

## Some Standard Clauses in Every Agreement

A contract should contain an OFFER, ACCEPTANCE and CONSIDERATION.

In the case of contracts between photographers and another (advertising agency, etc.):

- The **offer** must be from another in clear terms
- The **acceptance** must be by the photographer in clear terms
- The **consideration** is the monetary fee

A background should be provided on the contract such as who gave the brief, whose equipment will be used, who pays for the models, who arranges the location, style, etc. This contract should override all previous all previous contracts/agreements/drafts/communication/MoUs exchanged before this contract was signed. This contract should clearly state the background inder which this contract/this assignment came about.

The terms of the contract should be worded such that a clear distinction is made between a Contract OF Service and a Contract FOR Service.

By reading and interpreting the contract one should be able to make out whether it is a Work For Hire contract or not.

The contract should clearly spell out who is the AUTHOR and who is the OWNER of the photograph/image/work.

The rights of the photographer should be clearly stated, that is, all the different copyrights which the photographer acquires upon creation of the work.

The USAGE RIGHTS should be clearly stated. This should be contained in a separate paragraph with sub-heads, which covers the following aspects:

- Term/Duration
- Territory
- Manner of Usage
- Limited (or unlimited) rights of use
- The consideration to be paid is Usage is extended or changed in any manner
- Prior approval and consent required for such extension or change

Mention the MORAL RIGHTS of the Author such as Rights of Integrity, Right of Paternity, Right to have a credit line, Right to prevent mutilation of the work, etc.

State the remedy in case of breach of contract. State the manner of serving a notice, the appropriate jurisdiction to initiate legal proceedings, if required.

The contract should be termed depending upon the nature of the photographic work. For example there are different clauses/terms for fine art photography, for regular advertising work, for photographs of celebrities, for event photography, for journal/magazine photography, editorial photography, etc.

Indemnification clause whereby both the parties indemnify each other against third party claims. And a Representation and Warranties cause whereby both parties represent and warrant each other.

DOs

- A proper agreement

- On stamp paper
- Containing all standard clauses
- Containing all special clauses
- Signed appropriately, with witnesses
- Have a schedule/ an exhibit to the agreement, if required
- Engage a lawyer, it might just be worth it. You draft the Agreement, he/she will vet it. Involve your lawyer in the negotiations if it is something big.

#### DON'Ts

- Don't use the back of your invoices to set out your Terms & Conditions
- Don't miss out on standard clauses which actually make a contract
- Don't be unclear in the Usage right clauses (Anticipate all possible use of the artistic work/ images and go ahead and incorporate them, even though that use may or may not happen)
- Don't be afraid. You are the photographer, be sure of your rights and what you are giving away.
- Don't DIY it!