

CONTRACTS, AGREEMENTS & NEGOTIATIONS

OVERVIEW

This document sets out recommended standards for professional artists. The guidelines serve as a model for practical and ethical practices facilitating fair and equitable dealings between creators and partners, by ensuring appropriate negotiations, agreements and contracts. This is a living document and will be revised and updated based upon ongoing input from stakeholders.

Many activities, not creative in themselves, are necessary for artists. This is especially true once work leaves the studio. Examples of such activities include exhibiting, negotiating reproductions of images, selling, working on commissions, and paying taxes.

Any use of artwork should align with the intentions of the artist's work or practice. Likewise, individuals and organizations wishing to use artists' work should expect professional conduct on the part of the artist with respect to the work or use of work being negotiated. It is in the best interest of both artists and engagers to take appropriate steps to see that artwork is used in alignment with professional best practices.

Negotiation is a process of coming to an agreement between an artist and an individual or organization wishing to purchase an artist's work or engage the artist's professional services. This should not be an adversarial process; the goal of negotiation is to find a professional arrangement that is beneficial to both parties. An artist has a right to have a representative for negotiations, and an engager should endeavor to explain all aspects of agreements to artists and/or their representatives.

CARFAC believes that the artist is the best spokesperson for their work. However, artists need to understand both their rights and their responsibilities to be able to direct their careers in a professional manner. Similarly, individuals and organizations need to understand their rights and responsibilities when engaging artists, to ensure that all parties involved have a clear understanding of processes and expectations. CARFAC works with engagers of all types to ensure fair treatment, and works with artists to encourage self-determination.

1 GETTING ASSISTANCE

1.1 CARFAC Alberta offers periodic workshops and professional development programs that provide information and assistance to artists on a range of legal and financial matters, including use of work, contracts, copyright, legal remedies, accounting, income tax and GST. Contact your appropriate arts service organization for further information.

- 1.2 Copyright Visual Arts/Droits d'auteur Arts Visuels has information on copyright and artists' fees. They can also manage and negotiate copyright agreements and licensing for artists who become members. For further information consult the website for Copyright Visual Arts (coov-daav.ca).

2 SUMMARY OF NEGOTIATIONS

- 2.1 Other activities related to the use of artwork are necessary for most artists. These activities can lead to pressure situations. Reactions to pressure may be emotional or rational, depending on the knowledge attained before entering the situation.
- 2.2 It is important to have all the necessary information in order to assess a proposal and respond from a knowledgeable position. No matter what the situation, an artist has the right to professional assistance or representation.
- 2.3 Both parties should agree to any limitations on the use of the artist's work.
- 2.4 Look out for any waiver of moral rights in agreements or contracts (as defined in section 14.1 of The Copyright Act (Canada)); waiving moral rights allows an engager to use or adapt art work in ways that may not be intended by the artist.
- 2.5 In negotiations between an engager and artists who identify as Indigenous, the protocols respecting the use of Indigenous symbols or artifacts or matters of importance to Indigenous people must always be discussed and taken into account.

3 WRITTEN AGREEMENTS AND CONTRACTS

- 3.1 Formal written agreements increase protection for artists and their intellectual property, and clearly define the rights and responsibilities of both those who engage the services of artists, and the artists themselves. Both parties should read, clearly understand, and sign the agreements.
- 3.2 Written agreements or contracts are a necessity to:
 - a) Formalize and record agreements, particularly with regard to work to be undertaken, remuneration, copyright, and moral rights
 - b) Avoid any future conflicts
 - c) Establish responsibilities and details for insurance coverage requirements and/or related values
 - d) Record transactions and professional activity

- e) Establish an artist's status for tax purposes, e.g. employee or independent contractor
- f) Provide information on taxation, any benefits or other payments or withholdings

3.3 The following basic elements should be included in each agreement, written as clearly numbered clauses:

- a) The legal names of the engager and the artist
- b) The effective date and duration of the agreement
- c) Description of the work, production or enterprise that forms the object of the agreement and all of the terms, duties, responsibilities, expectations and conditions covered by the agreement
- d) All financial considerations due to the artist and the terms and conditions of payment, including insurance, the date of the delivery of the work or production or the conduct of the enterprise and the date of the delivery of payment
- e) The frequency with which the engager shall report to the artist on the transactions made with respect to the work, production or enterprise that is subject to the agreement and for which financial consideration remains owing after the agreement is entered into
- f) The notice and, if applicable, the compensation required if either the engager or the professional artist terminates the agreement before its completion
- g) Dispute resolution mechanisms

3.4 Both parties should receive a completed copy of any agreement or contract for their records, bearing the signatures of all parties.

4 FUTURE USE OF WORK

4.1 A written agreement that includes any rights of an engager to future use of the work or production of an artist, in addition to the elements listed above must include the following:

- a) Description of the work or production
- b) Description of the process that the professional artist must follow to terminate the contract after the expiration of a specified period

- c) An expiry date after which, any exclusive right of the engager/user for any future use of the work or production of the artist, or any right of the engager/user to the work or production, will cease to be in force

4.2 In addition, any transfer of right, e.g. reproduction or copyright, and any grant of licence consented to by the artist must be listed, including:

- a) The purpose of the transfer of right or grant of licence
- b) The term of the transfer of right or grant of licence
- c) The jurisdiction in which the transfer of right or grant of licence applies
- d) Whether any licence granted to an engager is transferable to a third party
- e) The licencing fee payable to the artist

5 INDIGENOUS ARTISTS

5.1 In the case of Indigenous artists, engagers have a duty to become aware of the protocols that exist with respect to an Indigenous artist's customs and traditions.

5.2 Both engagers and Indigenous artists have a duty to set out the protocols regarding the use of indigenous symbols, or artifacts, or traditional knowledge, or matters of importance to indigenous peoples, and ensure they are in any agreement.

5.3 Indigenous artists may request an oral agreement that can be notated and signed, or alternatively an option to have the agreement read to them and for the negotiations to be stated orally and noted afterwards in a written agreement.

6 NEGOTIATION RIGHTS

In negotiations, both parties have rights. These include:

6.1 The right to state what you want and expect.

6.2 The right to hear the other party's requests and expectations.

6.3 The right to ask for clarification at any point.

6.4 The right to refuse or accept any request. Negotiations may or may not proceed further. An agreement satisfactory to both parties may or may not be concluded.

- 6.5 The right to compromise, if it seems acceptable.
- 6.6 The right to decide to conclude with either agreement or disagreement.
- 6.7 The right to get professional assistance, perhaps from a lawyer, a financial expert, CARFAC, or any other appropriate party; it is advisable that engagers find ways to eliminate barriers for artists, especially regarding access to non-profit legal council or other forms of assistance in understanding agreements before signing.
- 6.8 Acting on these aforementioned rights can help prevent negotiations fail or stall. Negotiations fail or stall when the artist is unable to accept terms offered by potential user of their art, the user is unwilling to change their terms, or accept the artist's terms. The artist may, at that point, be under pressure to reconsider or rescind. Most artists have been or will be in this situation at some time.

7 TIPS FOR POSITIVE NEGOTIATIONS

In some situations, either or both parties may feel pressure from a variety of sources. These are occasions to bear the following in mind:

- 7.1 No one should feel pressure to participate in an exhibition, an art auction, or to have their work used in association with a campaign or product, or for marketing, promotion, or reproduction.
- 7.2 No one should feel pressure to assign all or part of their copyright, or to agree to waive their moral rights.
- 7.3 Neither party should feel pressure to pay a fee or commission, whether or not a service has been rendered.
- 7.4 Neither party should feel pressure demand to agree to all terms of a contract rather than only some (or none).
- 7.5 Neither party should feel pressure due to timelines, budget constraints, or other issues related to negotiations that are not directly part of that process.
- 7.6 Both parties have the right to state a point of view.
- 7.7 Both parties have the right to propose alternatives if either think there are some.
- 7.8 Both parties have the right to terminate the discussion, either temporarily or permanently.
- 7.9 Both parties have the right to say no, even though this response may result in discord.
- 7.10 Both parties have the right to say yes, even if under better circumstances they might prefer not to

8 SITUATIONS TO AVOID

There are many ways that pressure can be applied in negotiations. It is helpful for all concerned to avoid the following:

- 8.2 Applying “friendly persuasion,” for example “It would be such a good idea for you to donate some work to this art auction. A lot of people will see it, and it will be good exposure for you.”
- 8.3 Assuming that the needs of the artist and those of a user of an artist’s work are the same.
- 8.4 Applying moral pressure to agree to terms, for example, statements like “It’s for such a good cause” or “If I don’t get this show then I won’t be able to ...”.
- 8.5 Statements that you are being unreasonable. For example, “You’re the only one who won’t...”.
- 8.6 Threats of any sort.

Copyright © CARFAC Alberta 2020, all rights reserved. This project has been developed based on *The Code of Practice for the Australian Visual Arts and Craft Sector*, 2nd Edition, commissioned and published by the National Association for the Visual Arts Ltd (NAVA), and on the *Best Practices/Industry Standards* developed by CARFAC Saskatchewan.