

# Professional Guidelines

## CONSIGNMENT CONTRACT: Overview

### INTRODUCTION

**Most galleries do not purchase work outright.** Instead, they accept the work “on consignment.” In effect, they borrow work from an artist for display in the gallery, and then pay the artist only when it sells. This arrangement limits the gallery’s capital outlay, so they can devote more of their resources to paying for rent, staff, publicity, or other costs of doing business.

**A consignment arrangement has advantages and disadvantages.** For example, one advantage is that consignment can allow a gallery to show risky or difficult work, since their money is not tied up in purchasing inventory. However, a disadvantage is that even though the artist’s work is in the gallery’s possession, the artist isn’t paid until the work is sold. This business arrangement is complicated enough that misunderstandings and difficulties can arise if the parties have not been clear about the terms of the arrangement from the beginning.

**Even in the best relationships based on trust and a good working relationship,** there is no substitute for a contract. To minimize and hopefully avoid possible conflicts, the rights and obligations of both the artist and the gallery should be clearly written in a contract. Do not rely on assumptions and the memories of verbal conversations. A good contract, such as the consignment contract developed by the Professional Guidelines Committee, is fair to both parties. It is in the interest of both parties to discuss all the issues presented here. The contract outlines the responsibilities and rights of both the gallery and the artist.

**Many galleries are accustomed to using their own contract.** If the gallery already has a contract that it wants to use, it can be signed “as is”, or it can be viewed as a starting point for further discussion. The artist can use this contract as a checklist or guide for negotiating modifications and revisions. Your business relationship with the gallery may include specific arrangements that require additions or deletions, which you should initial. In addition, amendments that arise after the original contract has been signed should also be put in writing and signed by both parties (see clause # 18).

**For a deeper understanding of contracts,** read the book, *The Artist-Gallery Partnership* by Crawford & Mellon. The first half the book is dedicated to explaining contracts at length in a style that is easy to understand. Several other books offer further explanation for most segments of a contract or additional contracts as needed. (See Useful Books for Legal and Professional Advice, also in these Guidelines.)

**As a preface to the Consignment Contract,** the following overview provides a brief explanation for each part of the contract.

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**1. Scope of Agency.** The term “exclusive” implies that the gallery will be the only representative for the artist usually within a stated geographic boundary, for a specific body of work, or extent of sales. (Also see #11, Commissions.) The geographic territory could be limited to a single city or town, a radius of a specified number of miles, the region, one state, several states, or nationwide. As for the scope of an artist’s work, an exclusive representation could be limited to a specific body of work, or a specific medium or type of work (e.g. jewelry vs. hollowware).

The definition could include not only work sold directly by the gallery from its inventory, but also studio sales and /or commissions made by the artist during the period of gallery representation. (Again, see #11, Commissions.)

In contrast, the term “non-exclusive” means that the artist may sell the same work to a multiple number of businesses within the stated geographic territory.

**2. Consignment of Inventory.** Artists should send two copies of the List of Inventory every time work is sent to the gallery. The gallery signs one copy upon receipt of the work and returns it to the artist. This is to verify that the work listed is now in their possession and becomes the gallery’s responsibility as stated under the contract.

**3. Pricing and Terms of Payment.** This clause establishes what obligations the gallery has concerning pricing, and what percentage of the sales price the gallery retains. It is important to state both the retail price and the wholesale price on your List of Inventory. Do not use “net price” (see #4, Discounts, below) or “artist’s price” (the wholesale price).

The percentage for consignment between a gallery and an artist is always negotiable, though most commonly the arrangement is 50% artist /50% gallery or 40% artist/ 60% gallery. The Professional Guidelines Committee discourages arrangements in which the artist pays more than a 50% commission to the gallery on the retail price.

**4. Discounts.** A gallery may decide to reduce the retail price under certain conditions as specified in your contract. This practice is known as offering a discount. Artists or galleries can also decide on a “**No Discounts**” policy. Offering a discount raises two immediate questions. First, who absorbs the discount? Second, if the responsibility of the discount is to be shared between the gallery and the artist, how much should the artist bear? In the consignment contract, the Committee provides two options for dealing with discounts. It is suggested that this issue be discussed with the gallery. For more information, please read the Professional Guidelines document **Discounts**. <http://www.harriete-estel-berman.info/profguidelines/discounts.html>

**5. Payment.** Every gallery seems to have its own payment schedule, stipulating that the artist will be paid within a certain time after the sale. Payment in full within thirty days after the sale is standard. Be sure to write a mutually acceptable payment structure into the contract.

Some collectors arrange to pay the gallery in installments. Even if a gallery agrees to this arrangement, the artist should try to negotiate to be paid in full before the gallery retains any of the money, rather than having to wait until the end of the installment payments to receive a check.

For example, assume that there is a 50/50 consignment arrangement, and a piece sold for \$5000 to be paid in \$1000 installments over five months. The artist is owed \$2,500. Under the best arrangement, the artist will receive the first \$2500 paid by the collector (which would happen within the first three months). Otherwise the artist could be in a situation of waiting until all the installment payments have been made before receiving any money. The contract states that when a collector pays in installments, the artist will be paid in full from the first monies received, and will not wait until the end.

Money owed to the artist for work sold **should not be called a stipend** and be paid over an extended period of time. If the parties agree to a stipend arrangement, it should be incorporated only as a non-refundable advance against future sales.

**6. Accounting.** It is sound business practice for both the artist and the gallery to compare the List of Inventory regularly. Remember, work on consignment is owned by the artist. The investment of time, materials and overhead makes it just as much the artist's responsibility as the gallery's to account for inventory.

Keeping good records for one-of-a-kind artwork can be very important for the artist. Curators or museums working on exhibitions or retrospectives may want to borrow work from a gallery or work owned by collectors. Such exhibitions become part of the works provenance, and may increase the value of the artwork. Thus, artists should keep accurate records for the location of their work.

The Professional Guidelines Committee recommends that galleries provide artists with the names and addresses of all collectors of their one-of-a-kind work.

"Approval Sales" are a courtesy for special clients. For example, a gallery may ship work to a potential collector to view at home. Discuss approval sales with the gallery. The gallery may have a clear policy, which they are accustomed to following. There should be a short time limit (usually a week or less) on all approval periods. The gallery's insurance should cover all work sent on approval.

**7. Fiduciary Responsibilities.** This clause concerns ownership of the artwork and the gallery's fiscal responsibilities to the artist. It clearly states that work on consignment is owned by the artist and **cannot be taken by creditors** in case the gallery goes bankrupt.

**8. Loss or Damage.** Please see the **Claims for Damaged Work: Artist Checklist** <http://www.harriete-estel-berman.info/profguidelines/claims.html> for more information.

**9. Insurance.** Insurance for the full wholesale price should be provided by the gallery. The gallery is responsible for the deductible on their policy. Artist should have control over any repairs, as necessary. (Again, for more information see the Artist Checklist: Claims for Damaged Work.)

**10. Transportation of Artwork.** If the artist or gallery has a preferred shipper, this could be added to the contract under this section.

**11. Commission.** Certain kinds of sales may - or may not - be covered by a gallery's contract. For instance, a gallery representing an artist who lives in the same city may want to receive a percentage from all commissions the artist receives, or a percentage from all studio sales. Thus, studio sales, commissions, or exhibitions within the geographic territory that the gallery wants to include in the contract should be discussed between the gallery and the artist. The Professional Guidelines Committee recommends that artists should not sell their work at studio sales below the retail price established at their galleries. (Also see #3 Pricing and Terms of Payment.) Commissions for one-of-a-kind work should probably be handled on a case-by-case basis, depending on the difficulty of the commission. Several books suggested in the Useful Books for Legal and Professional Advice include contracts for commissions.

**12. Promotion.** Marketing, promotion, and publicity, including advertising expenses, is the responsibility of the gallery. In addition, the gallery should adequately display the work and clearly identify the artist as the creator. It is the opinion of the Professional Guidelines Committee that artist should not be expected to pay for publicity. The only exception to this would be if the artist wanted to buy advertising that is outside of the gallery's usual practice. For instance, an artist might contribute money toward a color ad instead of the gallery's usual black & white ad.

**13. Reproduction.** Artists should supply professional quality photographic images. Galleries and publications should make every effort to credit the artist and the photographer in all ads and publicity.

**14. Copyright.** Artists always retain the copyright to all artwork even after it is sold unless there is another contract, which states that the copyright has been purchased. Artists should mark all artwork and visual materials with the © symbol and the year the work was completed. In addition, it is professional to identify the object as one-of-a-kind, a limited edition, or an unlimited edition.

**15. Security Interest.** This is a legal clause protecting the artist, stating that the artist owns the consigned work until paid in full. Only a few states have laws that protect an artist's work on consignment from the creditors of the gallery. This is an important reason why artists need to use contracts with a Security Interest clause. The creditor's rights are also cut off if there is a sign in the gallery stating that the work sold is on consignment, but such signage is rarely used.

**16. Duration and Termination of Consignment.** This clause states that the contract will last for an initial length of time, and then continue until terminated. Assuming the relationship has been good for years, it is still advisable to reevaluate and formally renew the contract with the gallery every few years (or consider a different contract for an important solo show, for example). This clause also describes how the contract may be terminated.

**17. Miscellany.** It is good business practice to put any changes or amendments in the working relationship with the gallery in writing and signed by both parties. This avoids misunderstandings or forgotten conversations.

**18. Governing Law.** Laws for consignment vary from state to state. Normally, the artist/gallery relationship is governed by the law where the gallery is located. The second half of the book, The Artist-Gallery Partnership, by Crawford & Mellon, covers various state laws governing consignment contracts. (See Useful Books for Legal and Professional Advice, which are part of these guidelines.) In addition, many states have artist advocacy groups or non-profit art law organizations that will be able to give up-to-date information for a particular state. Be informed!

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#### **DISCLAIMER**

"THE COPYRIGHT OWNER HAS PREPARED THE FOLLOWING MATERIALS AS AN INFORMATIONAL AID TO EDUCATE THE READER ABOUT COMMON SITUATIONS THAT GENERALLY ARISE IN THE ARTS AND CRAFTS FIELD. THESE MATERIALS, INCLUDING ALL SAMPLE AGREEMENTS, CANNOT AND DO NOT ADDRESS ALL OF THE LEGAL ISSUES THAT MAY BE PERTINENT TO ANY INDIVIDUAL CIRCUMSTANCES. THE READER SHOULD NOT ASSUME THAT THE INFORMATION CONTAINED HEREIN WILL SATISFY ALL OF THEIR NEEDS. LAWS VARY FROM STATE TO STATE, AND THESE MATERIALS ARE NOT A SUBSTITUTE FOR OBTAINING LEGAL ADVICE FROM A LICENSED ATTORNEY IN YOUR STATE. THE READER IS ENCOURAGED TO SEEK SUCH LEGAL ADVICE PRIOR TO USE OF THESE MATERIALS THE COPYRIGHT OWNER DISCLAIMS ANY RESPONSIBILITY FOR ANY AND ALL LOSSES, DAMAGE, OR CAUSES OF ACTION THAT MAY ARISE OR BE CONNECTED WITH THE USE OF THESE MATERIALS AND/OR FORMS."

# CONSIGNMENT CONTRACT

Agreement is made this \_\_\_\_ day of \_\_\_\_\_ (month and year) by and between \_\_\_\_\_ (“Artist”) located at \_\_\_\_\_ and \_\_\_\_\_ (“Gallery”) located at \_\_\_\_\_.

## Recitals

Gallery exhibits and sells artwork; and Artist has created and owns the artwork listed in the List of Inventory (the “Artwork”) and desires to exhibit and sell the same; Therefore, the parties agree as follows:

**1. Scope of Agency.** The artist appoints the gallery to act as artist’s exclusive/ nonexclusive agent in the following geographic area: \_\_\_\_\_ for the exhibition and sale of artwork in the following media: \_\_\_\_\_. This agency shall cover only artwork submitted by the artist while this agreement is in force. The gallery shall document receipt of all artworks consigned.

**2. Consignment of Inventory.** Gallery accepts on consignment, the artworks listed on the List of Inventory attached to this agreement. Additional lists may be incorporated into this agreement if signed by both parties.

**3. Pricing and Terms of Payment.** The gallery shall sell the artworks only at the retail price specified on the List of Inventory. The gallery and the artist agree that the gallery’s commission is to be \_\_\_\_\_ percent of the retail price of the artwork. Both parties must agree to any change to the retail price or the gallery’s commission in advance.

## 4. Discounts.

**Option 1.** In the case of discount sales, the discount shall be deducted from the gallery’s commission. The artist will be given the full artist’s share of the retail price as agreed.

**Option 2.** If the gallery is required to give its customer a collector’s discount of \_\_\_\_\_% percent from the retail price, the amount of the discount shall be split equally by the gallery and the artist, provided, however, that the artist’s share of the discount shall not exceed \_\_\_\_\_% percent of the retail price.

## 5. Payment.

**Option 1.** The gallery shall pay the artist all proceeds due the artist within thirty days of sale of any artwork. No “sales on approval” or “on credit” shall be made without the written consent of the artist. All installment proceeds received by the gallery shall first be paid to the artist until the artist has been paid in full.

**Option 2.** The gallery shall pay the artist all proceeds due to the artist within 10 days of the last day of the month in which the piece was sold. No “sales on approval” or “on credit” shall be made without the written consent of the artist. All installment proceeds received by the gallery shall first be paid to the artist until the artist has been paid in full.

**6. Accounting.** The Gallery shall furnish the artist with an accounting every \_\_\_\_\_ months. The first such accounting to be given on the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_. Accounting shall identify each artwork sold during the accounting period and the location of all artworks consigned to the gallery that have not been sold. A complete and final accounting shall be provided in the event of termination of this agreement.

**Accounting for one-of-a-kind Artwork.** For one-of-a-kind artwork with a retail price of \$500 or more, the gallery will furnish the name, mailing address, and telephone number of the client / collector who purchases the artwork. Artist agrees not to contact the client for the purpose of selling artwork directly to the client and the gallery will be informed or receive a copy of any communication between artist and client that relates to this artwork as long as the contract remains in effect.

**Approval Sales.** The gallery shall not permit any artwork to remain in the possession of client for a period exceeding seven days unless such artwork is purchased and fully paid for by client, or unless artist provides prior written approval.

**7. Fiduciary Responsibilities.** Title to each of the artworks shall remain in the artist's name until the artist has been paid in full. Upon payment, title then passes to the purchaser. All proceeds from the sale of the artworks shall be held in trust for the artist until the artist is fully paid. The gallery shall pay all amounts due to the artist before any proceeds of sales can be made available to any and all creditors of the gallery.

**8. Loss or Damage.** The gallery shall be strictly liable for loss or damage to any consigned artwork from the date of delivery to the gallery until the artwork is returned to the artist or delivered to a purchaser. In the event of loss or damage that cannot be restored, the artist shall receive the same amount as if the artwork had been sold at the retail price. If restoration is suggested or pursued by the gallery, the artist shall have veto power over the choice of the restorer. The artist shall be responsible for all repairs to artwork necessitated by artist's faulty workmanship.

**9. Insurance.** The gallery shall insure the artwork for its full wholesale price. In the event an insurance claim is made, the gallery shall pay all deductibles.

**10. Transportation of Artwork.** Packing and shipping charges, insurance costs, other handling expenses, and risk of loss or damage incurred in the delivery of the artworks:

- A. From the artist to gallery shall be borne by the artist
- B. From the gallery to the artist shall be borne by the gallery
- C. From the gallery to any point other than the artist shall be borne by the gallery

The gallery is also responsible for storing and using custom-made boxes and shipping containers made specifically for artwork.

**11. Commission.** If the artist sells any artwork directly to a purchaser through contacts established initially through the gallery, then the gallery shall be entitled to a commission of \_\_\_\_\_% percent of the selling price. If the gallery's agency is exclusive, then the gallery shall receive a commission of \_\_\_\_\_% percent of the selling price for each studio sale of art by the artist that falls within the scope of the gallery's exclusivity.

**12. Promotion.** The gallery shall use its best efforts to promote, display and sell artworks. The gallery shall clearly identify the artist's name with all artworks and shall include the artist's name on the bill of sale for any artwork sold by the gallery.

**13. Reproduction.** The artist reserves all copyrights to the reproduction of the artworks except as noted in writing to the contrary. The gallery may arrange to have the artworks photographed to publicize and promote the artworks through means to be agreed by both parties. In every such use, the artist shall be acknowledged as the creator and copyright owner of the artwork. The gallery shall include on each bill of sale of any artwork the following legend: "All copyrights to reproduction of the artwork(s) identified herein are retained by the artist."

**14. Copyright.** The gallery shall take all steps necessary to insure that the artist's copyright in the consigned artworks is protected in the artist's name.

**15. Security Interest.** Title to and a security interest in any artworks consigned or proceeds of sale under this agreement are reserved to the artist. The artworks shall not be subject to claims by the gallery's creditors. The gallery agrees to execute and deliver to the artist, in the form requested by the artist, a financial statement and such other documents, which the artist may require to perfect its security interest in the artworks. In the event of the purchase of any artwork by a party other than the gallery, title shall pass directly from the artist to the purchasing party. In the event of a purchase of any artwork by the gallery, title shall pass only upon full payment to the artist of all sums due hereunder. The gallery acknowledges that it has no right to and shall not pledge or encumber any artworks in its possession nor incur any charge or obligation for which the artist may be liable.

**16. Duration and Termination of Consignment.** The artist and the gallery agree that the initial term of consignment for the artwork shall continue until \_\_\_\_\_, 200\_\_, and that the artist will not ask for return of the artwork prior to this date unless the agreement is breached by the gallery. Thereafter, this agreement shall continue until written notification of termination from either party to the other. Within thirty days of the termination notification, all accounts shall be settled and all unsold artwork shall be returned to the artist at the gallery's expense. The agreement shall automatically terminate with the death of the artist or if the gallery becomes bankrupt or insolvent, or breaches the agreement.

**17. Miscellany.** All modifications, deletions or additions to this agreement must be in writing and signed by both parties. This agreement constitutes the entire understanding between the parties hereto.

**18. Governing Law.** This agreement shall be governed by and in accordance with the laws of the State of \_\_\_\_\_.

**IN WITNESS WHEREOF**, the parties hereto have signed this agreement as of the date below.

Artist: \_\_\_\_\_(print)

Company Name (if any):

Authorized Signature

\_\_\_\_\_  
Title \_\_\_\_\_

Date \_\_\_\_\_

Gallery: \_\_\_\_\_(print)

Authorized Signature

\_\_\_\_\_  
Title \_\_\_\_\_

Date \_\_\_\_\_



**APPENDIX A: SAMPLE LIST OF INVENTORY** for consignment of all work

The artist should fill out form in triplicate. Keep one copy for the artist's records.

Send two copies to the gallery with the artwork.

(Fax or e-mail additional copy so gallery or exhibition sponsor is expecting the box if the work is valuable or one-of-a-kind.)

Gallery should sign and return one copy to the artist and keep one copy for their records.

**LIST OF INVENTORY ON CONSIGNMENT**

This is to acknowledge receipt of the following artworks on consignment.

Artist should list both the wholesale and retail price for the convenience of the gallery and to avoid any misunderstandings.

|    | Title | Medium | Description | Wholesale Price | Retail Price | # of items |
|----|-------|--------|-------------|-----------------|--------------|------------|
| 1. |       |        |             |                 |              |            |
| 2. |       |        |             |                 |              |            |
| 3. |       |        |             |                 |              |            |
| 4. |       |        |             |                 |              |            |
| 5. |       |        |             |                 |              |            |
| 6. |       |        |             |                 |              |            |
| 7. |       |        |             |                 |              |            |
| 8. |       |        |             |                 |              |            |
| 9. |       |        |             |                 |              |            |

Gallery acknowledges receipt of artwork listed.

Gallery Name

Address

Phone

Fax

E-mail

Authorized Signature

\_\_\_\_\_  
Title \_\_\_\_\_ Date \_\_\_\_\_

Artist

Address

Phone

Fax

E-mail