

TERMS OF SERVICE AGREEMENT



THIS SERVICES AGREEMENT is made as of this ____ day of _____, 20__ by and between **Gander & White Shipping, Inc.** its affiliates, subsidiaries, divisions, employees, officers, and agents ("**G&W**"), a New York Corporation whose principal place of business is located at **45-11 33rd Street, Long Island City, N.Y. 11101** and _____ whose principal place of business is located at _____ ("**Customer**"). Customer retains G&W to provide Services in accordance with the terms and conditions set forth herein. In consideration of the promises herein contained, and other good and valuable consideration, G&W and Customer agree as follows:

Definitions: "Items", sometimes referred to as Goods, shall refer to all property in whole or in part, in packed or unpacked state, including but not limited to artworks and cultural property, tendered to G&W for any reason including but not limited to storage, transportation and Services. "**Customer**" is the person(s) or organization who retains G&W to perform Services. "**Consignee**" shall refer to the person or parties who receive Items from G&W or its subcontractors or representatives. "**Premises**" shall refer to the structure, fixtures and fittings at any location other than the facilities maintained by G&W, including but not limited to the location where the Services are being performed, the Customer's residence or place of business, Consignee's residence or place of business, and or any location where G&W receives and or delivers Items and or performs Services. "**Contents**" shall refer to any articles of property, excluding Items, including but not limited to fine and decorative arts, antiques, furnishings, equipment and household goods located at Premises.

Term and Termination: This Agreement shall commence on the date of execution and continue on a month-to-month basis. It may be terminated at any time, with or without cause, upon thirty (30) days written notice. Termination by either party shall not affect Customer's obligation to pay G&W for charges incurred.

Services: "Services" shall refer to any and all work performed by G&W for a Customer, including but not limited to storage, transportation, carriage, handling, installation, hanging, removal, movement, collecting, receiving, delivering, placement and securing of Items; construction and repair of crates and travel frames; packing and unpacking, crating and uncrating; framing and unframing, condition reports, cataloguing and inventory, collection maintenance, design and construction of pedestals and brackets, exhibition design, and any and all other services performed by G&W. Customer agrees that it will promptly pay G&W for all Services rendered. Additional expenses incurred by G&W shall be charged to Customer, including for all Items handled after regular business hours.

G&W Rates, Lien for Money Advanced and Interest: G&W shall have a lien against Items for all Services rendered, to cover all monies and materials advanced to third parties for account of Customer, as quoted by G&W in writing to the Customer, and as permitted by the laws of the State of New York and in accordance with the provisions of New York Uniform Commercial Code §§ 7-209 and 7-210 and Uniform Commercial Code §§ 7-209 and 7-210 and or any other applicable state laws. Customer must pay all charges on a monthly basis and within 30 days of invoice by G&W. If charges are not paid within 30 days of invoice by G&W, Customer shall pay an additional 2% of the monthly charge (24% per annum) for each month thereafter until such fees are paid as well as all costs and expenses incurred in collection of such charges including but not limited to attorney's fees and Court costs. Customer shall pay a charge of \$25.00 for a dishonored check. G&W reserves the right to refuse payment by check at any time. No Items may be removed from G&W's Warehouse(s) if Customer's account is 30 or more days overdue.

Indemnification of G&W: Customer agrees to indemnify G&W against all losses, costs, claims, expenses, penalties or liabilities, including attorneys' fees, which arise or may be asserted against G&W as a result of claims for damage resulting from Items deposited with G&W by Customer or Consignee; competing claims of ownership asserted against Items; and/or Customer's failure to timely pay charges incurred in transport, storage or otherwise or any breach of this Agreement by Customer.

Limitation of Liability: G&W's liability for loss or damage to Items by any cause, even if such loss or damage is caused by the negligence of G&W during its performance of Services, is limited to \$0.60 (sixty cents) per pound per article of Items as determined by the actual weight of the unwrapped article of Items, but it cannot exceed the actual loss. G&W shall not be liable for any claim in excess of \$0.60 (sixty cents) per pound per article of Items, whether the result of negligence, loss, damage, delay, non-delivery, mis-delivery or misinformation, unless Customer declares a higher value for all or a portion of the Items, pays an additional charge based upon the increased valuation of the Items, and documents its actual loss in accordance with G&W's Claim filing rules.

This limitation of liability for damage to Items applies to all transportation, storage, and Services performed by G&W, including but not limited to packing, crating, storage, viewings, installations, and construction and repair of crates and travel frames. G&W incorporates by reference all benefits, defenses and exemptions of the Carmack Amendment to the Interstate Commerce Act, 49 USC §14706, the Convention on the Contract for International Carriage of Goods by Road ("CMR"), May 19, 1956, 399 U.N.T.S. 189, the Carriage of Goods by Sea Act ("COGSA"), the Harter Act, 46 U.S.C. § 30701, the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw, October 12, 1929, and that Convention as further amended by Montreal Protocol Nos. 1, 2, or 4 (referred to as the "Air Treaties"). Declared Value, if any, must appear on all applicable contracts, including but not limited to the applicable Bill of Lading, Warehouse Receipt and /or Services Agreement and may only be entered by G&W. If the space provided for Declared Value on the applicable agreement is left blank, then no value is declared for the Items. G&W's liability is limited to \$.60 per pound as set forth above unless Items are transported by sea (and then G&W's liability is limited to \$500 per package or customary freight unit pursuant to COGSA) or by air (and then G&W's liability is limited to 19 SDR per kilogram pursuant to the Air Treaties).

THE LIABILITY OF G&W FOR LOSS OR DAMAGE TO PREMISES BY ANY CAUSE, INCLUDING THE NEGLIGENCE OF G&W, DURING ITS PERFORMANCE OF SERVICES IS LIMITED TO \$500.00. THE LIABILITY OF G&W FOR LOSS OR DAMAGE TO CONTENTS BY ANY CAUSE, INCLUDING THE NEGLIGENCE OF G&W, DURING ITS PERFORMANCE OF SERVICES, IS LIMITED TO \$500.00.

Exclusions: G&W shall not be liable for loss or damage due to: improper or inadequate packaging by Customer, inherent vice, wear, tear, gradual deterioration, acts of God, war, terrorism, invasion, acts of foreign enemies, hostilities, civil war, rebellion, revolution, insurrection, military or usurped power, confiscation or nationalization, requisition or destruction of or damage to property under the order of any government or public or local authority, civil disobedience, actions by customs or government officials. G&W shall not be liable for punitive, consequential or special damages, including, but not limited to, loss caused by delay, emotional distress, lost revenue, income, market value, loss of use, utility or profit, irrespective of whether G&W knew that such damage could occur. G&W shall not be liable for the mechanical functions of pianos, radios, phonographs, clocks, barometers, mechanical refrigerators or other instruments or appliances. G&W shall have no liability for damage caused by radiation of any kind, toxic, explosive or hazardous property, nuclear weapons or reactors, nuclear fuel, nuclear waste, or chemical, biological, bio-chemical or electromagnetic weapons.

Basis of Settlement of Claims: In the event an Item is lost or damaged, and Customer did not declare a higher value for all or a portion of the Item(s) and pay an additional charge based upon the increased valuation of the Item(s), and an "Exclusion" does not apply, the extent of G&W's liability for such loss or damage shall be limited to the lesser of 1) the cost of repair or restoration plus any diminution of value resulting from such loss or damage, not to exceed \$0.60 per pound, or 2) the pre-loss value, not to exceed \$0.60 per pound.

In the event such Item is subject to a declared value by the Customer 1) G&W agrees to pay the lesser of a) the cost of repair/restoration plus any diminution in value resultant from the loss or damage, not to exceed the declared value, or b) the pre-loss value, not to exceed the declared value. 2) In the event that G&W agrees to pay the full declared value should the Item(s) be totally lost or destroyed or when the Item(s) are deemed to be a constructive total loss (i.e. when the cost of repair/restoration plus any diminution in value exceeds the declared value), then Customer shall surrender the damaged Item(s) and/or Customer's rights, title, and interest to lost Item(s) to G&W. 3) G&W shall not be liable to pay any loss or claim to the extent such payment would expose G&W to any sanction, prohibition, or restriction under UN resolutions or the trade or economic sanctions, laws, or regulations of the European Union, United Kingdom, or United States of America, including but not limited to any sanctions administered and enforced by the United States Treasury Department's office or Foreign Asset Control. 4) G&W shall have no liability whatsoever in the event that any representation made by the Customer regarding the Item(s), including but not limited to any representation regarding any declared value or any representation in connection with any claim against G&W is made knowing that such statement is false or fraudulent as to amount or otherwise.

Indemnity and Hold Harmless: Customer shall defend, indemnify and hold G&W harmless from and against any and all claims, liabilities, damages, losses and judgments, incurred or brought by third parties, including attorneys' fees and costs and expenses incident thereto, which may be recoverable from G&W 1) by reason of loss, damage or destruction of Items, Contents, Premises, or any other property in excess of the above referenced Limitation of Liability and/or 2) by reason of injury to or death of any person or loss, damage or destruction of Items, Contents, Premises, and or any other property resulting from the fault, willful misconduct, or negligence of Customer, its officers, agents, subcontractors and or employees and 3) G&W shall choose its own attorneys. Moreover, Customer shall indemnify G&W from and against all losses, costs, claims, expenses, penalties or liabilities, including attorneys' fees, which arise or may be asserted against G&W as a result of 4) claims for damage resulting from Items deposited with G&W by Customer or Consignee; 5) competing claims of ownership asserted against Items; and/or 6) Customer's failure to timely pay charges incurred in transport, storage or otherwise or resulting from the breach of any agreement by and between G&W and Customer and or these Terms and Conditions.

Waiver of Subrogation: To the extent permitted by law, Customer hereby waives all rights of subrogation against G&W, its officers, members, agents and employees, occurring and or arising out of any loss or damage to Items, Contents or Premises to the extent such loss or damage is covered by insurance. This waiver of subrogation shall be in addition to, and not in limitation or derogation of, any other waiver, release, or limitation of liability contained in this Agreement with respect to any loss of, or damage to the Items, Contents or Premises. Inasmuch as the above waiver will preclude the assignment of any aforesaid claim for loss of, or damage to the Items, Contents or Premises by way of subrogation to an insurance company, Customer agrees to immediately furnish its insurers with written notice of the terms of said waiver, and to have all applicable insurance policies properly endorsed, if necessary, to prevent the invalidation of said insurance coverage by reason of said waiver of subrogation. All insurance policies covering Items that Customer has or shall procure shall contain a waiver of subrogation in favor of G&W. Customer shall furnish G&W with all applicable insurance policies on request.

Miscellaneous: Choice of Law- This Agreement shall be construed and governed according to the laws of the State of New York without reference to its choice of laws. **Claims Not Resulting from Transportation:** Customer agrees to notify G&W in writing for all loss or damage to Items, Contents, or Premises within five days of after Customer discovers or should have discovered the damage to Items, Contents, or Premises resulting from Services (not transportation) furnished by G&W. No action may be maintained by Customer against G&W to recover for claimed loss or damage to Items, Contents, or Premises resulting from Services (not transportation), unless such proceeding is commenced within twelve months after Customer discovers or should have discovered the damage to Items, Contents, or Premises and a result of Services (not transportation) furnished by G&W. If Customer fails to timely notify G&W and fails to commence suit against G&W within the above time limits, G&W shall not be liable for such claims and such claims shall not be paid. **Claims Resulting from Transportation:** Claims for loss, damage or delay arising from transportation must be filed in writing with G&W within nine

months after the delivery and receipt of Items, except that claims for failure to make delivery must be filed in writing within nine months after a reasonable time for delivery has elapsed. Suits for loss, damage, injury, or delay arising from transportation must be commenced against G&W no later than two years and a day from the date that the claim was denied by G&W (unless the shipment was carried by sea and then COGSA's one-year limitation of time applies). If claims are not filed or suits are not commenced within the above time limits, G&W shall not be liable and such claims shall not be paid. In the event of a claim, the Customer and or the Consignee must hold the packaging, shipping container and its contents in the same condition they were in when damage was discovered.

Subcontractors: Customer authorizes G&W, in its sole and absolute discretion and without further notice, to engage any subcontractor, agent or other third-party independent contractor to undertake any and all Services requested by Customer. In the event that G&W engages a subcontractor for all or part of the Services furnished to Customer, these Terms and Conditions, including the Limitations of Liability, shall apply as if Services were performed by G&W.

Tender for Storage and Release: Customer may only store Items that are free and clear of all superior liens and that Customer has the legal right to store. Customer shall provide G&W with at least one business day's prior written notice of each delivery and removal of Items. If Customer fails to provide G&W with at least one business day notice, G&W shall have the right to refuse the delivery and or removal of Items. Customer shall indemnify, defend, and hold G&W harmless from all claims for unpaid charges, including but not limited to any tax, transportation, or storage charges, in connection with Items shipped to G&W. Items may not contain dangerous, hazardous, odoriferous, radioactive, or leaking substances or any substance or material that is capable of contaminating or damaging G&W or G&W's Customers' Items. Customer's Items are accepted by G&W in apparent good order, except as noted otherwise. Items will not be inspected by G&W and G&W undertakes to handle, store and deliver Items in the packages in which the Items were originally received by G&W. Condition reports prepared or issued by G&W during the normal course of business, for the purpose of noting damages visible to the naked and untrained eye, shall not be binding on G&W.

Delivery to Customer: When applicable, G&W shall be obligated to transport Items with reasonable dispatch and shall not be bound to transport Items by any particular timeline. Time shall not be of the essence in the delivery of any Items. Any part or all of said Items stored pursuant to a Warehouse Receipt or Storage Agreement shall be delivered to Customer only upon receipt of written instruction, signed by Customer, along with payment in full for accrued charges, including interest, if any. In the event of a failure or refusal to accept delivery, it is agreed that G&W shall have a general lien against such property and the right to dispose of such property in accordance with applicable law. In addition, if delivery is not accepted, for any reason, Customer agrees to remit payment to G&W for all expenses incurred as a result of the failure to accept the Items, including, but not limited to, the costs of redelivery and storage of the Items.

Subpoenas and Warrants: If legal actions are served on G&W relating to Items, including but not limited to Subpoenas and Warrants, Customer agrees to pay G&W's reasonable attorneys' fees incurred as a result of G&W's required compliance and defense. G&W shall choose its own attorneys.

Severability and Binding Effect: If any provision of this Agreement should be declared invalid or unenforceable by a competent authority, the remaining provisions herein shall still be in full force and effect. This Agreement shall be binding upon and effective against the Customer's heirs, executors, beneficiaries, and successors and upon any person or entity acquiring an interest in any Items stored by G&W hereunder.

Address of Customer: The address of Customer that is stated in this agreement shall be relied upon by G&W for all purposes until change of address is given in writing to G&W and acknowledged in writing by G&W. Notice of any change of address shall not be valid or binding against G&W if given or acknowledged in any other manner.

Labor, Material, Duty and Freight Charges: G&W will charge for labor and materials furnished at its prevailing rates. Customer will promptly pay G&W for all Services rendered. Despite the acceptance by G&W of instructions to collect freight, duties, charges or other expenses from a Consignee or any other third party, Customer shall remain responsible for all such freight, duties, charges or expenses and shall immediately pay same to G&W upon receipt of proper demand and in the absence of evidence of payment (for whatever reason) by such Consignee or third party when due.

PLEASE PROCEED TO DECLARATION ON PAGE 5 BELOW...

In the event that Customer intends to declare a value for all or a portion of any Items tendered to G&W for Services, including but not limited to transportation, storage, and installations, Customer must advise G&W in writing, in advance of the tender of such Items to G&W for Services, of such Declared Value and pay G&W an additional charge based upon the increased valuation of the Items.

For all Services provided by G&W, as defined in this Services Agreement, including but not limited to storage, transport, and handling of Items, Customer shall set forth an increased valuation for Items in writing to G&W and shall pay G&W the prescribed additional charges.

ADDITIONAL LIABILITY: CLIENT DECLARES A VALUE FOR ITEMS TO INCREASE G&W's LIABILITY FOR SUCH ITEMS, AS PER APPENDIX A. AND AGREES TO PAY AN ADDITIONAL FEE AT THE RATE QUOTED; ☐

TOTAL LOSS ONLY: CLIENT DECLINES THE OPPORTUNITY TO DECLARE A VALUE AND BY CHECKING THE BOX, REQUIRES LIMITED TOTAL LOSS COVERAGE SOLELY TO COVER ITEMS WHICH HAVE BEEN LOST OR COMPLETELY DESTROYED. CUSTOMER REQUIRES TOTAL LOSS COVERAGE FOR ITEMS, AS PER APPENDIX B.

AND AGREES TO PAY G&W AN ADDITIONAL FEE AT THE RATE QUOTED; ☐

(Total Loss Coverage only covers shipments whereby the total consignment of items have been lost or completely destroyed)

ALTERNATIVELY:

If the space provided for Customer to declare a higher value for Items on Appendix A, is left blank, then 1) no value is declared for the Items tendered to G&W for Services, 2) Customer accepts G&W's Limitation of Liability, and 3) Customer declines the opportunity to increase G&W's liability for all or a portion of Items tendered to G&W for Services.

For all Services provided by G&W, as defined in this Services Agreement, including but not limited to storage, transport, and handling of Items, Customer accepts G&W's Limitation of Liability. Nevertheless, Customer acknowledges that G&W has offered it an opportunity to declare a higher value for all or a portion of Items for an additional charge, based upon the increased valuation of the Items, and that Customer may choose to do so at any time by setting forth an increased valuation for Items in writing to G&W and paying the prescribed additional charges.

CLIENT DECLINES TO DECLARE A HIGHER VALUE AND BY CHECKING THIS BOX, CUSTOMER ACCEPTS G&W LIMITATION OF LIABILITY FOR ITEMS AND DECLINES THE OPPORTUNITY TO DECLARE A VALUE FOR ALL OR A PORTION OF THE ITEMS UNLESS IT NOTIFIES G&W IN WRITING (AS PER, APPENDIX A) AND AGREES TO PAY G&W AN ADDITIONAL FEE: ☐

AUTHORIZED SIGNATURE: _____ Date _____

Customer Name _____

Customer Address, Telephone, Facsimile and Email:

Print Name and Position or Title _____

G&W Signature _____ Date _____

APPENDIX A

Item	Value
1. _____	US _____
2. _____	US _____
3. _____	US _____
4. _____	US _____
5. _____	US _____
6. _____	US _____
7. _____	US _____
8. _____	US _____
Total: US _____	

APPENDIX B

1. _____ US _____