

A contract is the agreement one party has with another for the provision of goods or services in return for some form of consideration (payment in cash or in kind). It is legally binding and legally enforceable.

A contract or agreement defines not only the financial transaction but clarifies the expectations of both parties. When you have reached an agreement with another party NAVA advises practitioners to document the agreement. It can be very difficult to enforce a verbal contract if a dispute arises therefore written contracts are recommended.

Some parties will provide a contract that needs to be read through carefully, others will not provide any written documentation. It is in the later situation that the practitioner needs to take action and make sure that all the points you have negotiated are written down, shown to the other party and agreed to.

A written contract does not need to be in obscure or legalistic language. It simply states the agreement that the two parties have come to. In a written contract it is important to ensure that all points of the understanding are included because the contract is seen as the full extent of the relationship.

Up until the stage of final agreement all contracts can be negotiated, even if the contract has been offered as standard.

- The basic points of a contract should include
- The names of the two parties
- The nature of conditions of engagement including lines of accountability
- A complete description of the assignment or project
- Timeframe for the project
- Provisions for changes as the work progresses (if necessary)
- Fee arrangements and payment timeframes
- Minimum fees for rejection or cancellation
- Arrangements regarding copyright, moral rights and where appropriate resale royalties
- A dispute clause that seeks mediation before court proceeding are taken

A breach of contract arises where the agreements in a contract are not performed adequately by either party. The main remedy for breach of contract is payment of damages. Damages are supposed to place the person who didn't breach the contract in the same position that they would have been in if the contract had been carried out as agreed.

One way to limit the costs involved in contract disputes is to include a mediation clause in the contract. This clause says that before any legal proceedings are commenced, both parties agree to work through an independent mediator to try to resolve the issues.

Negotiating

The negotiation process is fundamental to ensuring a clear understanding of the issues impacting on an offer or request, such as the full requirements of the job, all parties' responsibilities and terms of pay. You want these discussions to result in a viable relationship for both parties.

When entering negotiations, you need to make sure you are prepared.

- Research the situation as much as possible. Make yourself aware of any established guidelines or standards.
- Recognise your own strengths. Be confident about what you know you can offer.
- Do not agree to undertake activities or provide goods that you aren't able to.
- Understand what the other party is expecting from the situation. Recognise what terms and conditions are not negotiable from the other party's point of view.
- Think about a best scenario/ outcome for you.
- Think about what cannot be negotiated because the outcome would be disadvantageous for you.
- Aim to negotiate for your ideal outcome but be prepared to find an acceptable balance between the needs of both parties.
- How either party behaves during the negotiating process could be an indication of a future relationship so actively read the messages coming from the other party during the process.
- Be prepared to halt the negotiation and walk away if the deal is not to your advantage.

If you feel you cannot manage the negotiating process, investigate using the assistance of a third party such as gallery dealers or agents, lawyers, accountants and other skilled professionals. For example, Viscopy (<http://viscopy.net.au/>) can negotiate copyright licences for their members. They take a fee for the service, but they may be able to get a financial deal or a contract of use that better protects a practitioner's long term copyright interests, due to a thorough understanding of the market.

Types of contracts and agreements

Space rental agreements

When you rent a space for exhibition it is important to have a written agreement that sets out what space facilities you are renting, for what period of time and who will be responsible for which aspects of the exhibition. See Exhibition Contracts Guide for more information.

Loan agreements

Australia has an extensive network of publicly funded spaces that show visual arts, craft and design work usually through curated exhibitions that may not involve selling the work. An exhibition loan agreement should be used when an artist is loaning a work to these galleries for an exhibition outlining the rights and responsibilities of each party. See Chapter Two of the Code of Practice for more information.

Consignment agreements

Where an intermediary such as a gallery or shop exhibits work with the intention of selling it, the work will usually be held on consignment. The practitioner is paid only following the sale of the work. You should develop a consignment agreement that very clearly states what works are left on consignment and under what conditions. Each work should be itemised with a clear description and perhaps photograph of the work. See Chapter One of the Code of Practice for more information.

Full gallery representation

Gallery representation can be referred to as a 'business partnership' in which both parties expect to gain benefit from working together over the longer term. Your representation contract should outline the rights and obligations of each party such as use of the venue, marketing, delivery of goods, payment, legal rights such as copyright and moral rights. For Commercial Gallery Representation Guide and Chapter One of the Code of Practice for more information.

Commission agreements

Individuals and organisations not familiar with the art sector may initiate special purpose commissions. They may have very limited knowledge or experience of working with practitioners or understanding the processes involved in a commission. It is therefore very important that you are able to lead the process to a mutually satisfying outcome.

Producing to a commission brief requires a very thorough understanding of what is required and what is possible. Negotiating the brief, establishing payments, timelines and lines of accountability must be done and agreed to before any work is commenced.

The commissioner is buying something that is, to a certain degree, unknown at the outset of the relationship. Given this uncertainty of outcomes it is important that ways of addressing disputes or terminating the agreement are discussed and agreed to. See Chapter Three and Four of the Code of Practice.

Tender agreements

Tenders within the arts, craft and design are usually called for when a project or service of significant value is required by a government agency such as for a public art project. There are rules, which may differ depending on the level of government involved, that regulate how the tender document must be drawn up and how the tendering process must be undertaken.

There are also standards that govern how a tender agreement will operate which have been developed by Standards Australia (www.standards.org.au). If you are considering submitting a tender, you should make yourself familiar with the Australian Standard as it covers a large number of terms and conditions which are the standard agreement for any tender.

Some other types of contracts you may come across are:

- Copyright licence
- Purchase of artwork agreements
- Entry form for awards/prizes/competitions
- Residency agreement
- Offer of grant
- Employment contract

Further information

The Arts Law Centre of Australia offers contract and agreement templates to purchase from their website www.artslaw.com.au/legal/sample-agreements Arts Law also offer contract view and mediation services.