

Contracts

It's better to have a contract and not need it than to need a contract and not have it. So even if you're a tiny charity working with a freelance designer on a pro bono basis, it might just be worth formalising your arrangement through some basic terms and conditions.

For example, who owns the copyright on the work they've undertaken for you? (Answer: them.) And what happens if they don't deliver as agreed? (Answer: who knows?)

A basic contract protects both sides. Here are 10 tips to consider:

Tips

1. **Don't accept suppliers' terms without getting them checked first**, either by a colleague, a lawyer – of course yourself. And don't just ignore them because if you engage that supplier's services you may be considered by default to have accepted them.
2. **How are disputes handled?** The main point of having terms in place is to define what happens when something goes wrong. So making sure this is covered in any contract should be the first step. One real alternative to the courts is to propose a mutually acceptable expert to adjudicate in the event of any dispute...
3. **How long will the terms last?** Terms are important, even if you have a short-term arrangement based on a project-by-project relationship. Even if you can effectively 'walk away', remember that the basis for the ownership of intellectual property and any other aspects of a dispute will still be defined by those terms – so be careful.
4. **Who is doing what, for what?** The real meat of any contract is the offer by one person to do something for the other (make something, sell something, do something). This needs to be clear from the contract, so watch out for the contractor who agrees only to: 'Use reasonable endeavours,' (ie 'try') to do the job.



5. **Who owns what?** If the project involves the creation of intellectual property like copyright, the contract should ensure the 'right' person owns it and that the owner gives other people the rights they need to use it. In particular, be aware that if you commission a third party to create copyright, they will own it unless the contract says differently.
6. **How much does it cost?** Standard terms will most probably refer to a stated price, but watch out for provisions allowing the supplier to amend the price. This is especially relevant for charities and support organisations as suppliers who agree to take on work for a reduced fee might feel aggrieved if they perceive that a job is proving more difficult than anticipated. If you're prepared to consider these changes then perhaps ask for controls that cap the increase or limit the frequency of price reviews - and ask to be told in advance.
7. **Liability:** Has the supplier limited its liability, and if so how? If so you'll only be able to claim for limited losses if they make mistakes that cost you money. So...what is your exposure? If the supplier doesn't deliver, what will/could you lose? If you think the liability is too limited then try and negotiate the point. If that doesn't work at least you'll be alert to the problem. You can check your insurance then make an informed decision on the risk.
8. **Subcontracting and change of control:** Having selected your supplier carefully it can be disorientating to find that work has been subcontracted to a third party. Check whether the terms allow this. If so, consider adding a level of control. It could simply entail being told of the change. Alternatively you could insist on a right of veto. If the supplier uses a particular third party for a certain function then ensure your specific consent is required for this, rather than a general discretion to subcontract. Include a termination right to protect against the supplier changing hands – for example if it were bought by one of your competitors.
9. **Confidentiality:** Business relationships often involve disclosure of confidential information. Make sure the terms require the supplier to respect this aspect of your relationship and return or destroy all confidential information on request.

10. **When it ends:** You may well need ongoing help to migrate your business to a replacement supplier: Make sure the terms commit the supplier to ensuring a harmonious transfer.

Do it yourself?

Much like the creative industries, the legal world also has a culture of pro bono work. If in doubt try and enlist the help of a local firm.

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