

 **macmillan**
ART AND DESIGN PURCHASE ORDER AND AGREEMENT

LICENSING COMPANY (Name): _____ TO: _____
(together with its trade publishing affiliates, "Publisher") *Name, telephone, email, etc.* *Address*

This will confirm the agreement between you and Publisher, concerning rights in artwork/photograph(s)/graphic design/type design/cartography (the "Artwork") to be provided in a mutually acceptable format to Publisher. The Agreement is as follows:

1. Description of the Artwork; Delivery Schedule. The Artwork to be provided is:

Jacket/Cover Art Interior Art Endpaper Art Maps/Charts Graphic Design

Description (*describe material to be delivered*): _____

First version and/or sketch must be delivered by: _____ Final version must be delivered by: _____ (*Timely delivery is an essential condition of this Agreement*)

2. Rights; Payments. You hereby grant to Publisher exclusive reproduction and distribution rights in the Artwork in connection with (a) jackets, covers and packaging of and/or (b) within [**cross out whichever of (a) or (b) does not apply**] editions of a book tentatively entitled _____ by _____ (the "Work") that are published by Publisher, and its successors, assigns and licensees. The rights described herein shall apply to all editions and uses in each of the format(s) and media indicated below:

Hardcover Paperback (either Trade or Mass Market) Audio Edition E-Books Out Of Context Marketing (using the Artwork apart from how it appears in/on the Work for marketing purposes related to the Work in any media); **These editions include** (check **one** of the following): All Languages English only

Publisher may also use and authorize the use of the Artwork in any of the manners *that are not checked above*. If Publisher makes any such additional use of the Artwork, Publisher will pay you a percentage of the amount specified in paragraph 3 for such use as follows: 50% for Trade Paperback; 50% for Mass Market; 10% for Audio Edition; 10% for E-book; 10% for Out of Context Marketing. Upon such payment, Publisher's reproduction and distribution rights in the applicable format(s) and media will become exclusive.

3. Payment. Upon acceptance of the final version of the Artwork, Publisher will pay you the following sum for all the rights described herein. \$ _____.

4. Use. The Artwork as used on or in the Work may also be used and reproduced in advertising, publicity and promotion of the Work in any media, in reproductions or depictions of the jacket/cover (if applicable) (or any portion thereof when used in connection with the Work) in any media, and in advertising, publicity and promotion in any media of, and in connection with, subsidiary rights in the Work granted by Publisher. Uses of the Artwork that are authorized in this Agreement may include changing the Artwork's orientation, zooming in on part of the Artwork, enlarging, shrinking, cropping or otherwise modifying the Artwork, combining the Artwork or portions thereof with other elements, and/or featuring it in interactive and or animated media, such as GIFs.

5. Acceptance; Kill Fees. The obligation of Publisher to make payment hereunder is subject to the Artwork being delivered in a timely manner and being satisfactory in form and content to Publisher, as determined solely by Publisher. If requested, you will be required to make revisions. If Publisher rejects the Artwork, you will repay any sums previously received by you under this Agreement and we will make no further use of the Artwork. However, if you have used best professional efforts to produce the Artwork in accordance with Publisher specifications and to revise the Artwork in response to Publisher's requests, but the Artwork is still not acceptable, all rights in the Artwork granted by this Agreement will be returned to you and, if the project is terminated pursuant to this paragraph 5 at the "sketch" stage, you will be entitled to a "kill fee" equal to 35% of the amount listed in paragraph 3, and if the project is terminated pursuant to this paragraph 5 at the final version stage, you will be entitled to a "kill fee" of 50% of the amount listed in paragraph 3.

6. Return of Artwork. You are entitled to the return of physical Artwork you delivered (if any) after the last use thereof. You are responsible for picking it up. Publisher has no responsibility for loss of, or damage to, the physical Artwork, except for its own gross negligence. If you do not pick up the physical Artwork by the end of six months after Publisher no longer requires the physical Artwork, Publisher will have no further responsibility for it.

7. Use of Name. Publisher, and its successors, assigns and licensees, have the right, but not the obligation, to use your name, likeness and biographical information in connection with the Artwork.

8. Warranty and Representations. You hereby warrant and represent that you are the sole owner of all rights in the Artwork and that the Artwork is not in the public domain, will not infringe or violate any copyright or other personal or property right of any person or entity and will not contain any material which is in violation of law. You also warrant and represent that you have full right, power and authority to enter into this Agreement and to grant the rights herein granted and that no conflicting license or assignment or other transfer of rights in the Artwork has been or will be made. You hereby agree to indemnify and hold Publisher and its successors, assigns, licensees, employees, distributors, directors, officers and agents harmless from any and all damages, losses, costs, expenses (including, but not limited to, reasonable attorneys' fees and disbursements), settlements and judgments arising from the falsity of any of the above warranties and representations or from any claim or legal proceeding alleging falsity of any of the above warranties and representations. The foregoing warranties and representations and indemnity shall survive any termination of this Agreement.

9. Miscellaneous. This Agreement, and the rights and liabilities of the parties with respect to this Agreement and its subject matter, shall be governed in all respects by the laws of the State of New York and of the United States applicable therein, without reference to principles of conflicts of law. Each party hereby waives the right to a jury trial in any action arising out of or relating to this Agreement. Since payment hereunder is for a grant of rights, no sales tax is due and you agree that any invoice or bill rendered by you will be prepared accordingly. This is not a services agreement. This Agreement shall not be construed as establishing any employment, partnership, agency or joint venture relationship. Neither party will have any right to bind the other and neither party shall hold itself out as having authority to bind the other. This Agreement constitutes the entire agreement between the parties concerning its subject matter. This Agreement may not be cancelled or modified, nor may any of its provisions be waived, except by a writing signed by the party against whom the cancellation, modification or waiver is to be enforced. The rights granted herein are granted for the full term of copyright in the Artwork (and any extensions, renewals, reversions and continuations thereof) and may be exercised by Publisher and its successors, assigns and licensees. This Agreement is not binding on Publisher unless it is signed below by an authorized individual.

ACCEPTED BY:  _____
[SIGNATURE OF ARTIST/SUPPLIER]

Tom Mendola
[PRINT ARTIST/SUPPLIER NAME]

PUBLISHER:  _____
[EMPLOYEE NAME, TITLE]

[PRINT EMPLOYEE'S NAME AND TITLE]

Dated: _____