

CONTRACTS

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.

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. This is referred to as a counter offer. 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.

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.

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** (ASIC; 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.

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 (www.artslaw.com.au), tel. (02) 9356 2566 or toll-free outside Sydney 1800 221 457

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