

The following document is AN EXAMPLE ONLY, intended to help you better understand the kind of provisions typically included in this type of agreement. It is not intended as a substitute for consulting with an experienced attorney and receiving legal advice based on the facts and circumstances of a particular case. It also does not necessarily represent the only possible way to structure the business relationship or the range of deal terms that might be available in a particular situation.

It is important to remember that just as every transaction is unique, so is the proper structure of the agreement documenting that transaction. Rarely does a so-called “standard” or “boilerplate” legal form fit the particular needs of the parties to a transaction. When a party says their contract is “standard” what they usually mean is that it is in a format that they are accustomed to using. There is some value in starting from a common ground, but never assume that a “standard” contract is not negotiable. It is all too common for parties to employ a “standard” form agreement without carefully considering the implications of its terms or its failure to address critical issues until a dispute arises. There are those who believe that the process of negotiating the terms of agreements is tedious and is a waste of time and money – they often try to cut corners by employing “standard” forms. However, in our experience the process of careful drafting and thorough negotiation is as valuable (or more so) than the final product. Those who take the time to clearly discuss their expectations, and to memorialize those expectations in a written agreement, forge stronger relationships and are much less likely to find themselves in a dispute later on.

ARTIST-GALLERY CONSIGNMENT AGREEMENT

THIS AGREEMENT is made as of this ____day of _____, 200_, between _____ residing at _____, _____ (hereinafter referred to as the "Artist"), and _____ (hereinafter referred to as the "Gallery"). The artworks consigned at any time pursuant to this Agreement are hereinafter collectively referred to as the "Works" or "Work." Throughout this Agreement, the terms "Works" and "Work" refer exclusively to the specific works the Artist agrees to consign to the Gallery.

WITNESSETH:

WHEREAS, the Artist is in the business of creating works of art and the Gallery is in the business of selling works of art; and

WHEREAS, the parties hereto wish to enter into a business relationship for the sale by Gallery of works of art created by Artist.

NOW, THEREFORE, in consideration of these premises, and of the mutual promises and undertakings set forth below, the parties hereto agree as follows:

1. Delivery of Work. From time to time while this Agreement is in effect, the Artist may select Works for consignment from her studio, which the Gallery may agree to accept on consignment at its option. [Further description may be advisable, such as if the Works will be delivered framed or unframed and, if so, who will pay for framing.]

[Alternative 1. Exclusive Agent; Purposes. The Artist hereby appoints the Gallery, and the Gallery hereby accepts such appointment, to serve as the sole and exclusive agent and representative of the Artist with respect to Works created by the Artist, and consigned under this Agreement, for the purpose of exhibition and sale [to limit exclusivity to a specific geographic territory – in the following territory: _____.] The Gallery shall not permit the Works to be used for any other purposes without the written consent of the Artist. This Agreement applies only to works consigned under this Agreement and does not make the Gallery a general agent for any other works.

[If a gallery exhibition is planned, add the following subsection – Gallery Exhibition. The Artist and Gallery desire to exhibit the Artist's Works in the context of an exhibition to be housed in the Gallery's space from _____, 200_ through _____, 200_ (the "End Date"). The Gallery shall be open in accordance with the time schedule attached hereto as Schedule _____. Artist shall have access to the Gallery with prior consent, for preparations, storage of Exhibit pieces, if required, one week before the opening and shall have ___ business days after the exhibition closes to remove the Works from the Gallery. Decisions as to disposition of the Works not removed by that time will be made solely by the Gallery, including risk of loss, costs for storage, maintenance and additional insurance, all chargeable to the Artist.]

2. Duration of Consignment. The Artist and the Gallery agree that the initial term of consignment for the Works is to be _____ (__) months, commencing on _____ and terminating on _____. Thereafter, the Artist and Gallery may agree on extending the duration of consignment in a written, signed agreement.

3. Fiduciary Relationship; Notice of Consignment. The parties agree that the Gallery, as agent for the Artist, has a fiduciary relationship to the Artist and owes a duty to the Artist to deal fairly and honestly, to care prudently for and to manage the business affairs for the Artist on sales and commissions, including a good faith effort to promote and sell the Works with clear identification of the Artist's name on all Works, and to account periodically and disclose promptly all information relevant to the Gallery's representation of the Artist. The Gallery shall give notice, by means of a clear and conspicuous sign in full public view at the point of sale or other appropriate location that certain works of art in the Gallery are being sold subject to a contract of consignment. Title to each of the Works consigned to the Gallery shall remain in the Artist until the Artist has been paid the full amount owing from the sale of the Work, on which title will pass directly to the purchaser of the Work. All proceeds from the sale of any of the Works, less commissions due the Gallery hereunder, shall be held by the Gallery in trust for Artist. The Gallery shall pay all amounts due the Artist before any proceeds of sales can be made available to creditors of the Gallery.

4. Consignment. The Artist hereby consigns to the Gallery, and the Gallery accepts on consignment, those Works listed on the attached Inventory Sheet, which is part of this Agreement. Additional Inventory Sheets may be incorporated into this Agreement at such time as both parties agree to the consignment of other works of art. All Inventory Sheets shall be signed by the Artist and Gallery and shall include a description of and agreed "Value" for each Work consigned. The Gallery's authority to sell any Work is conditioned upon payment of the Artist's share of any sale (see Clause 8). In selecting a public offering or retail price, the Gallery may increase the price at its discretion to not more than 10% above the Inventory Sheet Value. [If discounts are acceptable – In making any sale, the Gallery at its discretion may discount the actual sales price to members of the trade (such as interior decorators, designers, and art dealers), collectors of the Artist's Work, and purchasers of more than one piece of the Artist's Work by not more than 10% from the Inventory Sheet Value. No discount in excess of 10% will be offered or granted without the express prior approval of the Artist.] [Alternative discount language – In making any sale, the Gallery at its discretion may discount the actual sales prices without prior approval of the Artist so long as Gallery absorbs any discounts over 10% from the Inventory Sheet Value.] [It may be advisable to include terms of sale – including the exact language to be contained in each Bill of Sale and/or Certificate of Authenticity (including whether copyright is being sold along with the work). A form Bill of Sale and/or Certificate of Authenticity could be attached as an exhibit.]

5. Warranty. The Artist hereby warrants that the Artist possesses sole unencumbered title to the Works, that the Works are original and do not infringe upon the work of any other person, that the Works are free of all liens, and that their descriptions are true and accurate. This warranty will survive termination of this Agreement and the Artist agrees to hold the Gallery harmless against any cost resulting from a breach of this warranty. Furthermore, the Artist warrants to the Gallery that the Artist shall not, during the term of this Agreement, grant any lien or security interest in the Work to any other person or entity or encumber the Work in any manner, or permit or allow such lien, security interest, or encumbrance to remain against the Work.

6. Transportation Responsibilities. Packing and shipping charges, insurance costs, other handling expenses, and risk of loss or damage incurred in the delivery of Works from the Artist to the Gallery and from the Gallery to the Artist shall be the responsibility of [the Gallery/Artist]. Similarly, any unsold work shall be returned to the Artist, at the expense of [the Gallery/Artist], at the same studio address no later than 15 days from any demand for return.

7. Responsibility for Loss or Damage; Insurance Coverage. The Gallery shall be responsible for the safekeeping of all Works while they are in its custody, including from the time the Works leave the Artist's studio or storage facility up to and until each work is returned to the Artist in the condition delivered or until full payment is made for that Work. The Gallery shall be strictly liable to the Artist for their loss or damage (except for damage resulting from flaws inherent in the Works) to the full amount the Artist would have received from the Gallery if the Works had been sold. In this regard, the Gallery covenants that the Works will be insured against all risk for their full value under the Gallery's fine arts insurance policy. Any and all insurance proceeds on account of any casualty will be paid to the Artist. A determination of the condition of the Work at the time of delivery to the Gallery will be made by the Gallery and if any damage or defect is observed, a written report must be sent to the Artist within seven (7) days from delivery. The Gallery shall provide the Artist with all relevant information about its insurance coverage for the Works if the Artist requests this information.

8. Termination. The consignment of any Works and/or this entire Agreement and all outstanding consignments shall terminate upon the death of the Artist, or may be terminated by either the Artist or the Gallery at any time, on [30] days' prior written notice to the other, at the sole discretion of either party except that the Artist agrees not to terminate earlier than three months from delivery of the first consigned work.

Upon the event of termination, the Gallery shall [have thirty (30) days to sell the Artist's Works and] to deliver all unsold Works held under this Agreement to the Artist and shall account for all Works sold or delivered on an approval basis, with all such Works and all payments for Works subject to this Agreement to be delivered or paid to Artist within thirty (30) days following termination.

Upon any event of termination, the Gallery shall allow the Artist access to all photographs, transparencies, catalogs, and other materials pertaining in any way to the Artist or the Artist's Works. Such access shall be allowed in such manner to allow the Artist to duplicate any such materials at the Artist's expense. The Artist shall have access to such materials for as long as the Gallery remains in business and the Gallery agrees not to dispose of such materials without first offering them to the Artist [at cost].

9. Commission to Gallery. The Gallery shall be entitled to receive a commission for the sale of any consigned Works in an amount equal to fifty percent (50%) of the Gallery's receipts from such sale in excess of the Artist's Direct Costs for the Works sold. A "sale" shall be deemed to have taken place when a buyer makes a first payment on the Artist's Work. Thereafter, the Gallery assumes full risk for the failure to pay fully on the part of any purchaser to whom it has sold a Work. The term "Direct Costs" shall mean the Artist's out-of-pocket costs in creating a particular Work, including without limitation, costs of materials, fabrication, and labor (other than that of the Artist). The Artist agrees to supply the Gallery with a statement in reasonable detail of such Direct Costs for each Work prior to the time that the Work is placed on sale with the Gallery. The commission referred to in this paragraph shall be considered earned by the Gallery only when such Direct Costs have been credited to Artist's Sales Account as described in paragraph 6 below and when the sales proceeds are actually received by the Gallery. The remaining fifty percent (50%) of the sales proceeds in the excess of the Artist's Direct Costs shall be credited to the Artist's Sales Account as described in paragraph 10 below.

10. Artist's Sales Account. The Gallery shall maintain an Artist's Sales Account in order to keep a record of monies due the Artist from the Gallery. Upon the sale by the Gallery of any of the Artist's Works, the Gallery shall first credit the Artist's Sales Account with the Direct Costs for the work of art sold. The Gallery shall then credit the Artist's Sales Account with fifty percent (50%) of the Gallery's receipts from such sale over such Direct Costs. The Artist, the Artist's attorney, and Artist's accountant shall have the right to inspect the Artist's Sales Account and other books and records of the Gallery relating to the sale of the Artist's Works from time to time during normal business hours upon the Artist's giving the Gallery [three (3)] days written notice. The Artist, Artist's attorney, and Artist's accountant shall maintain in strict confidence all information relating to the Gallery obtained in the course of such inspection.

11. Payments to Artist. The Gallery shall [at the end of each calendar month] pay to the Artist any balance in the Artist's Sales Account.

12. Expense of Sales.

The Gallery shall pay all of the Gallery's costs and expenses in connection with the sale of the Artist's Works, including without limitation all costs and expenses for all catalogs, photographs, advertising, framing, preview, display, promotion and openings, and such expenditures to be within the sole discretion of the Gallery. [It may be advisable to place limits on promotional expenses or to require Artist's approval. Agreeing on a promotional budget is one way to accomplish this.]

In order to promote sales, and for the purpose of advertisement and promotion, the Gallery shall have the right to use and publish the name, likeness, and biography of the Artist and to reproduce and distribute material incorporating photographs of the Artist's Works. The Gallery shall have the right to sell and retain the proceeds from the sale of catalogs produced by it, but shall not sell any other items referred to in this paragraph without the prior written approval of the Artist. The Artist shall cooperate with the Gallery in such advertising and promotional efforts. [These terms are negotiable – it may be advisable to place restrictions on what may be included in a catalogue or to share revenues from catalogue sales in some situations. Artist may also want to request free copies of any catalogue containing his or her work].

The Gallery agrees that no amount expended by it under this paragraph shall be deducted from the amount due the Artist pursuant to the Artist's Sales Account.

13. Gifts and Exchanges. The Artist may, from time to time, make a reasonable number of gifts of the Artist's Works to anyone of the Artist's choice. The Artist may also make a reasonable number of exchanges of the Artist's Works for services or with other artists. The Artist shall promptly notify the Gallery about any such gift or exchange and provide sufficient information to permit the Gallery to keep accurate records of the Artist's Works. [This clause is only applicable in exclusive agency relationships and is negotiable.]

14. Shows. During any two-year period of this Agreement, the Gallery shall arrange, at its own expense, for at least one exhibition and show of the Artist's Works at the Gallery's office in _____. In connection with such exhibition and show the Gallery shall produce at its expense an appropriate catalog of the Artist's Works. The Gallery, with the approval of the Artist, may arrange for other exhibitions and shows at other locations of the Artist's Works, so long as any exhibition or show is on a financial basis no less favorable to the Artist than the terms and conditions set forth in this Agreement. [This clause may duplicate Section 1 and is negotiable.]

15. **New Works of Art.** During the term of this Agreement, the Artist shall create and provide the Gallery with new Artist's Works for sale by the Gallery, it being understood however that the Gallery may also offer for sale any Artist's Works heretofore produced by the Artist (and the Artist shall cooperate with the Gallery in this regard). In the event that the Artist fails to create and provide the Gallery with a "reasonable number" of new Artist's Works of reasonable size during any consecutive six-month period, the Gallery may terminate this Agreement under the provisions of paragraph 8 above.

The Artist agrees to use her best efforts to create and provide the Gallery with new Artist's Works sufficient to have at least one exhibition and show of such works in the Gallery no later than the eighteenth month during this two-year Agreement. [This clause only applies in exclusive agency situations and is negotiable.]

16. **Sales by Artist.** The Artist shall not exhibit or sell any works of art created by the Artist, whether from the Artist's studio or otherwise, to clients, private or public, without prior consent of the Gallery. Such sales, if allowed, will be fully commissionable to the Gallery at the time of payment for such sale unless specifically excepted in writing signed by the Gallery. [This clause only applies to exclusive agency situations and is negotiable. Artist may want to limit territory and whether Artist may sell works not sold by the Gallery without paying a commission.]

17. **Purchase by Gallery.** The Gallery, with the written consent of the Artist, where consent shall not unreasonably be withheld, may from time to time purchase for cash (or by credit to the Artist's Sales Account if there is at the time a deficit in such Account) any of the Artist's Works for its own account at fifty percent (50%) of the Sales Price in excess of the Direct Costs plus the Direct Cost for such Artist's Works. In the case of sales by the Artist to the Gallery under this paragraph, the Gallery shall receive no commission and the total proceeds of such purchase by the Gallery shall be credited to the Artist's Sales Account.

18. **Artist's Works Retained by Artist.** Any other provision of this Agreement to the contrary notwithstanding, the Artist shall have the right to retain for herself such of the Artist's Works as the Artist in her sole discretion shall determine.

19. **Installations.** The Artist shall have the right to create "installations" for exhibition from time to time in her sole discretion and at her sole expense, provided, however, that she has consulted with the Gallery.

20. **Reproduction.** The Artist reserves all rights to the reproduction of the Works except as noted in writing to the contrary. The Gallery will not permit any of the Works to be copied, photographed, or reproduced without the written permission of the Artist, and shall take all necessary steps to ensure that the Artist's copyright to the Works is protected, including informing all purchasers that the Artist retains copyright in the works. In every instance of reproduction, the Artist's name shall be included on the bill of sale of each of the Works.

21. **Arbitration.** Any controversy or claim arising out of or relating to this Agreement, or breach thereof, shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof.

22. **Entire Understanding.** This Agreement contains the entire understanding of the parties with respect to the subject matter hereof; it may not be changed or amended except in writing signed by the parties. If any part of this Agreement is held to be illegal, void, or unenforceable for any reason, such holding shall not affect the validity and enforceability of any other part.

23. **Choice of Law.** This Agreement shall be governed by the law of the Commonwealth of Massachusetts.

24. **Binding Effect.** This Agreement shall inure to the benefit of, and shall be binding upon, the successors, heirs, executors, and administrators of the parties.

This Agreement is not assignable by the Artist or the Gallery.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of the date first above written.

GALLERY

_____ Date: _____, _____, 200_

By:

Its: President

ARTIST

_____ Date: _____, _____, 200_

Artist

SSN: _____