

Theartisan.ai - Terms of Use and Privacy Policy

Last updated and effective date: 27.08.2024

1. Introduction

This document outlines the Terms of Use and Privacy Policy (collectively referred to as the "Agreement") for Theartisan.ai, a service provided by Theartisan.ai VOF, a company registered in the Netherlands. This Agreement applies to all users of Theartisan.ai's services, including our website (theartisan.ai) and our physical kiosks located at partner establishments.

By using our services, whether through our website or our kiosks, you agree to be bound by this Agreement. If you do not agree to these terms, please do not use our services.

This Agreement has been drafted to comply with Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016, also known as the General Data Protection Regulation (GDPR), and other applicable EU laws and regulations.

2. Definitions

For the purposes of this Agreement:

"Service" refers to both our website (theartisan.ai) and our physical kiosks. "User" or "you" refers to any individual who uses our Service. "Personal data" means any information relating to an identified or identifiable natural person as defined in Article 4(1) of the GDPR. "Processing" means any operation performed on personal data, as defined in Article 4(2) of the GDPR. "Controller" and "Processor" have the meanings given to them in Article 4(7) and 4(8) of the GDPR respectively.

3. Acceptance of Terms of Use

By accessing or using our Service, you acknowledge that you have read, understood, and agree to be bound by this Agreement. If you are using the Service on behalf of an organization, you agree to these terms on behalf of that organization.

For kiosk users: By using our kiosks, you agree to these terms. Clear signage at each kiosk will direct you to where you can read this Agreement in full.

For website users: By accessing our website, you agree to these terms. You will be prompted to review and accept these terms when creating an account or making a purchase.

We reserve the right to update or modify this Agreement at any time. Any changes will be effective immediately upon posting the updated Agreement on our website and at our kiosks. Your continued use of the Service after any such changes constitutes your acceptance of the new terms.

4. Rules and Conduct

When using our Service, you agree to abide by the following rules:

a) You will only use the Service to create AI-generated images of yourself or others for whom you have explicit consent.

b) You will not use the Service for any unlawful purpose or in any way that violates applicable EU laws and regulations.

c) You will not upload, post, or transmit any content that:

- Infringes on intellectual property rights
- Is defamatory, abusive, or offensive
- Contains nudity or pornography
- Depicts minors without parental consent
- Promotes hate speech or discrimination
- Is false, misleading, or fraudulent

d) You will not attempt to interfere with, disrupt, or gain unauthorized access to our Service or servers.

e) You will not use any automated systems or software to extract data from our Service (data scraping).

f) For kiosk users: You will follow all posted instructions at the kiosk location and treat the equipment with care.

g) For website users: You will maintain the confidentiality of your account credentials and not share your account with others.

Violation of these rules may result in termination of your access to the Service.

5. European Copyright Directive and Intellectual Property Rights

We respect intellectual property rights and comply with the Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market (the "Copyright Directive").

If you believe that content on our Service infringes your copyright or other intellectual property rights, please contact us at legal@theartisan.ai with the following information:

- A description of the copyrighted work or other intellectual property that you claim has been infringed
- A description of where the material that you claim is infringing is located on our Service
- Your contact information
- A statement by you that you have a good faith belief that the disputed use is not authorized by the copyright or intellectual property owner, its agent, or the law
- A statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright or intellectual property owner or authorized to act on the owner's behalf

Upon receiving a valid notice, we will take appropriate action, which may include removing or disabling access to the allegedly infringing content.

We reserve the right to terminate the accounts of users who repeatedly infringe or are repeatedly charged with infringing the intellectual property rights of others.

6. Modification and Changes to the Terms of Use

We may modify this Agreement at any time. We will notify you of any material changes by posting a notice on our website.

If you do not agree to the modified terms, you should discontinue your use of the Service. Your continued use of the Service after the effective date of any changes constitutes your acceptance of the modified terms.

In accordance with GDPR requirements, if we make any changes to how we process your personal data, we will provide clear and explicit notice and, where required, seek your consent before implementing these changes.

7. Trademarks and Patents

All Theartisan.ai logos, marks, and designations are trademarks or registered trademarks of Theartisan.ai VOF. All other trademarks mentioned in connection with our Service are the property of their respective owners.

The trademarks and logos displayed on our website or at our kiosks may not be used without the prior written consent of Theartisan.ai VOF or their respective owners.

Portions, features, and/or functionality of Theartisan.ai's products may be protected under Theartisan.ai VOF patent applications or patents, in accordance with EU and international patent laws.

8. Licensing Terms

Subject to your compliance with this Agreement, we grant you a limited, non-exclusive, non-transferable, and revocable license to access and use our Service for personal or commercial use. This license is subject to the following conditions:

a) For kiosk users:

- You own all rights to the images you create using our kiosks.
- We retain the right to use these images for improving our AI models, as detailed in the "Data Processing" section below.
- You are responsible for obtaining any necessary permissions from individuals depicted in the images.

b) For website users:

- You own all Assets (AI-generated images) you create using our website.

- We retain the right to use these images for improving our AI models, as detailed in the "Data Processing" section below.
- We assign to you all rights, title, and interest in and to such Assets for your personal or commercial use.
- You must download and secure a copy of your Assets before the termination of your account or access to the Service.

c) By using our Service, you grant Theartisan.ai VOF a perpetual, worldwide, non-exclusive, royalty-free, sublicensable license to use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, and display any content you input into our Service (including text prompts and images) for the purposes of providing and improving our Service, and for compliance with applicable laws.

d) You agree that this license is provided without compensation, as your use of the Service is considered sufficient compensation for the grant of rights herein.

e) The license granted to Theartisan.ai VOF survives the termination of this Agreement.

Theartisan.ai VOF reserves all rights not expressly granted under this Agreement.

9. Fees and Payments

Our Service includes both free and paid features. By using our paid features, you agree to the following terms:

a) For kiosk users:

- Fees for printed images will be clearly displayed at each kiosk.
- Payment must be made at the time of use through the provided payment methods.
- In some cases, our partner establishments may collect payments on our behalf.

b) For website users:

- We offer subscription plans and one-time payment options for image generation and all other services such as, but not limited to printing, shipping, and gift wrapping.

- Subscription fees are payable in advance and will automatically renew unless canceled.
- You can cancel your subscription at any time through your account settings or by contacting us at info@theartisan.ai

c) All fees are in Euros and include taxes. For tax collection either we are responsible or if the payment processing is carried out by our partner, tax collection and payment falls on that partner.

d) We use Stripe as our payment processor. By making a payment, you agree to Stripe's terms of service.

e) We do not store your full credit card information. This is handled securely by Stripe.

f) No refunds will be provided for subscription fees already paid, except where required by EU consumer protection laws.

g) We reserve the right to change our pricing at any time. For subscription users, price changes will take effect at the next renewal date.

h) If we are unable to charge your payment method, we may suspend or terminate your access to paid features.

10. Termination

a) You may terminate this Agreement at any time by ceasing to use our Service. For website users, you can also delete your account through your account settings or request deletion by reaching out to info@theartisan.ai with your account ID.

b) We may terminate or suspend your access to our Service immediately, without prior notice or liability, for any reason, including if you breach this Agreement.

c) Upon termination:

- Your right to use the Service will immediately cease.
- For website users, you will lose access to any Assets stored in your account. We recommend downloading your Assets regularly.

- Any fees paid are non-refundable, except as required by EU consumer protection laws.
- Sections of this Agreement that by their nature should survive termination will remain in effect.

11. Indemnification

To the extent permitted by applicable law, you agree to indemnify, defend, and hold harmless Theartisan.ai VOF, its affiliates, officers, directors, employees, and agents from and against any and all claims, liabilities, damages, losses, and expenses, including reasonable attorneys' fees and costs, arising out of or in any way connected with:

a) Your access to or use of our Service; b) Your violation of this Agreement; c) Your violation of any third-party right, including without limitation any intellectual property right or privacy right; d) Any content you submit to our Service.

This indemnification obligation will survive the termination of this Agreement and your use of the Service.

12. Limitation of Liability

To the maximum extent permitted by applicable law:

a) Theartisan.ai VOF and its affiliates, officers, employees, agents, partners, and licensors shall not be liable for any indirect, incidental, special, consequential, or punitive damages, including without limitation, loss of profits, data, use, goodwill, or other intangible losses, resulting from:

- Your access to or use of or inability to access or use the Service;
- Any conduct or content of any third party on the Service;
- Any content obtained from the Service; and
- Unauthorized access, use, or alteration of your transmissions or content.

b) In no event shall our total liability to you for all claims arising from or relating to this Agreement or your use of the Service exceed the amount paid by you, if any, to Theartisan.ai VOF for use of the Service during the 12 months immediately preceding the date of the claim.

c) These limitations do not purport to limit liability that cannot be excluded under applicable law, such as liability for death or personal injury caused by negligence.

13. Disclaimer

Our Service is provided "as is" and "as available" without any warranties, either express or implied, including but not limited to warranties of merchantability, fitness for a particular purpose, non-infringement, or course of performance.

Theartisan.ai VOF and its affiliates do not warrant that: a) The Service will function uninterrupted, secure, or available at any particular time or location; b) Any errors or defects will be corrected; c) The Service is free of viruses or other harmful components; d) The results of using the Service will meet your requirements.

This disclaimer does not affect any warranties which cannot be excluded or limited under applicable law.

14. Age Requirements

Our Service is intended for users who are at least 16 years old, which is the age of digital consent in the Netherlands under the GDPR. If you are under 16, you may only use our Service with the involvement and consent of a parent or guardian.

For kiosk users: If you appear to be under 16, our staff or the staff of our partner establishments may ask for proof of age or parental consent before allowing you to use the kiosk.

For website users: By creating an account or using our Service, you represent and warrant that you are at least 16 years old. If we learn that we have collected personal data from a user under 16 without parental consent, we will take steps to delete that information as soon as possible and terminate their account as per our termination policy.

Parents and guardians: If you allow your child to use our Service, you are responsible for their activity and for ensuring they comply with this Agreement.

15. Data Protection and Privacy

Theartisan.ai VOF is committed to protecting your privacy and complying with the GDPR and other applicable data protection laws. This section outlines how we collect, use, and protect your personal data.

a) Data Protection Officer: Our Data Protection Officer can be contacted at aaron@theartisan.ai

b) Personal Data We Collect:

- For kiosk users: We collect your image when you use our kiosk to create AI-generated images.
- For website users: We collect your name, email address, payment information (processed securely by Stripe), delivery information, and any images you upload.
- For all users: We collect usage data such as IP address, browser type, pages visited, demographic data (such as age, race, gender, images selected), and time spent on our Service.

c) Purpose and Legal Basis for Processing:

- We process your personal data for the following purposes:
 - To provide our Service (performance of a contract)
 - To improve our AI models (legitimate interest)
 - To communicate with you about our Service (legitimate interest)
 - To comply with legal obligations
- Where we rely on legitimate interest to ensure our interests do not override your fundamental rights and freedoms.

d) Data Retention:

- For kiosk users: Your original image is deleted immediately after processing, and no later than 72 hours after collection. AI-generated images are stored for 30 days, after which they are permanently deleted. Storage term might be extended upon partner request.
- For website users: We retain your account information for as long as your account is active. You can request deletion of your account at any time.

e) Data Sharing:

- We do not sell your personal data.
- We may share your data with:
 - Our service providers (e.g., cloud hosting providers) who are bound by data processing agreements
 - Law enforcement agencies when required by law

f) International Transfers:

- Your data is primarily processed within the European Economic Area (EEA).
- If we transfer data outside the EEA, we ensure appropriate safeguards are in place, such as Standard Contractual Clauses approved by the European Commission.

g) Your Rights: Under the GDPR, you have the following rights:

- Right to access your personal data
- Right to rectification of inaccurate data
- Right to erasure ('right to be forgotten')
- Right to restrict processing
- Right to data portability
- Right to object to processing based on legitimate interests
- Right to withdraw consent at any time
- Right to lodge a complaint with a supervisory authority

To exercise these rights, please contact our Data Protection Officer at aaron@theartisan.ai.

h) Data Security: We implement appropriate technical and organizational measures to protect your personal data, including encryption, access controls, and regular security assessments.

i) Cookies and Similar Technologies: Our website uses cookies and similar technologies for functionality, analytics, and advertising purposes. You can manage your cookie

preferences through your browser settings. For more information, please see our Cookie Policy [Insert link].

16. Dispute Resolution

In the event of any dispute arising out of or relating to this Agreement or your use of our Service:

a) We encourage you to contact us first at info@theartisan.ai to try to resolve the issue informally.

b) If we cannot resolve the dispute informally, any dispute, controversy, or claim arising out of or relating to this Agreement, including the validity, interpretation, breach, or termination thereof, shall be resolved by binding arbitration in accordance with the Rules of Arbitration of the Netherlands Arbitration Institute (NAI).

c) The arbitration shall take place in Amsterdam, Netherlands, and shall be conducted in the English language.

d) The arbitration panel shall consist of a single arbitrator appointed in accordance with the NAI Rules.

e) The party initiating the arbitration shall bear the costs of the arbitration, including the arbitrator's fees, unless otherwise determined by the arbitrator. Each party shall bear its own legal fees and costs associated with the arbitration unless the dispute case is deemed frivolous, then the initiating party shall bear Theartisan.ai VOF legal fees.

f) The arbitrator shall have the authority to grant any remedy or relief that would have been available to the parties had the matter been heard in court, including injunctive relief.

g) The arbitrator's decision shall be final and binding on both parties, and judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction.

h) Notwithstanding the foregoing, either party may seek injunctive or other equitable relief from a court of competent jurisdiction in Amsterdam, Netherlands, to prevent the

actual or threatened infringement, misappropriation, or violation of that party's copyrights, trademarks, trade secrets, patents, or other intellectual property rights.

i) This Agreement and any dispute arising out of it will be governed by and construed in accordance with the laws of the Netherlands, without regard to its conflict of law provisions.

j) You agree to waive any right to participate in a class action lawsuit or class-wide arbitration. All claims and disputes within the scope of this arbitration agreement must be arbitrated on an individual basis and not on a class basis.

k) You have the right to opt out of this arbitration agreement. If you do so, neither you nor Theartisan.ai VOF can require the other to participate in an arbitration proceeding. To opt out, you must notify us in writing within 30 days of the date that you first became subject to this arbitration provision. The opt-out notice must state that you do not agree to this arbitration agreement and must be sent to: Hamerstraat 3, 1021 JT Amsterdam.

l) If any portion of this arbitration agreement is found to be unenforceable or unlawful, the remaining portions shall remain in full force and effect.

By agreeing to these terms, you acknowledge that you are waiving your right to a jury trial or to participate in a class action lawsuit.

17. Changes to this Agreement

We may update this Agreement at any time. We will notify you of any changes by posting the new Agreement on this page and updating the "Last updated" date at the top of this Agreement.

For material changes, we will provide additional notice, such as a prominent notice on our website or kiosks, or by sending you an email. We will seek your explicit consent to any changes that require such consent under applicable law.

You are advised to review this Agreement periodically for any changes. Changes to this Agreement are effective when they are posted on this page, unless stated otherwise.

18. Contact Us

If you have any questions about this Agreement, please contact us:

By email: legal@theartisan.ai

By mail: Theartisan.ai VOF, Hamerstraat 3, 1021 JT Amsterdam

19. Severability

If any provision of this Agreement is held to be unenforceable or invalid, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law, and the remaining provisions will continue in full force and effect.

20. Waiver

Except as provided herein, the failure to exercise a right or to require performance of an obligation under this Agreement shall not affect a party's ability to exercise such right or require such performance at any time thereafter, nor shall the waiver of a breach constitute a waiver of any subsequent breach.

21. Assignment

You may not assign, transfer, or sublicense any or all of your rights or obligations under this Agreement without our express prior written consent. We may assign, transfer, or sublicense any or all of our rights or obligations under this Agreement without restriction.

22. Entire Agreement

This Agreement constitutes the entire agreement between you and Theartisan.ai VOF regarding your use of the Service and supersedes all prior and contemporaneous written or oral agreements between you and Theartisan.ai VOF.

You acknowledge that, in entering into this Agreement, you have not relied on any representations, undertakings or promises given by or implied from anything said or written in negotiations between us prior to this Agreement except as expressly stated in this Agreement.