

Second Edition

Business and Legal Forms

30 FORMS ON CD-ROM

for

Crafts

READY-TO-USE WITH NEGOTIATION CHECKLISTS

Tad Crawford

**Business and
Legal Forms**
for
Crafts

Tad Crawford

Second Edition



Allworth Press, New York

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The Success Kit

To create this book of business and legal forms for crafts is a challenge that requires considering the many different types of crafts. Crafts may be produced as a one-of-a-kind work or a limited edition, in which case the legal issues are close to those presented for fine arts such as sculpture and painting, or may be produced in more substantial quantities, in which case the legal issues are like those affecting manufactured goods. The forms in this book should help all artists creating crafts, although some forms will be more relevant than others depending on the type of craft and quantities of work produced. Throughout the text and business forms the creator of craftwork is referred to as an artist. This seems preferable to the outdated “craftsman,” cumbersome “craftsperson,” archaic sounding “artisan,” overly inclusive “home worker,” or the awkward amalgams of “crafts artist” or “craftworker.”

Attaining the knowledge of good business practices and implementing their use is an important step toward success for any professional, including the professional artist creating craftworks. The forms contained in this book deal with the most important business transactions that an artist is likely to undertake. In addition, the forms are included on CD-ROM to make customization easier. The fact that the forms are designed for use and that they favor the artist give them a unique value.

Understanding the business concepts behind the forms is as important as using them. By knowing why a certain provision has been included and what it accomplishes, the artist is able to negotiate when faced with someone else’s business form. The artist knows what is and is not desirable. The negotiation checklists offer a map for the negotiation of any form.

All forms, whether the artist’s or someone else’s, can be changed. Before using these forms, the artist should consider reviewing them with

his or her attorney. This provides the opportunity to learn whether local or state laws may make it worthwhile to modify any of the provisions. For example, would it be wise to include a provision for arbitration of disputes, or are the local courts speedy and inexpensive, making an arbitration provision unnecessary?

The forms must be filled out, which means that the blanks in each form must be completed. Beyond this, however, the artist can always delete or add provisions on any form. Deletions or additions to a form are usually initialed in the margin by both parties. It is also a good practice to have each party initial each page of the contract, except the page on which the parties sign.

The artist must ascertain that the person signing the contract has authority to do so. If the artist is dealing with a company, the company’s name should be included, as well as the name of the individual authorized to sign the contract and the title of that individual. If it isn’t clear who will sign or if that person has no title, the words “Authorized Signatory” can be used instead of a title.

If the artist will not be meeting with the other party to sign the contract, it would be wise to have that party sign the forms first. After the artist gets back the two copies of the form, they can be signed and one copy returned to the other party. As discussed in more detail under letter contracts, this has the advantage of not leaving it up to the other party to decide whether to sign and thus make a binding contract.

If additional provisions that won’t fit on the contract forms should be added, simply include a provision stating, “This contract is subject to the provisions of the rider attached hereto and made a part hereof.” The rider is simply another piece of paper which would be headed, “Rider to the contract between _____ and _____, dated the ____ day of _____, 20____.” The additional provisions are put on this sheet and both parties sign it.

Contracts and Negotiation

Most of the forms in this book are contracts. A contract is an agreement that creates legally enforceable obligations between two or more parties. In making a contract, each party gives something of value to the other party. This is called the exchange of consideration. Consideration can take many forms, including the giving of money or an artwork or the promise to create an artwork or pay for an artwork in the future.

Contracts require negotiation. The forms in this book are favorable to the artist. When they are presented to a buyer, store, or even a museum, changes may be requested. This book's explanation of the use of each form should help the artist evaluate changes either party may want to make in any of the forms. The negotiation checklists should also clarify what changes would be desirable in forms presented to the artist.

Keep in mind that negotiation need not be adversarial. Certainly the artist and the other party may disagree on some points, but the basic transaction is something that both want. The buyer wants to own the artwork, the store wants to sell it, and the museum wants to display it. This larger framework of agreement must be kept in mind at all times when negotiating. Of course, the artist must also know which points are nonnegotiable and be prepared to walk away from a deal if satisfaction cannot be had on these points.

When both parties have something valuable to offer each other, it should be possible for each side to come away from the negotiation feeling that they have won. Win-win negotiation requires each side to make certain the basic needs of both are met so that the result is fair. The artist cannot negotiate for the other side, but a wise negotiation strategy must allow the other side to meet their vital needs within a larger context that also allows the artist to obtain what he or she must have.

It is a necessity to evaluate negotiating goals and strategy before conducting any negotiations. The artist should write down what must be achieved and what can be conceded or modified. The artist should try to imagine how the shape

of the contract will affect the future business relationship with the other party. Will it probably lead to success for both sides and more business or will it fail to achieve what one side or the other desires?

When negotiating, the artist should keep written notes close at hand concerning goals and strategy. Notes should be kept on the negotiations too, since many conversations may be necessary before final agreement is reached. At certain points the artist should compare what the negotiations are achieving with the original goals. This will help evaluate whether the artist is conducting the negotiations according to plan.

Most negotiations are done over the telephone. This makes the telephone a tool to be used wisely. The artist should decide when to speak with the other party. Before calling, it is important to review the notes and be familiar with the points to be negotiated. If the artist wants the other party to call, the file should be kept close at hand so that there is no question as to where the negotiations stand when the call comes. If the artist is unprepared to negotiate when the other party calls, the best course is to call back. Negotiation demands the fullest attention and readiness.

Oral Contracts

Although all the forms in this book are written, the question of oral contracts should be addressed. There are certain contracts that must be written, such as a contract for services that will take more than one year to perform, a contract to transfer an exclusive right of copyright (an exclusive right means that no one else can do what the person receiving that right of copyright can do), or, in many cases, a contract for the sale of goods worth more than \$500. So—without delving into the full complexity of this subject—certain contracts can be oral. If the artist is faced with a breached oral contract, an attorney certainly should be consulted for advice. The artist should not give up simply because the contract was oral.

However, while some oral contracts are valid, a written contract is always best. Even people with the most scrupulous intentions do not always remember exactly what was said or whether a particular point was covered. Disputes, and litigation, are far more likely when a contract is oral rather than written. That likelihood is another reason to make the use of written forms, like those in this book, an integral part of the business practices of any artist whose work may someday have value.

Letter Contracts

If the artist feels that sending a well-drafted form will be daunting to the other party, the more informal approach of a letter, signed by both parties, may be adopted. In this case, the forms in this book will serve as valuable checklists for the content and negotiation of the letter contract. The last paragraph of the letter would read, "If the foregoing meets with your approval, please sign both copies of this letter beneath the words AGREED TO to make this a binding contract between us." At the bottom of the letter would be the words AGREED TO with the name of the other party so he or she can sign. Again, if the other party is a company, the company name, as well as the name of the authorized signatory and that individual's title, would be placed beneath the words AGREED TO. This would appear as follows:

AGREED TO:

XYZ Corporation

By _____

Alice Hall, Vice President

Two copies of this letter are sent to the other party, who is instructed to sign both copies and return one copy for the artist to keep. To be cautious, the artist can send the letters unsigned and ask the other party to sign and return both copies, at which time the artist will sign and return one copy to the other party. This gives the other party an opportunity to review the final draft, but avoids a situation in which the other

party may choose to delay signing, thereby preventing the artist from offering a similar contract to anyone else because the first contract still may be signed.

For example, if a wholesaler wanted to wait and see if it could resell jewelry it was contracting to buy, it might hold the contract and only sign after it knew it could make the resale. If the resale did not come through, the wholesaler might not sign the contract and the deal would be off. The artist can avoid this by being the final signatory, by insisting that both parties meet to sign, or by stating in the letter a deadline by which the other party must sign. If such a situation ever arises, it should be remembered that any offer to enter into a contract can always be revoked up until the time that the contract is actually entered into.

Standard Provisions

The contracts in this book contain a number of standard provisions, called "boilerplate" by lawyers. These provisions are important, although they will not seem as exciting as the provisions that relate more directly to the artist and the artwork. Since these provisions can be used in almost every contract and appear in a number of the contracts in this book, an explanation of each of the provisions is given here.

Amendment. Any amendment of this Agreement must be in writing and signed by both parties.

This guarantees that any changes the parties want will be made in writing. It avoids the possibility of one party relying on oral changes to the agreement. Courts will rarely change a written contract based on testimony that there was an oral amendment of the contract.

Arbitration. All disputes arising under this Agreement shall be submitted to binding arbitration before _____ in the following location _____ and shall be settled in accordance with the rules of the American Arbitration Association. Judgment

upon the arbitration award may be entered in any court having jurisdiction thereof. Notwithstanding the foregoing, either party may refuse to arbitrate when the dispute is for a sum of less than \$_____.

Arbitration can offer a quicker and less expensive way to settle disputes than litigation. However, the artist would be wise to consult a local attorney and make sure that this is advisable in the jurisdiction where the lawsuit would be likely to take place. The arbitrator could be the American Arbitration Association or some other person or group that both parties trust. The artist would also want the arbitration to take place where he or she is located. If small claims court is easy to use in the jurisdiction where the artist would have to sue, it might be best to have the right not to arbitrate if the disputed amount is small enough to be brought into small claims court. In this case, the artist would put the maximum amount that can be sued for in small claims court in the space at the end of the paragraph.

Assignment. This Agreement shall not be assigned by either party hereto, provided that the Artist shall have the right to assign monies due to the Artist hereunder.

By not allowing the assignment of a contract, both parties can have greater confidence that the stated transactions will be between the original parties. Of course, a company may be purchased by new owners. If the artist only wanted to do business with the people who owned the company when the contract was entered into, change of ownership might be stated as a ground for termination in the contract. On the other hand, money is impersonal and there is no reason why the artist should not be able to assign the right to receive money.

Bankruptcy or Insolvency. If the Gallery should become insolvent or if a petition in bankruptcy is filed against the Gallery or a Receiver or Trustee is appointed for any of the Gallery's assets or property, or if a lien or attachment is

obtained against any of the Gallery's assets, this Agreement shall immediately terminate and the Gallery shall return to the Artist all of the Artist's work that is in the Gallery's possession.

This provision seeks to protect the artist against creditors of the gallery who might use the artist's work or proceeds from that work to satisfy claims they have against the gallery itself. Because a provision of this kind does not protect the artist completely, many states have enacted special consignment laws protecting artists and their work. However, the definition of "art" in these laws will exclude many types of crafts, so the artist should check the law in his or her own state. The full texts of all of the state consignment laws appear in *The Artist-Gallery Partnership* by Tad Crawford and Susan Mellon (Allworth Press).

Complete Understanding. This Agreement constitutes the entire and complete understanding between the parties hereto, and no obligation, undertaking, warranty, representation, or covenant of any kind or nature has been made by either party to the other to induce the making of this Agreement, except as is expressly set forth herein.

This provision is intended to prevent either party from later claiming that any promises or obligations exist except those shown in the written contract. A shorter way to say this is, "This Agreement constitutes the entire understanding between the parties hereto."

Cumulative Rights. All rights, remedies, obligations, undertakings, warranties, representations, and covenants contained herein shall be cumulative and none of them shall be in limitation of any other right, remedy, obligation, undertaking, warranty, representation, or covenant of either party.

This means that a benefit or obligation under one provision will not be made less because of a different benefit or obligation under another provision.

Death or Disability. In the event of the Artist's death, or an incapacity of the Artist making completion of the Work impossible, this Agreement shall terminate.

A provision of this kind leaves a great deal to be determined. Will payments already made be kept by the artist or the artist's estate? And who will own the work at whatever stage of completion has been reached? Will either the commissioning party or the artist's estate have the right or obligation to complete the work? If the commissioning party completes it, who will own the copyright? These and related issues should be resolved when the contract is negotiated.

Force Majeure. If either party hereto is unable to perform any of its obligations hereunder by reason of fire or other casualty, strike, act or order of a public authority, act of God, or other cause beyond the control of such party, then such party shall be excused from such performance during the pendency of such cause. In the event such inability to perform shall continue longer than ____ days, either party may terminate this Agreement by giving written notice to the other party.

This provision covers events beyond the control of the parties, such as a tidal wave or a war. Certainly the time to perform the contract should be extended in such an event. There may be an issue as to how long an extension should be allowed. Also, if work has commenced and some payments have been made, the contract should cover what happens in the event of termination. Must the payments be returned? And who owns the partially completed work?

Governing Law. This Agreement shall be governed by the laws of the State of _____.

Usually the artist would want the laws of his or her own state to govern the agreement. However, laws vary from state to state. A number of states have enacted laws favoring artists, especially in the area of consignments of art to a gallery. If the

artist's own state lacks this law, it might be preferable to have a gallery contract governed by the law of a different state that has such a consignment law. Again, *The Artist-Gallery Partnership* can be referred to in order to determine the coverage of the law of a particular state.

Indemnify and Hold Harmless. The Purchaser agrees to indemnify and hold harmless the Artist from any and all claims, demands, payments, expenses, legal fees, or other costs in relation to obligations for materials or services incurred by the Purchaser.

This provision protects one party against damaging actions that may have been taken by the other party. Often, one party will warrant that something is true and then indemnify and hold the other party harmless in the event that it is not true. For example, an artist selling a limited edition to a dealer might warrant the size of the edition and then indemnify the dealer in the event the artist has not given accurate information. If the dealer were sued because of the breach of warranty, the artist would be liable to the dealer.

Liquidated Damages. In the event of the failure of XYZ Corporation to deliver by the due date, the agreed upon damages shall be \$ _____ for each day after the due date until delivery takes place, provided the amount of damages shall not exceed \$_____.

Liquidated damages are an attempt to anticipate in the contract what damages will be caused by a breach of the contract. Such liquidated damages must be reasonable. If they are not, they will be considered a penalty and held to be unenforceable.

Modification. This Agreement cannot be changed, modified, or discharged, in whole or in part, except by an instrument in writing, signed by the party against whom enforcement of any change, modification, or discharge is sought.

This requires that a change in the contract must be written and signed by the party against whom the change will be enforced. It should be compared with the provision for amendments that requires any modification to be in writing and signed by both parties. At the least, however, this provision explicitly avoids the claim that an oral modification has been made of a written contract. Almost invariably, courts will give greater weight to a written document than to testimony about oral agreements.

Notices and Changes of Address. All notices shall be sent to the Artist at the following address: _____ and to the Purchaser at the following address: _____. Each party shall be given written notification of any change of address prior to the date of said change.

Contracts often require the giving of notice. This provision facilitates giving notice by providing correct addresses and requiring notification of any change of address.

Privacy. The Purchaser gives to the Artist permission to use the Purchaser's name, picture, portrait, and photograph, in all forms and media and in all manners, including but not limited to exhibition, display, advertising, trade, and editorial uses, without violation of the Purchaser's rights of privacy or any other personal or proprietary rights the Purchaser may possess in connection with the reproduction and sale of the artwork.

This provision would be used if the purchaser were also going to be the subject for a portrait. While the purchaser would own the portrait, the artist might have the right to sell reproductions of it or use it for promotional purposes. A similar release of privacy might be requested by a gallery, store, or manufacturer which planned to use the artist's name or photograph in advertising. In such a situation, the artist would want to be certain that the promotion would be tasteful.

Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors, and assigns.

This makes the contract binding on anyone who takes the place of one of the parties, whether due to death or simply to an assignment of the contract. With commissioned works, death or disability of the artist raises complex questions about completion and ownership of the work. The issues must be resolved in the contract. Note that the standard provision on assignment in fact does not allow assignment, but that provision could always be modified in the original contract or by a later written, signed amendment to the contract.

Time. Time is of the essence.

This requires both parties to perform to the exact time commitments they have made or be in breach of the contract. It is not a wise provision for the artist to agree to, since being a few days late in performance could cause the loss of benefits under the contract.

Waivers. No waiver by either party of any of the terms or conditions of this Agreement shall be deemed or construed to be a waiver of such term or condition for the future, or of any subsequent breach thereof.

This means that if one party waives a right under the contract, such as the right to an accounting from a gallery, that party has not waived the right forever and can demand that the other party perform at the next opportunity. So the artist who allowed a gallery not to account would still have the right to demand an accounting. And if the gallery breached the contract in some other way, such as not paying money due, the fact that the artist allowed this once would not prevent the artist from suing for such a breach in the future.

Warranties. The Artist hereby warrants the following:

A warranty is something the other party can rely on to be true. If the artist states a fact that is a basic reason for the other party's entry into the contract, then that fact is a warranty and must be true. For example, stating that a fine print is in an edition of 60 copies is a warranty, since the print will be worth far less if the edition is actually 120 copies. So a warranty could read, "The Artist warrants this work is one of a limited edition of ____ copies, numbered as follows: _____."

Volunteer Lawyers for the Arts

There are now volunteer lawyers for the arts across the nation. These groups provide free assistance to artists below certain income levels and can be a valuable source of information. If, for example, it is not clear whether a certain law to benefit artists (such as a gallery consignment law) has been enacted in a state, the artist should be able to find out by calling the closest volunteer lawyers for the arts group. To find the location of that group, one of the groups listed here can be contacted:

California: California Lawyers for the Arts, Fort Mason Center, Building C, Room 255, San Francisco, California 94123, (415) 775-7200; and 1641 18th Street, Santa Monica, California 90404, (310) 998-5590; www.calawyersforthearts.org.

Illinois: Lawyers for the Creative Arts, 213 West Institute Place, Suite 403, Chicago, Illinois 60610, (312) 649-4111; <http://law-arts.org>.

New York: Volunteer Lawyers for the Arts, 1 East 53rd Street, New York, New York 10022, (212) 319-2787; www.vlany.org.

A helpful handbook covering all the legal issues which artists face is *Legal Guide for the Visual Artist* by Tad Crawford (Allworth Press).

Having reviewed the basics of dealing with business and legal forms, the next step is to move on to the forms themselves and the negotiation checklists that will make the forms most useful.

Using the Negotiation Checklists

These checklists focus on the key points for negotiation. When a point is covered in the contract already, the appropriate paragraph is indicated in the checklist. These checklists are also valuable to use when reviewing a form given to the artist by someone else.

If the artist will provide the form, the boxes can be checked to be certain all important points are covered. If the artist is reviewing someone else's form, checking the boxes will show which points are covered and which points may have to be added. By using the paragraph numbers in the checklist, the other party's provision can be quickly compared with a provision that would favor the artist. Each checklist for a contract concludes with the suggestion that the standard provisions be reviewed to see if any should be added to those the form provides.

Of course, the artist does not have to include every point on the checklist in a contract, but being aware of these points will be helpful. After the checklists, the exact wording is provided for some of the more important provisions that might be added to the form. Starting with Form 1, the explanations go through each form in sequence.

Contract of Sale and Basic Contract of Sale



Form 1 and Form 2 are simple contracts for the sale of a work. Form 3 is also a contract to sell a work, but it has provisions which connect the artist to the work after sale. With either Form 1, Form 2, or Form 3, the artist may wish to use Form 4 or Form 5—invoices for the sale—to make his or her records complete.

Form 1 and Form 3 are most appropriate for sales of one-of-a-kind or limited edition works. If the artist is selling works created in quantity, a far simpler form might be used, such as Form 2. The Basic Contract of Sale allows the entry of information when many items are likely to be ordered or when these items are likely to be ordered in quantity. Provisions from Form 1 or Form 3 could be added to the Basic Contract of Sale as necessary. Form 2 can be used with customers buying directly or with wholesalers who are buying for resale. To avoid confusion, it is also possible to create two versions of Form 2. One would be for consumers and not show discounts, the other would be for trade accounts buying for resale and would show discounts and payment terms (such as thirty days after receipt of merchandise). If the trade accounts are taking inventory on consignment, refer to Forms 9, 10, and 11. The instructions for filling in the forms cover both Form 1 and Form 2. The negotiation checklist is based on the provisions in Form 1, but the same concepts apply to Form 2 which can be modified if necessary.

Filling in the Forms

For Form 1, in the Preamble, fill in the date and the names and addresses. In Paragraph 1 describe the work. In Paragraph 3 fill in the price. In Paragraph 5 check the box to indicate who will arrange for delivery, and fill in the location and time for delivery and who will pay the expenses for the delivery. In Paragraph 6 fill in when the risk of loss will pass from the artist to the purchaser. In Paragraph 7 fill in the date for the copyright notice. In Paragraph 8 fill in the state whose laws will govern the sale. Both parties should then sign.

For Form 2 give the purchaser's name and address as well as the ship to address if different from the purchaser's. Fill in the date, the purchaser's account number if a repeat customer, the sales rep if any, the order number, the method of shipment, and the date of shipment. Make certain all the ordering information is correctly included. In the case of trade accounts, such as retailers or wholesalers who receive a discount, indicate the amount of the discount and the unit price. Then total the amounts, add shipping and sales tax, subtract payments received, and show the balance due. If a credit card is being used, fill in the credit card information. Have both the purchaser and artist sign the contract if practicable, although the form will serve as a sale receipt even if unsigned.

Negotiation Checklist

- Describe the work. (Paragraph 1)
- Make certain title does not pass to the purchaser until the artist has been paid in full. (Paragraph 2)
- Agree on the price and the payment of sales tax or any other transfer tax. (Paragraph 3)
- Agree on the payment of other charges, such as those for framing or installation. If the artist must travel to install the work, agree on a fee or reimbursement for the travel expenses.
- Agree on the time for payment. (Paragraph 4)
- If the sale is an installment sale, obtain the right to a security interest in the work. (See Other Provisions for Form 1.)
- Specify the manner of payment, such as by personal check, certified check, cash, credit card, or money order.

- Specify the currency for payment. This might be necessary if the purchaser is foreign or if the artist is selling work abroad.
- Agree on who arranges and pays for delivery, if the purchaser can't simply take the work when it is purchased. (Paragraph 5)
- Specify a time for delivery. (Paragraph 5)
- Agree when the risk of loss or damage to the work passes from the artist to the purchaser. This risk usually passes on delivery, but the timing can be altered by contract. Keep in mind that if the purchaser buys the work but leaves it with the artist, the risk of loss will not pass to the purchaser until the purchaser could reasonably have been expected to pick up the work. The artist can avoid the uncertainty of this by providing that the risk of loss passes to the purchaser at the time of purchase, regardless of whether the work has been delivered. (Paragraph 6)
- Agree whether the work will be insured and, if so, by whom. (Paragraph 6 partially covers this.)
- Reserve all copyrights to the artist. (Paragraph 7)
- Require copyright notice in the artist's name for any reproductions approved by the artist. (Paragraph 7)
- Review the standard provisions in the introductory pages and compare with Paragraph 8.

Other Provisions for Form 1

- Installment Sale.** If the artist wants to sell the work on an installment basis, the following provision could be added:

Installment Sale. The price shall be paid in _____ installments, payable \$_____ on _____, 20____, \$_____ on _____, 20____, and \$_____ on _____, 20_____.

- Security Interest.** If the artist allows the buyer to purchase the work on an installment basis, the artist may want the right to have a security interest in the work until payment is made in full. This means that the artist would have a right to the work ahead of any of the purchaser's creditors. This provision might be used with Form 1 or Form 2 in any situation when payment is not made in full at the time of purchase and is for a significant amount. Such a provision would state:

Security Interest. Purchaser grants to the Artist, and the Artist hereby reserves, a security interest under the Uniform Commercial Code in the Work and any proceeds derived therefrom until payment is made in full to the Artist. Purchaser agrees to execute and deliver to the Artist, in the form requested by the Artist, a financing statement and such other documents which the Artist may require to perfect a security interest in the Work. The Purchaser agrees not to transfer, pledge, or encumber the Work until payment has been made in full, nor to incur any charges or obligations in connection therewith for which the Artist may be liable.

To perfect a security interest, which means the formalities have been completed so the artist can take precedence over the purchaser's creditors, requires the filing of Uniform Commercial Code Form 1 with the secretary of state or local agency for filing such as the county clerk. Since the purchaser will usually have to sign what is filed, the contractual provision requires the purchaser to provide whatever documents the artist may need. If large

sums are involved or the purchaser's finances are questionable, these documents might be required at the time of signing the contract of sale.

A number of other provisions can be added to Form 1. In general, these provisions govern the relationship of the artist to the work after the sale. Because these provisions are innovative and the artist may wish to use some and not others, Form 3 adds these provisions to the basic provisions contained in Form 1. Before using Form 1, Form 3 should also be reviewed.

Additional Provision for Form 2

Refunds. While Form 2 can be modified by adding provisions from Form 1 and Form 3, a form like Form 2 would usually be kept quite simple. One typical addition might be the refund policy, since this both reassures the customer and places limitations on the artist's obligation to make refunds. The time and manner of payment of the refund—for example, whether immediately in cash or within a certain time period by check—may depend on whether the sale was from a retail location or by direct mail. Of course, the artist may feel the refund policy shown here is too generous and modify it according to his or her particular business exigencies.

Refunds. The purchaser may return any purchase in its original condition within ___ days of purchase for a full refund. Shipping costs can only be refunded if the return is a result of our error. All refund requests must be accompanied by the sales check and the refund will be paid as follows_____.

Contract of Sale

AGREEMENT made as of the _____ day of _____, 20_____, between _____ (hereinafter referred to as the "Artist"), located at _____, and _____ (hereinafter referred to as the "Collector"), located at _____, with respect to the sale of an artwork (hereinafter referred to as the "Work").

WHEREAS, the Artist has created the Work and has full right, title, and interest therein; and

WHEREAS, the Artist wishes to sell the Work; and

WHEREAS, the Collector has viewed the Work and wishes to purchase it;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants hereinafter set forth and other valuable considerations, the parties hereto agree as follows:

1. Description of Work. The Artist describes the Work as follows:

Title _____

Medium _____

Size _____

Framing or mounting _____

Year of creation _____

Signed by the Artist Yes No

If the Work is part of a limited edition, indicate the method of production _____; the size of the edition _____; how many multiples are signed _____; how many are unsigned _____; how many are numbered _____; how many are unnumbered _____; how many proofs exist _____; the quantity of any prior editions _____; and whether the master image has been canceled or destroyed Yes No.

2. Sale. The Artist hereby agrees to sell the Work to the Collector. Title shall pass to the Collector at such time as full payment is received by the Artist pursuant to Paragraph 4 hereof.

3. Price. The Collector agrees to purchase the Work for the agreed upon price of \$ _____, and shall also pay any applicable sales or transfer taxes.

4. Payment. Payment shall be made in full upon the signing of this Agreement.

5. Delivery. The Artist Collector shall arrange for delivery to the following location: _____ no later than _____, 20 _____. The expenses of delivery (including, but not limited to, insurance and transportation) shall be paid by _____.

6. Risk of Loss and Insurance. The risk of loss or damage to the Work and the provision of any insurance to cover such loss or damage shall be the responsibility of the Collector from the time of _____.

7. Copyright and Reproduction. The Artist reserves all reproduction rights, including the right to claim statutory copyright, in the Work. The Work may not be photographed, sketched, painted, or reproduced in any manner whatsoever without the express, written consent of the Artist. All approved reproductions shall bear the following copyright notice: © by (Artist's name) 19____.

8. Miscellany. This Agreement shall be binding upon the parties hereto, their heirs, successors, assigns, and personal representatives. This Agreement constitutes the entire understanding between the parties. Its terms can be modified only by an instrument in writing signed by both parties. A waiver of any breach of any of the provisions of this Agreement shall not be construed as a continuing waiver of other breaches of the same or other provisions hereof. This Agreement shall be governed by the laws of the State of _____.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement as of the date first set forth above.

Artist _____ Collector _____

Basic Contract of Sale

Artist's Letterhead

Purchaser_____	Date_____
Address_____	Account Number_____
_____	Sales Rep_____
Ship to_____	Order Number_____
Address_____	Ship via_____
_____	Date shipped_____

All customers must pay in full at the time of purchase, except for credit-verified trade accounts. If the purchaser is such a trade account, payment in full is due within ____ days of receipt of merchandise.

Item Number	Description	Quantity Ordered	Quantity Shipped	Back Ordered	Retail Price	Discount	Unit Price	Amount

Authorization if paying by credit card

Card_____

Number_____

Expiration_____

Subtotal	_____
Shipping & Handling	_____
Sales tax	_____
Payment received	_____
Balance due	_____

Purchaser_____ Artist_____

Contract of Sale with Moral Rights and Resale Royalty Rights

FORM
3

This contract provides for the artist to have a continuing relationship to the work after the sale. Copyright, of course, implies a continuing relationship through control of the right to reproduce the work. However, Form 3 seeks to give the artist a continuing relationship to the physical work itself, which is now owned by the collector.

Several of the provisions relate to moral rights, which include the right to be acknowledged as the creator of the work and to have the integrity of the work protected against alteration. Unfortunately, the Visual Artists Rights Act, which took effect on June 1, 1991, has narrow coverage. It defines a work of visual art as “a painting, drawing, print, or sculpture.” It protects only unique works or signed, limited editions of two hundred or fewer copies of a sculpture, print, or photograph. This means that many disciplines of the crafts will not find coverage under the Visual Artists Rights Act. So the artist who wishes to gain such protections must do so by contract, using the types of provisions detailed in Form 3.

The provision for the artist to share in the proceeds if the collector resells at a profit reflects the California art resale proceeds law, which itself was inspired by foreign laws such as the French *droit de suite*.

Other provisions include nondestruction of the work, the right of the artist to borrow the work for exhibition, and the right of the artist to be involved in any restoration of the work. The form is similar to Form 1 and the negotiation checklist includes the issues raised in Form 1.

Filling in the Form

In the Preamble fill in the date and the names and addresses. In Paragraph 1 describe the work. In Paragraph 3 fill in the price. In Paragraph 5 check the box to indicate who will arrange for delivery, and fill in the location and time for delivery and who will pay the expenses for the delivery. In Paragraph 6 fill in when the risk of loss will pass from the artist to the col-

lector. In Paragraph 7 fill in the date for the copyright notice. In Paragraph 11 fill in how many days out of how many years the work may be borrowed by the artist for exhibition purposes. In Paragraph 13 fill in the percentages to be paid to the artist in the event of sale or other transfer. In Paragraph 14 fill in the state whose laws will govern the sale. Both parties should then sign.

Negotiation Checklist

- Review the negotiation checklist for Form 1, since Paragraphs 1–7 are the same for Form 1 and Form 3, and Paragraph 8 in Form 1 is Paragraph 14 in Form 3.
- Determine which provisions that connect the artist to the physical work after sale should bind not only the collector, but owners after the collector. (See Other Provisions for Form 3.)
- Give the artist a right of access to the work in case he or she wishes to make photographic or other reproductions of the work after sale.
- Have the collector agree not to destroy the work.
- If the collector must destroy the work, require that it be offered back to the artist or the artist’s successors in interest. (Paragraph 8)
- Have the collector agree not to alter the work. (Paragraph 9)
- If alteration occurs, give the artist the right to withdraw his or her name from the work as the artist who created it. (Paragraph 9)
- Provide affirmatively that the artist shall be acknowledged as the creator of the work. (Paragraph 10)
- Give the artist the right to borrow the work for purposes of exhibition. (Paragraph 11)

- If the work requires restoration, give the artist the opportunity to make that restoration. (Paragraph 12)
- If the artist does restore the work, provide that a fee shall be paid for this.
- Allow the artist to select the restorer.
- Do not allow the display of work which, in the artist's opinion, requires restoration.
- Provide for a percentage of resale price or transfer value to be paid to the artist as long as the price or value is greater than what the collector originally paid. (Paragraph 13)
- Provide a time within which payment of the percentage of resale proceeds must be made. (Paragraph 13)
- Base the resale proceeds on the collector's profit, rather than on the resale price, and adjust the percentage to be paid the artist upward, since profit will be less than resale price.
- Require that any exhibition of the work by the collector be in a dignified manner.
- Require that any work in multiple parts always be exhibited in its totality. (See Other Provisions for Form 3.)
- Restrict the collector from renting or loaning the work.
- Review the standard provisions in the introductory pages and then compare with Paragraph 14.

Other Provisions for Form 3

- Transferees Bound.** If the artist merely wishes to bind the collector, then Form 3 will suffice as it is. However, the reasons for guaranteeing the artist rights to the physical work after sale remain, even if the collector sells or transfers the work. For that reason, the artist may want to have some or all of the provisions which bind the collector also bind subsequent owners. Collectors may resist this because it could make the work more

difficult to resell. Robert Projansky, who innovated one of the earliest contracts connecting the artist to his or her work after sale, drafted the following provision:

Transferees Bound. If anyone becomes the owner of the Work with notice of this contract, that person shall be bound to all its terms as if he had signed a TAR when he acquired the Work.

The TAR is the Transfer Agreement and Record. Under Projansky's contract, in addition to paying part of any profit to the artist, each seller must obtain a filled-in TAR from the buyer and deliver the TAR to the artist within thirty days after the sale or transfer, along with the money due to the artist. The TAR describes the work, gives the addresses of the artist and the old and new owners, states the agreed value (usually the sale price), and states, "Ownership of the above Work of Art has been transferred between the undersigned persons, and the new owner hereby expressly ratifies, assumes and agrees to be bound by the terms of the contract dated _____," which is the original contract between the artist and collector. Along with the contract and TAR is a notice to be affixed to the work that indicates that the work is subject to the terms of the contract.

- Work in Multiple Parts.** One famous moral rights case in France involved a refrigerator with panels painted by Bernard Buffet. A collector tried to sell the panels as separate artworks. Buffet intervened and the courts required that the work be sold in its totality as the artist originally intended. This is an example of the moral right of integrity. To reach this result in the United States, where moral rights are limited as to the categories of art covered, it might be wise to add the following provision:

Work in Multiple Parts. The Purchaser acknowledges that the Work is a single work consisting of ____ parts, and agrees to exhibit, sell, or otherwise transfer the work only in its entirety as a single work.

Contract of Sale with Moral Rights and Resale Royalty Rights

AGREEMENT made as of the ____ day of _____, 20____, between _____ (hereinafter referred to as the "Artist"), located at _____, and _____ (hereinafter referred to as the "Collector"), located at _____, with respect to the sale of an artwork (hereinafter referred to as the "Work").

WHEREAS, the Artist has created the Work and has full right, title, and interest therein; and

WHEREAS, the Artist wishes to sell the Work; and

WHEREAS, the Collector has viewed the Work and wishes to purchase it; and

WHEREAS, the Artist wishes to have a continuing relationship with the Work after its sale, including the right to borrow the Work periodically for exhibition, restore the Work if necessary, receive a residual payment if the Work is resold at a profit, and be acknowledged as the creator of the Work; and

WHEREAS, both parties wish to maintain the integrity of the Work and prevent its destruction;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants hereinafter set forth and other valuable considerations, the parties hereto agree as follows:

1. Description of Work. The Artist describes the Work as follows:

Title _____

Medium _____

Size _____

Framing or mounting _____

Year of creation _____

Signed by the Artist Yes No

If the Work is part of a limited edition, indicate the method of production _____; the size of the edition _____; how many multiples are signed _____; how many are unsigned _____; how many are numbered _____; how many are unnumbered _____; how many proofs exist _____; the quantity of any prior editions _____; and whether the master image has been canceled or destroyed Yes No.

2. Sale. The Artist hereby agrees to sell the Work to the Collector. Title shall pass to the Collector at such time as full payment is received by the Artist pursuant to Paragraph 4 hereof.

3. Price. The Collector agrees to purchase the Work for the agreed upon price of \$_____, and shall also pay any applicable sales or transfer taxes.

4. Payment. Payment shall be made in full upon the signing of this Agreement.

5. Delivery. The Artist Collector shall arrange for delivery to the following location: _____ no later than _____, 20____. The expenses of delivery (including, but not limited to, insurance and transportation) shall be paid by _____.

6. Risk of Loss and Insurance. The risk of loss or damage to the Work and the provision of any insurance to cover such loss or damage shall be the responsibility of the Collector from the time of _____.