

INFORMATION RELATING TO CONTROL AND LICENSE AGREEMENT

Since April 1, 1989, Quebec's *Act respecting the Professional status of artists in the visual arts, arts and crafts and literature, and their contracts with promoters* requires clients to sign a contract with artists whose works they intend to use, whether or not these artists have the status of "professional" in accordance with the Act. Section 33 of the Act is very specific on the subject and even provides obligatory content for these contracts:

"Every agreement between a promoter [client] and an artist pertaining to one of the artist's works shall be stipulated in a contract which shall be made and take effect in accordance with **section 31** and shall contain stipulations concerning the matters which must be set forth under **section 31**" (R.S.Q., c. S-32.01).

This section is followed by a sample contract, and the clauses, conditions, and paragraphs that we deem relevant to add in appendix. Here is a detailed look at the sections that should be included in an ideal contract. **Section 31** of the Act cited above gives us the contents of the contract. It reads as follows (*the mentions in italics are from us, they guide you and refer you the appropriate paragraphs or clauses of our contract*):

Section 31: The contract must be evidenced in writing, drawn up in duplicate, AND clearly set forth the following elements:

- 1° Nature of the contract (*the object, its finality – see the title of the contract*).
- 2° Work or works which form the object of the contract (*the title(s) or a short description – see paragraph 1*).
- 3° Any transfer of right (*copyright – see clause 8 at the back of the contract*) and any grant of licence consented to by the artist, the purposes, the term or mode of determination thereof, and the territorial application of such transfer of right and grant of licence (*see paragraph 2 and clause 10 of the contract*), and every transfer of title or right of use affecting the work (*see paragraph 3 and clauses 14 and 16 of the contract*).
- 4° Transferability or non transferability to third person of any licence granted to a promoter (*see clause 11 at back of contract*).
- 5° Consideration in money due to the artist and the intervals and other terms and conditions of payment (*see paragraph 4 and clauses 1 to 3 of the contract*)
- 6° Frequency with which the promoter shall report to the artist on the transactions made in respect of every work that is subject to the contract and for which

monetary consideration remains owing after the contract is signed (*applies mainly in the field of publishing*).

The contract has been written to protect the artist as much as possible from abuse of certain clients who, among other things, continue to believe that the acquisition of a work by a purchase order automatically gives them every right to use and dispose of the work as they wish.

We believe that any client who has a minimum of respect for artists and their rights can only agree with such a document. It is, on the other hand, obvious that having to sign a contract is not an acquired habit and some of your clients will be reluctant, especially in large companies where decision making is fragmented. Don't try to impose this contract "at any cost", but rather have the client understand that without a written agreement he has no right to use your work and that you are under no obligation to produce anything.

Some clients may have their own contracts. You should take the time to read and understand them completely before signing and make sure that they are in conformity with **section 31** of the Act. **Remember that a purchase order is neither as effective nor as clear as a properly written contract and that it is intended only for the client's accounting services.**

In any case, it is important to stay flexible when negotiating, so that both parties can obtain satisfaction. To that effect, you must not hesitate to modify this contract by crossing out (with caution!) certain parts or by adding others. You and your client must remember to initial all of the changes for them to be valid.

Let's examine the contract so that we can give you as many details as possible to help you complete it correctly.

CONTRACT FOR COMMISSIONED WORK AND LICENCE

1. IDENTIFICATION OF THE PARTIES

BETWEEN

AND

THE ARTIST

Mandated signatory:
THE CLIENT

2. DESCRIPTION OF THE EXISTING ARTISTIC WORK(S) OR THE WORK(S) TO BE CREATED BY THE ARTIST

3. USE OF THE WORKS

BENEFICIARY:

THE PRESENT LICENCE WILL BE USED TO THE BENEFIT OF:

REPRODUCTION SUPPORT(S) OR ADVERTISING MEDIUMS(S):

QTY

QTY
QTY
QTY
QTY

TERRITORY OF CIRCULATION:

TERM OF USE :

4. OWNERSHIP OF THE ORIGINAL(S)

THE WORK(S) COVERED BY THIS CONTRACT WILL BE OWNED BY:

5. PRICE AND METHOD OF PAYMENT

ORDER SHEET NUMBER:

PRODUCTION COST:	\$
SALE OF THE ORIGINAL(S):	\$
COST OF THE LICENCE (copyright under section Art. 726.26 L.I. of the Income Tax Act):	\$
GST (REGISTRATION NUMBER)	\$
QST (REGISTRATION NUMBER)	\$
TOTAL:	\$
DEPOSIT:	\$
BALANCE:	\$

6. DELIVERY DATE

SKETCHES:

ORIGINAL:

7. SIGNING THE CONTRACT

THE CONDITIONS WRITTEN ON THE BACK OF THIS DOCUMENT ARE AN INTERGRAL PART OF THIS CONTRACT. THE PARTIES DECLARE THAT THEY HAVE READ AND UNDERSTOOD THESE CONDITIONS AND COMMIT THEMSELVES BY THE SIGNATURE OF THIS DOCUMENT TO RESPECT THEM.

SIGNED IN
THIS DAY OF 20
IN TWO ORIGINAL COPIES.

SIGNED IN
THIS DAY OF 20
IN TWO ORIGINAL COPIES.

ARTIST

CLIENT

CONDITIONS

PRICE

1. The balance of the price of this contract is payable within () days following the receipt of the invoice. An interest of two per cent (2%) compounded monthly will be billed on any overdue invoice.
2. The Client is responsible for the total payment of this order even if the work is not distributed by him.
3. Any correction or additional work due to the Artist will be assumed by him without charge. Any correction or additional work due to the Client will be charged in addition by the Artist.

DELIVERY

4. In the event where it becomes impossible for the Artist to comply with the set delivery date, he will inform the Client as soon as possible. The Client can either consent to a delay of grace or unilaterally cancel the contract, if the Client can prove that it becomes impossible to use the work because of this delay.
5. The Client or his representatives are responsible for the supervision and approval of the different stages of production of the work. Any lengthy delay for approval will bring about a revision of the delivery date. No responsibility will be assumed by the Artist in the case of inadequate supervision and the work shall be considered acceptable by the Client as delivered.
6. The Client cannot refuse the work unless it does not correspond to the description defined by the parties in paragraph 2 (over) of this contract. Any other form of refusal will be considered as a cancellation of the order.
7. If the order is cancelled, the Client commits to pay all production costs. Furthermore, if the cancellation occurs once the Artist has started the work, percent (%) of the total price of the contract shall be paid by the Client; if the cancellation occurs once the work is completed, the Client commits to pay the full price (100%) of the contract.

COPYRIGHT AND LICENCE

8. Subject to the licence given hereinafter, the Artist retains the entire and exclusive ownership of all his works covered by this contract, as well as all other rights not expressly transferred to the Client.
9. The Client commits to have the following copyright byline printed on each copy of the reproduction of the work: "© (artist's name) (year the work is reproduced), All rights reserved". The Client will provide the Artist with () copy or copies of each form of publication of the work.
10. Upon full payment of the price of the contract, the Artist gives the Client a licence for the uses described in paragraph 3 (over) of this contract. Any other use of the work(s) covered by this contract is prohibited without the previous written consent of the Artist.
11. This licence cannot in any case be transferred or assigned without the previous written consent of the Artist.

GUARANTEES

12. The Client guarantees that it holds all rights required to use all visual references that it supplies to the Artist in view of the application and eventual circulation of the work.
13. The Client commits to take up the defence of the Artist in the event of any claim or legal action based on allegations that go against the guarantees mentioned above and to compensate the Artist for any legal and extrajudicial fees incurred or sustained by the Artist due to said claim or legal dispute, as well as any damages sustained by the Artist because of this.
14. In the case where the Artist retains the ownership of his original work, it will have to be returned to him within () days following the first publication. The Client is responsible for any loss or damage caused to the original work, from the moment of its delivery until it is returned to the Artist. The Client is liable for the price of the original work.
15. The Artist commits himself not to use the work for any commercial or advertisement purposes that could be in competition with the Client.
16. In the case where the Client or any other person becomes the owner of the work, he commits to keep it in good condition in accordance to the law regarding moral rights and guarantees that the Artist will have access to the work and be able to borrow it for exhibition, photography or other purposes, on previous written notice of at least thirty (30) days.

APPLICABLE LEGISLATION AND DECLARATION

17. This contract will be interpreted and applied in conformity with the applicable laws of the province of Quebec. In case of contention the parties agree to recognize the jurisdiction of the appropriate tribunal in the province of Quebec.
18. The parties declare that this document constitutes the integral agreement concluded between them and that it cannot be modified without a written document signed by both of them.
19. The signatory of the Client declares having been duly mandated to negotiate and conclude the present agreement in his name.

Initials

HOW TO COMPLETE THE CONTRACT

PARAGRAPHE 1 - IDENTIFICATION OF THE PARTIES

In this section, write the company name or the registered name of each party or, the case being, the name of the individuals between whom the agreement is concluded.

IN THE CASE OF A COMPANY: it is important to know that it is to it (the company) and not to the person signing the contract that you are committed. That is why you must make sure that the person effectively has the mandate or power to conclude the agreement with you in the name of the company (see clause 19 at the back of the contract). This way, in case of a breach of contract, the company will be held responsible.

IN THE CASE OF A REGISTERED BUSINESS (a business that exists with a registered name only): it is the registered owner(s) that will be *personally* responsible toward you.

So make sure that you sign the contract with a person effectively responsible and write the name of that person in a legible manner below the name of this person in this section for eventual reference.

PARAGRAPHE 2 – DESCRIPTION OF THE EXISTING WORK(S) OR OF THE WORK(S) TO BE CREATED BY THE ARTIST

In this section it is important to describe the existing work(s) or the work(s) to be created with as many details as possible. So, write the title of the work(s) (if appropriate), a detailed description on the visual level as well as any other information relating to the existing work(s) or work(s) to be created. If needed, you can attach an additional page to the contract on which you can write these details, but in this case make sure to mention it in section 2 by adding these words “see Appendix” and have this appendix initialled by both parties at the bottom of the page.

PARAGRAPHE 3 – USE OF THE WORK(S)

As you may already know, copyrights on a work exist from the time of its creation, without it being necessary to have them registered, on certain conditions; the work must be original (it must be the work of the artist, the fruit of his competence, and it must not have been copied on another work), it must be fixed materially and its author must be, at the time of its creation, a Canadian citizen, a British subject or a resident of a country that is part of the Commonwealth or a citizen or subject of a foreign country that has adhered to the international conventions signed in Berne or Geneva. As a general rule, the author of the work is the first owner of the copyright therein.

The sale of the work does not bring about the transfer of the copyright to the benefit of the buyer, unless the contrary is stipulated in a written document, signed by the artist. Any person

who wishes to use or reproduce your work, whether he is the owner of the work or not, must obtain your written permission. This permission is called a LICENCE.

Section 3 of the contract defines the parameters of the copyright LICENCE that you will grant the promoter (referred to as the Client in the contract), either for his use or for his client's use (referred to as the Beneficiary in the contract). The beneficiary is thus the person or company to whom the contract is giving the use the work(s).

The REPRODUCTION SUPPORTS (or advertising mediums) are all objects on which and the media by which you authorize your client to reproduce and distribute your work(s). For example, the objects could be posters, shopping bags, T-shirts or packaging. The media, for their part, are represented among others by the newspapers, television, billing, movie theatre, and Internet.

The TERRITORY OF CIRCULATION geographically limits the use of your work(s). It can be limited to a city, province, country or continent or can be open to the world.

The TERM OF LICENCE brings a limit in time to the use of your work(s). It can be for a very short period (a few weeks) or a very long period (many years) but it cannot, in the case where the author of a work is the first owner of the copyright, be forever because the *Copyright Act* (R.S.C., c. C-42, s. 14) provides for the reversal of these rights to the author's legal representatives, as part of the estate of the author, 25 years after his death. In any case, the work(s) will become part of the public domain 50 years after the death of the author, which means that no copyright will subsist on the work(s) after that date. It is now up to you to determine a reasonable period considering the circumstances of the contract to sign.

PARAGRAPHE 4 – OWNERSHIP OF THE WORK(S)

It can happen that the promoter wishes to buy the original work, either for himself or to offer to his client. If this is the case, you must, in section 4 of the contract, write the name of the eventual owner. If not, you should write your name.

PARAGRAPHE 5 – PRICE AND METHOD OF PAYMENT

You must here distinguish the production costs – or professional fees – (hours spent creating, material, research) from the price of the original (if it is bought by your client) and the cost of the licence (the price you are asking to authorize the use and reproduction your work(s), as described in section 5 of the contract).

To the total price, you must add the GST (and your registration number) as well as the QST (and your registration number) if you are collecting them. In any case, make sure that the promoter's provincial tax number is written on the order sheet and on the contract. A space is also provided for the promoter's order sheet number (if there is one), so don't forget to write it in. The GST is billed to all clients (company or person) who reside in Canada and who possesses

a GST number. The QST is billed to all clients (company or person) who reside in Quebec and possesses a QST number. Both of these taxes, when applied, are calculated for professional fees and copyright as well as for sale of the original work. The provincial sales tax is payable only on the selling price of the original work and this, only if the work is not being resold. Finally, a space is provided for artists who require that a deposit be given before beginning to work; this space is optional, but we strongly encourage you to do so, as much as possible, if only to cover the production costs that you will incur.

It is also possible to include a clause that offers the client a 2% discount on the amount of the invoice, if he pays it within a predetermined period of time. In most cases, this period is fixed at 10 days after the artist has handed in the final work. It can nevertheless extend to 30 days. This clause can be useful to encourage the client to pay you as quickly as possible and thus save you the hassle of running after your money. However, do not forget to adjust your tender (also called offer, bid or proposal) in accordance with the 2% if you intend to apply the discount.

PARAGRAPHE 6 – DELIVERY DATES

Specify the delivery dates for both the sketch and the original.

PARAGRAPHE 7 - SIGNING THE CONTRACT

It is important to sign the contract only after it has been signed by the client, so as to make sure that no changes to which you would not agree are brought to the contract. When you sign the contract, make sure that the spaces provided for the place and date are filled in by each party. These are very important, particularly in the case of eventual legal action because they determine the place and date the contract was actually concluded. Finally, don't forget to fill in clause 14 (if applicable) and to have both parties initial the conditions that were added, as well as any modifications to the contract.

THE BACK OF THE CONTRACT – UNDERSTANDING THE APPLICABLE CONDITIONS

CLAUSE 1. Once the work is completed you will have to send the promoter an invoice. This invoice will show the same details as section 5; that is, the production costs, the price of the original work (if applicable), the cost of the licence, and the taxes. It is important to send the invoice as soon as possible. In the case where the promoter does not respect the allowed time to pay the invoice, we recommend that you call and ask to speak to someone in the accounting department rather than the Art Director. The person in charge of accounts payable will more likely be able to tell you exactly what is happening with the payment of your invoice. When the delay exceeds 30 days, send the promoter a statement on which you have added a monthly 2% interest charge.

CLAUSE 8. This clause makes it clear that you are retaining all of your copyrights on the work(s) created in accordance with this contract. **UNDER NO CIRCUMSTANCES**

should you cross out this section without having given it some thought and without receiving a proper financial compensation from the promoter for the “sale” of all your copyrights.

- CLAUSE 10.** With this clause you are giving the promoter a licence for the uses specified in section 3 of the contract. In accordance with this clause, this licence will be valid only once the full price of the contract is paid. However, in practice, the promoter could use your work before having paid the full amount due. You should nevertheless maintain this clause because it permits you, in case of eventual non-payment, to forbid and stop ANY use of your work(s) including the ones specified in the licence.
- CLAUSE 11.** The promoter cannot authorize another person to use your work(s) in accordance with the licence without your prior written consent.
- CLAUSE 12.** In the case where the promoter supplies you with or asks you to use existing material in the execution of your work (e.g.: trademarks, initials, photographs or drawings taken from a book), he must have previously obtained the reproduction and use rights for these or else you could be charged with copyright or trademark infringement.
- CLAUSE 13.** With this clause, the promoter commits to take your defence in case of any claim or legal action (for example in copyright infringement) relating to the work done in accordance with the contract, as well as to compensate you, financially or otherwise, for any damages that could have been caused to you by this claim or legal action.
- CLAUSE 14.** In certain cases the promoter may need the original(s) for quite a long period, to make, for example, “stats”, screened different ways and adapted to specific uses. For this reason, you should be flexible when it comes to setting a date for the return of the original(s).
- CLAUSE 16.** Try not to abuse of this clause by borrowing the work, for example, six months a year or very frequently. If you are counting on entering your “masterpiece” in every contest for it to be exhibited, you should keep the ownership of the original.
- CLAUSE 17.** This clause establishes that if any problem comes up regarding the interpretation or the application of the contract, the laws of the province of Quebec will apply to settle the matter. It also establishes if legal action is taken against you, the case will have to be brought to a competent court of law within the province of Quebec.

INITIALES

Don't forget to initial and have your client initial the bottom of the page with the "conditions" or "terms", in the space provided. By putting their initials on this page, the parties declare having read and understood all of the conditions mentioned and commit themselves to respecting them.