Design Checklist

Introduction

This checklist is designed to help you, the maker, have better and more complete contracts with the people or businesses who commission you, and is a starting point for dealing with some of the key issues to be aware of when being commissioned to make pieces/works/designs for a client or customer. It's important to put your commission arrangements into writing so that you and the commissioner are clear about the costs and process of the commission, and so that if things go wrong, you have evidence of the understanding between you. Having a written contract is, if you will, a way of having a conversation with your customer or commissioner that you can both rely on.

Arts Law has a template commissioning agreement which could assist you in setting out the terms of your agreements with clients. It is called the Commissioning Agreement: Private or Commercial Visual Artwork and can be purchased and amended to suit your needs. It is a template (originally designed in respect of artworks and not furniture, but many of the core aspects of a commission arrangement will apply). Once you have had a go at using the template, Arts Law can review it through our DRS service, which is also accessible if you draft your own agreement and then subscribe to our services to have it reviewed by Arts Law. This helps to make sure it covers the necessary aspects of your arrangement with your clients. To find out more about our templates and our advice service, go here. Arts Law can also arrange a private referral to a lawyer who can draft or negotiate your contracts.

Each of the headings below refers to a suggested part of the agreement between you and your commissioner/customer/client.

Names and contact details of Contracting Parties

This is so that you know exactly who your customer is which is important for a few reasons, but particularly if things don't go well and you end up needing to chase someone for money. If you're being commissioned by a business, then it's also a good idea to get their ABN and the full company name of the commissioner.

Issues to be aware of:

- Who enters into the agreement? State their full names and addresses.
- Ensure that if any party is a legal entity, it is authorised to enter into the agreement and an authorised representative can sign the agreement on behalf of the entity.

Meetings

Consider whether there will be charges for meetings (or the initial meeting) and whether additional costs, for example, travel costs, are covered by the customer or the maker.

Aspects to note:

- Where will the meeting be held?
- What is the start and end time?
- Are there additional costs related to the project?

Design Brief Supplied

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How does the initial brief reach you? Are there terms and conditions governing that relationship? How do subsequent discussions around the brief unfold? What do you, the maker, need from the client in terms of a brief?

This might include;

- Design ideas
- Are there any requirements around the materials and purpose of the article being commissioned?
- What is the format that you require any design brief to be in? Consider the aspects of what you need to know about a design before you start work

Design Fees

In some instances, you may be asked to create a design which already exists – perhaps a piece which you have previously created, which a client or customer would like a "repeat" of. In this case, your quote might be based solely on your materials, time and the value of the finished piece. However, where you are required to create a new design entirely, you should consider charging a fee for your design time or efforts as well. It should be clear in any quote what this will be based on, and whether it is separate to the other quoted amounts.

Approval of Design and Approval to Proceed

Consider how you will confirm the customer's approval of the design. This should be done in writing so that you have evidence of the design or mock-up approval. As you can imagine, if things don't go to plan and a customer claims you haven't provided what you'd agreed to, this written approval is important.

Production Schedule

You should be clear about when it will be possible to provide designs, the work, and/or the finished article to your customers. This keeps expectations on both sides realistic about when the work might be completed, and when certain payments are due.

Fees and Payments

Being clear about what is owed, and when, is vital. Getting this in writing means that if you, the maker, aren't paid when you should be, there is something to rely on if things don't improve.

Your contract should include:

- Your fee structure, including for example, when a deposit is payable, and whether there are payments due during the production process, or whether you are paid 50% on commencement and 50% on completion, for example.
- You might want to indicate that payment is due within 14 days of receipt of your invoice and how you want that payment made, e.g. by eftpos and the relevant account details.

Intellectual Property

It's worth setting out who owns the drawings and the design of the piece that you are creating. If you are creating the design and the drawings, then being clear that you continue to own those is a good idea.

Issues to note:

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- If your client/customer is providing the design or drawings, then you could say that you both continue to own any IP created by or controlled by you.
- You might want a clause that says that you retain copyright in all work and designs created by you but that on payment in full, your customer will have a licence for the display of the final work or final designs supplied, for the purpose of showcasing your work unless agreed. That is, the use of part(s) of or element(s) of any work or design or any use for other purposes will require further written permission from you.
- You could also include that all creation files remain your property and that you retain the right to use all work and designs in advancing your profile, including by marketing or other means and to be recognized for furniture and artwork created by you.
- You should also request that the client/customer agrees to identify you as the creator whenever use is made of the final work and final designs or any parts thereof (for example if they photograph the work in their offices and wish to use those photographs on their website, they should seek your consent and credit you).

Warranties and Indemnities

Your customer may require you to promise that all work is original and that you have all the necessary rights to create the work and sell it to them. You might also be required to make promises about how safe the article is and what it can be used for.

For any designs they provide you, they promise that they either:

- own or have the rights to give those designs to you to create your commissioned work, and that
- if they don't have those permissions, they will indemnify (or cover) you for any loss

Termination

Your agreement with your customer should deal with:

- Whether or not they can end or terminate their commission or sale with you.
- Whether you would require them to reimburse you for your costs if they cancelled the commission once you had already agreed to do the work.

Insurance

It is important to draw a line in the sand about when the piece is and is not your responsibility. For example, if the work is damaged in transit, who bears the responsibility for this? An agreement about insurance of the piece and how far this extends is a good idea.

Returns or Exchanges

Have a conversation (and then a clear agreement in writing) about your policy on returns and exchanges.

Be aware that consumers in Australia have rights to get what was advertised, to have goods that work for the purpose they were purchased and other related rights. In certain circumstances, these laws will determine what rights there are in relation to refunds or exchanges, too.

f you need more information about this, the Australian Competition and Consumer Commission can provide further information.

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It's worth considering the above issues whenever you are engaged to make/design furniture or other pieces for customers and clients.

A draft contract – which you have at the ready when opportunities arise to do this type of work is a handy thing. Arts Law has a number of templates which can assist but can also review a draft which you devise based on the above checklist.

Need more help?

Contact Arts Law if you have questions about any of the topics discussed above Telephone: (02) 9356 2566 or toll-free outside Sydney 1800 221 457 Also, visit the Arts Law website (www.artslaw.com.au) for more articles and information sheets

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