

FLASHPOINT CHICAGO

A CAMPUS OF COLUMBIA COLLEGE HOLLYWOOD

What is a contract and why do I need one?

WHAT

Simply put, a contract is a document that can protect all parties by avoiding misunderstandings and serving as a paper trail if things do go wrong. It outlines the terms and conditions under which you will perform your work, what you will provide to the client and what they will provide in return.

Its purpose is also to anticipate problems and clarify the responsibilities of both parties should problems arise.

WHY

You need a contract because human relationships can be messy, memories are imperfect and communication is often ambiguous. A contract cannot protect you from any of this, but it can bring some clarity and consensus. Clarity because it puts in writing what was said (and sometimes not said) so all parties can review it before embarking on a joint project. Consensus because each party must agree to what is written before proceeding further. If any problems arise afterward, the contract stands as the objective document to fall back on.

HOW

A contract can be a simple outline of the terms and conditions by which you and your client agree to work. Or it can be a complex document of several pages, depending on the intricacy of the project or the number of elements involved. Its purpose is to set forth the terms of work—deadlines, scope of work and limitations, contingencies in case of unexpected changes and potential misunderstandings.

WHEN

Many creative professionals believe that contracts are only necessary for big jobs with big fees for big clients. They often skip the paperwork on small projects. But it's actually the little stuff that has the most potential to cause time-consuming, expensive problems. Contracts are especially important for creative professionals because when you sell your work, you essentially are selling a right to your property—in this case, your intellectual property, which is intangible. And because it's intangible, the process may be less clear than if the object in question were tangible, like a car or a house. However, a contract is only as good as the people signing it.

OTHER THOUGHTS

Business relationships are built on trust. In fact, many agreements are made on a handshake and that is enough if both parties are trustworthy. Rule to live by: If you sense that your potential client is not negotiating in good faith, walk away.

What about a contract's ability to anticipate what might happen? In real life you can't predict everything that could possibly happen, so don't spend too much time thinking about every single "what if" scenario. If you're dealing with honorable people, you'll come up with an acceptable solution to an unanticipated problem, even if it's not in the contract. Have your own contract drawn up by an attorney who understands creative services and your interests. You can customize it for each situation. If that's beyond your means, there are plenty of resources available.

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KEY CONTRACT INFORMATION

1. Client information

Name:

Organization:

Address:

E-mail address:

Phone number:

2. Project information

Go into as much detail as possible about what you will do and how you will provide the deliverable(s).

3. Project price and payment terms

Be sure to note any details regarding state taxes that apply (or don't apply) as well as any service charges you plan to add if you use any services, such as PayPal or other merchant services that charge a fee. It is up to you whether you pass this fee on to your client or absorb it as a cost of doing business. Either way, it should be stated up front and agreed upon. Being able to offer credit card payment helps because small projects can require a very quick turnaround.

4. Final payment terms

There are no "right" terms. What's important is that you outline your terms clearly. Always include how much you'll be paid and when, plus your policies regarding late charges. Traditionally, clients with whom you've maintained long relationships should pay "net thirty," meaning they have the standard thirty days to pay. For smaller projects and for new clients, it's customary to request 50 percent in advance and the balance on delivery.

For large projects, consider asking for "progress payments" which are payments that are not tied directly to project milestones, but instead are tied to the calendar. For example, for a project that you estimate will take you four months, propose four equal monthly payments (less the deposit) on the first of every month. This way, if the project takes longer or the client has a bottleneck, your cash flow isn't compromised. Plus, it's an incentive to finish the project since they've already paid for it.

5. Revisions

What's important here is addressing the issue of revisions and clarifying exactly what a revision is. It is not advised to provide unlimited revisions at a fixed price, especially with a new client.

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6. Ownership of artwork/files

Whether you retain ownership of the files or you transfer that ownership to your client is your decision to make. It should be decided on a case-by-case basis. If you want to retain the rights and the native files, you must make that clear because most clients do not understand that is not what they're contracting for.

7. Production schedule/delivery of project

This clause is designed to avoid the all-too-common situation where a client is delayed in getting their feedback to you and you therefore have less time to implement the changes. It states up front that you will extend your time frame according to the length of their delay. In the actual situation, that may not be possible or your choice, but at least you've provided for it as an option.

8. Third-party shipping/delivery

In the event any material necessary for the completion of the project must be shipped to a third party, you must communicate that you will incur no liability for losses incurred in transit, or due to the delay of the shipper of the third party.

9. Proofing of final project

These clauses attempt to protect you from mistakes and minimize your liability. These mistakes will hopefully not occur often, but, when they do, it can be catastrophic if you haven't protected yourself.

10. Cancellation

It's a good idea to have a clause outlining what will happen and what charges will be incurred in the event of a cancellation of the project. If the cancellation is due to reasons beyond your control, a kill fee should be applied according to a percentage representing the stage of the work completed. For example, the Graphic Artists Guild Handbook states, "Typical charges for services rendered can be 25–50 percent if the work is killed during the initial sketch stage, 50 percent if killed after completion of the sketch stage and 100 percent if killed after the final design is completed." You should also allow for payment in the event that the work is rejected due to client dissatisfaction, which also depends on where in the process the project is. Also, "Common cancellation fees are one-third of the total fee if canceled before completion of final project, and 50–100 percent after the final project is completed." This is subject to negotiation but should be provided for.

11. Confidentiality

All correspondence and documents provided will be treated as confidential between you and the client, unless consent has been granted by both parties involved.

12. Acceptance of Agreement

Make sure to state that prices, specifications and conditions are accepted by your client and that you are authorized to execute the project as outlined in the agreement. Also state that payment will be made as proposed in the contract and that the agreement is not valid until signed by client and returned to you.

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PHOTOGRAPHY CONTRACT SAMPLE

Contract for Photography Services

Client's Name:

Client's Address:

Photography Location:

Photography Date: _____ Start Time: _____ End Time: _____

Proof photographs are to be delivered to Client by MM/DD/YYYY

Minimum number of Photographs to be taken: _____ Maximum number: _____

Photographer's Fee: \$ _____ Deposit paid: \$ _____

1. The Client shall reimburse Photographer for any additional costs the Photographer may incur for travel, meals, parking, and other reasonable costs necessary to the performance of these services.
2. The deposit is not refundable if the Client cancels or changes the engagement. If the Photographer fails to appear at the place and time specified above, the deposit shall be refunded to the Client.
3. Proof photographs shall be delivered to the Client on CD. The client shall provide the Photographer with a written list of the proof images from which final photographs are to be prepared, and specify the number and format(s) of the final photograph to be delivered for each proof image. See attached Price Schedule for available final photograph formats and their prices.
4. The Client shall assist and cooperate with the Photographer in obtaining the desired photographs, including but not limited to specifying persons and/or scenes to be photographed; taking time to pose for photographs at the Photographer's direction; providing a person to guide the Photographer to desired persons and/or scenes; pre-shoot consultations, etc. The Photographer shall not be responsible for photographs not taken as a result of the Client's failure to provide reasonable assistance or cooperation.
5. The Photographer retains copyright in the photographs, and hereby grants the Client unlimited but non-exclusive rights to use or reproduce the photographs for which the Client pays.

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Applicable Law

This contract shall be governed by the laws of the County of _____ in the State of _____ and any applicable Federal law.

SIGNATURES

Client's Signature

Printed Name

Address

Phone

Photographer's Signature

Printed Name

Address

Phone

