

ARTISTS in the BLACK

CONTRACTS

Gday, Ed speaking.

Hi Ed, it's John from Bonza Artworks, we'd like to order 200 Emu eggs from you.

Sounds good, I'll sell them for \$75 each. When do you need them?

That price is good. We need them by the end of the month, can you do that?

No worries, I can send you 100 now, they are ready to go.

Great, I'll send an email to confirm the order.

Ed sends the 100 Emu eggs and receives payment. Meanwhile he has worked hard to finish 50 more and he sends them on to Bonza Artworks.

Hello Ed, it's John from Bonza Artworks, we can't accept delivery of more Emu eggs.

I've worked hard to fill the order, and you underpaid me for the second batch.

You even confirmed our agreement by email - **I believe we have a contract!**

I'm sorry but we do not require the order any longer.

Ed knows this is a **big problem**; he knows he entered into a contract with Bonza Artworks, who haven't held up their end.

Ed contacts Bonza Artworks again to talk to them regarding the order and payment. There's no reply. He knows there has been a breach of contract. He calls his Aunt Dot.

Hey Aunt, I have a problem with Bonza Artworks, what's that place you told me about in Sydney where they help Indigenous artists get free legal advice?

Ed that's the **Arts Law Centre of Australia**, call them on the toll free number.

CONTRACTS

- Contracts can usually be written or verbal (including by phone calls and emails) between two or more parties/people.
- There are 4 elements to create a contract: offer, acceptance, consideration and intention.
- Try to get the contract in writing and always keep copies of written contracts, orders and similar documents.
- If the other party does not follow through it could be a breach of contract.

Contact the Arts Law Centre of Australia for free legal advice.

CONTRACTS

1. What is a contract?

A contract is an exchange of promises (“something for something”) that is legally enforceable. Contracts can also be called “agreements”.

Throughout life you will enter into thousands of contracts, without even realising it! For example, getting on a bus; subscribing to pay TV; buying a drink.

2. More about contracts

There are 4 things that a contract needs to be enforceable:

- **offer:** an offer by one party to another (must be made clear what the offer is). If an offer is rejected then that offer automatically ends.
- **acceptance:** the other party must accept the whole offer without conditions. For example, If an art buyer offers you \$500 for your painting and you say that you would take \$600, you have not accepted the buyer's offer, but made a new offer that the buyer can accept or reject. There can be many offers and counter-offers before there is an agreement.
- **consideration:** this is what each party gives to the other as the agreed price for the other's promises.
- **intention:** the people or organisations entering into the contract must intend to create legal relations.

3. How do you make a contract?

A contract can be made:

- orally;
- in writing;
- partly orally and partly in writing; or
- by people's actions.

This means that a contract can be made up of a number of different things such as phone calls, letters, emails and conversations.

4. How to safeguard yourself

- Is it a good deal for you?
Make sure that the deal meets your requirements and covers all your concerns.
- You can negotiate.
There is no such thing as a standard contract so try to negotiate better terms for yourself. If you can't, and you think that it is a bad deal for you, then maybe you should walk away.
- Get legal advice.
Especially if you don't understand a document or conversation. You can call *Arts Law*. Don't give in to pressure to sign a contract.

- Do your research.
An individual could be bankrupt or untrustworthy. Who are you entering into a contract with? Check with the *Australian Securities and Investment Commission* (website www.asic.gov.au) and with the *Consumer Affairs* body in your State. Ask around.
- Don't give away more than you need to.
Try to keep control of your artistic property, eg your copyright in your artwork
- Only promise what you can deliver.
You cannot give something that you do not have. Be sure you can deliver what you say you can.
- Keep a copy of all documents that you sign and read them often.
It's a good idea to get two copies (identical originals) of the agreement signed by both parties and keep one, or try to get a copy of the original signed contract if there is only one.

5. Basic tips about contracts

- Get it in writing. This will help avoid disputes.
- If someone is hesitant about putting things in writing, explain that it is not a sign of distrust but a clear way to understand each others' rights and obligations. Because sometimes things do go wrong!
- You can use a 'formal' contract (the kind a lawyer would). Arts Law has sample contracts that you could look at.
- You can write your contract in simple wording (plain language), so that both of you understand it.
- If the other person still does not agree, write them a follow-up letter in simple, non-threatening language to confirm what each party has agreed on. You can then ask them to check it, and sign it if they agree with it. If it is signed it then becomes evidence of the agreement.

Always read all written documents that are given to you to sign, and make sure that you understand them before you sign.

Further Information

Arts Law Centre of Australia

Tel: (02) 9356 2566 / 1800 221 457

Website: www.artslaw.com.au

Australian Copyright Council

Website: www.copyright.org.au

ARTISTS BLACK^{in the}

DISCLAIMER

This publication is intended as a guide to the law only. It is not legal advice and should not be used as a substitute for legal advice. Although all care has been taken in preparing this document, the Arts Law Centre of Australia does not guarantee the accuracy, adequacy or completeness of any information and is not responsible for any errors or damage suffered as a result of it being relied upon. Legal advice should be sought on the specific issues affecting you.

The law as at 1 March 2005. This information applies to people who live in, or are affected by the law as it applies in Australia.

This information sheet made possible through the generous support of the Law & Justice Foundation of New South Wales.

The Arts Law Centre of Australia has been assisted by the Australian Government through the Australia Council, its arts funding and advisory body.



The Contracts leaflet was designed and produced by Streetwize Communications.
First Published in May 2005. ISBN number 1 876226 91 9

Comic Writer: Blanch Lake
Comic Artist: Ross Carnsew
Underlying design b Adam Hill, koori8@bigpond.net.au

Streetwize Communications
6/245 Chalmers St
Redfern NSW 2016
www.streetwize.com.au

Arts Law Centre of Australia
The Gunnery 43-51 Cowper Wharf Road Woolloomooloo NSW 2011
t. 02 9356 2566/1800 221 457 f. 02 9358 6475 e. artslaw@artslaw.com.au
ABN 71 002 706 256 . ACN 002 706 256

No part of this Contracts leaflet may be reproduced without the permission of the Arts Law Centre of Australia.