

## Considerations for Artists' Contracts

Over the last five years the Scottish Artists Union has been approached by a number of artists who have run into difficulties where they lacked a contract or have delivered work without adequate documentation. SAU's original premise was to establish industry-standard templates which would help to secure the artist's position and avoid future wrangles. This proved problematic as there are as many contracts possible as there are artists. The best way forward was to compile a checklist and provide a list of useful sources of information which would help artists understand their professional responsibilities and liabilities.

The checklist is intended to raise awareness of the need for fair and proper contracts that protect artists, the integrity of their work and ultimately enhance their professional status. The aim is also to encourage the use of contracts, however simple.

The SAU is an altruistic organisation, run for artists by artists and in that spirit, research was conducted and information shared on a voluntary basis by SAU members and fellow artists. Our final list is by no means comprehensive; however, we have endeavoured to cover different areas of working, having consulted artists working in the gallery system, working to commission, and in the community and health and education sectors. We had no input from artists in residency situations, but have taken this into consideration. Not all points may be relevant to every artist, but we hope it will be a useful starting-point for artists wishing to draw up their own contracts.

As no lawyer has been consulted to date in the writing of this checklist, SAU advises artists consult a legal specialist when drawing up or negotiating contracts. Care has been taken to consult reputable sources of advice, however, SAU cannot be held responsible for any advice taken or used from this document particularly without proper legal consultation regarding individual circumstances.

The Scottish Artists Union would like to thank all participating artists, SAU Executive Committee especially Laura Hunter, Cultural Enterprise Office, DACS, Wendy Law and Nicholas Sharp for all of their help and advice.

### Contracts Checklist: Main Considerations

1. Insist on a contract meeting before work or exhibition plans commence.
2. Protect your professional interests and provide your own terms and conditions; SAU advocates the use of a legal specialist. Do not sign anything presented to you without reading it carefully, running past a lawyer if necessary, and do not be afraid to negotiate terms that do not suit.
3. Do not sign anything you do not understand or agree with.
4. Ensure you understand your legal and tax position in your relationship with the other party and your professional responsibilities, liabilities, and obligations, and that you are able to fulfil these.

5. Ensure you are adequately covered for anything that might go wrong.
6. Ensure you and the other party understand clearly who is doing what, where, and when.
7. Check who is paying for what, when and how.
8. Insist on prompt, acceptable, payment terms. If a client is paying in instalments, get a non-refundable deposit to cover basics, and get post-dated cheques on the spot for the balance payments.
9. Protect your name and work, and retain your copyright and reproduction rights unless an acceptable fee is negotiated that makes it worth your while to relinquish them.
10. Ensure you can prove ownership of your work until you are in full receipt of payment. To do this, keep dated, photographic records of work, and provide delivery documents with the work, get gallery/client to sign for it and retain a copy for your records.

**Get the Agreement (However Simple) in Writing, Signed by Both Parties, Dated, and Keep a Copy**

## Checklist for Drawing Up Bespoke Contracts

Below are groupings of considerations which could be relevant when drawing up a contract, including secondary items that might need to be covered in a contract and with some added comments and recommendations. Working through this list you can note which items are important for you to include.

## Types of Agreement

**Long-Term Agreements** - Selecting galleries or employers and/or giving loyalty to a successful gallery in a particular area can aid marketing and career success. Choose the number you work with and their locations carefully so you are not saturating your market.

**Exhibition** - Consider: dates, content, delivery, installation, invitations, private view, catering, staffing, catalogue, advertising, PR, sales, discounts, insurance, uplift of work.

**Employment** – Consider: your position and employment remit/brief, hours (preparation, travel time, clear-up), responsibilities and liabilities, disclosure application if necessary, insurance, health and safety, payment, materials, budget, admin and travelling involved.

A contract of service or employment means the person contracting you is your employer and therefore responsible for your tax and national insurance payments. You will usually be paid a salary.

If you have a contract for services you will be responsible for your own tax and national insurance as a self employed person or company and will invoice for a fee.

**Commissioned Work** - Consider: brief, budget/costs involved, materials and work involved, production if there are others to co-ordinate, timescale, payment, deposit (non-refundable for initial work, materials, costs, admin), rejection fee (see Own Art contracts checklist), loan of work, copyright, reproduction rights, insurance, transportation, installation, long term maintenance.

**Exclusivity** - This involves being tied to one gallery/employer and is inadvisable, unless there is an established, beneficial working relationship and the gallery/employer has proved itself in offering a highly professional service, good promotion, a regular sales record providing the artist with a proper income and a top-notch client list.

**Residencies** - consider: provision of accommodation, transport, meals, materials, workspace. Is there a particular brief, interaction with the community involved? Is an outcome required e.g. exhibition, showing or donation of work? Is there a stipend, or funding?

## Ownership & Copyright

**Maintenance of Work** - Especially if on permanent display, establish who will be responsible for repairs etc. The artist probably does not want permanent responsibility for this, but may wish to ensure work's integrity e.g. by stipulating it must be painted a particular colour and remain so.

**Ownership** - Artist must ensure they retain proof of this until they have received full payment. A consignment document, signed by the gallery, should be kept by the artist. Should a gallery be in financial difficulty this helps you prove the work is not their stock/asset, and it should be returned to you. It also proves you delivered the work in the first place should the gallery dispute it.

**Copyright** - The artist retains copyright automatically, even on work sold unless an additional fee is negotiated. The artist may choose to assign copyright to others and negotiate reproduction rights for a fee (see DACS and Cultural Enterprise Office websites).

**Moral Right** - This protects the work's integrity.

**Right of Paternity** - This ensures that the artist is recognised as the creator when a work is permanently displayed.

**Reproduction Rights** - The artist can negotiate a fee and stipulate conditions allowing another party to reproduce the work (unless the copyright has been sold).

**Edition Numbers** - Ensure you are clear, and record in writing, how many reproductions will be made and numbered in a series, and that they are correctly numbered and recorded.

**Protection of Intellectual Copyright** - You may want to retain and protect material and ideas from a particular project e.g. in an educational workshop you might use the instructional materials you produced in the future or in another context. Whether you retain the right to use such materials will depend on your terms of contract. If contracted as an employee the copyright often rests with the employer.

## Security

**Insurance** - Check with your own insurer, gallery, client, employer, landlord etc. what cover you need. You may need public liability insurance and professional indemnity cover. You may want to cover yourself in case you are unable to work through illness or injury, you may wish to insure your work and studio contents etc. Check whether your work is covered in transit and at what point responsibility for insurance transfers to gallery/client.

**Security** - Consider the value of your work to you should it be stolen. Keeping records and visual documentation of your work for copyright and insurance purposes is good practice. A gallery should be adequately prepared and insured, but check.

**Liability** - We live in a suing culture, so it makes sense to have public liability insurance. Some artists operate as limited companies to protect their domestic assets, and to gain tax benefits.

**Damage, Fire, Theft** - A degree of minor repair generally has to be factored into costs (e.g. frames always come back in need of something) however, major damage should be invoiced to the offending party and can be written in your terms. You can insure for these things but check the gallery/employers cover.

**Health & Safety** - Ensure that legal requirements are met in your working environment or place of employment (especially if you are responsible for others or for a workshop). If others are to install your work in a gallery or public place particularly if there are unsupervised instructions, or unusual circumstances, check who carries responsibility. You should check how dangerous solvents etc. should be used on the premises and safely disposed of. Check who is responsible for maintenance and supervision of all equipment and tools and what insurance cover exists.

## Provision & Care

**Equipment** - In workshop situations and gallery installations check who will supply and insure equipment e.g. installation of digital work, workshops where students are using tools and equipment. Cost any equipment supplied by you.

**Installation of Work** - Consider: Who does what, where and when in terms of instructions, supervision, responsibilities, and liabilities? Who provides what e.g. tools and who is insured to use them? Who repairs/repaints walls etc. especially if in an unusual venue? What happens if things go wrong or work incorrectly installed? Make provision for these eventualities in the contract so that you and the gallery or venue can troubleshoot.

**Proper Care of Work** - Determine the responsibility for care of work, and its insurance, in a gallery or exhibition situation and in transit to and from the exhibition space. Galleries should take good care of your work likewise your work should be delivered in good order. Contracts should describe procedures where this system fails.

## Payment

**Payment Terms-Commercial Galleries** – Consider: Who invoices whom for what? What kind of sales agreement do you want or are you being offered? You should inform the gallery if you are VAT –registered or not. An organised, solvent, professional gallery should be in a position to pay you within 5 working days. Realistically, expect payment within a week of an exhibition closing (usually within 28-30 days of sale). Longer is unacceptable as most sales are made at or before an opening, so sufficient time has elapsed for initial payments to clear. If a gallery does not pay promptly it is using your money as cashflow instead of the bank's.

**Costs Involved** - Ensure you know what is involved and who is paying for what- even a simple letter listing terms is helpful. Framing costs, PR, mailing costs, advertising, transport costs, particularly delivery to clients, catalogue and invitation printing, photography for these, wine & catering.

**Agent's Agreement Vs. Direct Purchase** - If a gallery represents you on a permanent basis they are acting as your agent. Agents charge commission, to you as their client, for the services you are buying from them. If they are VAT registered they must charge you VAT on their commission for that service. This can have VAT registration and tax implications for the artist, (see SAU website for notes from "Artists, Galleries, Money" event). As the gallery is acting on your behalf you may want to stipulate terms and conditions.

If the gallery buys work from you directly, then effectively, the gallery is your client. It is important for tax purposes for you to check what type of agreement you have. Some artists have direct purchase at point of sale agreements, whereby they provide the work with specific paperwork to indicate that the gallery will buy the work from the artist at the point where they sell it onward to the gallery client, the artist invoices the gallery for the artist's price only. The artist does not agree to pay commission and legally and tax-wise there is an important distinction. Consult your lawyer and accountant to assist with the appropriate paperwork/ contract.

**Resale Rights** - Artists are due a royalty payment when work is sold-on by an art market professional. This royalty is paid for work selling at 1000 euros or more but not on the first sale or on work resold within 3 years. See DACS website for further details and to register with their royalty payment distribution service.

## Rights & Agreements

**Provision By Gallery of Client/Purchaser Details** - The gallery is not legally obliged to give these details, however, if you have an agency type arrangement, ask for this information. Whatever your relationship legally, establish with the gallery that you are loyal, not intent on poaching purchasers, but want to meet and understand who likes, buys, collects your work for your marketing purposes.

**Statutory Rights Liability** – These are laws protecting consumers. If you have an agency agreement you are liable.

**Exhibition Payment Rights (EPR)** - Public Spaces Fee - Artists are due an additional separate payment under this scheme. Galleries receiving SAC funding are obliged to pay an EPR fee. This fee should be included in your contract and cannot be offset, by the gallery, against other costs such as catalogues etc.

**Governing Law** - Important to state in a contract particularly if the buyer or artist is not a UK resident. This clause ensures where a case can be brought to court e.g. 'Scottish Law'.

**Duration of Contract** - Stipulates length of time agreement will be in place.

**Termination of Contract** - Under what circumstances and how might the contract be ended e.g. it could be important should gallery/client experience financial difficulty. Each party stipulates the notice required to end their agreement e.g. 30 days' notice in writing.

**Non-Waiver Clause/Amendments** - Check details with your lawyer, this clause is useful for instances where the artist may have ongoing projects with a client and can waive e.g. payment of deposit in one project, but does not want to set a precedent. Amendments must be in writing signed by both parties.

## Obligations & Cancellations

**Obligations** - Ensure there is provision in your contract for either party being unable to fulfil their obligations due to unforeseen circumstances, such as illness or materials being unavailable.

**Cancellations** - What provision should there be if either party fails or is unable to fulfil the commitment in full or in part e.g. exhibition, project. Consider reasonable notice periods and penalty clauses.

**Change of Agreement Due to Unforeseen Dire Circumstances** - What if you are unable to work, the gallery goes bust etc.

**Legal Clauses and Useful Terminology** - See Nicholas Sharp's New Contracts for Artists and Galleries for ACE and SAC Own Art Scheme.

**Whole Agreement Clause** - This means neither party can claim after the fact that the signed contract did not contain other terms they may have discussed earlier. Everything pertinent and mutually agreed to should be written in the contract at the point where both sign their agreement to the terms. The written signed document overrides any thing else understood previously. Check details with your lawyer.

## Useful Sources of Information

### **A Proper Living from Your Art**

This book is a practical guide for artists and mentors by Harley and Cally Miller and published by Posthouse Publishing, Findhorn. It offers advice on how to generate a proper income and maintain a professional profile as an artist and includes specific information on selling to retailers, forming workable agreements, understanding and applying copyright. Available to reference at Cultural Enterprise Office's Glasgow library.

t: Harley Miller 01309 611708

e: [info@harley@harleymiller.com](mailto:info@harley@harleymiller.com)

[www.harleymiller.com](http://www.harleymiller.com)

### **AN the Artists Information Company**

AN's website hosts an artists' toolkit available to paying subscribers which offers step-by step contract templates to assist artists compiling their own bespoke contracts

[www.a-n.co.uk](http://www.a-n.co.uk)

### **Cultural Enterprise Office**

Practical business advice; free business surgeries with specialist advisers including legal assistance; website holds information on both copyright and contracts as well as a factsheet on Costing and Pricing Work.

t: 0844 544 9990

e: [info@culturalenterpriseoffice.co.uk](mailto:info@culturalenterpriseoffice.co.uk)

[www.culturalenterpriseoffice.co.uk](http://www.culturalenterpriseoffice.co.uk)

### **Design and Artists' Copyright Society (DACS)**

DACS is a not-for-profit organisation acting as a royalty collecting society for its members. It offers good advice on copyright; reproduction rights and licensing and resale rights. Standard contracts are available for its members. Copyright factsheets can be downloaded from the website.

t: 020 733 68811

e: [info@dacs.org.uk](mailto:info@dacs.org.uk)

[www.dacs.org.uk](http://www.dacs.org.uk)

## **Group for Education in Museums (GEM) and Museum and Galleries Commission (MGC)**

Their ***Choosing and using and museum education consultant or a freelance educator*** Information sheet provided contains an extensive list of points for consideration when working in this sector or employing freelance artists.

t: 01634 312 409

[www.gem.org.uk/grassroots/GR%20Resources/GRwwArtists.html](http://www.gem.org.uk/grassroots/GR%20Resources/GRwwArtists.html)

[www.gem.org.uk/fnet/fn\\_menu.html](http://www.gem.org.uk/fnet/fn_menu.html)

## **Own Art**

### **Contracts and agreements between artists and dealers/galleries**

The Arts Council's of England and Scotland have commissioned the Checklists and Q&As that follow as a way of assisting both artists and dealers to establish appropriate contracts. The Checklists set out the clauses that are commonly seen in Artist/Gallery contracts and what each clause usually covers. The Checklists and Q&As reflect three types of arrangement:

- (a) a simple **Exhibition Agreement** between artist and gallery, and which relates to a one-off exhibition being mounted by the gallery for the artist;
- (b) a **Consignment Agreement** between artist and gallery which sets out the essential terms on which work is consigned by the artist to the gallery; and
- (c) a **Long-term Representative Agreement** between artist and gallery where the gallery intends to develop a long-term relationship with an artist, which will normally include exhibitions but may also include holding an artist's work, showing the artist's work at art fairs and representing the artist in setting up overseas exhibitions.

The Checklists and Q&As have been drawn up by solicitor Nicholas Sharp, consultant to London law firm Swan Turton, Solicitors,

[www.scottisharts.org.uk/1/artsinscotland/visualarts/ownart/informationforgalleries.aspx](http://www.scottisharts.org.uk/1/artsinscotland/visualarts/ownart/informationforgalleries.aspx)  
[www.swanturton.com/ebulletins/archive/NXSArtistGalleryContracts.aspx](http://www.swanturton.com/ebulletins/archive/NXSArtistGalleryContracts.aspx)

## **Scottish Artists Union (SAU)**

Two useful articles published by SAU and available on the website are; ***Artists' Rates of Pay*** - guidelines for setting fees for delivering workshops, ***Artists, Galleries, Money*** - seminar notes from VAT specialist Angela Bedi's talk on agents' agreements versus outright and direct purchase agreements between artists and galleries

e: info@sau.org.uk

[www.sau.org.uk](http://www.sau.org.uk)

## **Scottish Arts Council (SAC) Helpdesk**

Has a publication and professional guidance sections which provide a snapshot of helpful organisations

t: 0845 603 6000

e: help.desk@scottisharts.org.uk

[www.scottisharts.org.uk](http://www.scottisharts.org.uk)

## **Society of London Art Dealers (SLAD)**

SLAD made a submission to the Culture, Media and Sport Committee's March 2005 report into the Market for Art which included an Artists/Galleries agreements checklist for SLAD members taken from "Artists and Galleries – a profitable relationship" (orig. 1996/ updated 2005)

[www.publications.parliament.uk/pa/cm200405/cmselect/cmcomeds/414/5030810.htm](http://www.publications.parliament.uk/pa/cm200405/cmselect/cmcomeds/414/5030810.htm)

[www.slad.org.uk](http://www.slad.org.uk)

**The Artist's Guide to Selling Work**

Published by the Fine Art Trade Guild, this book contains about the business side of being an artist, selecting the right business, how businesses find artists, making an approach, pricing original artwork, terms & conditions, Case Studies, Selling direct, exhibition practices.

t: 020 7381 6616

[www.fineart.co.uk/books.asp](http://www.fineart.co.uk/books.asp)

**The Artlaw Archive**

Archive of over 200 articles written by art lawyer Henry Lydiate. Covers relevant and contemporary issues facing visual artists and craftspeople. Henry's columns refer to current legal and related issues in the art world. The site publishes information on contracts and exhibition agreements. Note: the online 'surgeries' are only for London-based artists.

[www.artquest.org.uk/artlaw/artlaw.htm](http://www.artquest.org.uk/artlaw/artlaw.htm)

**The Better Payment Practice Group** - a cooperative forum of representatives of the business community and Government that seeks to help improve the payment culture amongst organisations trading in the UK. Includes advice on invoicing and tips on chasing late and non-payers.

[www.payontime.co.uk](http://www.payontime.co.uk)

**UK Intellectual Property Office**

Information on copyright and resale Rights

[www.ipso.gov.uk/policy/policy-issues/policy-issues-copyright/policy-issues-copyright-artist.htm](http://www.ipso.gov.uk/policy/policy-issues/policy-issues-copyright/policy-issues-copyright-artist.htm)