

This sample contract is based on examples of standard artists' agreements found in Sanderson and Hier's *Artists' Contracts: Agreements for Visual and Media Artists* (CARFAC Ontario: Toronto, 2006).

ARTIST/CHARITABLE ORGANIZATION AGREEMENT

This Agreement made in duplicate is between:

_____ (herein called "the Artist")

of _____ (address)

whose GST/HST registration number is _____

and _____ (herein called "the Organizer")

of _____ (address)

whose Canada Revenue Charitable registration number is _____

on _____, 20____.

Definitions:

All-risks: "All-risk" insurance covers all types of damage or threat to the artwork, except where a peril has been specifically excluded.

Archival: when an artwork is deemed to be archival, it is considered impervious to the immediate effects of environmental elements such as light, humidity and heat. While not impervious in the longterm, use of archival materials in its creation slows the rate of decomposition of an artwork. Longterm decomposition is generally due to the breakdown of materials causing "off-gassing", the result of high acid content in the artwork or framing materials.

Canadian Artists' Representation / Le Front des artistes canadiens (CARFAC): A not-for-profit corporation that is the national voice of Canada's professional visual artists. As a non-profit association and a national art service organization, its mandate is to promote the visual arts in Canada, to promote a socio-economic climate that is conducive to the production of visual arts in Canada, and to conduct research and engage in public education for these purposes.

Condition Report: A written report of a visual inspection made upon receipt of an artwork or the container or packaging in which the piece was shipped and of the work itself once it has been unpacked. The purpose is to document the general condition of a work for insurance purposes (should the need for a claim arise). The report should detail any obvious damage such as scratches, dents, chipping, water damage, etc. and the location of damage on the artwork.

Copyright: The exclusive legal right, given to the originator or his or her assignee for a fixed number of years, to print, publish, perform, film, or record literary, artistic, or musical material, and to authorize others to do the same (Oxford 9th ed). Under Canadian Copyright Law, Copyright includes moral and intellectual property rights.

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Copyright fee: A fee charged to a third party for the right of public or private use of an artwork or its reproduction. Uses for which fees can be charged are covered under Canadian Copyright Law.

Descriptive information: Details of an artwork that are included wherever the original, or a reproduction (such as a publicity photo) appears. The details include: the artist's name, the title of the work, the medium, the dimensions, the date the work was created, and the photo credit (where applicable).

“Nail-to-nail” (also “door-to-door”): A term referring to insurance coverage for an artwork which covers the work from the moment it leaves the artist's studio, while in transit, while being installed and publicly exhibited and, finally, either returned to the artist's studio or delivered to the buyer.

Original artwork: A first form from which other forms are developed, particularly an authentic work of art that has been composed by the hand of its originator from which copies or reproductions can be made. Fine Art Prints or Fine Art Multiples are considered original works of art, whereas Art Reproductions are not.

Photo Documentation: A photographic reproduction of an original work. This is generally done for the purpose of publicity or record-keeping (i.e. for insurance purposes).

“Ready to Hang”: A term referring to an artwork that is ready for public exhibition and/or hanging. For two-dimensional works, this generally means works are professionally matted and/or framed. For best longterm value to the buyer, the framing method must incorporate materials that are considered to be archival. For three-dimensional works, the exhibitor (the fundraiser) is generally responsible for the details of display such as a case or pedestal.

(Art) Reproduction: An image that has been mechanically reproduced in a different medium from the original, but that is faithful in its resemblance to the content and composition of the original. “Print or Offset” Reproduction are terms also used and refer to a type of art reproduction generally produced through a photo-mechanical process and produced by a commercial press.

The parties agree as follows:

1. Limited Rights of Use & Description of Work(s)
 - 1.1 The Artist shall give the Organizer specific and limited rights of use of artwork(s) identified by the Artist in the attached **Annex** and entrusted by the Artist to the Organizer. These rights are limited to uses in conjunction with the fundraising event/project titled _____ (herein called “the Fundraiser”) and outlined in this agreement. The Fundraiser shall take place on the date(s) _____, 20____.
2. Authorship & Copyright
 - 2.1 The Artist shall guarantee that he/she has created the work(s), that the work(s) is original, and that he/she has the right to sell the work(s).
 - 2.2 The Artist shall guarantee that he/she has retained copyright of the work(s) and that he/she has the right to grant permissions and licences for use of the work(s).
 - 2.3 The Organizer shall agree to protect the Artist's copyright by advising the buyer that under Canadian Copyright Law, the purchase of original work(s) is not equivalent to the purchase of copyright. This shall be done either in writing or verbally during the Fundraiser.
3. Photo Documentation & Publicity

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- 3.1 The Organizer shall be responsible for any expense(s) incurred in photographing the Artist's work(s) to be used in the Fundraiser. Should the Artist have access to already existing photographs of the original work(s), he/she shall endeavour to make them available to the Organizer.
- 3.2 The Artist shall retain copyright of the photographs, as well as ownership and control of all negatives and transparencies once the Fundraiser is over.
- 3.3 If using the Artist's copies of photo documentation of the work(s), the Organizer shall return the photographs in their original condition to the Artist within a timely period of the Fundraiser, ideally ten (10) days following.
- 3.4 The Organizer shall be responsible for publicity for and related to the Fundraiser.
- 3.5 The Artist shall grant the Organizer permission to use images of the work(s) listed in the attached **Annex** for the purposes listed below. The Organizer shall pay copyright fees as follows:

Approved Use:	Applicable Copyright Fee:
a) _____	/ _____
b) _____	/ _____
c) _____	/ _____

[Or alternatively:

- 3.6 The Artist shall grant the Organizer permission to use images of the work(s) listed in the attached **Annex** for the purposes listed below. The Artist shall waive the copyright fees for the following uses:

Approved Use:

- a) _____
- b) _____
- c) _____]

- 3.7 The Organizer shall not crop or edit images of the original work(s) without the express permission of the Artist.
- 3.8 Every time an image of the Artist's work is used, in whole or in part, it shall be accompanied by proper and complete descriptive information – this information shall be provided in the attached **Annex**. The Organizer shall honour existing agreements with the photographer of the work and give photo credit where applicable.

4. Framing

- 4.1 The cost of framing each work is:
 - (Work 1) _____
 - (Work 2) _____
 - (Work 3) _____
- 4.2 The Organizer shall absorb the cost of framing.
- 4.3 The Organizer shall ensure that the framing is completed within a timely period, ideally ten (10) days prior to the Fundraiser.

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[Or alternatively:

4.4 The Artist and the Organizer agree to evenly (50/50) share the cost of framing, and the Organizer will ensure that the framing is completed within a timely period, ideally ten (10) days prior to the Fundraiser.]

5. Reserve

Either

5.1 The Artist shall establish a reserve price on the work(s). The Artist shall include the reserve price in the table in the attached **Annex**.

5.2 The Organizer shall agree that the minimum price at which the work(s) will be sold or auctioned meets or exceeds the reserve price.

5.3 If the reserve price is not met, the Organizer shall return the work(s) to the Artist at no additional expense to the latter.

[Or alternatively:

5.4 The Artist shall not establish a reserve price on the work(s).]

6. Transportation

6.1 The Organizer shall absorb the cost of shipping or transporting the work(s).

6.2 The Organizer shall agree to employ the Artist's preferred shipping or courier company, if he/she has a specific preference.

6.3 The Artist shall pack the work(s) to ensure, to the best of his/her ability, against damages. If he/she chooses not to pack the work(s) him/herself, the Artist will give his/her final approval on the packing done by another party.

6.4 If the Artist delivers the work(s) by hand, the Organizer shall ensure the delivery was made at no extra cost to the former, by absorbing the cost of gas (30 cents per km) or taxi fare (with accompanying receipts).

7. Insurance

7.1 The Organizer shall provide all-risks insurance for the work(s) at full value stated by the artist in the attached **Annex**.

7.2 The Organizer shall provide "nail-to-nail" coverage for the work(s) at full value stated by the artist in the attached **Annex**.

8. Storage

8.1 The Organizer shall be responsible for the storage and the cost of storage of the Artist's work(s) from the date of submissions for the Fundraiser to the day the work(s) leaves the Organizer's premises following the Fundraiser. The Artist's work(s) shall be stored at:

_____ by _____.
(location) (method)

9. Installation

9.1 The Organizer shall be responsible for the installation of artwork(s).

9.2 The Artist shall advise the Organizer on the installation of his/her work(s). The Artist reserves the right to be present at the time of installation.

9.3 The Organizer shall respect the integrity of the work(s) by accommodating any special installation requirements indicated by the Artist. The requirements should be characterized as being significant to the meaning or aesthetic of the work(s) or important to the safety of the work(s) and the public.

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10. Damages

- 10.1 The Artist shall include a Condition Report in the shipping container with the work(s). Both parties will inspect the work(s) for damages before packing, before shipping and upon receipt of the packaged work(s) and complete the Condition Report accordingly. Before work(s) is unpacked, the receiving party shall conduct a visual inspection of the parcel or container to assess for damage.
- 10.2 The Artist must be notified immediately if shipping container(s) and/or work(s) is received in damaged condition.
- 10.3 If shipped work(s) is received in damaged containers, it is the responsibility of the Organizer to ensure the work is returned to the Artist prepaid pending claims on the insurer.
- 10.4 With the Artist's permission, the Organizer may unpack the damaged container with the understanding that no claims for damage to the work will be made against the Organizer for the unpacking.
- 10.5 If work(s) is declared damaged or damaged beyond repair, and compensation paid to the Artist, the Artist shall retain ownership of the work in its damaged state.
- 10.6 Clause 10.5 shall be included in the insurance policy for the Fundraiser.

11. Sales and Billing

- 11.1 The Artist shall receive 50% of the purchase price of the donated work(s). The remaining 50% shall be retained by the Organizer.

[Or alternatively:

- 11.2 *The Artist shall set a reserve price, 100% of which shall be payable to the Artist. The Organizer shall retain any amount received at auction above the reserve price.]*
- 11.3 Within ten (10) days of a sale or auction, the Organizer shall notify the Artist whether or not a work(s) has been sold.
- 11.4 A copy of the bill of sale shall be forwarded to the Artist within this ten (10) day period containing the following information: title of work(s), date of sale, sale price (including GST/HST if applicable), name and address of purchaser, balance of sale proceeds payable to the Artist, and any GST/HST payable to the Artist.
- 11.5 Within thirty (30) days of the Fundraiser, the Artist shall be paid the full amount owing for the sale.
- 11.6 Prior to payment to the Artist, the Organizer shall hold all proceeds of sale in trust for the Artist.

12. Tax-Deductible Receipts

- 12.1 The Organizer guarantees that he/she can legally provide the Artist with tax-deductible receipts for any sale amounts above what is payable to the Artist.
- 12.2 The Artist's donation amount shall be considered 100% of the purchase amount of the work, subtracted by the amount of remuneration (50% or the reserve price, as applicable) received by the Artist from the Organizer.
- 12.3 Should the Artist decide to waive his or her portion of the sale proceeds, the Organizer shall ensure that the Artist has the option of receiving a tax-deductible receipt for the full amount for which the work is purchased. This shall be done through additional transactions that the Organizer shall guarantee are in compliance with the rules and regulations laid out by the Canada Revenue Agency.

13. Removal of Work(s)

- 13.1 Neither the Artist nor the Organizer shall remove the work(s) before or during the Fundraiser without the explicit permission of the other.

14. Key Dates

- 14.1 The following key dates will be reviewed and approved by the Artist and the Organizer no later than thirty (30) days before the deadline for submissions.

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- 14.2 For the purposes of event promotion, photographs of the original work(s) to be sold or auctioned shall be sent to the Organizer no later than thirty (30) days before the deadline for submissions, or _____, 20____.
- 14.3 The deadline for submission of work(s) is _____, 20____.
- 14.4 Any unsold work, as well as photographs, negatives, and transparencies, shall be returned to the Artist no later than ten (10) days following the Fundraiser, or _____, 20____.
- 14.5 The Organizer shall deliver payment and receipts to the Artist thirty (30) days following the Fundraiser: _____, 20____.

GENERAL PROVISIONS

18. Amendments

- 18.1 Amendments to this Agreement shall be in writing and signed by both parties.

19. Default and Cure

- 19.1 No party shall be in breach of this Agreement unless given written notice by the other party stating the nature of the breach and the party receiving notice has failed to cure the default written thirty (30) days of receipt of the notice.

20. Entire Agreement

- 20.1 This Agreement shall constitute the entire agreement between the parties and shall supersede all prior negotiations and understandings. The parties shall also agree that there are no representations or warranties, collateral agreements or conditions that affect this Agreement other than what is expressed herein.

21. Interpretation and Validity

- 21.1 The interpretation and validity of this Agreement shall be governed by the laws of the Province/Territory of _____ and the parties agree to submit to the exclusive jurisdiction of the courts of _____.

22. Waiver

- 22.1 No waiver by one party to a breach of this Agreement by the other party shall take effect or be binding upon the other party unless in writing. Unless otherwise agreed, a waiver shall not affect the right of either party with respect to any other breach. All rights and remedies of the Artist are cumulative and may be exercised independently or in combination.

(Witness)

(Artist)

(Organizer)

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Acknowledgements:

The following sources have been consulted for the artistic and legal definitions found in pages 1-2 of this sample contract.

“Copyright.” The Concise Oxford Dictionary, 9th Edition. Ed: Della Thompson. Oxford: Clarendon Press, 1995.

Sanderson, Paul, and Ronald N. Hier. Artists' Contracts: Agreements for Visual and Media Artists. Toronto: CARFAC Ontario, 2006.

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