


Purchase Order

<u>Purchase order number:</u> 044	<u>Area:</u> Health Centre
<u>Name and address of the Artist:</u> Sally Fawkes Jackson Fawkes 16a Stafford Mill London Road Thrupp, Stroud Gloucestershire GL5 2AZ UK Tel: 01453 767 234 Mob: 07974 801 047 Email: sally@sallyfawkes.com	<u>Artwork Description:</u> To supply x 1 glass sculpture, inspired by the below image. The sculpture should have elements of etching and colour to it. Please note the colourings of the health centre, and the fact the inside of the niche is a cream colour. We would like the sculpture to come with a stainless steel fixing to fix it within the niche. It is important that the glass does not vibrate with the movement of the ship. Please submit a to-scale sketch for sign-off before production.  <u>Cost of the Artwork:</u> £3500.00 <u>Artwork Code:</u> <u>Niche Dimensions mm (w) x (h) x (d)</u> 131-05-03-MED-06a 750 x 1100 x 450 (suggested height of sculpture 700 mm)

Completion Date: The Artwork shall be completed and ready for inspection on or before 28.06.2016.

Collection Date: The Artwork shall be ready for collection on or before 05.06.2016

Invoice: Your invoice must be issued to "Chinese Dream Limited" under its German Tax Number and VAT ID Number below:

(a) German Tax Number: 16/669/30749

(b) German VAT-ID number: DE300346663

Please ensure your bank details are clearly noted on the invoice so that we are able to make an immediate BACS payment upon receipt.

Please complete and sign this Purchase Order and return it together with your invoice to:

FAO Jennie Drummond
Chinese Dream Limited

c/o SMC Art Consultancy
Unit 10 Blue Lion Place
237 Long Lane
London
SE1 4PU

Delivery: Please contact Jennie Drummond at SMC Design on 0207 436 6466 to discuss the delivery and packing arrangements.

Note: Capitalized terms used but not defined in this Purchase Order shall have the same meanings set out in the Terms and Conditions of the Purchase Order attached thereafter.

[I]/[We] hereby accept the terms and conditions of the Contract in respect of the above

Name:

Date:



.....
Name: Jennifer Drummond
Chinese Dream Limited
Acting through its Agent SMC Design Ltd
Date: 23.02.2016

Terms and Conditions of the Purchase Order

1 Definitions and Interpretation

1.1 The definitions and rules of interpretation in this Condition 1 apply in these Terms and Conditions of the Purchase Order (these “**Conditions**”).

Artist: the artist named on the Purchase Order being the artist who is commissioned to create and build the Artwork;

Artist’s Invoice: the invoice issued by the Artist for the Price as set out in Condition 5.1;

Artwork: the sculpture, paintings, pictures, photographs and all other artworks as set out in the Purchase Order which are commissioned by Chinese Dream in accordance with these Conditions;

Confidential Information: (i) all technical or commercial information of a confidential nature (including trade secrets) which has been disclosed by Chinese Dream to the Artist, and (ii) the existence and details of the Purchase Order, these Conditions, the Specification, and the Artwork;

Contract: the contract between Chinese Dream and the Artist comprising the Purchase Order and these Conditions;

Insolvency Event: a person suffers an insolvency event if it is unable to pay its debts as they fall due; or it begins negotiations (because of actual or anticipated financial difficulties) with, or enters into any composition or arrangement with one or more of its creditors with a view to rescheduling any of its indebtedness; or it suffers any of the following events: a moratorium of any indebtedness, winding-up, dissolution, suspension of payments, administration, reorganization, petition for bankruptcy, composition, compromise, assignment or arrangement with any creditor; or any liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer is appointed in respect of that person or any of its assets; or any event occurs in relation to that person that is analogous to the events listed in this definition;

Intellectual Property Rights: any patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world, in respect of the Artwork;

Chinese Dream: Chinese Dream Limited whose head office is situated at Cannon’s Court, 22 Victoria Street, Hamilton HM 12, Bermuda, and, for the purpose of the Contract, such expression shall include its agents or authorized representatives (including without limitation SMC);

German Tax Number: 16/669/30749;

German VAT-ID number: DE300346663;

Purchase Order: the purchase order to which these Conditions are attached;

Price: the price payable for the Artwork as set out in the Purchase Order and payable in accordance with Condition 5;

Site: the venue designed by Chinese Dream for the delivery and/or installation (as instructed by Chinese Dream) of the Artwork by the Artist;

SMC: SMC Design Limited being the authorized representative of Chinese Dream for the purposes of the Contract;

Services: the creation and completion of the Artwork by the Artist in accordance with the Specification and the terms of the Contract;

Specification: the specification for the Artwork as set out or referred to in the Purchase Order; and

VAT: value added tax chargeable in accordance with Condition 5.2 from time to time and any similar tax.

1.2 References to conditions and schedules are to the Conditions and Schedules to the Contract.

1.3 Headings in these Conditions shall not affect their interpretation.

1.4 A person includes a natural person, corporate or unincorporated body (whether or not having a separate legal personality).

1.5 A reference to writing or written includes faxes but not email.

1.6 Any obligation in the Contract on a person not to do something includes, without limitation, an obligation not to agree, allow, permit or acquiesce in that thing being done.

2 Application of Conditions

2.1 These Conditions shall:

2.1.1 Apply to and be incorporated into the Contract; and

2.1.2 Prevail over any inconsistent terms or conditions contained, or referred to, in the Artist's acceptance, standard terms and conditions, confirmation of order, or specification, or other document supplied by the Artist, or implied by law, trade, custom, practice or course of dealing.

2.2 The Artists signature on the Purchase Order constitutes acceptance of the Contract at which time the contract for the supply and purchase of the Artwork on the Purchase Order and these Conditions will be established.

3 Commencement and Duration

3.1 The Contract shall come into effect on the date the Purchase Order is signed ("**Commencement Date**") and shall continue up to and including the Collection Date save where the Contract is terminated in accordance with Condition 4.6 or 9.

4 Artist Responsibilities

4.1 The Artist will notify Chinese Dream when it has completed the Artwork. However, in any event, the Artwork shall be completed and ready for inspection by Chinese Dream on or before _____ (the "**Completion Date**").

4.2 Within 5 days after the receipt of notification in accordance with Condition 4.1, Chinese Dream will inspect the Artwork. If the Artwork has been completed in accordance with the Specification as determined in the sole discretion of Chinese Dream, Chinese Dream will approve the Artwork ("**Sign Off**").

4.3 If the Artwork has not been completed in accordance with the Specification and/or on or before the Completion Date, no Sign Off will take place and the Artwork is deemed "Faulty".

4.4 On Sign Off, the Artist and Chinese Dream shall arrange the collection of the Artwork on or before _____ (the "**Collection Date**").

4.5 The Artist will be responsible for any loss or damage to the Artwork up to and including the Collection Date. Title to the Artwork shall pass to Chinese Dream after the Collection Date. Any and all sketches, drawings, models and other materials prepared by the Artist for the Artwork shall be the property of the Artist whether the Artwork for which they are made is executed or not. Chinese Dream shall be entitled to retain copies, including reproducible copies, of such materials for information and reference in connection with the use of the Artwork.

4.6 The Artist shall meet, and time is of the essence as to, the Collection Date. If the Artist fails to provide the Artwork on the Collection Date, or the Artwork is deemed Faulty in accordance with Condition 4.3, Chinese Dream, may (without prejudice to any other rights it

may have):

- 4.6.1 Terminate the Contract in whole or in part without liability to the Artist;
- 4.6.2 Refuse to accept any subsequent performance of the Services which the Artist attempts to make;
- 4.6.3 Purchase substitute Services and/or Artwork from elsewhere (the cost of which shall be reimbursed by the Artist);
- 4.6.4 Have all sums previously paid by Chinese Dream to the Artist under the Contract refunded by the Artist; and
- 4.6.5 If the Artwork is deemed Faulty, Chinese Dream may require the Artist to provide replacement Artwork or remedy the Faulty Artwork at no additional cost to Chinese Dream subject to such replacement or remedied Artwork being completed on or before the Collection Date and the provisions of this Condition 4 shall apply to such replacement or remedied Artwork.

4.7 The Artist shall provide Chinese Dream with written instructions for the appropriate maintenance and preservation of the Artwork, and shall ensure that all maintenance and preservation requirements will be reasonable in terms of time and expertise. Chinese Dream will be responsible for the appropriate maintenance and preservation of the Artwork.

4.8 With respect to the Services, the Artist represents and warrants that:

- 4.8.1 the Artist will co-operate with Chinese Dream in all matters relating to the Services and the Artwork;
- 4.8.2 the Artist will perform the Services with reasonable care and skill and in accordance with generally recognized commercial practice and standards in the industry for similar services;
- 4.8.3 the Services shall be performed in accordance with all applicable laws, regulations, ordinances, etc; and
- 4.8.4 the Artist will provide Chinese Dream with updates as to the progress of the Artwork, provide Chinese Dream with photographs of the Artwork, and/or allow Chinese Dream to inspect the Artwork at any time during the term of the Contract upon request by Chinese Dream.

4.9 With respect to the title of the Artwork, the Artist represents and warrants that:

- 4.9.1 the Artwork is solely the result of the artistic effort of the Artist;
- 4.9.2 the Artwork is unique and original and does not infringe upon any Intellectual Property Rights or the rights of any person;
- 4.9.3 the Artwork (or duplicate thereof) has not been accepted for sale elsewhere;
- 4.9.4 the Artist has not sold, assigned, transferred, licensed, granted, encumbered or utilized the Artwork or any element thereof or any copyright related thereto which may affect or impair the rights granted pursuant to the Contract;
- 4.9.5 the Artwork is free and clear of any liens from any source whatsoever;
- 4.9.6 the Artwork created or performed by the Artist under the Contract, whether created by the Artist alone or in collaboration with others, shall be wholly original with the Artist and shall not infringe upon or violate the rights of any third party; and
- 4.9.7 the Artist has the full power to enter into and perform the Contract and to make the grant of rights contained in the Contract.

4.10 With respect to the quality and condition of the Artwork, the Artist represents and warrants that:

- 4.10.1 all work will be performed in accordance with professional "workmanlike" standards and free from defective or inferior materials and workmanship (including any defects consisting of "inherent vice," or qualities that cause or accelerate deterioration of the Artwork) for five (5) years after the Collection Date

(the **“Warranty Period”**);

- 4.10.2 the Artwork will conform in all respects with the Specification and will be fit for its purpose;
 - 4.10.3 the Artwork and the materials used are not currently known to be harmful to public health and safety;
 - 4.10.4 reasonable maintenance of the Artwork will not require procedures substantially in excess of those described in the maintenance and preservation requirements submitted by the Artist pursuant to Condition 4.7;
 - 4.10.5 if within the Warranty Period Chinese Dream observes any breach of warranty described in this Condition 4.10 that is curable by the Artist, the Artist shall, at the request of Chinese Dream, cure the breach promptly, satisfactorily and consistent with professional conservation standards, at no expense to Chinese Dream; and
 - 4.10.6 if within the Warranty Period Chinese Dream observes any breach of warranty described in this Condition 4.10 that is not curable by the Artist, the Artist is responsible for reimbursing Chinese Dream for damages, expenses and loss incurred by Chinese Dream as a result of the breach.
- 4.11 With respect to the acceptable standard of display of the Artwork, the Artist represents and warrants that:
- 4.11.1 General routine cleaning and repair of the Artwork and any associated working parts and/or equipment will maintain the Artwork within an acceptable standard of public display;
 - 4.11.2 Foreseeable exposure to the elements and general wear and tear will cause the Artwork to experience only minor repairable damages and will not cause the Artwork to fall below an acceptable standard of public display; and
 - 4.11.3 With general routine cleaning and repair, and within the context of foreseeable exposure to the elements and general wear and tear, the Artwork will not experience irreparable conditions that do not fall within an acceptable standard of public display, including mold, rust, fracturing, staining, chipping, tearing, abrading and peeling.
- 4.12 For Artwork with latent defect, the Artist shall replace or repair such Artwork when a latent defect becomes apparent and indemnify Chinese Dream for any costs, damages, lossess regarding such Artwork with latent defect.
- 4.13 The Artist shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.
- 4.14 The Artist shall cooperate with Chinese Dream to obtain all applicable import and export approvals, licenses or other authorizations issued by the applicable governmental authorities for the performance of the Contract.

5 Price and Payment

- 5.1 In consideration of the provision of the Services by the Artist, Chinese Dream shall pay the Price set out in the Purchase Order as follows:
- 5.1.1 Chinese Dream shall pay thirty percent (30%) of the Price within thirty (30) days after the receipt of the Artist's Invoice for the same to be issued on the Commencement Date; and
 - 5.1.2 Chinese Dream shall pay the remaining seventy percent (70%) of the Price within thirty (30) days after the receipt of the Artist's Invoice for the same to be issued on the Collection Date.
- 5.2 The Artist will comply with the following appropriate provisions in respect of VAT:
- 5.2.1 If the Artist is resident in the European Community (“EC”), it is agreed that the place of supply of goods and services is in Germany and the Artist must include

the German Tax Number and the German VAT-ID number on the Artist's Invoice and not charge any VAT to Chinese Dream; or

- 5.2.2 If the Artist is resident outside the EC, the Artist will ensure that it complies with its own country of residence VAT laws and advise Chinese Dream of its invoicing requirements in this respect.

5.3 Each of the Artist and Chinese Dream shall be liable for its own taxes relating to the sale and purchase of the Artwork and the Contract.

6 Intellectual Property Rights

6.1 The Artist assigns and transfers to Chinese Dream, with full title guarantee and free from all third party rights, the Intellectual Property Rights in respect of the Artwork.

6.2 The Artist shall, promptly at Chinese Dream's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as Chinese Dream may from time to time require for the purpose of securing for Chinese Dream the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights and all other rights assigned to Chinese Dream in accordance with the Contract.

6.3 Chinese Dream shall have right to make two-dimensional photographic reproductions of the Artwork, including without limitation reproductions in catalogues, books, slides, postcards, publications, magazines, and newspaper.

6.4 The Artist will issue a letter of authenticity to Chinese Dream with respect to the Artwork stating that the Artwork is an original and unique piece of artwork which will not be re-produced.

7 Indemnity

7.1 The Artist shall indemnify and hold harmless Chinese Dream from all claims and all direct, indirect or consequential liabilities (including loss of profits, loss of business, depletion of goodwill and similar losses), costs, proceedings, damages and expenses (including legal and other professional fees and expenses) against, or incurred or paid by, Chinese Dream as a result of or in connection with:

- 7.1.1 Any alleged or actual infringement, whether or not under the laws of Hong Kong, of any third party's Intellectual Property Rights or other rights arising out of the use or supply of the Artwork; and

- 7.1.2 Any defects in the Artwork or any other breach of the Contract by the Artist.

7.2 Chinese Dream's rights under these Conditions are in addition to the statutory rights and remedies in favour of Chinese Dream under the law of Hong Kong.

7.3 Chinese Dream may at any time, without limiting any of its other rights or remedies, set off any liability of the Artist's to Chinese Dream against any liability of Chinese Dream to the Artist, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract.

8 Confidentiality

8.1 The Artist agrees that it shall at all times (both during the term of the Contract and after its termination) keep confidential, and shall not use (other than strictly for the purposes of the Contract) and shall not, without the prior written consent of Chinese Dream, disclose to any third party any Confidential Information, unless the information:

- 8.1.1 is in the public domain other than as a result of a breach by the Artist of the Contract;

- 8.1.2 is lawfully in the possession of the Artist (as evidenced by written records) and was made available to the Artist by a third party which was not bound by an obligation of confidentiality to Chinese Dream prior to it being made available to the Artist by Chinese Dream; or

- 8.1.3 is required to be disclosed by any applicable law or regulation or the court order.

8.2 All documents and other records (in whatever form) containing Confidential

Information supplied to or acquired by the Artist from Chinese Dream shall be returned promptly to Chinese Dream on termination of the Contract and no copies shall be kept by the Artist.

8.3 The Artist shall only disclose such Confidential Information to those of its employees who need to know it for the purpose of discharging the Artist's obligations under the Contract, and shall ensure that such employees comply with the obligations set out in this Condition 8 as though they were a party to the Contract.

9 Termination

9.1 Chinese Dream may terminate the Contract without liability to the Artist immediately on giving notice to the Artist if:

9.1.1 The Artist fails to perform or comply with any of its covenants, duties, obligations or warranties under the Contract and (if such breach is remediable) fails to remedy that breach within a period of fourteen (14) days after being notified in writing to do so; or

9.1.2 The Artist suffers an Insolvency Event.

9.2 Notwithstanding Condition 9.1, Chinese Dream may terminate the Contract in whole or in part at any time before delivery with immediate effect by giving the Artist written notice, whereupon the Artist shall discontinue all work on the Contract. Chinese Dream shall pay the Artist fair and reasonable compensation for any work in progress on the Artwork at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.

10 Effects of Termination

10.1 Termination of the Contract, howsoever caused, shall be without prejudice to any rights or liabilities accrued at the date of termination.

10.2 The rights and obligations set forth in the Contract (including without limitation Conditions 4, 7, 8, 10, 19 and 20) shall extend beyond the termination of the Contract to the extent that the survival of such rights or obligations is necessary to permit their complete fulfillment or discharge.

11 Force Majeure

11.1 Chinese Dream reserves the right to defer the date for performance of, or payment for, the Services and/or the Artwork, or to terminate the Contract, if it is prevented from, or delayed in, carrying on its business by acts, events, omission or accidents beyond its reasonable control, including (without limitation) strikes, lockouts or other industrial disputes (whether involving the workforce of Chinese Dream or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

12 Variation

12.1 No variation of the Contract shall be valid unless it is in writing and signed by, or on behalf of, each of the parties.

13 Waiver

13.1 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the circumstances for which it is given. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that (or any other) right or remedy.

13.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

14 Severance

14.1 If any provision of the Contract (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required be deemed not to form part of the Contract, and the validity and enforceability of the other provisions of the Contract shall not be affected.

14.2 If a provision of the Contract (or part of any provision) is found illegal, invalid or unenforceable, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

15 Entire Agreement

15.1 The Contract constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.

15.2 Each party acknowledges that, in entering into the Contract, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) except as expressly set out in the Contract.

15.3 Nothing in this Condition shall limit or exclude any liability for fraud.

16 Assignment

16.1 The Artist shall not, without the prior written consent of Chinese Dream assign, transfer, charge, mortgage, subcontract, declare a trust of, or deal in any other manner with all or any of its rights or obligations under the Contract.

16.2 Chinese Dream may at any time assign, transfer, charge, mortgage, subcontract, declare a trust of, or deal in any other manner with all or any of its rights under the Contract.

16.3 Each party that has rights under the Contract is acting on its own behalf and not for the benefit of another person.

17 No Partnership or Agency

17.1 Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership, agency relationship, or joint venture of any kind between the parties. No party shall have authority to act as agent for, or to bind, the other party in any way.

18 Rights of Third Parties

18.1 A person who is not a party to the Contract shall not have any rights under or in connection with it.

19 Notices

19.1 Any notice or other communication required to be given under the Contract shall be in writing and shall be delivered personally, or sent by pre-paid first-class post, recorded delivery or by commercial courier to the other party and for the attention of the person specified in the Purchase Order or as otherwise specified by the relevant party by notice in writing to the other party.

19.2 Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address and for the contact referred to in the Purchase Order, or if sent by pre-paid first-class post or recorded delivery, at 9.00am on the second working day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

19.3 This Condition 19 shall not apply to the service of any proceedings or other documents in any legal action.

19.4 A notice or other communication required to be given under or in connection with the Contract shall not be validly served if sent by email.

20 Governing Law and Jurisdiction

20.1 The Contract, and any dispute or claim arising out of or in connection with it or its

subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, the law of Hong Kong.

20.2 The parties irrevocably agree that the courts of Hong Kong shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, the Contract or its subject matter or formation (including non-contractual disputes or claims), subject only to the right of Chinese Dream to bring such proceedings in any other jurisdiction it may consider appropriate.

21 Compliance

21.1 The Artist warrants that it or any of its controlling shareholders, directors, officers, and employees shall comply with all applicable laws and regulations in the performance of the Contract.

21.2 The Artist warrants that it or any of its controlling shareholders, directors, officers, and employees shall not be a Sanction Person during the term of the Contract and it shall not, at any time during the term of the Contract, violate any laws or regulations which would result in the Artist, Chinese Dream or their respective associates, directors/officers becoming a Sanction Person. "Sanction Person" means a person, entity or organization that is (i) listed on any Sanctions List; or (ii) is a resident or has a place of business in, or is incorporated under the laws of, a country or territory that is the target of country-wide or territory-wide sanctions, such as Cuba, Iran, North Korea, Sudan and Syria; or (iii) is directly or indirectly owned or controlled by, or acting on behalf of, a person/entity/organization referred to above; or (iv) a sanction authority would prohibit or restrict by law from engaging in trade or other activities. "Sanction List" means the "Specially Designated Nationals and Blocked Persons" list maintained by the Office of Foreign Assets Control of the US Department of Treasury, the "Consolidated List of Financial Sanctions Targets" maintained by Her Majesty's Treasury or any similar list maintained by, or public announcement of sanctions designated made by, any of the sanction authority.

21.3 The Artist warrants that neither it, nor any of its controlling shareholders, directors, officers, and employees have offered to directly or indirectly pay or have paid Chinese Dream (including its holding companies, subsidiaries and affiliates), its employees or representatives or anyone closely related to them any bribes, kickbacks, loans, share in profit and/or other similar improper proceeds in situations of contract bidding, quotation/ tender evaluation or contract award.

21.4 The Artist warrants that it, and any of its controlling shareholders, directors, officers employees, had not and will not directly or indirectly take part in any conduct or seek to influence any decision that can give rise to an actual, potential or perceived conflict of interest relating to the Contract. Conflict of interest means, the Artist has an unfair advantage or engages in conduct, directly or indirectly, that may give it an unfair advantage, including but not limited to (i) having, or having access to, confidential information of Chinese Dream in relation to procurement that is not available to other Artists, (ii) communicating with any person with a view to influencing preferred treatment in the procurement process (including but not limited to the lobbying of decision makers involved in the procurement process), or (iii) engaging in conduct that compromises, or could be seen to compromise, the integrity of the procurement process.