

TERMS AND CONDITIONS — PLEASE READ CAREFULLY

1. DEFINITIONS AND ABBREVIATIONS:

“ACI”, “the Carrier” or “the carrier”: Art Crating, Inc. and its employees.  
“BOL” or “Bill of Lading”: A contract representative of an order for ACI to perform transportation, packing and/or any other Services. This document is a Bill of Lading.  
“Consignee” or “consignee”: Persons or parties who receive freight from ACI.  
“Client” or “client”: Persons, parties or organizations who request ACI to perform any Services.  
“Freight” or “freight”, “Goods” or “goods”: Items in whole or in part (in packed or unpacked state) that are tendered to ACI for transportation or other Services, and subject to the terms and limitation of liability set forth in this BOL.  
“PBS”: Packed by shipper, contents and content’s condition are unknown to ACI.  
“Services” or “services”: All art related services, including but not limited to carriage, packing, crating, art handling, installations, de-installation, storage, temporary storage, rolling, folding, stretching, framing, unframing, rigging, manufacture, repair and modification of crates, travel frames, and other containers, handling and removal of goods and artworks from walls, mounting and removal of goods and artworks, lifting and removal of goods and artworks into or out of any location, inventory management, conservation, fabrication of cleats and other hardware for installations and/or transport, or handling of goods and artworks, inspections, and/or condition notes.  
“Shipper” or “shipper”, “Consignor” or “consignor”: Persons or parties who consign goods to ACI for transport, packing and/or related services.

2. LIMITATIONS OF LIABILITY:

A. The maximum liability of Carrier and/or ACI for loss or damage to goods including those relating to or caused by Carrier and/or ACI’s (i) negligence, wrongful acts or omissions and/or (ii) acts or omissions with respect to the construction of a crate or other container for the goods, is limited to the lesser of \$0.60 per pound per item as determined by the actual weight of unwrapped goods or \$100.00 per item unless the Shipper shall declare a greater value where indicated on the front page of this BOL pursuant to a schedule of charges furnished by Carrier and/or ACI at the time this BOL is issued. In no event shall ACI’s Limitation of Liability exceed the actual loss or damage. Should any claim in an amount in excess of the foregoing limits of liability be asserted against Carrier and/or ACI by a third party for loss or damage to freight handled by Carrier and/or ACI, the shipper, consignee, and client agree to, jointly and severally, indemnify and hold Carrier and/or ACI harmless as against any such claim. This provision shall be in full force irrespective of the cause of such loss or damage, including ACI’s negligence. 49 U.S.C. Section 14706 may be applicable.  
B. The maximum liability of ACI to Client, Consignor and/or Consignee for loss or damage to any goods, artworks, or property during its performance of any Services, even if such loss or damage is caused by the negligence, wrongful acts, or omissions of ACI, shall be limited to the lesser of \$0.60 per pound per item or \$100.00 per item unless Client, Consignor, and/or Consignee shall declare a greater value where indicated on the front page of this BOL pursuant to a schedule of charges furnished by ACI at the time this BOL is issued. In no event shall ACI’s Limitation of Liability exceed the actual loss or damage.  
C. The foregoing limitations of liability in this BOL shall also extend to items damaged inside a client, shipper or consignee’s premises or place of business even if caused by the negligence of ACI.

3. CONSEQUENTIAL DAMAGES:

ACI shall not be responsible for and shall be exempt from liability for indirect, incidental, consequential, exemplary or special damages

4. CLAIMS:

Claims (the “Claim”) for loss or damage to goods must be made in writing to ACI within nine (9) months of the date of delivery of goods by Carrier and/or ACI to Consignee (or if there has not been delivery, within nine (9) months from a reasonable time for delivery). No legal action or proceeding may be commenced by consignor of goods, shipper or consignee or anyone claiming through them against Carrier and/or ACI unless the Claim has been timely filed with Carrier and/or ACI and such action or proceeding is commenced within the expiration of two (2) years and one (1) day after Carrier and/or ACI gives written notice that the Claim and/or any part of the Claim has been disallowed. ACI reserves the right to inspect all items and wrapping materials that are being made subject to a claim. As a condition precedent for a claim, the consignee must retain the goods in the original container(s) and/or materials and to make such goods and materials available to ACI or ACI’s insurance company for inspection upon ACI’s or its insurance company’s demand.

5. JURISDICTION AND COSTS OF SUIT:

Claims against Carrier and/or ACI shall be instituted only in the City, County and State of New York, the Courts of which shall have exclusive jurisdiction over all such matters.  
The prevailing party shall pay all the costs of collection and/or litigation relating to this BOL including reasonable attorney’s fees.

6. EXCLUSIONS:

ACI shall not be liable to Customers or consignees, and Customers and consignees release ACI from any and all liability and responsibility for physical damage, loss or loss due to delay for items of freight listed below:

- Items improperly or inadequately packed or mislabeled by the shipper and/or Client.
- Items containing internal damage or concealed breakage; glass and ceramic with existing cracks or other damage.
- Items of inherent vice or weakness due to poor craftsmanship in fabrication.
- Items containing internal mechanics or instrumentation.
- Items with waxen, resinous, or viscous surface area (whether they are in wet, semi-dry or hardened state).
- Uncured and/or not thoroughly dry paintings; uncured and/or unset varnish applied to furniture.
- Items with directional orientation to which the shipper and/or Client does not affix descriptive arrows in advance.
- Items shipped or otherwise handled unwrapped at the stated request of shipper.
- Damaged or excessively worn antique items in disrepair, items exhibiting prior repairs, damage, or breakage.

In relation to any subjective terms as used above (“improperly”, “inadequately packed” mislabeled”, “inherent vice”, “weakness”, “excessively worn”, etc.) it is understood and agreed that ACI shall have the sole and exclusive right, to define and interpret such terms provided such definitions are reasonably and commonly acceptable in ACI’s industry and as applied against common and previous occurrences in the normal course of packing and shipping.

7. JEWELRY AND SPECIE:

ACI will not transport and/or perform any services relating to currency, specie, precious stones, jewelry, or negotiable documents without ACI’s knowledge and consent. Nevertheless, ACI’s liability for loss or damage to such items, regardless of whether or not such loss is sustained during the performance of any services and/or resulting from ACI’s negligence, will be subject to the limitation of liability set forth in this BOL as stated above.

8. EXCLUDED ITEMS:

ACI will not transport and/or perform any services with regard to the following items, under any circumstances without ACI’s knowledge and consent, and such items are collectively referred to as “dangerous goods”:

- Contraband or illegal substances; firearms or ammunition.
- Explosive, chemical, noxious or dangerous goods.
- Livestock, plants, biological or hazardous goods.

The act of consigning dangerous goods to ACI which are disguised by the client and/or shipper, acting with or without knowledge of the client, shall entitle ACI to recover any and all costs and expenses for fines, penalties, legal fees, or other damage to ACI, its equipment and/or personal injury and compensation to ACI employees. The customer also shall be liable for and indemnify and hold harmless ACI from and against all loss or damage to other property or persons caused by said dangerous goods. ACI is at liberty to dispose of any items consigned with or associated with

said dangerous goods at any time and place deemed appropriate by ACI with disposal charges billable to the customer, who shall promptly pay the same.

9. INSURANCE:

A. ACI does not automatically provide insurance for goods and/or relating to any services. Insurance may be purchased for a premium based on the value of goods, which will be added to the cost of ACI’s services. Values must appear on the face of this BOL and may only be entered by employees of ACI. Declared values may not be altered once freight has been received for transport and/or services have been commenced unless ACI issues written consent for such alteration. If insurance is purchased, condition inspections and notes will be required prior to policy issuance and thereafter at all points of interim and final destination, all at Client’s expense. Client will also have to sign documentation confirming insurance request.  
B. ACI reserves the right to inspect all goods and property for which insurance is requested and determine, in its sole and absolute discretion whether additional wrapping and packing may be necessary or desirable. ACI employees shall be at liberty and have the right to effect additional wrapping and packing on such items, even in the event that such services were not originally requested. Additional charges incurred for or associated with such additional wrapping and packing shall be the responsibility of and paid for by Client.  
C. Insurance only covers goods and does not cover the costs of inspection/s, packing labor and materials, crates, containers or shipping charges.  
D. ACI shall not be responsible to substantiate values of goods in transit; nor is ACI responsible to provide proof of origin or authenticate in any way such goods in transit regardless of the description listed on the face of this BOL. Insurance coverage will be voided if customers over-value goods or otherwise insure goods in transit in excess of their fair market values. The responsibility for providing documented proof of value in a claim shall rest entirely with the client. By failing to provide such proof, the client hereby releases ACI’s insurance company to adjust claims to any fair market value as determined by ACI’s insurance company in its sole and absolute discretion.  
E. Groups or multiple items consigned for insured transport and/or other services must be individually itemized and a separate value ascribed to each item.  
F. ACI shall not effect insurance coverage if client declines or refuses to have goods inspected.

10. WAIVER OF SUBROGATION:

Client, Shipper, Consignee and Consignor, hereby waive any and all right of recovery against ACI for loss and/or damage to goods, persons and/or property resulting during the course of ACI’s performance of Services to the extent such loss and/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 BOL with respect to any loss of, or damage to goods, persons and/or property. Inasmuch as the above waiver will preclude the assignment of any aforesaid claim for loss of, or damage to goods, persons and property by way of subrogation to an insurance company, Client, Shipper, Consignee and Consignor agree to immediately furnish their 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. Client, Shipper, Consignee and Consignor shall furnish ACI with all applicable insurance policies on request.

11. INDEMNITY:

Should any claim in an amount in excess of the foregoing limitation of liability set forth in this BOL be asserted against ACI by a third party for loss or damage to goods incurred during the course of ACI’s performance of services or otherwise, client shall indemnify and hold ACI harmless as against any such claim, including reasonable costs, expenses and attorney’s fees. This provision shall be in force and effect regardless of the cause of such loss or damage, and shall include, but not be limited to, claims arising out of ACI’s negligence.

12. LEGAL FEES FOR MODIFICATIONS OR REVIEW:

Should Client, Consignor, and/or Consignee request ACI to make any modifications to any agreement and or review or sign additional agreements and or terms which necessitate ACI to consult with legal counsel, Client agrees to pay ACI’s attorneys fees.

13. BILLS OF LADING:

A. Only ACI employees may alter the front of ACI BOLs. In the event that any third party, including but not limited to shipper, consignor, consignee, or client alters the front of an ACI BOL by making written additions or omissions, without the express written permission of ACI, such alterations shall be deemed void. All terms set forth on the back of this BOL are binding and cannot be modified, altered or waived by any person including ACI employees, save for officers of ACI, and then only in writing and when signed by such an ACI officer.  
B. ACI retains the right to prepare other BOLs and addenda as necessary to sufficiently describe freight in transit.  
C. If ACI deems it necessary or desirable to depart from client’s instructions in relation to any services, then ACI shall be at liberty to do so. ACI shall be at liberty to execute any new BOL information or instructions it shall deem necessary in the interest of the safe performance of services.  
D. Description(s). The description, representation, particulars and/or itemization relating to the goods (collectively, the “Description(s)”) supplied by Client to ACI and any other Description(s) appearing on the (i) container, crate or other packaging, (ii) the goods themselves and/or (ii) other documents relating thereto, have been furnished by the Client to ACI without verification by ACI; Client warrants and represents to ACI and its affiliates, that the Description(s) set forth including, but not limited to, weight, content, measure, quantity, quality, condition, marks, numbers and value are true and correct.

14. USE OF OTHER CARRIERS:

A. ACI may engage other carriers at ACI’s sole discretion subject to the terms, conditions, and limitations of liability contained in this BOL. Should another carrier become the consignee, the liability of ACI shall terminate effective at the time of consignee’s receipt and signature. It is understood that ACI’s receipt of another party and/or carrier’s BOL or receipt ticket constitutes an agreement between ACI and client to release goods to that other party and/or carrier and for client to be then governed by said other party and/or carrier’s terms and conditions as set forth on such other party and/or carrier’s BOL or receipt ticket. ACI shall not be liable to review other party and/or carrier’s terms and conditions and ACI, its agents, servants and employees, shall be released and discharged from all liability under this BOL.

15. SUBCONTRACTORS:

ACI may engage subcontractors at ACI’s sole discretion for the performance of any services subject to the terms, conditions, and limitations of liability contained in this BOL.

16. RATE APPLICATION, PAYMENT TERMS, COSTS, FEES AND EXPENSES:

A. Estimates and quotations are issued on the basis of immediate acceptance; ACI maintains and reserves the right to withdraw or revise without prior notice any estimate, whether issued verbally or in writing, should any changes occur in regards to the rate of freight, insurance premium, or any other charges that are applicable to the goods and services. Services required to be performed on weekends, holidays and other than usual business hours as well as those requiring specialized labor or overnight accommodations will be invoiced pursuant to a separate rate schedule maintained by ACI.  
B. Payment is due upon presentation of invoice unless otherwise agreed to in writing. Invoices that are past due more than thirty (30) days are subject to a 1.5% per month service charge.  
C. No claims for loss or damage will be entertained until all of ACI’s charges have been paid in full. The amount of the claim may not be deducted from the total due and payable charges.  
D. All goods and/or artworks delivered to ACI shall be held pursuant to the terms and provisions contained above, including but not limited to the limitations of liability (and also pursuant to the terms and conditions contained in the ACI Storage Agreement), and subject to payment of all storage fees at ACI’s then current prevailing rates.