data traffic on the internet or infrastructure failures.

7. Liability

7.1 The Stiftung Museum Kunstpalast is liable without restriction for intent and gross negligence. In case of slight negligence, the Stiftung Museum Kunstpalast is only liable for the violation of material contractual duties (so called cardinal obligations). Material contractual duties are such duties which make possible the proper fulfilment of the contract in the first place, violation of which jeopardises the achievement of the contractual objective and the compliance with regulations which users may regularly rely on. Liability in case of a breach of such material contractual duties is limited to contractually typical damage which the Stiftung Museum Kunstpalast had to reckon with at the time of conclusion of contract on the basis of circumstances known at that time.

7.2 The aforementioned exclusions of liability are applicable analogously for the benefit of the legal representatives and vicarious agents of the Stiftung Museum Kunstpalast.

7.3 The aforementioned exclusions of liability are not applicable in case of injury of life, body and health. Liability pursuant to the German Product Liability Act (Produkthaftungsgesetz) shall remain unaffected.

8. Term

The term of this contract is limited and ends at the end of the Biennale on February 20, 2022. After the aforementioned date, the AR-works will no longer be available to users.

9. Right of Change to the Terms and Conditions

9.1 For the event of statutory amendments, changes to case-law or changes in economic conditions affecting the provision of services by the Stiftung Museum Kunstpalast, the Stiftung Museum Kunstpalast reserves the right to change these terms and conditions according to the following regulation in relation to the contract with users, provided that the change is reasonably acceptable for users.

9.2 The Stiftung Museum Kunstpalast will announce changes to the users in a timely manner, meaning within a period of six (6) weeks prior to the effective date in text form via notification within the app and will inform users as to the content of the changes. The announced changes will enter into effect six (6) weeks after the announcement in the app. The Stiftung Museum Kunstpalast will expressly notify users of this consequence in the announcement of the changes.

9.3 Users can object to the changes until the changes enter into effect. In case of an objection, the contract will be continued under the existing conditions. However, the Stiftung Museum Kunstpalast is at liberty to terminate the contract where important grounds of termination for cause are deemed applicable, in particular when the continuation of the contract under the existing conditions is not feasible technically. Should users not object to changes within the aforementioned period of time, the new provisions are deemed contractually agreed upon among the contractual parties.

10. Jurisdiction and Governing Law

The laws of the Federal Republic of Germany shall apply with the exception of the UN Purchase Law (CSIG). If users are consumers with ordinary EU residence, they furthermore enjoy protection under the mandatory regulations of their country of residence's governing law. They can assert claims associated with these terms and conditions, relating to consumer protection standards at their discretion, either within the Federal Republic of Germany or in the EU Member State of their residence.

Revocation Instruction

Right of Revocation

You can revoke your contract declaration within 14 days, without stating reasons, in a clear statement. This term begins after reception of this instruction on a durable medium, however not prior to the conclusion of the contract and also not prior to fulfilment of our obligation to inform according to Article 246 § 2 (1) in connection with Article 246b § 1 (1) EGBGB. The timely dispatch of the revocation will suffice for the compliance with the revocation term, if the declaration is dispatched on a durable medium (e.g. letter, telefax, e-mail). The revocation must be addressed to:

**Stiftung Museum Kunstpalast
Ehrenhof 4-5
40479 Düsseldorf**

**Telephone (+49) (0)211 56642100
info@kunstpalast.de**

Revocation Consequences

In the event of a valid revocation, the mutually received benefits are to be returned. You are obligated to pay compensation for the service provided up to the revocation, if you were notified of this legal consequence prior to your contract declaration and had expressly agreed to our services starting prior to the end of the revocation term. If there is an obligation for payment of a compensation, this may lead to you having to fulfil the contractual payment obligations regardless for the time prior to revocation. Your revocation right expires prematurely if according to your explicit wish the contract is completely fulfilled by both sides prior to your exercising your right of revocation. Obligations to reimburse for payments must be discharged within 30 days. The term begins for you upon sending your revocation declaration, for us with its receipt.

Specific Instructions

Upon revocation of this contract, you are not bound to a contract related to this contract anymore, if the related contract contains a service provided by us or a third party based on an agreement with us and the third party.

End of the Revocation Instruction