

# FEAGA'S NEW GUIDE FOR ART GALLERIES

## Preface

The New Guide has been compiled in order to support the professionalism of gallerists. It contains recommendations for their daily business and helps to avoid pitfalls. It is the continuation and update of FEAGA's 1999 European Gallery-Artist Guide. This New Guide is also a means of gathering more information and we will update it regularly. However, we have chosen not to be too detailed, since our member associations often have their own national Guides or Codes.

I am very satisfied with the efforts of the FEAGA Workgroup, the external advisors, and our lawyer Mr. Antoon Ott. All have made great efforts to achieve the present result in June 2019. I am most grateful and wish to thank Jo Coucke, Peter Deuss, Kristian Jarmuschek, Annamaria Molnár, Marion Papillon, Helene Vandenberghe, Sofie Van de Velde and Karine Verloren van Themaat.

FEAGA's separate Code of Ethics and Professional Practices is based on several codes from different countries. We consulted the codes in FEAGA's archives and the ADAA (Art Dealers Association of America). I am equally grateful to our American colleagues for sharing their inspiring Code of Ethics.

Ours has therefore become a clear document, essential to keep up our professional transparency.

*Adriaan Raemdonck, President of FEAGA*

## 1 INTRODUCTION

Its texts are based on experience, on years of research and on consultation between the various national professional associations, members of FEAGA, and the umbrella organisation FEAGA - Federation of European Art Galleries Associations itself.

FEAGA considers the open dialogue between the various actors or parties involved (galleries, artists, fellow galleries, institutes and customers) as most important. The pragmatic consideration of possibilities in a transparent and open dialogue between equal parties will often lead to much better results than a strict regulation ever will. Nevertheless, FEAGA recommends that the conditions for collaboration between galleries and artists or their successors in title and between galleries and other parties are formalized in writing prior to any engagement.

What follows is a practical guide for galleries and their dealings with other parties. For the ethics of a gallery's professional practice, we refer to FEAGA's document Code of Ethics and Professional Practices. For the reader to have a good understanding of the world of galleries, we start by sketching its composition.

## 2 THE PROFILE OF THE GALLERY

In the gallery landscape we can roughly distinguish three types of art galleries which show clear, distinct differences in their operations.

First, there is the promotional gallery, also known as pilot gallery, 'galerie de combat' or primary gallery. Often, but not always this is the first gallery for the artist, sometimes called discovery gallery. The promotional gallery focuses primarily on the promotion and sale of the work of the artists with which they enter into a direct and long-term collaboration. Promotional galleries are usually the first to offer the work of their artists; they form part of the primary market. Further on, we will discuss the characteristics of the promotional gallery more in depth.

Aside from these galleries, there are art dealers or merchants. An art dealer is directed primarily towards the trading of works of art. Collaboration with the artist is in this instance not necessary. An art dealer buys, exhibits and sells works of art that he has personally selected, whether or not within a certain genre or a particular style period. Art dealers usually work with art objects that have previously been sold on the art market and are therefore part of the secondary art market. Art dealers take a commission on the resale of work they have previously purchased, or that was placed on consignment with them by individuals or colleagues.

Finally, there are also rental galleries. Rental galleries make their space and services available against payment to all who wish to make use of them.

## 3 THE RELATIONSHIP BETWEEN A GALLERY AND AN ARTIST

The interests of both the gallery and the artist that it represents are inextricably linked. Consequently, their professional relations are based on trust and dialogue and evolve with the aim of long-term collaboration.

In principle, the artist and the gallery are bound by a written more specific agreement or by any other written, more specific engagements such as e-mails or consignment documents, carried out in good faith, involving a sales mandate, responsibility towards the works and financial terms and conditions.

Furthermore, a gallery has similar responsibilities towards an artist who is still alive and towards the successors in title of a deceased artist.

### *3.1 The agreement between gallery and artist*

*See also Annex I (Model of cooperation agreement between gallery and artist)*

#### 3.1.1 Subject of the agreement

The gallery owner is appointed by the artist and therefore also often by his successors in title, to promote, distribute and sell his works.

The gallery owner advises the artist he represents about how to develop and build his career; he offers support, adopting an attitude that is both benevolent and critical towards his work and creations.

Similarly, the gallery owner advises the artist's successors in title in order to protect the good name and fame of the artist and eventually to increase the value of the work.

### 3.1.2 Statement of accounts

Works are generally sold in several stages: reservation, conclusion of the sale, billing, delivery and payment. This process takes a certain amount of time, and therefore the artist must be kept



### 3.1.3 Payment of the artist

If the artist grants a mandate to the gallery to sell his works, the gallery acts as an intermediary in the sale. The gallery and the artist or successors in title, agree on the financial terms and conditions. They are free to agree on the sharing out of the proceeds from the sale. There are two recurrent possibilities:

- If there are no production costs, the sharing out of the proceeds from the sale must be determined with the artist or successors in title.
- If production costs are incurred by the artist, the gallery or a third person, the proceeds from the sale are shared out after deducting the agreed production costs, which are repaid to those who incurred them.

### 3.1.4 Duration of the agreement

Agreements should always have a beginning and an ending. There are several possibilities. A specific period may be agreed upon. Alternatively, it may be agreed that the agreement ends after a specific number of exhibitions organized by the gallery.

When an artist and a gallery enter into an agreement for the first time, it is generally done on the basis of a contract concluded for a specific period.

If the relationship is satisfactory, then the agreement can be converted into a longer-lasting commitment. In principle, in this case, no new agreement needs to be drawn up. A provision can be included in the contract stating that if one of the parties does not wish to continue the agreement, they should cancel the contract prior to an agreed time. If neither party does so, then the contract is automatically renewed. This extension can be determined in a variety of ways. One option is the specification of a number of years or exhibitions. Another option is that the agreement is converted into an agreement for an indefinite period of time. In this case, the contract will give the parties the possibility to terminate the agreement. This will often be combined with a long period of notice, for example, at least one year.

If an artist chooses to work with another gallery, it is advisable to do this in an open dialogue with all parties. The termination of a (sometimes long-standing) relationship of trust requires the necessary tact and caution from all parties involved. A satisfactory close for all parties will leave open possibilities for cooperation in the future.

### 3.1.5 Prices

Gallery and artist together determine the selling price of each work. A price is always connected to an object, for instance a work of art, and not to a subject, for instance a gallery or dealer. When the artist is represented by various galleries, it is recommended to take this into account (possibly after mutual consultation between the relevant galleries), so that collectors are not confronted with different prices for a similar work (barring international differences due to the different national VAT rates).

The prices in the studio must be equal to the sales prices indicated in the gallery of the artist.

### 3.1.6 Partition of the net sale price

As previously mentioned, it is customary for the gallery to act on behalf of the artist in the event of a sales transaction and to conclude an agreement between the buyer and the artist. The gallery is given a fee in compensation, namely a commission on the net sales price. Specifically, this is the sales price minus VAT, payments for social security and other premiums.

The gallery earns a commission on the net selling price obtained, excluding VAT. In case of considerable production costs, it is common practice to deduct these costs from the sale price, after which the balance is distributed between the artist and the gallery, according to a previously agreed ratio. In many cases, a 50/50 rule is used; this mainly applies to long-term collaboration agreements. In the case of group exhibitions (where a gallery builds no long-term relationship with the artist), this may be different. If there is collaboration with another (whether or not) international gallery, the distribution may still be different. It is important that the precise distribution forms part of the prior negotiation between the artist and the gallery. The following elements can be taken into account in this negotiation: the uniqueness or exclusivity of the work, the position of the artist, the production costs, transport costs, the willingness to collaborate with the gallery in the long run. There are no specific rules for this distribution, and more important than the distribution is the investment in a collaboration that works for all parties involved.

When a work is created upon the request (a so-called commission) of a private customer or a public institution, a specific agreement is drawn up between the gallery, the artist and the third party.

It is not an uncommon practice that a gallery grants a discount to the buyer of a work of art. Any consequences of such discount and of the subsequent repartition of the net sale price between gallery and artist should have been discussed in advance by them.

In some cases, the production costs of specific works of art are jointly borne by the gallery and the artist, according to a previously established division.

In the event of a very expensive production, the costs are deducted from the sales price. The remaining sum is then equally divided between the gallery and the artist.

The above principles also apply to works sold by the artist from the studio. It may occur that the artist has a previously established client relationship prior to the agreement with the gallery. In this case, the abovementioned principles do not apply to transactions between the client and the artist. This is primarily the case with clients who have shown long-standing support and loyalty to the artist. However, such transactions should be notified by the artist to the gallery in advance.

When a work of art is sold via an art consultant, the transaction is handled by the gallery. It is common practice in the industry for the gallery to pay the consultant a commission calculated on the sale price. The settlement between the gallery and the artist in this case is as follows: the commission is deducted as a cost from the total sale price. The remaining proceeds are then divided between the gallery and the artist on the basis of an allocation key that is preferably determined in advance.

In most countries it is legally not allowed for an art consultant to receive commissions from both seller and buyer.

Sales to museums are also handled by the gallery. If the purchasing museum negotiates a discount, then this is deducted as a cost from the total sales price. The remaining proceeds are subsequently divided between the gallery and the artist on the basis of an allocation key that is preferably determined in advance.

### 3.1.7 In case of commissioned creations

When a work of art is ordered and regardless of the commissioning party, the artist and commissioning party must involve the gallery that represents the artist in the project from the very start of the process.

### 3.1.8 Studio sales

Artists who grant a mandate to a gallery undertake not to sell directly and therefore to inform the gallery of any purchase procedures, by both private and institutional players. Consequently the sales mandate includes not only works consigned to the gallery, but also those in the studio.

Each sale made in the artist's studio is basically treated in the same way as a sale in and through the gallery. All sales are concluded in consultation with the gallery and under the same conditions as a gallery sale.

Most sales, however, pertain to works in consignment. This means that the gallery facilitates an agreement between the buyer and the artist. The gallery collects the payment from the buyer. The gallery subsequently pays the artist. The settled amount consists of the selling price, minus the mediation costs (including VAT).

The payment of the buyer to the gallery must take place within a reasonable time. The payment by the gallery to the artist will take place as soon as the gallery has received the buyer's payment.

### 3.1.9 Termination of the agreement

This issue is a most frequent stumbling stone and source of conflicts.

In the case where the collaboration between the gallery and the artist is indeed ended because of the termination of the agreement by one or both parties, then a fair, correct and detailed settlement should be carried out. There may still be outstanding claims between both parties that need to be settled. Furthermore, there may be other costs that need to be paid. The termination of the agreement does not necessarily imply that there are no future revenues.

Should one of either parties wish to terminate the agreement, then the previously agreed terms such as period of termination, funded production costs and the like must be met. On-going sales agreements are not cancelled by the termination of the collaboration. When the termination period has expired, the artist (or his entitled party) will remove all his works from the gallery as soon as possible.

If the production of a particular artwork was funded by the gallery, then the gallery has the right to purchase the work. Another option is the reimbursement of the production costs. When the contract is terminated, the costs (due to the breach) will be paid by the party who has terminated the mandate. In any case, all inventoried costs and obligations between both parties need to be dealt with.

### 3.1.10 Customer information

The gallery is not obliged to share the contact details and the addresses of its customers with its artists. Furthermore, customers' data can only be shared with any other party with consent of the customer. If the gallery does share so, then the shared information will remain the property of the gallery. The artist may not commercially misuse this information or share it with other galleries. See also 8.5 about the European personal data protection Directive.

## 4. ISSUES RELATED TO DEALING WITH WORKS OF ART

### 4.1 *The Consignment Form*

A consignment is a means to formalize a collaboration between two parties, for a determined period of time and with regard to one or more specified objects. The accumulated history of subsequent consignments between two parties indicates an actual collaboration, proves the actual existence of the relation and even predicts how parties mutually behave unless they have agreed to end their relationship. Repeated consignments of a specific artist to a specific gallery regarding different gallery exhibitions testify the legally binding actual relationship between gallery and artist. The same accounts for relationships between galleries.

Consignment in this context, refers to the common situation where an artist, or a person other than the artist (private sales- collections), called as the consignor, makes works of art available to the gallery. In this way, the gallery can sell the artworks on behalf of the consignor. When the gallery sells an artwork, then it actually mediates between the buyer and the seller, in this case the consignor.

The artist continues to own the goods until the moment of their sale. Often, this is an agreed period, but that is not necessarily always so.

Common agreements regarding consignment generally stipulate

- that the gallery reserves the right at all times to
  - keep the works of the artist in stock
  - exhibit the works
  - sell the works
  - return the works to the artist.
- that the artist can only accept the return of the work given in consignment upon the agreement of the gallery.
- that the artist may not refuse the works of art returned to him by the gallery.
- a description of the work so that it may be identified
- the financial conditions attached to the sale

When the gallery accepts the consignment of one or more works of the artist, an agreement should preferably be drawn up. Consignment here means: the temporary lending of works of art to be sold on behalf of the author or sender. A consignment document contains: agreements between the gallery and the artist about the price, the distribution of revenues, duration of the agreement, the insurance of the works, transport etc. and any other agreements regarding the collaboration between the gallery and the artist

### 4.2 *Insurance*

The gallery shall bear the cost of the insurance of works in the gallery or in any exhibition organized by the gallery, unless otherwise agreed. Any transport of the work must also be insured against damage. Although other possibilities are feasible, especially when the gallery has invested in the works, the amount to be insured is minimally limited to the artist's share of the selling price, excluding VAT.

#### The promotion of the artist and/or the art work

The gallery owner has the role of an intermediary between the artist and institutional and private collectors and art professionals. He can promote contacts with journalists and art critics. In this way, the gallery owner improves the artist's visibility, putting him in touch with all professionals likely to contribute to his fame.

The gallery owner develops communication tools in order to promote the artist and his works. He creates archives of the artists' work (articles, reviews, photographs etc.).

For a deceased artist, given that his work is now completed, the gallery owner who represents him, in agreement with his successors in title, promotes his work and enhances its value. He takes part in scientific and historical research on the works (annotated catalogues, authentication, valuations etc.) thereby contributing to the recognition of the deceased artist.

Promotional galleries work almost exclusively with contemporary, living artists and build a good working relationship with the artists they have prospected and represent. They foster the promotion, support and mediation of the artist's work and develop the necessary means of communication to these ends. The promotional gallery does everything – in consultation with the artist – to present his work in the best possible conditions:

- represents its artists at domestic and foreign art fairs so as to present the artist within a broader (international) forum;
- invests if possible and – if desired – in the production of a work;
- organises exhibitions and lectures, compiles portfolios for purchase committees;
- informs the press (journalists and critics) so as to increase the visibility and reputation of the artist;
- publishes exhibition catalogues and books on the work of the artist;
- promotes the artistic-scientific research of the oeuvre;
- advises the artist on the development of his career and assesses the work both critically and constructively; assists the family of the artist, both individuals and foundations, in the legal protection of the work of the late artist while also investing in scientific and historical research on the oeuvre so that it may acquire its rightful place in history;
- builds an archive (consisting of articles, reviews, photographs...) on behalf of the artist;
- collaborates with other galleries; in order to widen the artist's network, a promotional gallery will collaborate with other, mostly foreign galleries, preferably galleries that maintain the same philosophy and ethics; here too, good agreements help to streamline the relationship between galleries; these collaborations can be intensive and demanding in the short term, but are rewarding in the long run;
- aims to 'place' the works of its artists as accurately as possible and to the best possible terms and conditions of sale, both in private and public collections;
- in other words, ensures the good relationship between its artists and the public; the promotional gallery performs a bridging function between the artist and private collectors, art professionals, the media, companies, institutes and governments.

For its efforts, the promotional gallery does not charge a fee from the artist, but rather acquires its operating resources on the basis of a percentage of the sale price, which has been agreed upon in advance with the artist. In the event of the death of an artist, the gallery will respect the engagement made with the artist, unless new terms of collaboration are established with the artist's relatives.

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### *5.1 Exhibitions*

Gallery exhibitions serve a double purpose: they do not only offer opportunities to sell the art work exhibited, but they are a most valid means to make the artist and his work better known too.

The gallery and the artist make agreements on the exhibitions of the artist's work to be organized by the gallery. Generally, a somewhat regular frequency of exhibits is scheduled, for example every 12, 18, 24, 36 or 48 months. Obviously, this also depends on the productivity of the artist, exhibitions held at other locations, the age of the artist, the stage of his career, etc. In order to give the gallery the opportunity to adequately plan an exhibition within its programming – a gallery represents several artists – the concrete planning of an exhibition must be agreed upon 12 months in advance.



A gallery sometimes collaborates with other galleries. The gallery decides independently about the conditions of such cooperation. Under such collaboration, it may occur that the percentage of the share of the sale price realized by the other gallery for the artist is lower. In such cases, the artist must agree in advance if he wishes to participate in the collaboration. An example of this is an international collaboration between galleries that entails high costs, such as transportation, insurance, promotion and the like. On the one hand, this imposes a higher financial risk on the gallery, but on the other hand, it may generate an increase in the (international) interest in the artist in question.

## *5.2 Catalogues*

It is not a common practice that a gallery that organizes an exhibition should also produce an accompanying catalogue. If the gallery proposes to produce a catalogue, then the gallery will consult with the artist on how the production costs are to be covered or shared.

## *5.3 Photo documentation*

Part of the function of the gallery is the promotion of the artist and his works of art. This includes advertisements, placement on websites, catalogues, leaflets, invitation cards and the like. Typically, the gallery assumes the cost of the photography for these purposes. Should photos need to be made for other purposes, then the costs will be passed on to the artist and/or the client or persons concerned.

If the artist provides pictures of artworks to the gallery, then the photographer must agree that the gallery and the artist have the right to use these pictures for specific activities and also for future use, except for commercial purposes, for instance to make and sell posters of them. This implies that the photos can be used without any objection and be published on the Internet, in catalogues etc. This agreement applies even in the event where the gallery itself contracts a photographer.

# 6 ESTATES

## *6.1 The difference between an inheritance and an estate.*

Generally speaking, the estate is every property a natural person, a testator, leaves behind when he deceases. The inheritance is what the heirs receive out of the estate as the major/standard benefactors. The inheritance can be congruent with the estate but not necessarily. For example, if a testator bequests an artwork to a friend, the artwork is part of the estate but not part of the inheritance. It is a separated gift out of the estate to someone who is not an heir. The specific meaning of the term 'estate' depends on the context. On the one hand, it can refer to a legal structure in common law jurisdictions, which all assets of a natural person go into at the time of death. This structure is usually temporary. It is liable to pay inheritance taxes and handle the inheritance via an executor. After this has been done, the assets are transferred to the heirs. So it stands for a purely legal concept.

On the other hand the term 'artist's estate' is used in its broader meaning to describe a legacy vehicle of an artist. This can be a natural person, or an entity who is in charge of the legacy, in all possible ways, irrespective of the legal nature, the form of the organization, the planned duration, etcetera. Therefore in the end, the term is used to build a bridge to the deceased artist and makes sure that his/her work is kept alive.

## *6.2 The crucial role of the involved gallery*

Artists' estates have become important, independent actors within in the art world. They are more and more professionalized just as their essential partners, the galleries, they are working with and are in need of. This is to the benefit of both sides as it simplifies the way of working in a fast moving art market.

However, working with an estate differs from working with a living artist and successful togetherness does not happen automatically. Hence it is advisable for galleries to consider the following basic points for a promising legacy management and a mutually benefitting business relationship:

- discuss the artist's vision of the oeuvre/legacy pro-actively with the artist while he is still alive
- include the heir's/benefactor's perspective and wishes
- have/invest in a clear and professionally drawn contract that defines the working relationship and manages the reciprocal expectations

Additionally, the gallery should play an active supporting role in keeping the oeuvre alive by:

- finding solutions for the studio and the storage of the work, support with legal matters as authentication, Intellectual Property rights, stimulating scientific research, helping to create the catalogue raisonné, organising the archive, stimulating new lectures of the artist in the contemporary field through publications, group shows etc.

*(Source: the Institute of Artists' Estates)*

## 7 AUTHOR'S RIGHTS

### 7.1 General principles

Author's rights do occupy a vast domain. FEAGA suggests we focus on any artist's or author's rights that engage the gallery in one way or another.

There are three main moral rights.

- The right of disclosure: the author's right to make their work known to the public. The author alone is entitled to decide when their work is finished and may be revealed to the public.
- The right of attribution (or right of paternity): encompasses the author's right to be acknowledged as creator of a work and to oblige third parties to credit them as such. This means that their name must be given whenever their work is used. An author may also use a pseudonym or distribute their work anonymously.
- The right to integrity: allows the author to oppose any modifications or changes to their work.

The following economic rights are defined.

- The right of reproduction (e.g. the right to reproduce a Sol LeWitt on your museum wall).
- The right of adaptation or translation (e.g. for books or theatre scripts).
- The right of rental or loan (e.g. for DVDs or books).
- The right of distribution (e.g. for cinema or online releases of feature films).
- The right of publication (e.g. for books).
- The right of resale (i.e. the resale of works of art following the first, original sale).

When considering a transfer of economic rights, always keep in mind the following five questions: what, how, where, for how long and for what price?

- What type of right is being transferred or agreed upon?
- What is the scope of the usage?

- In what territory does the transfer apply?
- For what duration are the rights being transferred?
- What is the price of the transfer?

## Examples

- If a photographer is contracted to take pictures at the opening of an exhibition, both the initial quote and the final invoice should state clearly that, for example, the photographs supplied may be used by the gallery for promotional purposes (right of publication), online and in print (usage), in the whole world (territory) and for an indefinite period (the duration), for an amount (the price) which is included in the total price payable by the gallery, as shown on the invoice.
- If photographs of a work of art are supplied by the artist, the same five questions need to be addressed and agreed upon. If the artist took the photographs themselves, these arrangements are made directly with them. If they were taken by someone else, however, then two agreements need to be made: one with the artist and one with the photographer.

## 7.2 Resale rights

From 1 January 2012, throughout the EU, resale rights apply to works of art by living and deceased artists until 70 years after their death.

Resale right is the right of the creator of a work of art or the successors in title of a deceased artist to receive a percentage of the transaction price upon the resale of that work.

The basic rule is the same throughout the EU; the details of the implementation can vary by country. The following section mainly discusses the rules that are the same in each country.

### 7.2.1 Which works of art?

- artworks of living artists and of artists who died no more than 70 years ago.
- originals of works of graphic or visual art (or copies thereof in limited edition): for example, pictures, collages, paintings, drawings, engravings, prints, lithographs, sculptures, tapestries, ceramics, glassware and photographs.
- copies or castings of works of art, insofar as these were made by the artist himself or under his authority in limited edition.

### 7.2.2 Which transactions?

- in the event of a transaction, at least one professional art dealer must be involved as either buyer, seller or intermediary.
- the right does not apply, however, to the first sale made by the artist?
- The right does not apply to acts of resale by persons acting in their private capacity to museums which are not for profit and which are open to the public.
- the resale right applies to works of art with a transaction value of at least € 3,000.
- The resale right does NOT apply in the case where a professional art dealer sells a piece of art that he obtained from the artist less than three years before said sale AND whose sales price is not higher than € 10,000.

### 7.2.3 Which artists?

- artists who are nationals of the European Union (EU); see also <https://europa.eu/>
- artists who are nationals of non-EU member states that are part of the European Economic Area (EEA). At present, these include Iceland, Liechtenstein and Norway.
- If an artist is not a national of the EU or the above-mentioned three countries, then resale rights apply only if the artist has his habitual residence in a European Member State.
- Non-EU or EEA artists, who are nationals of a country that also grants resale rights to nationals of the EU or EEA.

### 7.2.4 Application threshold

Member States may choose to apply an application threshold. The minimum sale price may not exceed €3,000.

### 7.2.5 Which rates?

The following sliding scale applies:

- 4% for the portion of the sale price up to €50,000 \*
- plus 3% for the portion of the sale price from €50,000.01 to €200,000
- plus 1% for the portion of the sale price from €200,000.01 to €350,000
- plus 0.5% for the portion of the sale price from €350,000.01 to €500,000
- plus 0.25% for the portion of the sale price exceeding €500,000
- the maximum amount of resale rights is €12,500, an amount that is reached at a sale price of €2,000,000.
- \* Member States may choose to apply a percentage of 5 instead of 4 per cent for the first portion.

### 7.2.6 VAT

The amount of the resale right must be calculated on the sale price excluding VAT. Obviously, there is no VAT calculated on the resale right.

### 7.2.7 How to calculate?

Caution! Start from the Net Sales Price: the Gross Sale Price less VAT less Resale right. We refer to the online resale rights calculators of each country.

### 7.2.8 Voluntary or mandatory collective management?

Some Member States have opted for voluntary collective management. This means that no single collection organization has been appointed to collect resale rights. For example, it may occur that artists themselves manage their own collection of resale rights, or that there are multiple collection organizations.

### 7.2.9 Limitation period

The claim becomes statute-barred in two ways, in which case resale rights are no longer due:

- 1). in principle after 20 years;
- 2). in a particular case already after five years, i.e. five years after the person entitled has become known both with regards to the claim ability of the compensation and to the person obliged to pay the compensation.

## 7.2.10 Right to information

For a period of three years, the artists or persons who enjoy the resale right have the right to demand any information that may be necessary to secure payment of the resale right.

## 7.2.11 Who can collect?

Resale rights can only be collected by the artist himself, his heirs or authorized collection organizations.

If there is doubt whether one is actually dealing with an artist's heirs, it may be advisable to ask for a declaration of inheritance right to avoid to pay the wrong persons at the risk of having to pay again. In the event that resale rights are collected by a collection organization, it is often possible to perform a check on their website whether the artist or his heirs are affiliated with the organization. Here too, one must, in case of doubt, be able to verify the authenticity of the beneficiary, for example by means of a certificate of inheritance right.

# 8 THE RELATIONSHIP WITH BUYERS

Important are the Conditions of Delivery, see 8.6 and the European personal data protection Directive, see 8.5.

## 8.1 Certificates

It is in the interest of both gallery, artist and buyer that a certificate of authenticity, and of uniqueness in the case of unique works, accompanies every work of art that is being sold and – definitely so in our Internet times – that the selling party keeps a record of all the certificates it issues or has issued.

The artist of course is the ideal authority to issue such testimony but he can request the gallery to assume this task and responsibility. If a gallery has a certificate of authenticity for a work that it is selling, it must give it to the buyer together with the work.

The works are described and guaranteed according to current knowledge of the market. The document indicates what the work comprises as clearly as possible and where appropriate specifies the number of components. It must include at least one photograph of the work and include additional descriptions which the quality of the image alone cannot provide.

The certificate is a single, original document which accompanies the work and which cannot on any account be reproduced. The gallery owner is however advised to keep a duplicate of the certificate for the purposes of traceability of the work once it has been sold.

## 8.2 Invoices

### 8.2.1 General information

The invoice provides a guarantee to the buyer regarding the information it includes. FEAGA suggests that every invoice contains the following general information:

- Name of the artist
- title of the work
- creation date
- dimensions
- used technique
- edition and edition number(s)
- specific guidelines for handling, storage and transport of the work

### 8.2.2 The modalities of invoicing.

It is preferable that the gallery should invoice the work sold to the customer. The gallery issues an invoice according to the commission agreement – provided that the conditions of the agreement are complied with. The artist issues an invoice for his share to the gallery. Sometimes a gallery will choose to have the work invoiced directly from the artist to the customer. The disadvantage is that the transaction will appear less professional to the customer. The sale of an artwork takes place in different phases. The customer can reserve the work, then confirm his intention to buy, after which the work is invoiced and payment is made. Only after the completion of all these phases will the artist receive his agreed part of the sale. The artist continues to own the work until his part of the sale price is effectively paid.

### 8.3 Origin

The gallery owner can give the holder of a work the information contained in its archives, for example concerning the origin, but also the biography and bibliography of the work sold. Research may result in costs for the person requesting the information. Information making it possible to identify a work is provided while respecting trade secrets and privacy.

### 8.4 Public price information

Prices are displayed in art galleries according to the recommendations of the authorities, which can differ per country, by “affixing a discreet label on the items exhibited to the public or consulting a price list”. Until now there is no obligation from European law to display prices.

### 8.5 Personal data protection

Galleries and artists should adhere to the new European Personal Data Protection Directive. Disclosures or sharing customer information with artists, other galleries and institutions should be subject to the (written) consent of the customer and the gallery through which the sale occurred. The breach of this obligation shall be subject to the same penalties as usual in other commercial contracts.

Galleries have address files of their customers, (potential) buyers of works of art. They are not obliged to share these files with others, including the artists.

When galleries and artists do agree to exchange names and address data, then it is usual that the gallery should have an exclusive license with respect to the data. The artist himself is not entitled to use the names and addresses for commercial purposes. In this way, he cannot exchange names and addresses with other galleries.

Studio visits by customers are only organised in collaboration with the gallery. An exception to this are the clients who already had a commercial relationship with the artist before the artist joined the gallery.

### 8.6 Terms of Delivery

Terms of delivery should be specified in the sales agreement. These conditions have to be in accordance with the local law and with EU-law. An example of relevant EU-law is the Consumer Rights Directive in which a consumer has been given the right to undo the purchase of an artwork.

The European Personal Data Protection Directive (8.5) is of interest.

## 9 THE RELATION BETWEEN CONFRERES

### *9.1 The primary gallery and secondary galleries*

Artists often maintain relationships with multiple galleries. The basis is formed by the relationship with the primary gallery. The primary gallery invests in the artist. It organizes activities to promote the artist, for example by organizing and/or (co-)financing exhibitions, by publishing catalogues or by promoting the exhibition of the work of the artist by museums. In doing so, the gallery strengthens the reputation of the artist. Galleries will also invest in the production costs of artworks made by the artist. For such activities, which seek to build a long-term relationship, the gallery and the artist will often make specific arrangements: custom agreements.

In addition to the primary gallery, artists can also be represented by one or more secondary galleries. These secondary galleries obviously do not work exclusively with the artist. The activities they undertake for the artist mainly consist of selling his works of art.

The secondary gallery sets the selling price of the artworks, which it should do in consultation with the artist and/or the primary gallery. The secondary gallery is responsible for its own overhead and exhibition costs. The secondary gallery receives the agreed commission for the works of art which are shown in the exhibition space for a period to be determined.

For artists, who eventually have multiple primary galleries in addition to their first or discovery gallery (see chapter 2), the above described situation can be different. If exclusivity is stipulated in the cooperation agreement with the first gallery, it shall have special rights during the tenure of the contract:

- authorisation of other primary contracts
- leading role in price setting
- defining geographical or art fair restrictions

If the contract with the first gallery is terminated prematurely by the artist, or terminated unilaterally in case of contracts without definite tenure, the first gallery or any primary gallery holding exclusive rights might be entitled to either a compensation from the artist or from the new gallery.

If there is no exclusivity for any of the primary galleries, it is still recommended to regulate the representation of the same artist:

- with geographical focus or art fair restrictions
- with exclusive rights for artworks stored on consignment in the respective primary galleries for a pre-defined period.

### *9.2 Gallery-to-Gallery business*

#### *9.2.1.*

FEAGA recommends that galleries work together and that they clearly write down their mutual agreements regarding representation and promotion of an artist, consignments, and loans to third parties, sales, and courtesies.

#### *9.2.2*

In case of institutional exhibitions collaborating galleries also agree in advance about the eventual disclosure of the name of the primary gallery in all publications and media that relate to the exhibition, such as exhibition tags or labels, catalogues and brochures, press and media releases.

## ANNEX

### COOPERATION AGREEMENT

#### BETWEEN

[Gallery's name], a private limited company, with its registered office at [address], Chamber of Commerce [number],  
hereinafter referred to as: 'the Gallery';

#### AND

The [name], located at [address],  
hereinafter referred to as: 'the Artist';

#### WHEREAS:

1. the Gallery is an art gallery which invests in artists. The Artist wishes to work with the Gallery with a view to developing his/her artistic career;
2. in this Agreement, the Artist is designating the Gallery as the primary gallery, that is, the gallery which will exclusively exhibit and promote the Artist's work for a long period, with room being given for cooperation with secondary galleries, that is, galleries which may work with the primary gallery on a one off or regular basis;
3. the Artist and the Gallery are convinced that cooperation with the Gallery as the primary gallery will be advantageous to both of them over the long term and that it is in both of their interests to share the proceeds from the sale of the Artist's artworks in a cost efficient manner;

#### HAVE HEREBY AGREED AS FOLLOWS:

##### *Article 1. Cooperation*

Through this framework agreement, the Gallery and the Artist wish to lay down on good terms the modalities of their cooperation.

The Artist will endeavour to create works with reasonable regularity, with an eye to developing his/her oeuvre.

##### *Article 2. Exclusivity of and efforts by the Gallery*

1. The Artist and the Gallery hereby agree that the Gallery will be designated as the primary gallery in [country]. The Gallery will represent the Artist in [country] to the exclusion of other galleries.

Any sales of the Artist's works will go through the Gallery, independent of exhibitions occurring and irrespective of the date of the sale and place of the sale (gallery, museum, studio or other location).

2. If the Gallery works with secondary galleries, the Artist's works will be given on consignment to the secondary galleries. The Gallery and the secondary gallery will determine the sales price in consultation. The secondary gallery will bear its own costs.

Subject to written derogation, the Gallery, as the primary gallery, and the secondary gallery will be entitled respectively to 10% and 40% of the sales price. The Gallery will invoice its portion of the secondary gallery's commission to the secondary gallery, which itself will invoice the buyer.

[The commission split referred to in the previous paragraph will not apply to the cooperation with [gallery's name] as the secondary gallery.]



3. The Gallery will invest in the Artist's reputation by organising and/or financing promotional activities, and/or payments in advance, and/or investments in production costs, and/or participation in catalogue production, all of the foregoing consistent with the specific, mutual agreements made between the Gallery and the Artist.

These specific agreements may be directed at the following actions intended to exhibit the Artist's work to the public under the best possible circumstances, in close cooperation with the Artist:

- organising exhibitions and lectures;
- informing the press (journalists and critics), so as to boost the Artist's visibility and reputation;
- representing the Artist in domestic and foreign art fairs, in order to present the Artist on a bigger international or other stage;
- attending to files for institutional buyers' buying commissions;
- publicising exhibition catalogues and books about the Artist's work;
- utilising the cooperation with other galleries to expand the Artist's network, particularly

in foreign countries, for which the Gallery will be compensated separately in accordance with Article 2.2;

- to the extent possible, placing the Artist's work in private and public collections, with the Gallery's serving as a bridge between the Artist and private collectors, art professionals, media, companies, institutes and government bodies;
- promoting artistic-academic research regarding the oeuvre;
- maintaining an archive of articles, reviews, photographs, and so forth pertaining to the work;
- investing in the production of works (pursuant to agreements to be determined later).

This list reflects the areas in which the Gallery will undertake to exert its best efforts, without the list being exhaustive or binding as to each separate item. It will be up to the Artist and the Gallery to make additional agreements which relate to the cooperation and the needs regarding developing the Artist's career. The Gallery will continuously advise the Artist on developing his/her career.

4. Subject to agreements to the contrary, the Gallery will assume the following costs for its own exhibitions and participation in fairs:

- insurance;
- PR and communications about the exhibitions;
- set-up and dismantling installation costs;
- participation costs in fairs;
- shipment costs to buyers;
- transport between the studio and gallery.

### *Article 3. Consignment of works*

1. Unless agreed otherwise, the Artist's work which is provided to the Gallery will always be on consignment in the Gallery.

2. The Gallery may keep the Artist's work in stock, exhibit and sell it, and return the work to the Artist. Ultimately, the Artist's work must be returned to the Artist when the cooperation is over.

3. For all of the Artist's work which is provided to the Gallery, a consignment document will be drawn up, in which the work will be identified by title, production year, dimensions and technique, and the prices and designation for the work will be stated. The consignment document must be signed by both parties. A new list must be created on stipulated dates, but in any event at least once a year.

Before the consignment document is drawn up, the Artist will furnish the following information to the Gallery: a quality image of the work; title; year; dimensions; technique and installation instructions. This information will be conveyed by e-mail or another agreed digital method.

4. If works indicated on the consignment list are used for exhibitions outside the Gallery, they will be treated as if they were lent out by the Gallery.

5. The Artist will remain the owner of the consigned works at all times.

#### *Article 4. Exhibitions*

1. As the primary gallery, the Gallery will organise exhibitions concerning the Artist both domestically and internationally, in consultation with the network (other primary galleries in foreign countries).

2. The Gallery itself will organise both solo and group exhibitions at regular intervals. The Artist and the Gallery will make agreements on the frequency of the exhibitions, taking into account the specific circumstances (production time, exhibitions outside the gallery and so forth). No later than each anniversary of this Agreement, the Artist and the Gallery will make agreements for the next year. In consultation each time, they will agree on a reasonable interval of 6 to 12 months between exhibitions for the cooperation with the Gallery as the primary gallery.

#### *Article 5. Sales*

1. The Gallery will set the sales price for the Artist's works in cooperation with the Artist. The sales price will be the same for sales inside or outside the Gallery (in particular, from the studio). In setting prices for its own sales, the Gallery will consider the secondary galleries' sales prices.

2. The Gallery will receive a commission of 50% of the net price, exclusive of VAT, minus the production costs, and any other mark-ups based on where the works are sold.

In selling the Artist's work, the Gallery will bill the total price to the buyer. The Artist will in turn bill his/her portion to the Gallery. The Gallery will pay the Artist's portion within a reasonable period after receiving the payment by the buyer.

As regards sales by the secondary gallery, the Gallery will act in accordance with Article 2.2.

3. The Gallery may allow any discount of up to 15% without the Artist's permission. Any discount up to 15% will be shared equally by the Gallery and the Artist. Higher discounts may be agreed on in mutual consultation.

4. The Gallery will inform the Artist of any domestic or international sale. The Gallery will provide the Artist with a list of the collections which include his/her work.

#### *Article 6. Client information*

The Gallery need not provide client information. If the Gallery and the Artist agree to exchange client information, the information will remain the Gallery's property. The Artist may not use this information for commercial purposes, for example, by conveying it to another gallery.

#### *Article 7. Insurance*

The Gallery hereby undertakes to insure all of the artworks in the gallery through the Gallery's policy with [insurer's name]. The Gallery's liability will remain limited to the benefit paid by the insurer.

#### *Article 8. Photographic material*

If the Artist transfers photographic material to the Gallery, he/she will ensure that he/she has made agreements with the photographer allowing the material to be published in any media, including on the internet.

The Artist will allow the Gallery to reproduce and publish photographic material of his/her works without additional payment. This may relate to publications for museums and the Gallery in any media, including on the internet, with attribution for the photographer.

#### *Article 9. Courtesy*

If the Artist's work is exhibited publicly by third parties (galleries, museums and the like), the Gallery will, as the primary gallery, be entitled to be mentioned as the lender of the work next to the work (Courtesy of Gallery [gallery's name]). The Artist will ensure that the third party concerned complies with this agreement.

Similarly, reference must be made to the Gallery in publications about the Artist, catalogues of the Artist's work, press releases and so on. The Artist will likewise include a permanent reference to the Gallery on his/her website.

#### *Article 10. Special projects*

The Gallery will advise the Artist on the opportunity for special projects, such as commercial partnerships (licensings and collaborations), artistic integrations and editions in light of the agreements made in Article 2.3.

The Artist and the Gallery will always make specific agreements about such special projects beforehand.

Subject to agreements to the contrary, editions of the Artist's work will not confer rights to commissions.

Depending on the Gallery's role, artistic integration projects will confer a right to a commission of up to 20% of the Artist's fee.

#### *Article 11. Duration and termination*

The Agreement will be entered into for a five-year period after the signature date, after which the Agreement will automatically be tacitly extended for subsequent five year periods. If one of the parties wishes to terminate the Agreement effective when the initial five year period ends, it must provide notice of this in writing by registered letter at least six months before the initial five year period ends.

If the Agreement is extended, the Gallery and the Artist will consult with each other during the last six months of the five year period on the further development of the Artist's activities and specifically make agreements on the efforts which the Gallery and the Artist will undertake for the next period. These agreements will be included as an addendum to this Agreement.

During the notice of termination period, all of the agreements in this Agreement will be complied with further.

#### *Article 12. Choice of law and competent court*

This Agreement will be subject to [country] law. Any disputes will be exclusively settled by the district courts in [city].

Drawn up in two copies in [city] on [date], with each party having received one copy.

The Gallery

The Artist