

MODULE TWELVE: NEGOTIATING

The Highlights

Contracts Simplified

From buying paper clips to securing a large commission or playing at a wedding ceremony, self-employed artists or cultural worker enter into contractual relationships with legal consequences every day.

A contract is a negotiated agreement between two or more parties, and is legally binding. A contract serves as a record of that agreement, whether written down or verbal. In all work situations, a contract should be negotiated before you begin to do the work. Why? It helps equalize the relationship between yourself and the other party. It is a communications tool that serves both your interests and the interests of the other party. Think of all the negative stories you have heard (or perhaps experienced firsthand!) about work relationships that were not properly contracted.

Negotiating

Negotiation is comprised of four basic components:

1. People/Parties

Separate the person from the issue in order to create an agreement.
Work towards agreement, not towards disagreement.
Distinguish between facts and emotions.
Know who that person is and what they represent.

2. Interests

Focus the negotiation on interests rather than on taking a position.
Learn what the interests of all parties are, not simply your own.
State your own preferences clearly and do not hide them.

3. Options

Explore a variety of possibilities.
Try to create options that result in mutual benefit.
Consider short-term, mid-term, and long-term scenarios.

4. Standards

Ensure that all agreements are based upon objective standards such as market value, expert opinion, and established precedents.

Legal advisors

Many self-employed artists and cultural workers may have difficulty identifying legal issues. Yet at some point, you may have wondered if you were stumbling into a legal minefield and should get help. At other times, you may have realized that you simply lacked sufficient information to

be certain whether or not you faced a legal dilemma. Pages 126-134 of TAMYC outline common legal situations and help you determine whether you require professional help. **Not every legal issue requires a lawyer**, so the section also provides direction on how to locate and work with legal advisors who are able to efficiently address your legal problems.

Well Formed Outcomes

- Stated in positive terms
- Initiated and maintained by you
- Contextualize – time and specifics – I will lose 10 lbs within 2 months
- State it in sensory based words – not - I want to be a good communicator - but rather – I greet people warmly, I remember their names and feel confident in my communication
- State in bite-size chunks – I will write 2 pages every day
- Load up with your resources – what you need in order to make your goal a reality – confidence, flexibility, assertiveness
- Check for ecology. What are the consequences to you and yours
- Specify evidence for fulfillment. How will you know when you have reached your goal?
- Be clear. Write it down.

The Agreement Frame

- But versus and. Never use but. And allows you to link them to a new frame.
- Get a conditional close to prevent nitpicking details. If these conditions were met would you agree to them?
- Without common intent – a common goal – there can be no successful negotiation.

5 Tactics for Negotiations

1. Establish rapport
 2. Get consensus on the outcome so there is a basis for negotiating
 3. State areas of agreement and anchor them
 4. Present options that include both parties' interests - win-win
 5. Use the Law of Requisite Variety – the person with the most flexibility has the most control
2. Be flexible
 3. Remember the yes set – set up three questions that get you a yes answer and this will lead more easily to a yes answer to the next question

THE FIVE ESSENTIAL ELEMENTS OF A VALID CONTRACT

1. The Offer

- If the offer is rejected, the offer ceases to exist
- An offer lapses if unaccepted within the time specified
- An offer is terminated by a counteroffer.
- It must be definite and clearly describe what each party is to do

2. Acceptance

- Occurs when the party receiving the offer agrees to all of its terms exactly as presented.

- Your behaviour can imply acceptance. If you start performing an obligation set out in an offered contract it can be implied that you have accepted the contract and are now fulfilling its terms

3. Consideration

- The value exchanged in the contract is known as the consideration.
- Most commonly this is money - a negotiated fee.
- Consideration can take the form of releasing one party from legal liability – eg. one party accepts a sum of money in exchange for a signed release that relieves the other party from any further legal responsibility.

4. Capacity to Contract

Both parties must be

1. Mentally competent
2. Authorized to sign – ie. an unincorporated association may not enter into a contract – the authorized signing authority will have the personal liability
3. Sane
4. Unimpaired by drugs or alcohol
5. Of the legal age of majority

5. Legality

- A contract for an illegal purpose is invalid and legally unenforceable.
- Be clear, explicit, and include all necessary terms

THE HOMEWORK

HOW DO I ESTABLISH AND ENFORCE CONTRACTS?

From buying paper clips to securing a large commission or playing at a wedding ceremony, as a self-employed artist or cultural worker you enter into contractual relationships with legal consequences every day. In Québec, artists in the fields of literature, visual arts, and arts and crafts have the legal obligation to require a written contract from any publisher, gallery, or other relevant distributor with whom they are entering into agreements (see Act S-32.01). Act S-32.1 prescribes collective agreements between professional associations, on behalf of their members, and producers.

Consider Toronto illustrator Thomas Dannenberg.

In 1998, Dannenberg accepted an assignment to draw several illustrations for a magazine. The magazine rejected the work and refused to pay. After trying unsuccessfully to negotiate a settlement with the publication, Dannenberg launched a Small Claims Court action. Undertaking a lawsuit was a new experience for the veteran illustrator, but he believed his contract with the publication entitled him to payment.

This chapter describes the basic elements of a valid contract or agreement and how to ensure that your interests are protected in contractual matters.

With what kinds of contracts am I likely to be involved?

Many kinds of contracts affect self-employed artists and cultural workers. Some affect almost everyone working in the cultural sector; others relate only to people working in specific fields.

Here are some examples of contracts that are relevant to most artists and cultural workers.

- Contract to provide services.
- Loan agreements.
- Property or equipment leases.
- Agreements to purchase supplies or hire services.
- Commissioning agreements or agreements to publish or produce a play, book, video script, screenplay, opera, dance piece, musical work, or a work of visual art. Remember that, **under copyright law, in the case of engravings, photographs or portraits that are commissioned, the person that requested the work to be done is deemed to be the first owner of the copyright of such work**; other types of artistic products considered under this clause may gradually be enlarged.
- Representation agreements with an agent, representative, manager, dealer, gallery owner, or promoter.
- Agreements to sub-contract your work or to hire an assistant.
- Permission for the inclusion of a person's picture in any work of art. This is compulsory in Québec and failure to do so could result in a suit for breach of privacy. Indeed, it may be risky to use pictures that may contravene either the Canadian or Québec charters of rights.
- Agreements that license or assign elements of the copyright to your work.

That's a promise

- A legally enforceable contract is a deliberate agreement between two or more competent parties, which is supported by mutual consideration, to voluntarily perform some legal act.
- Such a contract should be, but does not necessarily have to be, in writing.
- A contract is, then, really a promise, or set of promises, agreed upon by each person entering into the contract.
- The contract is considered breached if any of the promises of performance go unfulfilled or are unsatisfactorily fulfilled. If you breach a contract, the other party may be entitled to certain remedies by way of compensation. The same applies if another party breaches a contract with you.

In Québec, in the visual arts and crafts and literature sectors, any agreement between an artist and an exhibitor or a publisher must be in writing, with two signed copies. These contracts must contain the following clauses: the nature of the contract, a description of the works or products constituting the object of the contract, specifications relative to copyrights granted (license, assignment, duration, territory, goals, transferability of rights), and monetary and payment clauses. In other sectors, there are certain contract forms or collective agreements pertaining to services rendered by artists. For further information, contact your professional association.

However, a promise isn't worth the paper it is written on if one or more of the contracting parties are not "legal persons" under the law. For example, an unincorporated association may not enter into a contract since it has no "corporate capacity". If the name of an unincorporated association appears on a contract and an individual signs below the name, it is the individual who is contracting and who will have personal liability. Also, if an artist has incorporated and intends his or her company to enter into a contract, it is critical to ensure that the correct corporate name is set out in the contract and that the individual signs as an officer or director of the company instead of personally.

Making a counteroffer means you reject the original offer.

- If you return a tentative promise or set of promises made to you with one or more of those promises modified, you are rejecting the offer.
- The modifications you request are considered a counteroffer.
- When you make a counteroffer, you have rendered the original offer null and void. The party having made the original offer, which has been altered, is not obligated to enter into a contract with you, not even on the terms contained in that original offer.
- A contract is entered into the moment that it is signed by all parties and distributed among the signatories.

Is an oral contract valid?

- Both oral and written contracts can be binding.
- Contracts in writing have more certainty and are easier to enforce. A written contract is not required to be in any particular form. It is sufficient to have a statement of the essential points and the signatures of the parties.
- Written contracts can be in the form of a letter, memorandum, hand-written note, standard form agreement, or lawyer-drafted contract. Most importantly, the document should state the terms clearly and capture all the elements of the contractual agreement.

- Certain agency agreements must be in writing; they cannot be oral. As previously mentioned, in Québec, a written contract is a legal obligation for several categories of creators. This obligation must conform to the terms of Act S-32.1 and Act S-32.01.

Get it in writing.

It is difficult, not impossible, to prove what was agreed to in a verbal contract.

As is often said, "An oral contract is worth the paper it's written on." Some artists believe that insisting on a written agreement implies that the other party is untrustworthy. So they prefer to do business on the basis of a handshake or "gentleman's agreement" only. However, even in the best of relationships it is still possible that the parties might forget the terms of an oral agreement or they might have different perceptions regarding their agreement.

A written contract is a safeguard against later forgetfulness or misunderstanding and protects the goodwill between the parties.

Can I unwittingly enter into a contract?

A contract can be implied to exist where parties fulfill independent obligations as though they had an agreement.

Consider the following scenario: You call your regular supplier to order a quantity of canvas without discussing price and without expressly offering to pay for the canvas. However, the promise that you will pay is implied by virtue of your placing the order. In this situation, an implied contract exists, and you will be legally obliged to pay a reasonable price for the delivered canvas.

WHAT ARE THE ELEMENTS OF A VALID CONTRACT?

To be valid and binding, a contract must contain five essential elements:

Offer

An offer exists when one party invites another into an agreement. An offer is not effective until it is communicated to the second party. Once the acceptance has been communicated to the other party, orally or in writing, the offer becomes a contract and cannot be unilaterally cancelled. If, however, you make an offer that is rejected, the offer ceases to exist. An offer lapses if unaccepted within the time specified. An offer is also terminated by a counteroffer.

The offer must be definite and clearly describe what each party is supposed to do to fulfill the terms of the contract.

Simply expressing a wish, such as "Wouldn't it be great if you designed my next opera production set?", is not an offer. Nor is expressing your intention to enter into a deal by, for example, saying, "I would like you to design my next opera production set, but let's settle the price and details later." Extending an invitation to deal by such means as issuing a call for audition or proposal is also not an offer.

Here's an example of a valid offer:

You say, "I'm producing The Grand Opera next August and will pay you \$55,000 when you deliver an acceptable set design by next August 1". An offer, containing essential terms, has been communicated. This offer can now be either accepted or rejected by the set designer. Once accepted, of course, such a major project would require the negotiation and agreement of the parties as to the specifics of the set design.

Acceptance

Acceptance occurs when the party receiving the offer agrees to all of its terms exactly as presented. You accept an offer by communicating your consent, for example, by simply saying "okay" or by doing so in writing.

A contract is also established when you make a return promise, such as offering to allow a friend to use your studio in exchange for his painting its interior.

One thing that is little understood is that your **behaviour** can imply acceptance. If you start performing an obligation set out in an offered contract it can be implied that you have accepted the contract, are now fulfilling its terms, and accept its conditions as offered.

For example, a band offered a contract to perform for three hours at a neighbourhood bar. The group shows up for the gig, but goes home after the first break. This could be considered a breach of a contract accepted by the band's apparent willingness to perform in the bar, unless the bar owner breached the implied contract by withdrawing the promised free beer.

Consideration

The value exchanged in the contract is known as the consideration. Literally, consideration is what one party gets from the other by fulfilling his part of the contract. Usually both parties gain something of value from the contract.

Consideration may be tangible or intangible. The most common form of consideration is money paid for some service or product, such as a fee paid for a painting, a royalty offered for a book manuscript, or interest paid on a loan. In these cases, the consideration is based on the promise to do something in exchange for a negotiated fee. Sometimes consideration entails not doing something.

If a writer accepts an exclusive film option, the consideration offered by the writer to the option holder is a promise not to sell the movie rights to his best-selling novel to anyone else for a specified period of time in exchange for a sum of money.

Consideration can take the form of releasing one party from legal liability. Out-of-court settlements are an example of a release from legal liability: One party accepts a sum of money in exchange for a signed release that relieves the other party from any further legal responsibility in the dispute. Consideration can also entail an exchange of favours, such as one person lending lighting equipment to a theatre company in exchange for advertising space in the company's

newsletter. In Quebec, artists who fall under the Act regulating the production of works of art are not deemed to have signed a legally valid contract unless such a contract includes the provisions that are required by law.

Both parties should receive acceptable benefit from a contract.

Capacity to contract

Both parties to the contract must be: mentally competent and authorized to sign; sane; unimpaired by drugs or alcohol; and of the legal age of majority. Minors can be engaged in a contract only indirectly by a parent, guardian, or authorized adult signing the contract on the child's behalf. In Québec, the negotiation of a contract must comply with the applicable provincial legislation. In some cases under the Québec Civil Code, certain contracts are considered *contrats d'adhésion*. For instance, if you elect to use Bell as your telephone service provider, you have agreed by that selection to adhere to the company's lengthy and complex contract, which is not individually negotiable.

Legality

A contract for an illegal purpose is invalid and legally unenforceable.

If you contract with an importer to provide rhinoceros horns, which are illegal to import into Canada, the contract is invalid, but can be used against you as evidence of intent.

How do I protect my rights under a contract?

Negotiate. It's professional and expected.

Each contract you enter into should be beneficial to you and should protect your rights and interests. This usually requires negotiation. Like many artists and cultural workers, you may fear losing a contract if you negotiate. Have no fear. You can usually win more favourable contract terms by negotiating. People in business are used to negotiating and usually expect to do so. Don't be afraid to ask for better terms if you feel they are warranted. Your goals in negotiating should be to achieve a fair deal that you are capable of fulfilling. So determine these goals before entering into negotiation.

When you start discussions with the other side, make sure that the negotiator has authority to make an agreement with you which binds the other side. Otherwise that party will be able to back out.

When you reach agreement in principle, it is wise to enter into a Memorandum of Agreement that outlines the salient terms of the contract that will be finalized at a later date. Don't hesitate to involve a lawyer, colleague or knowledgeable professional to help you with any element of the negotiation process, particularly if you feel the bargaining power between you and the other party is unequal.

Be clear, explicit, and include all necessary terms.

Don't wait until the deal is set in stone before going to a lawyer. Your lawyer may point out other terms which require negotiation. To be effective, a written contract need not be complicated. The best contract is one written in plain language that both parties can understand. Each of the contract terms should be stated very clearly, so that there is no uncertainty about their meaning.

Include definitions if necessary.

Make sure the contract contains the following essential terms:

- Date and place of the agreement.
- Identification of the parties to the agreement; detailed description of the consideration each party is bringing to the contract.
- Any locations, dates, and times essential to describing the terms of the contract (i.e., a performance date and the exact location).
- The nature of the relationship being established (i.e., artist-agent, employment arrangement, independent contract arrangement).
- The rights and obligations of each party; contract term.
- Materials to be supplied and by whom.
- Electrical power requirement.
- Payment schedule.
- The signatures of the parties. If the contract is being made in Québec, see the clauses described herein as pertaining to Acts S-32.1 and S-32.01.

Be aware of the consequences of entering into a contract of employment, and its impact on the copyright of the works produced during that employment.

Other contract terms (not all will apply)

| Timeframes | Insurance | Integrity rights | Indemnification | Notice clause |
|---------------------------|---------------------------------|---------------------------|----------------------------------|----------------------------|
| Deadlines | Copyright | No terms outside contract | Liability | Failure to perform |
| Delivery / shipment dates | Authentication | Royalty / licensing fees | Rejection of work conditions | Work breaches no copyright |
| Contract breach terms | Guarantee artist is the creator | Exhibiting rights | Artist has title to work | Conservation terms |
| Overdue payment terms | Artist's right to benefit | Dispute solving mechanism | Preservation of work's integrity | Termination conditions |

The most common contractual problems arise out of misunderstandings over terms of payment.

- Be clear on how much you will be paid and when.
- If you accept a long-term, ongoing contract or one that constitutes actual employment, you want regular payment – most likely every two weeks.
- If you enter into a contract with someone you don't know, think about getting a deposit up front. This is a good way to check a person's ability and intention to pay. A deposit is particularly important if you have to purchase materials or incur other costs to complete the contract.

- If the contract is going to last more than 60 days, arrange to be paid in a series of timed lumped sums.
- Schedule each payment to correspond with the delivery of a certain stage of the project. Then you can refuse to go further on the project, if the latest payment due isn't made on time.

For example, a sculptor agrees to create a statue to stand outside a civic building for \$50,000 plus material costs. A \$5,000 deposit is due on contract signing, \$10,000 on completion of design sketches, \$10,000 on design acceptance, \$15,000 when the sculpture is completed, and \$10,000 upon delivery to the civic building. Regardless of how you are paid, ensure all applicable taxes or benefits attached to each payment are paid at the same time.

- Be careful with form contracts or those issued by whoever is engaging your services or work. You might feel that you don't have the time, energy, money, or expertise to draft a new contract every time you make a deal with someone. In many situations, the other party may have a standard contract for doing business with an artist.
- However, you should be wary of signing a form contract because it will almost always be one-sided with terms in favour of the drafting party.
- The same is true with non-form contracts issued by the other party.

Always read the fine print of a contract.

If you are asked to sign a form contract, consider having your lawyer, agent, or professional association look at it first. Compare it with examples of relevant standard contracts. Your professional arts association or various specialized books are good sources of such contracts. Although every contract or agreement must usually be tailored to fit the circumstance and your needs, standard contracts will give you a place to start. They also provide a way to judge whether a contract is fair and similar to those offered to others in your artistic or cultural sector.

Additional terms can be incorporated as an addendum to a standard contract. Make reference to the inclusion of the addendum in the main body of the contract.

In Québec, contracts must respect the minimal conditions specified in collective agreements negotiated by relevant professional associations.

If you aren't given a contract or letter of agreement

Consider issuing one yourself (your professional arts association will probably have a standard contract to use as a model) that includes all the relevant terms negotiated verbally. Provide two signed copies of the contract and ask that the other party sign, date, and return one copy to you, while retaining the other.

In Québec, compulsory written contracts must, in order to be valid, be produced and signed in two official copies. It is only from this moment that the artist is "bound" to the contract, so you should make sure that the timeframe and dates specified in both copies are identical.

Some artists and cultural workers feel uncomfortable issuing a formal contract

If you feel this way, a legally acceptable alternative is to send a letter of understanding. You should set out all the terms negotiated earlier. For example, a librarian accepting a 90 days contract with a music library to construct an electronic index and retrieval system for the library's holdings might write the following as a letter of understanding.

Dear _____,

It was good to speak with you yesterday. This letter will confirm my understanding of the terms of my engagement by Rough Cut Music Library.

The contract is for a term of ninety consecutive days, beginning June 1, 2009. During the contracted period, I will create an electronic index and retrieval system for your collection. This system will be operational upon the expiration of the ninety-day term or earlier. I will report only to you, and be directly and exclusively responsible to you for direction. You will ensure that all staff give me the support required for the project's timely completion.

All necessary computer equipment and existing hard-copy index and retrieval materials will be in place and ready for my use at 9:00 a.m. on June 1, 2009 and will remain so for the term of the contract. **[Other specific terms of how the contract will be completed, materials required, etc. should go here.]**

My fee for this work will be \$10,000 plus GST, payable in instalments of \$3,333.33 each, plus GST. The first instalment is due and payable to me upon your receipt of this letter. The second is due not later than July 15, 2009, and the third on or before September 10, 2009. All related expenses I incur will be reimbursed by you upon my submission of receipts and an invoice citing the expenses. **[Any additional benefits, remuneration terms, and other conditions of your contract should be spelled out here.]**

Please return the enclosed copy of this letter, signed by you, together with the first instalment, as an indication of your acceptance of the terms and conditions contained in this letter.

I am looking forward to receiving the documentation and to working with you on this project.

Yours truly,

Enforce the contract's terms

Should someone involved in a contract with you fail to fulfill an important obligation in the contract, be sure to say you want the breach remedied. Failing to take action could result in your silence being considered as an implied consent to the breach.

Taking action could entail renegotiation of the contract's terms if conditions have significantly changed since the agreement was entered into. You may also be entitled under the law or under the contract's terms to terminate the contract.

If the other party refuses to correct the problem or to negotiate with you, then your next step is to take advantage of whatever dispute-resolution methods are outlined in the terms of the

contract. Engaging in mediation or arbitration involves far less trouble, time, and money than going to court.

Sometimes the seriousness of the breach or the lack of viable alternatives will require you to bring in your lawyer and/or go to court.

Be sure not to wait too long to take action. Each province has limitation periods within which you must commence legal action.

Checklist

- Read all agreements fully before signing, including all fine print.
- Never think the law will help you get out of contracts you don't intend to fulfill.
- Check the business reputation of the other parties before entering into contracts with them.
- Request and keep copies of all offers, contracts, and related correspondence.
- For evidence, keep notes about your discussions and dealings with the other party.
- Periodically review the contract terms and conditions to ensure they are being fulfilled.
- Both parties must initial any changes you make to the language of a contract.
- If in doubt, seek advice from a lawyer, professional association, or trusted advisor.
- Get a retainer or deposit.
- Do not deliver the next stage of a commission when the previous one has not yet been paid.

The Art of Win-Win Negotiating

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In "win/win" negotiations, everyone emerges feeling that they have gotten what they need, are ethical in their practices and respectful of each other. The following attitudes are fundamental to this style of negotiating:

Determine what you want the outcome of the negotiation process to be before it takes place. This will help you to clarify your goals and will increase your confidence, allowing you better concentration during the process itself.

Think in terms of a long-term relationship. If you do right by people, the benefits will come around again and again.

Approach your win/win negotiations with certainty. Be assured that there is a way for everyone to benefit. Continue to explore ideas and generate options until a mutually beneficial solution is found.

Come prepared. Before meeting, find out as much as possible about the other party, including their life situation, personality, interests, and their attitudes on the issues you will be discussing. Be creative; generate mutually beneficial solutions before meeting.

Be agreeable - view the other party as a partner. It's easier to work with a partner than an adversary. Stay focused on agreement, don't get into rigid positions. Genuinely want to help the other party.

Listen. Find out as much as possible in advance, but don't come with set solutions. Hear what the other party's needs, concerns, and desires are. Ask questions and listen. Active listening allows you to hear what is being said and what's not being said. Don't assume the other party is clear about what they want - draw them out. Paraphrase what they say until they indicate you've got it.

Be honest about what you want and ask for it. Show the other party how they can help you get what you want. Don't appear to be impossible to please.

Don't view compromise as loss. Pride and self-righteousness can keep you from making compromises that will be better for everyone in the long run. Consider what the greater good is for everyone involved in the process.

See conflict as opportunity. Conflict offers a chance for creative solutions. Conflict usually occurs when people become rigid or limited in their thinking. Stay detached and objective, and don't take conflict personally. If the emotional tone is high, take a break.

Don't settle for less than the right solution for all parties. If a mutually beneficial solution can't be found, let it go. Part company with that understanding and leave the door open for future possibilities.

Remember you are entering into a dynamic, creative process. The spirit of win/win negotiation is creative and playful, fluid and fun. Stay away from hidden agendas and defensive posturing. The process should be holistic and inspirational.

- What have you witnessed/experienced regarding disagreement in your past? Beside each age listed, note what you did at that time in response.

Ages 10 to 15:

Ages 16 to 20:

Ages 21 to 25:

Ages 26 to 30:

Ages 31 to 40:

Ages 41 to 50:

- How do you respond to similar situations now?
- How do you feel about asking for something for yourself?
- Would you describe yourself as an aggressive or an assertive person? When are you aggressive? When are you assertive?
- Would you describe yourself as a passive person? When are you passive?
- Are you an ambitious person? What are your ambitions?

- Are you an anxious person? What triggers your anxiety? How do you behave when you become anxious?
- Are you an angry person? What triggers your anger? How do you display your anger?
- Are you a fair person? What happens when you don't get your way? What is your attitude towards compromise?
- Do you consider yourself a good communicator? What are your communicating strengths? What are your communicating weaknesses?
- Are you a good listener? How could you improve your listening skills?
- Do you feel that people listen to you when you speak to them? If so, what are the characteristics you possess that allow people to hear what you say? If people generally do not listen to you, why do you think this is so?
- How do people react to you? Under what circumstances do you react defensively?
- Are you known to have a good sense of humour? How does your humour help you? How does your humour impede you?

WHAT ARE YOU NEGOTIATING FOR?

Money is the central focus of most negotiations. Besides money, what other considerations will you want to make during the negotiation process?

CONDITIONS OF NEGOTIATION

Negotiating requires a lot of give-and-take and psychological maneuvering. Most artists are sensitive to the subtleties of communication and can use this to assist them in the negotiation process. Be prepared, rehearsed and in a positive frame of mind. Remaining aware of your biases enables you to approach the process with clarity and integrity.

HOW TO DEAL WITH OBSTACLES

The better prepared you are for hurdles in the negotiation process, the easier it is to navigate around them.

- Offer options from all angles, including ones you don't support
- Ask the other parties what isn't working for them, be prepared to answer the same question
- Be objective. Has the discussion become emotionally charged?
- If necessary, ask for a time out during the meeting, or briefly postpone
- Only walk away if prepared to deal with the consequences, and only if you mean it. Your integrity will be lost if you don't hold to your word

ABOUT MONEY

Money is a major component of most work-related negotiations. Come prepared. Articulating your needs regarding payment may feel unpleasant but it's a crucial component of the negotiating process.

- Define what your negotiable spectrum is in advance: what are the most and the least you'll settle for?
- Be aware of how you feel about different points between the two extremes
- Ask for what you are truly worth
- Be prepared for the first offer, and regard it as the start of a discussion. Remain aware of your current financial reality but do not let it cloud your vision
- When the other party makes its first offer, your response is key: if what is offered is unacceptable to you, clearly restate what you would prefer and why

SENSITIVITIES

Your advance research should include being prepared for additional factors, which could affect and influence the negotiation. Consider the following:

- Cultural and ethnic attitudes and customs
- Time of day and location
- Seasonal factors, such as audits, sales, parties, the fiscal year

Also remain aware of your own attitudes:

- How you present yourself
- The assumption that others already know what you want
- Trying to get everything, or not trying at all
- Being desperate and therefore vulnerable to compromising yourself

BIG DEALS

If you are negotiating a large number of items, try the following:

- Exchange an outline of each of the items to be negotiated
- Plan in advance which items you have the most flexibility on, and which you have the least

TIMING

Timing is determined both by the person with whom you are negotiating and the situation itself.

- Don't put off negotiation if a negotiation needs to take place
- Don't work under assumptions that have not been properly negotiated
- Set deadlines.

CLOSING THE DEAL

- Evaluate how much the other party wants to reach an agreement
- Evaluate what their bottom line is
- Leave yourself room to move closer to the other party's objective: by doing this you allow the other party room to meet your objective and still preserve their dignity and goodwill
- Pay attention to your intuition

PREPARATION FOR NEGOTIATION

Use this list as a preparation guide for any negotiation you find yourself in.

1. Clearly define the issues, needs, and your personal goals. What do you want? What does the other party want?
2. If this is a negotiation that involves conflict, how do you think others who are involved might see the problem?
3. What characteristics and beliefs do you have that might contribute in a positive way to the success of the negotiation?
4. What characteristics and beliefs do you have that might hinder the success of the negotiation?
5. What characteristics and beliefs do the other parties have that might be positive for the negotiation? How could you encourage these qualities?
6. What characteristics and beliefs do the other parties have that might hamper the success of the negotiation? How could you discourage these qualities?
7. Define what areas of difference or disagreement exist or might arise between you and the other party.
8. Define what areas of agreement exist or might arise between you and the other party.
9. Define what your boundaries or limits are regarding the terms or issues you want to negotiate.
10. Define what you think are the other party's boundaries or limits regarding the terms or issues you want to negotiate.

CONTRACTS

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A contract is a negotiated agreement between two or more parties, and is legally binding. A contract serves as a record of that agreement, whether written down or verbal. In all work situations, a contract should be negotiated before you begin to do the work. Why? It helps equalize the relationship between yourself and the other party. It is a communications tool that serves both your interests and the interests of the other party. Think of all the negative stories you have heard (or perhaps experienced firsthand!) about work relationships that were not properly contracted. They exist for a reason.

ASSUMPTIONS WHEN CONTRACTING

There are a number of assumptions that you and the other party will make while contracting. Here are a few of the most obvious:

- You read the fine print.
- You had a knowledgeable person review it.
- You are familiar with the system, style, process, etc., of contracting used.
- You have a 24-hour grace period to consider the contract after signing.
- You are using your intuition.
- What you have agreed to works for you.

BEFORE CONTRACTING

A contract is set out *after* negotiation has taken place. The negotiation process serves as the basis for coming to an agreement (it is also an indicator of whether or not you should get the contract in writing). As contracts vary a great deal from one discipline to another, it is imperative that you do research in your field of work to find examples and information. Where would you begin to do such research?

List the first five resources you would consult:

- 1.
- 2.
- 3.
- 4.
- 5.

STEPS TO CONTRACTING

1. Clearly define what your service and/or product is.
2. Clearly define whom it is you are contracting for or with.
3. Seek advice from knowledgeable friends and colleagues and from your discipline's association regarding industry standards and practices.
4. Use the negotiation process to express your needs and understand the needs of the other party. Avoid negotiating when contracting is taking place.
5. Use paraphrasing in order to be certain that all parties are in agreement.
6. Decide whether a verbal agreement is good enough to stand as your contract.

7. Keep records of all key negotiating processes, especially if the contract is only in verbal form.
8. Consider writing a 'letter of agreement'. This document outlines what has been negotiated and what you understand the agreements to be. This letter can be copied to the other parties.
9. If particular negotiated agreements are disputed during contracting, defer contracting until these points are renegotiated.
10. If signing (or offering) a formal contract, review the 6 assumptions already outlined, in addition to any others you might consider important.
11. Does the work represented by the contract reflect your mission statement, your work vision, and your current plan of action?
12. Contract only if willing to sign in good faith. Ask for the same from the other parties.
13. Fulfill the contract to the best of your abilities.
14. Contracts cover specified periods of time. Evaluate and renegotiate regularly in situations where you expect to be contracted frequently.

It may be a cliché but it still bears repeating. The process of contracting is part of business practice; you can't let your personal worth be tied into its outcome. If you are reacting from a personal place, make sure to get to the source of your issue before signing a contract.

For more information and resources, check out the Cultural Human Resources Council website on Careers in Culture: www.culturalhrc.ca/careersinculture/default-e.asp

SAMPLE CONTRACT

HEATHER BISHOP PERFORMANCE AGREEMENT

This is an Agreement made on _____, _____ by and between _____ hereinafter referred to as "Producer", and **Heather Bishop**, hereinafter referred to as Artist. If an organization or business is "Producer", the person signing this Agreement represents that s/he is legally empowered to act on behalf of said organization. The contact person for the organization is _____ whose day telephone number is ____/_____, fax number is ____/_____, evening number is ____/_____, cell number is ____/_____, and email address is _____.

The contact name and number that can be given to the public is: _____
The mailing address is: _____

1. ENGAGEMENT DETAILS:

Producer hereby contracts Artist for an engagement at the place(s), on the date(s), and to the specifications below:

Date(s) & Time(s): _____

Name & Address of Venue: _____

The Engagement shall include _____
Soundcheck will be at _____. Name and number of person responsible for technical arrangements is _____.

2. PAYMENT:

Producer will pay Artist a guaranteed fee of \$_____ plus GST (# _____), \$_____ in cash, certified bank cheque or postal money order to be paid: **20% (_____)** as non-returnable deposit payable to "Heather Bishop" by _____. The balance of \$_____ is payable at the time of the performance to "_____". Artist shall receive _____ of net, expenses (see attached) not to exceed _____ including artist fee and producer fee. The producer will also _____. This fee includes \$_____ (10%) for the AFM-EPW Fund (Canada) pension contribution.

In the event that payments are not made as herein set forth, Artist shall, at her discretion, have the right to refuse to begin or to continue the performance and Producer shall pay the remaining balance set forth in this agreement unless other arrangements for payment are explicitly set forth in amendments to this agreement.

Admission prices will be _____

3. PERSONAL REQUIREMENTS:

Artist will be traveling by air. Producer will provide for Artist's personal requirements as specified in attached Rider.

4. COMPLIMENTARY TICKETS:

Producer will allow Artist a total of 4 complimentary ticket(s) to any performance to be used at Artist's discretion. Producer will reserve _____ tickets to offer to media contacts and make tickets available for the promotional use of the distributor when requested.

5. SALES:

Producer will provide a table in the entrance or lobby area of the performance space for the sale of recordings and related products. Artist shall have exclusive right to designate a representative to engage in the sale of these at reasonable times before and/or after the Artist's performance without charge by Producer, or _____ as agreed by Artist and Producer.

6. PERMISSION:

No portion of stated performance will be filmed, taped, recorded, reproduced, or transmitted in audio or video form without prior written authorization of Artist.

7. PROMOTION:

Artist shall provide Producer with current promotional information to be used for media and general promotion. Producer will only use photographs provided or authorized by Artist. Producer agrees to assume the responsibility of organizing and promoting said performance and will use best efforts to publicize the performance in the press, radio and television, and to ensure as far as possible the success of the concert.

8. APPOINTMENTS:

Any and all scheduled activities in which the Artist is expected to take part must be cleared with Artist's manager in advance.

9. EXCLUSIVITY:

Producer understands that said performance is not an exclusive engagement, unless otherwise stated herein _____

10. OTHERS ON STAGE:

Producer will arrange for an M.C. to introduce Artist. No additional performers and/or speakers will appear on stage without Artist's approval. Additional approved artists and/or speakers: _____

11. TECHNICAL:

Producer shall provide light and sound equipment as specified in attached Rider. If Producer cannot provide any item in the Rider, arrangements must be made with Artist or Agent prior to signing this contract. Producer shall also provide technicians to set up, and test sound system and to mix sound throughout technical check and concert.

12. CONDITIONS:

This offer by Artist to perform is subject to proven detention by serious illness, accident, or accident to means of transportation, or any other legitimate conditions beyond control.

13. RIDER:

This contract includes one rider. This contract is not binding until the rider has been signed by Producer and Artist or Agent.

14. SIGNED CONTRACTS:

This offer by Artist for Artist's performance shall be void if signed contracts and rider from Producer are not postmarked on or before _____.

15. ANY ITEM:

If any item, condition or term of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the rest of the Agreement shall remain in full force and effect and shall in no way be impaired or invalidated.

16. BINDING:

This Agreement may not be assigned or transferred without the written consent of the Artist or her designated representative. This Agreement is binding only when signed by both Parties and contains the complete understanding of the Parties for the performance described in this Agreement.

17. LAWS OF MANITOBA:

This Agreement shall be construed in accordance with the laws of the Province of Manitoba, Canada.

Producing Organization_____

Producer Representative_____

Date_____

Artist_____ **Heather Bishop** _____

Artist or Agent_____

Date_____

MAIL COMPLETED CONTRACT TO: X Heather Bishop, Woodmore, MB., R0A 2M0

Mother of Pearl Records Box 41, Woodmore, Manitoba ROA 2MO Canada

Management: Joan Miller 1210 B Allston Way, Berkeley, CA 94702 510/540-5286

Web Page: www.heatherbishop.com Email: heather@heatherbishop.com

HEATHER BISHOP RIDER

This Rider is herewith attached to and made part of the contract dated _____ between **Heather Bishop** (Artist) and _____ (Producer).

The following terms and guidelines are intended to assist the Producer in producing the finest possible presentation. If there are any questions or concerns about this Rider or any of its provisions, please contact the Artist's Manager immediately.

TECHNICAL

1. STAGE:

Artist requires an optimal stage 20 feet wide by 10 feet deep. Where no permanent stage is available, risers should be assembled in configurations to meet these dimensions. Risers should be a minimum 8-12 inches high. One small table or stool is required on stage for glasses of water.

2. SOUND:

Artist requires a sound system and stage set-up meeting as closely as possible the specifications on the accompanying technical requirements sheet and stage diagram.

3. LIGHTING:

Artist requires good stage lighting. An optimum scheme for those who can provide it is:

- One follow spot with a broad selection of color gels, attended by a qualified operator;
- Complementing stage wash lamps (PAR lamps preferred), set up either 6-8 washes in front (overhead) or two trees with four lamps each, set to the side and slightly fore of the speakers. Instruments should have focus adjustments, a broad selection of color gels and dim-mix capability, and be monitored throughout the performance by a qualified operator.

4. CREW:

Producer will assure the presence of necessary numbers of people to facilitate all technical and non-technical aspects of the performance.

5. SOUND/LIGHT CHECK:

Sound and light check should take no more than one hour. When possible, Artist prefers to do the sound check 2 hours before the concert. Producer will clear the house of all non-essential people during the check, and will not open house doors or seat the audience until the check is completed and Artist has left the stage. **(be sure to include a technical rider if your presentation requires technical backup such as sound. Follow up to ensure that rider gets in the right hands.)**

NON-TECHNICAL

6. DRESSING ROOM:

Artist requires one clean, lockable dressing facility with a bathroom within or close by. Purchaser will assure the security of this room and all items therein, and deny entry to unauthorized personnel. If the dressing room does not have a good-sized wall mirror, Artist requests a hand mirror in the room. ____ Artist requires an iron and ironing board in the room.

7. HOSPITALITY:

Artist requests moderate quantities of the following be placed in the dressing room:

- 2 bottles of water
- a supply of ice
- a clean pitcher plus 2 clean cups

Optional:

- a tray of fresh fruits and vegetables
- bread or crackers (yeast-free if possible) with spreads (for example butter, peanut butter)

A hot meal is graciously accepted but not stipulated. If the Producer wishes to provide a hot meal, arrangements should be coordinated with the Artist's Manager.

8. SECURITY:

Producer will make every reasonable attempt to assure the security of the Artist and her equipment.

9. TRANSPORTATION:

____ Artist is driving to the community: Producer is requested to send maps of the community clearly showing the location of both the performance venue and accommodation, and the best route to take upon arrival. The maps should be sent with the signed contracts.

X Artist is flying in: Producer is requested to meet the incoming flight and to take Artist to the airport for her return flight, in a smoke-free vehicle large enough for **3** person(s), with instrument and luggage.

10. ACCOMMODATION:

Artist requires accommodation for **2 nights** in the form of **2 hotel rooms**

AGREED TO AND ACCEPTED BY:

Producer Representative _____ Date _____

Artist or Agent _____ Date _____

SAMPLE GALLERY CONTRACT

Portage and District Arts Council Exhibition Agreement



Portage & District *Arts* Council

11—2nd Street NE
Portage la Prairie,
Manitoba R1N 1R8
204-239-6029
pdac@mts.net
portageartscentre.ca

EXHIBITION AGREEMENT WITH ARTIST

This agreement is made in duplicate on:

Date: July 7, 2010

between

a) The Portage & District Arts Council, 11 – 2nd Street N.E., Portage la Prairie, Manitoba, Canada, R1N 1R8; tel. 204.239-6029; fax. 204.239-1472; www.portageartscentre.ca; pdac@mts.net (hereinafter called "the PDAC")

and

b) Insert Name, complete address, contact numbers, email) (hereinafter called "the Artist").

The Artist and the PDAC agree as follows:

1. The PDAC will present an exhibition in the PDAC Gallery of approximately (*insert number and media of works*) by the Artists during the period *insert exhibition dates*. The final number of pieces that will be determined by PDAC.
2. The Artist will be responsible for having the confirmed works ready for exhibition on or before *insert date*.
3. PDAC will pay an exhibition fee of _____ to the Artist.

4. The Artist will provide biographical information, details of the selected works (including: a list of works with titles, media and supports, dimensions, and valuations for insurance purposes for each work) to the PDAC TWO months before the exhibit. *i.e. November 1, 2011.*
5. The cost of shipment of the works of art to the PDAC and back to the artist will be paid by PDAC. The method of shipment of works is a matter for individual discussion and agreement between the Artist (and/or Lenders) and the PDAC.
6. The PDAC will be responsible for insurance of the works of art while on exhibit ***currently up to \$40,000.***
7. The PDAC will be responsible for the handling and installation of the works of art. Installation plans will be discussed with the Artist. Final installation decisions rest with the PDAC.
8. The attached Appendix "A" lists the details of any specific installation requirements for the exhibition, and outlines the responsibilities of the PDAC and the Artist.
9. **The PDAC will deduct a commission of 25% for any works that are sold as a result of the exhibition.**
10. The PDAC will produce a publication to accompany the exhibition. The publication will list the works exhibited and may illustrate some, in keeping with the curatorial theme and as discussed with the Artist. The Artist retains the copyright of (his/her) images and any written text by the Artist, unless the Artist waives copyright.
11. The Artist gives the PDAC permission to reproduce the works of art included in the exhibition for the PDAC exhibition publication, and for non-commercial purposes that are related to the exhibition's promotion, including: exhibition advertising, invitations, and posters; the exhibition's interpretative and public programs; the PDAC's promotional website.
12. The PDAC will not permit reproduction of the works of art included in the exhibition for commercial purposes.
13. The PDAC will arrange announcements of the exhibition, at the PDAC's expense, in PDAC publications and through the media, to be determined by the PDAC in accordance with its overall Communications plan.
14. The PDAC will sponsor an event during the exhibition such as: a public artist's talk, tour guide instruction, studio workshops, lectures, and/or other public forums to be determined in discussion with the Artist. The Artist agrees to participate in such education and public events planned in conjunction with the exhibition. *The Executive Director will contact the Artist directly to arrange such events and negotiate relevant fee payment.* The Artist agrees to participate in media interviews if requested to do so by the PDAC.
15. The PDAC will host an opening event to be held _____ insert date _____ and mail up to 40 invitations to a mailing list provided by the Artist, and email the appropriate PDAC mailing list

as determined by the Communications plan. The Artist must provide a mailing list to the PDAC two months before the exhibit.

16. The PDAC reserves the right to terminate this contract if external funding is not confirmed, or if the exhibition does not meet the PDAC's programming standards.

In the event that any part of this agreement on the part of the Artist or the PDAC shall be prevented by a natural phenomenon, physical disability, the acts or regulations of duly constituted public authorities, strike, civil tumult, war, epidemic, interruption or delay of transportation service or other cause beyond their control, each shall be relieved of their obligations hereunder during the period such prevention exists. It is understood and agreed that in such event there shall be no claim for damages by either party to this agreement.

The Portage & District Arts Council

Date

The Artist

Date

PLEASE SIGN. RETURN BOTH COPIES.

PDAC WILL COUNTERSIGN AND RETURN YOUR COPY.

APPENDIX 'A'

TITLE OF EXHIBITION:

| |
|--|
| |
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ARTIST(S):

| | | |
|--|----------------|--|
| | MEDIUM: | |
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INSTALLATION
REQUIREMENTS
ARRIVAL DATE:

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PICK UP DATE:

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EXHIBITION DATES:

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EDUCATION/PROMOTION
EVENT DATE (if any)

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CONTACT PERSON (if other than Artist):

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ADDRESS:

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CITY:

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PHONE:

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| | EMAIL: | |
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1. **Hanging Instructions:** In our gallery, all pictures are hung on chains, and in order to have the art work hang properly, adjustments have to be made. Two chains are needed to hang each selection of work.

Wooden Frames: Additional eyes must be placed on the back of the frame, 2 inches down from the top corners. We use "S" hooks to fasten pictures to the chains.

Metal Frames: Please adjust wire mounts to the highest position on the back of the frame.

Please have work prepared and ready to hang prior to its arrival. Work that does not meet these specification may not be included in the exhibition.

2. **Originality:** All works are original and have never been shown at this gallery before.
3. **Two months prior (*DATE*) to the exhibition PDAC must receive the following:**

| | |
|--|--|
| | 1. Artist's Statement. |
| | 2. Art Resume/Curriculum Vitae. |
| | 3. Recent Biography /background information for promotional purposes. |
| | 4. Description of show, title of show, and number of exhibit pieces. |
| | 5. Jpegs of at least 10 exhibit pieces – each labelled with name, number and position for viewing on computer. |
| | 6. Descriptive List – include title, medium, dimensions and date of work, insurance value and selling price, if applicable. Title cards are prepared from your list of works. (PDAC gallery fee is 25% of the selling price of any work sold as a result of being exhibited.) |