

# Shell Cases, LLC

## Service Agreement and Privacy Policy

### Introduction

Shell Cases, LLC ("**Shell**" or "**We**") enables artists to earn money from their artwork by making it available for sale on cell phone cases without giving up control of their rights. When you post your work to the Shell Cases website (www.shellcases.com), it will be publicly available for viewing and for sale.

Please read these terms of service (the "**Terms**") and Shell's Privacy Policy carefully. Before you sell through the Shell, you must agree to our Terms and Privacy Policy. These Terms and the Privacy Policy are a legal agreement between you and Shell. Submitting your artwork for sale on Shell, indicates that you agree to all of our terms and conditions and our Privacy Policy.

"**Shell Services**" means the process of selling cell phone cases through the shellcases.com website.

"**You**" means you individually, and if you are accepting these Terms on behalf of a company or other legal entity, that legal entity. You represent and warrant that you are at least 18 years of age and, if you are entering into these Terms on behalf of a company or other legal entity, you have the authority to bind such legal entity. IF YOU DO NOT MEET THESE REQUIREMENTS OR DO NOT AGREE TO THESE TERMS OR THE PRIVACY POLICY, YOU MAY NOT CREATE AN ACCOUNT OR USE SHELL SERVICES.

### Content, Copyright & Intellectual Property Policies

#### **Content**

You understand that all information, images, pictures, data, text, music, sound, photographs, graphics, video, messages, or other materials submitted, posted, published, displayed, performed, or offered for sale through the Shell Services ("**Content**"), whether publicly posted or privately transmitted, is protected by copyright and other intellectual property rights.

Shell does not prescreen Content or Products and is not responsible for examining or evaluating any Content or Products offered through the Shell Cases website, including without limitation, their accuracy, usefulness, or safety, or for determining whether the party offering the Content or Products for sale has obtained all required rights to do so. Without limitation of the foregoing, while we try to offer reliable data, we cannot promise that the Content on the Site will always be accurate and up-to-date. You further understand and acknowledge that you may be exposed to Content that is offensive, indecent or objectionable and that we may not be able to confirm the identity of other registered users or prevent them from acting under false pretenses or in a manner that infringes the rights of any person.

## Your Content

As between you and Shell, you own all and retain all rights in your Content (hereafter, "Artist Content"). You hereby grant Shell and its affiliates a worldwide, royalty-free, nonexclusive, assignable license (provided, that, prior to any such assignment, such assignee must agree, in advance and in writing, to abide by the terms and conditions contained in this Agreement), with right of sublicense, to use, publicly display and publicly perform, publish, reproduce, modify, and distribute Artist Content in any format or medium now known or later developed for the sole and limited purpose of promoting Artist Content, producing and promoting your Products (hereafter, "Artist Product"), and providing the other Shell Services to you. Notwithstanding anything to the contrary contained herein, the parties hereto specifically agree that Shell will not use any Artist Content or Artist Product for any commercial purposes other than as directed by Artist in writing.

YOU, AND NOT SHELL, ARE ENTIRELY RESPONSIBLE FOR ALL ARTIST CONTENT THAT YOU MAKE AVAILABLE AND ALL ARTIST PRODUCT THAT YOU OFFER FOR SALE THROUGH THE SHELL SERVICES, INCLUDING WITHOUT LIMITATION, THAT YOU OWN OR HAVE OBTAINED ALL REQUIRED INTELLECTUAL PROPERTY AND OTHER RIGHTS IN ARTIST CONTENT, INCLUDING WITHOUT LIMITATION, THE RIGHT TO MANUFACTURE, DISTRIBUTE AND SELL PRODUCTS THAT INCLUDE ARTIST CONTENT.

You represent and warrant that:

1. You own all intellectual property rights in Artist Content or that you have obtained all copyrights, trademark rights, rights of publicity and other rights required for you to make Artist Content available through the Shell Services, to manufacture, distribute and sell Artist Product that include Artist Content and to grant Shell the rights granted to it in these Terms;
2. Artist Content and the manufacture, distribution and sale of Artist Product that include Artist Content does not and will not infringe the intellectual property rights or other rights of any person or entity, including without limitation any copyright, moral rights, trademark, patent, right of publicity or right of privacy;
3. You will review and comply with these Terms, the Privacy Policy, all other rules, policies and procedures that Shell may publish from time to time and all applicable laws, rules and regulations;
4. Artist Content does not contain material that is false, inaccurate, misleading, incomplete, defamatory or libelous, harassing, threatening, harmful, invasive of privacy, in violation of anyone's rights, including their privacy or publicity rights, abusive or inflammatory;
5. Artist Content is accurate, is not misleading or deceptive and does not offer or disseminate fraudulent goods, products, services, schemes, or promotions.

Shell reserves the right to prescreen Artist Content (but has no obligation to do so), to review and remove Artist Content from the Site, to suspend or cancel your account, and to cancel the Shell Services provided to you at any time in its sole discretion. Shell has a zero tolerance policy for intellectual property infringement. If you submit Artist Content or offer Artist Product for sale that Shell, in its sole good faith discretion, believes may infringe another party's intellectual property rights, Shell may immediately terminate your account, in addition to any other remedies it may have.

**Procedure for Reporting Infringements of Copyright under the Digital Millennium Copyright Act, 17 U.S.C. 512 ("DMCA") or Infringements of Other Intellectual Property Rights:**

Shell has a zero tolerance policy for infringement of copyrights and other intellectual property rights. If you believe in good faith that any Content or Products made available through the Shell Services infringes upon your intellectual property rights, you may submit a notice of claimed infringement to us (a "NOCI") by providing the following information in writing to our designated Intellectual Property Rights Agent (listed below) ("**Designated Agent**"):

1. A physical or electronic signature of a person authorized to act on behalf of the owner of the copyright or other intellectual property right that has been allegedly infringed;
2. Identification of the works claimed to have been infringed, or if this is a single notification of a copyright infringement claim covering multiple copyrighted works on the Site, as permitted under the Digital Millennium Copyright Act, 17 U.S.C. 512 ("DMCA"), a representative list of such works on the Site;
3. Identification of the Content or Product that is claimed to be infringing or to be the subject of infringement activity and that is to be removed or access to which is to be disabled, including information reasonably sufficient to permit Shell to locate the material;
4. Information reasonably sufficient to permit us to contact the complaining party, including address, telephone number and e-mail address;
5. A statement that the complaining party has a good faith belief that the use of the Content or Product is not authorized by the copyright owner or other intellectual property rights owner, its agent, or the law; and
6. A statement made under penalty of perjury that the information in the NOCI is accurate and that the complaining party is authorized to act on behalf of the owner of the exclusive right that is allegedly infringed.

Shell's Designated Agent:

**Shell Cases, LLC**

Attention: Intellectual Property Rights Agent  
1005 Alderman Drive, Suite 205  
Alpharetta, GA 30004 / 770-954-7408  
[angela@shellcases.com](mailto:angela@shellcases.com)

You acknowledge that if you fail to comply with all of the above notice requirements of this Section, your NOCI may not be valid.

When a complete and proper NOCI is received by the Designated Agent, it is Shell's policy to act expeditiously and to investigate the claim and take appropriate action, as determined by us in good faith and in our sole discretion. Such action may include without limitation: (1) removing or disabling access to the Content, Product or other material identified in the NOCI; (2) notifying the applicable Shell user that we have removed or disabled access to such material; (3) cancelling orders for Products that include the Content identified in the NOCI; or (4) terminating such Shell user's account.

## **Payments and Services**

When we sell a cell phone case with one of your designs, we agree to pay you 30% of the sales price, less returns, and discounts resulting from promotions as agreed jointly by you and Shell, in writing, from time to time. We agree to make payments to you on a monthly basis, within fifteen (15 days) of the end of each calendar month.

## **Disclaimer of Warranties and Liability**

THE SHELL SERVICES ARE PROVIDED "AS IS", "AS AVAILABLE", AND WITH ALL FAULTS. WE CANNOT GUARANTEE CONTINUOUS OR SECURE ACCESS TO OR THAT THE SHELL

SERVICES WILL BE ERROR FREE OR THAT ALL TRANSACTIONS WILL BE COMPLETED, THE OPERATION OF THE SHELL SERVICES MAY BE INTERFERED WITH BY NUMEROUS FACTORS OUTSIDE OF OUR CONTROL. ACCORDINGLY, TO THE EXTENT LEGALLY PERMITTED, WE DISCLAIM ALL EXPRESS AND IMPLIED WARRANTIES, TERMS AND CONDITIONS, INCLUDING, BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY OF INFORMATION, QUIET ENJOYMENT, NONINFRINGEMENT, TITLE, OR FITNESS FOR A PARTICULAR PURPOSE. YOU ASSUME ALL RISKS ASSOCIATED WITH YOUR USE OF THE SHELL SERVICES.

WE ARE NOT AND SHALL NOT BE LIABLE FOR DIRECT, INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, OR ANY OTHER DAMAGES WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, ANY LOSS OF MONEY OR PROFITS, GOODWILL, DATA, CONTENT OR REPUTATION, OR ANY PROPERTY DAMAGE OR PERSONAL INJURY WITHOUT REGARD TO THE FORM OF ACTION (INCLUDING, BUT NOT LIMITED TO, CONTRACT, NEGLIGENCE, OR OTHER TORTIOUS ACTIONS) ARISING OUT OF OR IN CONNECTION WITH YOUR USE OF THE SHELL SERVICES, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES. YOU WAIVE ANY AND ALL CLAIMS, NOW KNOWN OR LATER DISCOVERED, THAT YOU MAY HAVE AGAINST US ARISING OUT OF YOUR USE OF THE SHELL SERVICES.

REGARDLESS OF THE PREVIOUS PARAGRAPH, IF WE ARE FOUND TO BE LIABLE, OUR LIABILITY TO YOU OR TO ANY THIRD PARTY IS LIMITED TO THE GREATER OF (I) THE TOTAL FEES YOU PAID TO US IN THE 12 MONTHS PRIOR TO THE ACTION GIVING RISE TO THE LIABILITY, AND (II) \$100.

SOME JURISDICTIONS DO NOT ALLOW THE DISCLAIMER OF WARRANTIES OR EXCLUSION OF DAMAGES, SO SUCH DISCLAIMERS AND EXCLUSIONS MAY NOT APPLY TO YOU. IN SUCH JURISDICTIONS, THE SCOPE AND DURATION OF OUR WARRANTIES AND THE EXTENT OF OUR LIABILITY WILL BE THE MINIMUM PERMITTED UNDER SUCH APPLICABLE LAW.

## **Trademarks**

If you use any of our trademarks in reference to our products or services, you must include a statement attributing that trademark to us and must comply with our guidelines regarding the use of our trademarks. You must not use any of our trademarks in or as the whole or part of your own trademarks; in connection with activities, products or services which are not ours; in a manner which may be confusing, misleading or deceptive; or in a manner that disparages us or our information, products or services (including the Shell Services).

## **Privacy**

We use your information only as described in our Privacy Policy. We view protection of users' privacy as very important. You can access and modify the information you provide us and choose not to receive certain communications by signing-in to your account and changing your account preferences or opting-out of certain communications. If you object to your information being transferred or used in the manner provided for in the Shell Privacy Policy sole recourse is to stop using the Shell Services.

## **Termination Of Account**

Shell may suspend or terminate your access to all or any part of the Shell Services or your account at any time, with or without cause, with or without notice, effective immediately. Without limitation of the

foregoing, Shell may terminate your access to the Shell Services if you are determined to be, in Shell's sole good faith discretion, a repeat infringer of these Terms. Shell may, but shall not be obligated to, give you one warning if you have violated these Terms prior to terminating your account.

On termination of these Terms for any reason, the rights and licenses granted by the parties hereunder will immediately terminate, except with respect to those certain provisions of these Terms that by their nature and context are intended to survive termination, shall survive, including, without limitation, the following provisions: Content, Copyright & Intellectual Property Policies, Account Information, Disclaimer of Warranties and Liability, Release, Linked Websites, Access and Interference, Privacy, Indemnity, No Agency, Ability to Accept Terms, Notices, Resolution of Disputes, and General. Shell shall have no liability to you for any damages, loss of profits or other claims arising from the termination or suspension of your access to the Shell Services or your account unless: (i) Shell has terminated this Agreement in bad faith; (ii) Shell has distributed Artist Content and/or Artist Product in violation of the terms and conditions contained in this Agreement; and/or (iii) Shell has otherwise materially breached this Agreement.

Without limitation of the foregoing, Shell shall have the right to retain copies of your Content in its archives for its internal business purposes and legal purposes.

## **Modifications To The Shell Services And Terms**

Shell reserves the right to monitor, modify or discontinue the Shell Services, and to block, modify, publicly comment on, or delete any Content submitted to the Shell Services by any party, at any time without notice in its sole good faith discretion; provided however, that Shell has no obligation to update, store, maintain or correct any information or Content on the Shell Services.

Shell reserves the right, at any time and in its sole discretion, to change these Terms, including the Privacy Policy, in whole or in part, by notifying you as described in the Notice provisions below. You are responsible for reviewing and complying with these Terms, including the Privacy Policy, in effect at the time you use the Shell Services. You acknowledge that you will be bound by the revised Terms, including the Privacy Policy, as of their effective date set forth therein and your continued use of the Shell Services constitutes acceptance of them.

## **Indemnity**

Each party hereto will indemnify and hold the non-breaching party (and their officers, directors, agents, subsidiaries, joint ventures and employees) harmless from and against any and all claims, demands, liabilities, damages, losses, fines, and expenses (including but not limited to, reasonable attorneys' fees and other reasonably professional fees and costs of investigation), arising from or in any way related to (a) Artist Content or your use of the Shell Services, including without limitation, your sale of any Artist Products; (b) either party's (including, anyone using your account's) breach of these Terms; or (c) either party's violation of any law or the rights of any third party, including without limitation, any intellectual property rights or privacy rights. The breaching party may not settle any claim in any manner that binds the non-breaching party without our express prior written consent of the non-breaching party. Notwithstanding anything to the contrary contained herein, no liability shall attach hereunder until such claims, demands, etc., shall have been litigated and a final non-appealable judgment from a court of competent jurisdiction has been rendered and/or such case has been settled with the breaching party's consent. If you are the breaching party, until such claim has been finally adjudicated or settled, Shell may withhold any amounts otherwise due to you as shall be reasonably commensurate with Shell's potential liability under such claim. Monies withheld shall be held in an interest bearing bank account. Upon the final adjudication or settlement of such claim, Shell shall, after deducting its actual out of pocket expenses (including reasonable attorneys' fees and costs) incurred in connection therewith, disburse all funds held by Shell in accordance with the terms of any settlement, judgment or other disposition thereof. Any such withholding by Shell in accordance with the foregoing shall be released in respect of any particular claim unless litigation is

instituted in connection therewith by not later than the close of the semi-annual accounting period next following the accounting period during which such amounts shall have been withheld by Shell. Shell shall consider in good faith your request to post a bond in favor of Shell to cover Shell's potential liability as an alternative to withholding monies as provided above.

## **No Agency**

No agency, partnership, joint venture, employee-employer or franchiser-franchisee relationship is intended or created by this Agreement.

## **Resolution Of Disputes**

If a dispute arises between you and Shell, you and Shell agree that the parties will resolve any such claim (a "**Claim**") in accordance with one of the subsections below or as Shell and you otherwise agree in writing. Before resorting to these alternatives, we strongly encourage you to first contact us directly to seek a resolution. We will consider reasonable requests to resolve the dispute through alternative dispute resolution procedures, such as mediation or arbitration, as alternatives to litigation. You agree that regardless of any statute or law to the contrary, any claim or cause of action that you may have arising out of or related to these Terms or your use of the Shell Services must be filed within three (3) years after the claim or cause of action arose.

**Law and Forum for Disputes** - These Terms shall be governed in all respects by the laws of the State of Georgia as they apply to agreements entered into and to be performed entirely within the State of Georgia, without regard to conflict of law provisions. You agree that any claim or dispute you may have against Shell must be resolved by a court located in the state of Georgia, except as otherwise agreed by the parties or as described in the Arbitration Option paragraph below. You agree to submit to the personal jurisdiction of the courts located within the state of Georgia for the purpose of litigating all such claims or disputes and waive any objection to such jurisdiction.

**Arbitration Option** - For any claim (excluding claims for injunctive or other equitable relief) where the total amount of the award sought is less than \$10,000, the party requesting relief may elect to resolve the dispute in a cost effective manner through binding non-appearance-based arbitration. In the event a party elects arbitration, it shall initiate such arbitration through an established alternative dispute resolution ("**ADR**") provider mutually agreed upon by the parties. The ADR provider and the parties must comply with the following rules: a) the arbitration shall be conducted by telephone, online and/or be solely based on written submissions (the specific manner shall be chosen by the party initiating the arbitration); b) the arbitration shall not involve any personal appearance by the parties or witnesses unless otherwise mutually agreed by the parties; and c) any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction.

**Improperly Filed Claims** - All claims must be resolved in accordance with this Resolution of Disputes Section. All claims filed or brought contrary to the Resolution of Disputes Section shall be considered improperly filed.

## **General**

If any provision of these Terms is held to be invalid or unenforceable, such provision shall be struck and the remaining provisions shall be enforced. You may not assign or transfer your rights or obligations under these Terms. Any purported transfer or assignment in violation of the foregoing will be invalid. We may assign these Terms and our rights and obligations under them upon notice to you in accordance with the Notices Section. Headings are for reference purposes only and do not limit the scope or extent of such

section. Our failure or delay to exercise or enforce any right or provision of these Terms or any rights under applicable law shall not constitute a waiver of any of those provisions or rights.

These Terms may not be otherwise amended except in a writing signed by you and Shell. These Terms, including without limitation, the Privacy Policy which is incorporated herein by reference, set forth the entire understanding and agreement between you and Shell with respect to the subject matter hereof.

## **SHELL CASES, LLC**

### **Privacy Policy**

#### **SECTION 1 - WHAT DO WE DO WITH YOUR INFORMATION?**

When you purchase something from our store, as part of the buying and selling process, we collect the personal information you give us such as your name, address and email address.

When you browse our store, we also automatically receive your computer's internet protocol (IP) address in order to provide us with information that helps us learn about your browser and operating system.

Email marketing (if applicable): With your permission, we may send you emails about our store, new products and other updates.

#### **SECTION 2 - CONSENT**

How do you get my consent?

When you provide us with personal information to complete a transaction, verify your credit card, place an order, arrange for a delivery or return a purchase, we imply that you consent to our collecting it and using it for that specific reason only.

If we ask for your personal information for a secondary reason, like marketing, we will either ask you directly for your expressed consent, or provide you with an opportunity to say no. Notwithstanding anything to the contrary contained herein, Shell hereby agrees that Shell has no right to use your name and/or likeness and/or biography, except as specifically granted by you herein in writing and only as the same relates to the sale and promotion of Artist Content and Artist Product.

How do I withdraw my consent?

If after you opt-in, you change your mind, you may withdraw your consent for us to contact you, for the continued collection, use or disclosure of your information, at anytime, by contacting us at [angela@shellcases.com](mailto:angela@shellcases.com) or mailing us at:

Shell Cases, LLC

1005 ALDERMAN DRIVE, SUITE 205 ALPHARETTA, GA 30005

### **SECTION 3 - DISCLOSURE**

We may disclose your personal information if we are required by law to do so.

### **SECTION 4 - SHOPIFY**

Our store is hosted on Shopify Inc. They provide us with the online e-commerce platform that allows us to sell our products and services to you.

Your data is stored through Shopify's data storage, databases and the general Shopify application. They store your data on a secure server behind a firewall.

Payment:

If you choose a direct payment gateway to complete your purchase, then Shopify stores your credit card data. It is encrypted through the Payment Card Industry Data Security Standard (PCI-DSS). Your purchase transaction data is stored only as long as is necessary to complete your purchase transaction. After that is complete, your purchase transaction information is deleted.

All direct payment gateways adhere to the standards set by PCI-DSS as managed by the PCI Security Standards Council, which is a joint effort of brands like Visa, MasterCard, American Express and Discover.

PCI-DSS requirements help ensure the secure handling of credit card information by our store and its service providers.

For more insight, you may also want to read Shopify's Terms of Service [here](#) or Privacy Statement [here](#).

### **SECTION 5 - THIRD-PARTY SERVICES**

In general, the third-party providers used by us will only collect, use and disclose your information to the extent necessary to allow them to perform the services they provide to us.

However, certain third-party service providers, such as payment gateways and other payment transaction processors, have their own privacy policies in respect to the information we are required to provide to them for your purchase-related transactions.

For these providers, we recommend that you read their privacy policies so you can understand the manner in which your personal information will be handled by these providers.

In particular, remember that certain providers may be located in or have facilities that are located a different jurisdiction than either you or us. So if you elect to proceed with a transaction that involves the services of a third-party service provider, then your information may become subject to the laws of the jurisdiction(s) in which that service provider or its facilities are located.

As an example, if you are located in Canada and your transaction is processed by a payment gateway located in the United States, then your personal information used in completing that transaction may be subject to disclosure under United States legislation, including the Patriot Act.

Once you leave our store's website or are redirected to a third-party website or application, you are no longer governed by this Privacy Policy or our website's Terms of Service.

### Links

When you click on links on our store, they may direct you away from our site. We are not responsible for the privacy practices of other sites and encourage you to read their privacy statements.

## **SECTION 6 - SECURITY**

To protect your personal information, we take reasonable precautions and follow industry best practices to make sure it is not inappropriately lost, misused, accessed, disclosed, altered or destroyed.

If you provide us with your credit card information, the information is encrypted using secure socket layer technology (SSL) and stored with a AES-256 encryption. Although no method of transmission over the Internet or electronic storage is 100% secure, we follow all PCI-DSS requirements and implement additional generally accepted industry standards.

## **SECTION 7 - COOKIES**

Here is a list of cookies that we use. We've listed them here so you that you can choose if you want to opt-out of cookies or not.

`_session_id`, unique token, sessional, Allows Shopify to store information about your session (referrer, landing page, etc).

`_shopify_visit`, no data held, Persistent for 30 minutes from the last visit, Used by our website provider's internal stats tracker to record the number of visits

`_shopify_uniq`, no data held, expires midnight (relative to the visitor) of the next day, Counts the number of visits to a store by a single customer.

`cart`, unique token, persistent for 2 weeks, Stores information about the contents of your cart.

`_secure_session_id`, unique token, sessional

`storefront_digest`, unique token, indefinite If the shop has a password, this is used to determine if the current visitor has access.

## **SECTION 8 - AGE OF CONSENT**

By using this site, you represent that you are at least the age of majority in your state or province of residence, or that you are the age of majority in your state or province of residence and you have given us your consent to allow any of your minor dependents to use this site.

## **SECTION 9 - CHANGES TO THIS PRIVACY POLICY**

We reserve the right to modify this privacy policy at any time, so please review it frequently. Changes and clarifications will take effect immediately upon their posting on the website. If we make material changes to this policy, we will notify you here that it has been updated, so that you are aware of what information we collect, how we use it, and under what circumstances, if any, we use and/or disclose it.

If our store is acquired or merged with another company, your information may be transferred to the new owners so that we may continue to sell products to you.

## **QUESTIONS AND CONTACT INFORMATION**

If you would like to: access, correct, amend or delete any personal information we have about you, register a complaint, or simply want more information contact our Privacy Compliance Officer at [angela@shellcases.com](mailto:angela@shellcases.com) or by mail at

Shell Cases, LLC  
[Re: Privacy Compliance Officer]  
1005 ALDERMAN DRIVE, SUITE 205 ALPHARETTA, GA 30005

Accepted by:

Name: \_\_\_\_\_

Company: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_