

skillcrush

LEGAL DOS AND DON'TS FOR FREELANCERS

| A comprehensive overview of freelance contracts

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INTRODUCTION

A solid contract is a must for protecting your work, your work, your money, and yourself. For freelancers and entrepreneurs particularly, using a lawyer to draft a contract to use for your clients is of the utmost importance to ensure you get paid and prosper.

Contracts serve two important purposes:

1. Creating the a framework for how the courts will interpret your agreement if it comes to that; and
2. Setting clear expectations so you're on the same page as your client.

The process of drafting a contract with your client will help you set appropriate expectations about the content of work, standards of work, timelines for delivery and acceptance, payment terms, and liabilities and warranties can help avoid problems in the first place. And, when problems do arise, it creates a framework for resolution, hopefully keeping costs down.

Too often, the fear of cost, uncertainty of how to find the right lawyer, and other questions deter freelancers from seeking legal advice.

This outline, generously explained to you by Basha Rubin of [Priori Legal](#), provides an overview of the typical provisions included in a freelance contract. As a disclaimer, this is for informational purposes only and is not presented as legal advice.

Be sure to read all the way through for Basha's tips on reducing legal costs, and an exclusive discount code.

WHAT TO INCLUDE IN YOUR FREELANCE CONTRACT

This outline explains the 10 key aspects that make up the architecture of a solid contract. It also includes suggestions for questions to ask or specifics to clarify when you work with a lawyer to draft a contract.

1. Who is bound by it:

Your name, address, contact information; your client's name, address, contact information, and a place for you to sign and date it. Electronic signatures are fine. Define terms.

2. Scope of work:

Deliverables, delivery dates, rounds of revision and process for amending either of those things.

- In this section, it is important that you are as precise as possible in describing what work you will do and how and when you will deliver it.
- What materials will be used and who will pay for the materials?
- This section touches on payment terms as well, but you should consider setting a procedure in advance for how the scope of work can be changed.

3. Delivery, Acceptance & Standards:

What is the process for accepting or rejecting the work, and what standard is used.

- For example, many contracts layout a timeline and method for acceptance -- i.e. if the client does not reject delivery within 5 business days, it is considered accepted. This can be very helpful in preventing problems down the line.
- What is the standard for the work performed - you might hear terms like "professional and workmanlike manner" or "industry standard." This is something you want to discuss with a lawyer to understand what consequences are, and what is typical in your industry.
- How will the work be delivered to the client, and who bears the risk of loss (damage after leaving your hands, before being delivered to the client). For example, an original work of art.

4. Payment terms:

What payment is, when it's due, what happens when it's late.

- How much is owed? Is it fixed or hourly? Will you invoice the client? If so, when?
- When is payment due? In installments? Upon completion?
- How does payment need to be made?
- What happens when payment is late? Will you charge interest?
- Cancellation: Will there be a kill fee if the client cancels mid-project? How much do they owe you? The whole amount? Work to date?
- If the scope of work is changed or revisions are needed, do you want to set a rate in advance?

5. Independent Contractor Relationship:

The contract should make sure to explicitly state that the nature of the relationship is an independent contractor and that nothing forms an employer/employee relationship (or joint venture, co-ownership, agency or partnership).

6. Non-Disclosure / Non-Solicitation clauses:

- If you are sharing any confidential information or if your client is, you might want to consider a non-disclosure clause. These can be drafted in several ways.
- If you have an employee or colleague you're working with on the project, you might also want to include a non-solicit, which prevents them from hiring that person for a certain period of time.

7. Ownership and Intellectual Property:

Who owns the finished and unfinished product and how can it be used?

- To clarify, the difference between trademarks, copyrights and patents:
 - A trademark protects logos, names, symbols, designs that distinguish the goods of one manufacturer or seller.
 - A copyright protects original works of art.
 - A patent protects inventions (including business methods).
- Many independent contractors reserve the right to use products as part of their portfolio. What about designs or products that were created and rejected by the client? Can you reuse those for future clients? What if you are using something you've previously invented or created (this comes up a lot in software) in their product?
- Are there any constraints on the client can use your product? Do they have to give you credit? Where and how can the client use the work? Is it a license or ownership? Is the license exclusive? (i.e. can you also license it to others)? Can your client modify the work and use it? When does ownership transfer (after payment is made is standard)?

8. Disputes and Termination

How will disputes be resolved? Termination? Arbitration? Mediation? Litigation? Venue and choice of law?

- In addressing dispute resolution, there are a few important definitions and differences to keep in mind:
 - Arbitration - Arbitration is a faster, simpler, and less expensive alternative to litigation. Disputes are brought before a neutral third party (the arbitrator) who, after reviewing all of the relevant information, issues a final decision in favor of one of the parties. The decision is binding on the parties, and typically not reviewable by a court. (This can be either good or bad.)

- Litigation - The process of resolving the dispute through the court system. You will need an attorney, and this is typically a longer and more costly solution. Most lawsuits end in settlement.
- Attorney's fees - Contracts can assign who is responsible for attorney's fees, such as the losing party pays for the winning parties attorney's fees.
- There might come a time when you'll need to fire your client. The contract you and your client sign should cover what happens in the eventuality that you no longer want to work with that client.
- Additionally, there may also be a case where the client may no longer require your services for whatever reason. A good contract will cover the procedure for severing the business relationship. Do you intend to charge a kill fee? Does the client have to pay for whatever amount of work you've already completed? If it's a long-term project, you can also charge a kill fee.
- What happens if the project needs to be terminated for reasons beyond your control? (force majeure)

9. Warranties, and other Miscellaneous Clauses

The legal niceties.

- You can state that this contract constitutes the whole agreement (a merger/integration clause). The purpose of such a clause is to exclude the liability of a party for any statements or representations (including pre-contractual representations) which are made other than those which are expressly stated in the contract.
- Likewise, you can include that if any clause of the contract is deemed unenforceable, the contract stands. This is known as a severability clause, which prevents the entirety of the contract from becoming unenforceable; the unenforceable clause can be severed from the whole.
- Limitation of Liability Clause: a provision in a contract that limits the amount of exposure a company faces in the event a lawsuit is filed or another claim is made. If found to be enforceable, a limitation of liability clause can "cap" the amount of potential damages to which a company is exposed.
- There should be a line stating that your client agrees and accepts the terms and conditions of the contract.
- Changes to the contract. How can you change the contract? Mutual written consent?

DIY VS. HIRING A LAWYER

Many freelancers use a contract -- but don't actually hire a lawyer to draft or review it. Instead, they find template contracts online or appropriate a friend's contract. This can be dangerous, because the contract might not be good or appropriate for your industry or circumstance. Plus, editing the contract yourself can be risky if you don't know or use the "terms of art" that impact how courts interpret the contract. Priori Legal strongly advises to hire a lawyer to create a flexible document upfront that you can use, and then seek advice from the lawyer as you need it down the line.

Try these two tips to keep your costs down with a lawyer:

1. Work with your lawyer to help draft fallback provisions. This will allow you to discuss with your lawyer the issues you are and will typically face. A lawyer can draft language upfront that helps deal with foreseeable issues with future clients, so you don't need to go back to the lawyer every single time you get a new client.
2. If you have a contract you have been using, you can ask the lawyer to review it rather than starting from scratch. There are a lot of great services (like Shake) out there that have good customizable templates - but they are still NO substitute for a lawyer. A [Consumer Reports study](#) assessed how using Docracy, LegalZoom, Nolo and Rocket Lawyer compares with hiring a lawyer and found that these services are generally better than drafting your own documents or not having them at all. But unless your needs are simple, none of the products are likely to meet all your needs, and in some cases, the documents aren't specific enough or contain language that could lead to an "unintended result."

CONCLUSION

Contracts aren't the be-all, end-all protection against issues that may arise while dealing with a client.

However, having a contract CAN and WILL help protect you from a lot of the potential negative consequences. Contracts provide proof that the parties agreed upon particular terms, and that damages should be awarded if one party does not deliver. The memorialization of an agreement prevents any dispute from becoming an unreliable his/her word against your word. It is important to choose an attorney with the experience and credentials to guide you as efficiently as possible.

AN EXCLUSIVE DISCOUNT

Are you ready to meet with a lawyer to draft a rock solid contract for your work? Mention “**Skillcrush**” in your lawyer request, and you will receive 50% off Priori's Management Fee.

Offer expires October 5, 2014. Visit www.priorilegal.com to get started.

MORE INFO

Join a Skillcrush Blueprint for a step-by-step learning program to learn the most in-demand freelance skills. From user experience and photoshop to JavaScript and Ruby, our interactive and community-supported classes bring you up to speed on exactly what you need to know to get ahead.

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THANKS *for* JOINING US.

Feel free to email us with any questions at hello@skillcrush.com.