

CONTRACTS

What is a Contract?

Broadly speaking contracts are any document that enter two parties into a legally binding agreement. Contracts are used in many business transactions and range from employment agreements to non-disclosure agreements. This Fact Sheet focuses on the importance of contracts for independent artists.

There are specific elements that are required for a contract to be valid, if any of the following are missing you do not have a legally binding contract.

Offer: The offer is what the person initiating the contract provides to the other party, often this will be the work of art or service you provide. It is the main item that the parties are concerned with.

Consideration: Consideration is what the person presenting the offer will receive in return. This can be a straightforward payment of cash, another service to be done in return, or anything that has perceivable value. It does not have to be comparable in worth to what is being offered, just that there is some value, and one party is not gifting something to another.

Acceptance: Acceptance can come in many forms; commonly seen is a signature at the bottom of a written contract. Acceptance is a clear and deliberate confirmation of the agreement. An offer must be accepted for a contract to be binding, negotiations can come close to acceptance but nothing can be enforced until all the details are understood and agreed upon.

Awareness: Both parties must know what is being agreed upon. There must be what lawyers like to call a “meeting of the minds.” This is to ensure that a contract cannot be enforced if the parties were genuinely mistaken as to what was being discussed.

Capacity: Both parties must be in a position to enter into a contract. This is not a common concern but there are situations in which an individual cannot legally agree to a contract. If you are a minor, greatly intoxicated, or not of sound mind there could be a lack of capacity to enter into a binding contract.

Legality: The content of the agreement cannot encourage or demand illegal activity. An agreement can have all other elements, but it will not be a binding contract if the subject matter includes behavior that the courts will not condone.

What Contracts do Artists Use?

The most common contract utilized by an independent artist is a service agreement: a contract that outlines what the artist will create and what they will receive in return. A service agreement can be used when accepting a commission. Artists can have a standard service agreement template they consistently use and simply change the details for new clients, or a unique service agreement can be drafted for each specific project.

Why Are Contracts important?

Entering into a contract before work on a project begins protects artists from being exploited for their work. It is a preventative measure that will make handling any disputes much simpler. Contracts ensure that the artist is compensated fairly and also ensures the client is not surprised by what they receive.

Terms to Consider

Contracts are flexible and can include as many or as little details as the two parties see fit. Some common terms that should be considered include:

Description of Service: Whether it be a logo, photoshoot, or sculpture, it is a good idea to clearly outline what is being done for the client. Knowing exactly what is being ordered prevents clients from demanding more or refusing payment once the project is complete.

Compensation: Include the pricing within the contract. It is also possible to include a clause that states what happens if payment is late or withheld. It is also important to consider the expenses of creating the art. What materials and tools are necessary; who will be providing these things? These details can factor into compensation.

Timeline: The contract should include a realistic expectation of when the project will be completed as well as when payment is expected.

Intellectual Property Rights: A contract can also cover the redistribution of work. The artist should consider what rights they wish to retain, and how the client can or cannot use the work moving forward.

Many more: These terms just scratch the surface of what can be included in a service contract. There are many terms that change based on the industry, the artist, and the client.

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Contracts are an essential tool for artists who sell their work. Drafting an effective contract before taking on work will save time and stress if any complications arise. It is also a good idea to understand the basics of contracts in case one is presented to you. The Manitoba Legal Clinic for the Arts can help artists review or draft contracts to ensure their interests are being protected. Fill out an [online intake form](#) today for help reaching your artistic goals!