

Get it in Writing – The Importance of Contracts

by Katherine Hawes

Written contracts are essential to any business, but of particular importance when you are creating designs for other people.

Having contracts sets expectations for what your client can expect from you and helps to assist you to stay on schedule. They are also the 'check and balance' between the most important element of staying in business: getting paid. The truth is that most disputes arise due to either having no contract in place, or is unclear about what happens if external factors change e.g. Council approval fails.

Three Key Reasons to have a Contract in Place:

1. **To settle disputes** – If disagreements occur in the relationship between a business and its customer/contractor, both parties can refer to the contract to settle any potential disputes. In the long run, this can also help to save both sides a lot of money, as litigation can be very expensive and stressful!
2. **Provides Certainty** – A written contract provides a level of certainty. It lets both parties know what to expect. Therefore, if either side feels that they did not receive what they feel entitled to, they can refer to the contract to see if expectations are honoured. It is highly advisable to ensure that any contract includes a plan of action should expectations fail to be met. This should include the process involved, costs and responsibilities.
3. **To preserve relationships** – The final main purpose of a contract is perhaps the most important in that it improves the chances that relationships will be preserved between the parties involved – even if there is an unmet expectation.

For design professionals, there are a wide range of contracts from retainers to short term contracts. It doesn't matter what type of contract you choose, you always need to protect yourself and ensure that the rights to your work are never in doubt or dispute. Even if you work for free, you should always enter into a written agreement with your client.

Key Points in Every Design Contract.

1. Set the scope of work. Building design requirements can range from straightforward, varied to extremely extensive. Regardless of the type, it is still important that the scope is clearly

defined, including where you are required just to design plans or are also engaged to carry out site attendance and/or contract administration.

2. Get clear what the client is purchasing. When freelancing as a design professional, you may create sketches, visualisations etc and it is fair to say that preliminary concepts may be rejected or modified in significant ways. Typically, the client will be only be purchasing a single concept – the finished design. Therefore, always include in the contract whether the client is purchasing rights to all designs, or just the finished product.
3. Gain permissions. If your designs include third party stock art, photos or illustrations, you will need to disclose this to your client and ensure they understand any usage restrictions. For example, if you purchase a stock photo to use in a design, the rights of the photo may be limited. Also, make sure that there is no ambiguity in place about who will purchase and pay for third-party content and get this in writing. Also make sure that your client is permitted to use any names, content, graphics, stock images, or other content that they ask you to incorporate into your design(s).
4. Setting the price for your work. Always carefully consider the rights that you are assigning when you determine the price that you will charge your client. You may generally want to charge higher fees for projects when you are assigning your rights in full. Clients will nearly always want to acquire the broadest rights possible, so when negotiating this provision, take the time to understand WHY the client needs broader rights and charge accordingly, as you will not be able to re-use those designs.
5. Ensure you clearly set out what is and what is not included in the contract and also what you are not responsible for. Remember, people have different understandings and expectations, so it is important to clearly state what you will not be responsible for. For example, if the client fails to undertake any specific task such as lodging Council approval, you will not be held responsible and will be paid up to that point for work you have completed.
6. Don't start work yet! Remember, your client has five business days to change their mind after receiving a signed copy of the building contract. This is the 'cooling-off' period and it starts from the date your client received the signed copy, regardless of when they signed



Katherine Hawes

the contract. Also remember that if your client does 'cool off' they must put their decision to withdraw from the contract in writing.

With over 20 years' legal and business experience, Katherine Hawes is the founder and principle solicitor of New Age Legal Solutions which offers fixed prices legal solutions for businesses. To find out more about her work and to download her free ebook on key legal issues for business owners, please see www.newagelegalsolutions.com.au

SmartRate™

NatHERS Training

Certificate 4 in NatHERS Assessment (CPP41212) ^a

FirstRate5 training

RPL Skills Assessment for existing assessors

Classroom based courses

Online options – PC or tablet

1 Day Courses

BCA Volume 1 - Section J Assessments

BCA Volume 2 - DTS Assessments

User Support

Expert advice & solutions

Mentoring for new assessors

www.smartrate.com.au

Nationally Recognised Training



^a Qualification issued by Education in Building - RTO 32418