

the artist's J.D. 

Writing a contract for your creative business

# What should your contract include?

A CHECKLIST FOR  
CREATIVE ENTREPRENEURS

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# Legal Nitty Gritty

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We've made our best efforts to prepare this guide, but laws change and the Internet is constantly changing. Because of that, we cannot make any representations or warranties about the contents of this workbook. At some point, the laws, links, or information contained in here will change. And since you have a static version, it'll be out of date.

I'm sure it goes without saying, but this workbook cannot be a replacement for working one-on-one with a lawyer. It's here to give you the tools and information you need to educate yourself about this aspect of your creative business and to empower you to take action. And as such it does not constitute legal advice.

# Ready to write your contract?

Searching “creative business contract template” will give you millions of results. (I got 1.9 million.) But using an Internet template contract or combining several templates together often leads to a Frankenstein contract.

Your contract should weave together words to form an image of the kind of relationship you want to create. You want all the pieces of your contract to work together to form an image.

## **So what should your contract look like?**

To start off, you are going to daydream. During this session, you'll come up with two things. First off, the core issues that your contract is going to address. And second, the common problems that might arise and how you'll fix them. Once you've completed your brainstorm session, you'll turn to putting your contract together.

When putting together your contract, there are 17 things that you might want to include. They are:

- cover page
- section headings
- information about who the contract is between
- how long the contract will last
- how the contract ends before it's up
- what will be exchanged

- who owns the intellectual property
- timeline or schedule
- format of deliverables
- approval/revision process
- business policies
- how payment will happen
- what kind of legal relationship you are creating
- what you are promising each other
- how you'll handle disagreements
- if someone can take your place
- legal boilerplate

## **Cover page**

When I write contracts for my clients, I often start with a cover page. On this cover page, I list out all of the important things:

- the names and contact information of all parties
- how long the contract will last
- what is being exchanged
- the schedule
- deliverables
- any restrictions on the use of deliverables

I then use the rest of the contract to cover the nitty gritty legal stuff. I do this for two reasons:

- to make it easier for my client to remember where she needs to update the contract (because everything that changes is on the first page)
- to make it easier for the person she's giving the contract to (because what they care about is on the first page)

## **Section headings**

I like to give all the contract sections a 1-2 word heading that describes what is going on in that section. Then, when I need to refer to another section of the contract, I bold the text that includes the heading.

For example, I might say, “Once each deliverable (as outlined in the **Delivery Schedule**) is received, Designer will submit Client an invoice. Client will pay this invoice within 10 days via PayPal.”

This helps weave the sections together to form the picture of the contract.

## **Information about who the contract is between**

The information in this section is pretty simple. All you need to do is explain who is involved in the contract and their contact information.

## **How long the contract will last**

This section of the contract determines how long this contract will last. (The legalese name is the contract term.)

You'll explain how long the initial term of the contract will be and if it can be renewed.

When it comes to the initial term, it might be:

- two months
- through a specific date
- on a specific date
- until a specific deliverable is provided
- perpetual

If the initial term can be renewed, you'll need to explain how it happens and for how long. For example,

- automatically renewed for a period equal to the initial period
- automatically renewed the first time for a year and then upon agreement by both parties
- renewed only if both parties agree

## **How the contract ends before it's up**

Here you are going to outline how the contract can end before the term runs out. (In legalese, how a contract can be terminated.)

This might be:

- either side can end for any or no reason with 30-day notice
- you can end if your client stops paying
- your client can end if you don't provide the deliverables
- either side can end if the other files for bankruptcy, becomes insolvent, or sells the business
- either side can end if the other fails to correct certain behaviors after being told to stop (e.g. failing to provide timely royalty statements)

## **What will be exchanged**

One of the requirements for a valid contract is mutual consideration. This means that both of you need to give something of value to the other side.

This can take on many forms:

- one of you could provide services and the other pays
- one could take photographs and the other could give jewelry
- one could create an illustration and the other could provide publicity

The bottom line is in this section, you need to define what the exchange will be.

## **Who owns the intellectual property**

If you are creating or exchanging something of a creative nature, you need to define who owns the intellectual property.

So in this section, you'll spell out who owns it. But more importantly, you'll explain what the person who doesn't own it can do with it.

If you are collaborating, you might be co-owners. If you are the illustrator, you might retain the copyrights and grant them a license to use your illustration on their website for two years.

## **Timeline or schedule**

If there are deliverables or the project will go on for a while, then you'll want to provide a schedule.

For example, you have three weeks to create the first draft. Then they'll have a week to provide edits. And you'll provide them a final draft a week after they send their edits. Or will everything be delivered by a specific date?

## Format of deliverables

If you are sending them a deliverable, then you should define what format it will be in. Will it be:

- three painted 6-foot long surfboards?
- single .PSD file?
- PDF file formatted for printing according to their specs?

## Approval/revision process

This might be included in **Schedule** or it's own section. Either way, you should define what, if any, feedback or edits you'll make to the deliverables.

For example:

- if they don't provide edits within a week it's assumed approved?
- must they accept the custom piece as long as it matches the sketches you provided?

## Business policies

Some service providers have policies for their businesses. And you'll use this section to spell out your company policies.

For example, if you are a wedding photographer or videographer, you might have a policy about cancellations/reschedules. If you are a graphic designer or copywriter, you might have policies about how many rounds of edits you will do (this might be covered in **Approval** too).

## How payment will happen

If **What's Being Exchanged** includes money, then you should define what that payment process looks like.

- Do they need to give you 50% up front, with 25% due when the first draft goes out and the remaining 25% when the final goes out?
- Do you have to submit an invoice before payment is due?
- How many days do they have to pay after the invoice is submitted?
- Do they pay for any expenses that you incur?
- Is this a royalty situation?
- If so, how often do they pay and what do those statements look like?

## **What kind of legal relationship you are creating**

If you aren't an LLC or corporation, it's best practice to include that you are an independent contractor and that the contract does not result in an employment relationship. This is for both your protection and for protection of the other side. But, this means if you are the one getting paid, you are responsible for your own taxes and insurance.

Regardless of your business type, this section also should outline if you are forming a partnership. Under the law, individuals, LLCs or corporations can easily form a partnership. A written contract isn't required, a partnership can be formed through actions. When deciding if you have a legal partnership, we consider:

- if you intended to form a partnership
- if you share profits and losses from the products/services you are jointly offering
- if you jointly control business decisions and operations
- if you both contributed funds or time to the joint effort
- if you own equipment, inventory, or other tools together

Why you care about this is to protect your own business. If you create a partnership and your partner buys expensive equipment, you are on the hook for paying for it. (Even if you didn't know they were doing it.)

So to help explain that you didn't intend to form a partnership, you might include a section explaining that the contract doesn't create a partnership.



## What you are promising each other

You've probably seen a section in contracts called Representations and Warranties. All this section is doing is outlining the promises you are making to each other.

This includes things like you are promising (representing) that you own the copyright to the work product you are giving them, or that you are free to enter into the contract.

Use this section to outline any promises you are making to each other.

## How you'll handle disagreements

If for some reason the two of you can't agree on what the contract says, or if one of you is failing to live up to the promises you made in the contract, how will disputes be resolved?

- Do you want to talk to a mediator?
- Do you have a mutual friend that you want to listen to both of you and then make a decision?

I often use the clauses provided by [California Lawyers for the Arts](#), because their mediators and arbitrators are trained to assist creative businesses. If you are not based in California, check to see if [your state's Volunteer Lawyers for the Arts organization](#) has a mediation service and sample clauses.

## If someone can take your place

You also might have come across a section called Assignment. This section outlines if, and how, either of you can substitute (assign) someone to perform your side of the exchange.

## Legal boilerplate

Finally, the contract ends with what we lawyers call “boilerplate” language. It's the things that don't vary much from contract to contract.

These might include:

- the fact that this contract and not anything you've discussed previously is what the deal is (merger clause)
- what state (and maybe city and county) you have to sue in (jurisdiction clause)
- which state laws will apply if there is a dispute (choice of law clause)
- if any particular part of the contract is invalid, that the rest of the contract shall still be valid (severability clause)

**And that's it! To help you put together your contract there's a checklist on [Page 11](#).**

## CONTRACT SECTIONS

- ☐ Is your contract more than 2 pages? Then consider adding a cover page with the important details
- ☐ Have you used headings to guide the reader and help them understand what each section discusses?
- ☐ Do you include names and contact information about everyone participating in the contract?
- ☐ Did you outline how long the contract will last and if (and how) it can be renewed?
- ☐ Did you explain the process for ending the contract before the term expires?
- ☐ Have you explained what will be exchanged between the parties?
- ☐ Are you creating something protected by copyright or trademark? Then outline who owns it and what the other side is (and isn't) allowed to do with it.
- ☐ Do you need to include a timeline or schedule of events or deliverables?
- ☐ Are you delivering something? Then explain the format you will give it to them in.
- ☐ Do you need to outline an approval or revision process?
- ☐ Do you need to make any of your business policies clear in the contract (e.g. cancellation or reschedule policies)?
- ☐ Are you being paid? Then explain when payments are due and how they will be paid.
- ☐ Do you need to clarify what kind of legal relationship you are creating?
- ☐ What promises are you making to each other?
- ☐ How will you handle disagreements?
- ☐ If it's allowed, what's the process for someone to take one side's place?
- ☐ Do you need any legal boilerplate?

## The end

I hope this checklist made this topic a little less scary! If you want more legal resources like this, [click here](#) to claim your free membership to the artist's Courtyard. You'll get instant access to actionable resources designed to help you achieve your goals—without a bunch of legalese.

Tweet me at [@kiffaniestahle](#) and let me know your biggest aha! moment or any questions.

If you'd like to connect on social media, as a photographer Instagram is my favorite, I'm [@kiffaniestahle](#) there (and most places).

I think every creative business should have a lawyer they trust on their team (just like you should have a CPA and PR maven). If you don't have one already and want to make a lawyer-friend, an amazing place to start is the Volunteer Lawyers for the Arts organization in your state. Here's the [state-by-state directory](#).