

We work in an industry where contracts are not standard procedure. Good faith is often relied on and in most circumstances this serves us well, but there are times when a written agreement between both parties is of great benefit. Long form projects are especially well served with an agreement or any work with a new or unknown client. Contracts do not need to be complex documents. They should simply and in plain English outline both parties duties to each other.

### Why You Need a Contract

There is no legal distinction between a ‘contract’ and an ‘agreement’ and the terms are used interchangeably here. Contracts can be written, oral or partly oral partly written. In this article we are focusing on the benefits of written contracts for those new to the field or who are not yet represented. This article only addresses a few key issues and some examples of areas that need to be addressed in each agreement. It is not intended to replace legal advice, but rather to highlight how contracts can benefit you and when you should be seeking additional advice.

A contract should not be a document destined to be argued over by lawyers at ten paces. It should be a simple agreement between yourself and the company that engages you which defines in detail your relationship. A good contract is designed to avoid a dispute as both parties put their intentions in writing so each can clearly understand their responsibilities. This should include “what if” scenarios even unlikely ones. Contracts do not need to be written by lawyers in legalese. They can be written in plain English although having a lawyer check out any agreement is a good idea. A contract simply is an agreement between two parties that sets out each parties obligations and the related terms and conditions of engagement. In terms of negotiation I find production companies prefer a plain English agreements as much as we do.

Some production companies may be wary of written contracts, but it should be explained to them it is in each parties interest as it codifies and clearly outlines both parties responsibilities. A good contract works both ways.

Even if the agreement is not in writing, an agreement may nonetheless exist so it is the benefit of the parties to clearly set out the terms in writing. In my experience it is the production companies that do not want any written agreement that are potentially the most troublesome.

Ideally a written agreement will limit the chances of disputes ending up in court as the responsibilities of both parties are clearly laid out. In reality irreconcilable disputes with Production companies are rare. Turning to a court is always a last resort. Legal actions are slow, time consuming and expensive. They are best avoided. The reality is a good relationship should involve trust and good companies want to do the right thing.

## CASE STUDIES

I have set out in this section a few case studies to illustrate issues and responsibilities of each party that are best addressed in written contracts. These case studies highlight some, but not all of the issues that should be considered and clarified between the parties.

### Overseas Work

Let's work with some example scenarios. Assume you are engaged for a four week documentary shoot overseas that includes time in a third world country and you are supplying the camera equipment.

Initial questions might be:

\_ Is it a five or six or other, working week?

\_ How and where are the days off scheduled?

\_ What is the "expectation" of working hours? Deal on overtime? Do they want to buy out the overtime?

\_ Are flights business or economy class?

\_ At what rate are travel days remunerated?

\_ Do I have any duties beyond camera work?

\_ PDM: Are they paid every day including travel and days off? Is the amount appropriate to your destinations cost of living?

Once you have some answers here you can start the nitty gritty of how much will you be paid. This is a tough one and usually you will simply be made an offer by the production company. This is not always set in stone and it's worth trying your luck to increase over all remuneration where feasible. The best negotiation is always done face to face. Visit the production company have a chat. Talk about how busy you are at the moment but how right you are for this job and the great things you can bring to the shoot. Be pleasant, professional and accommodating and you should win concessions. If they will not budge on the offered rate then negotiate on some of the other issues mentioned above in "Initial questions...."

Key variables to consider in determining freelance rates is the budget for the project and how badly they want you for the job. In terms of negotiation this can be considered as a simple equation:

Programme budget *plus* how much they want/need your skills.  
*minus* how much do you want the job.  
*equals* how much you will be paid.

If unsure of the "Market Rate" talk to other people who work in camera departments, ideally those individuals who have recently completed similar work. It is in all our interest to freely discuss our rates with our contemporaries. While collusion is illegal an informed environment is more likely to keep rates healthier.

## Other Considerations for Overseas Work

With work related travel an important area is your legally required travel documentation and insurance. I consider the following to be the responsibilities of the production company:

Organise and pay for all appropriate procedures and documentation in respect of work related travel.

Medical and Travel Insurance need to cover all your activities and in case of a medical emergency it is the production company's responsibility to get you home immediately.

Also consider and discuss with the production company the following:

What visas are required?

Is a carnet or other equipment import/export documentation required?

What medical procedures (inoculations) are required?

What if I get sick and cannot work for a few days? Do I get paid?

What if I am injured?

Another issue is equipment insurance and performance. If you are supplying camera and/or equipment it should be defined clearly who is insuring the equipment. If the Production Company is insuring the gear find out the details and exclusions of their insurance contract. If you are supplying cameras/equipment it is important to define what will happen if the gear fails in the field. If a weeks shooting in outer Mongolia is lost due to a camera fault who pays? What is your responsibility?

In my agreements I warrant that I will maintain the equipment to the highest standard, but I am not responsible for any loss due to failure or delay but I will repair the camera as soon as possible. If the shoot is likely to be unusually punishing on equipment I stipulate that I am willing to place the camera in harsh environments but repair, shipping and a replacement rental camera is at their cost.

Another issue that should be defined is termination of the contract. Try and avoid agreements that allow the production company to terminate you on the spot, but you have to give two weeks notice. Go for an equal relationship. If instant termination is required by the production company then you should allow yourself the same. Usually one weeks notice for both parties works well. Any termination by either party if overseas should allow for your prompt return on travel day remuneration.

Be extremely wary of allowing payment at the end of a project. Payment is best organised weekly and preferably a week in advance. If there is a dispute and you have not been paid and they withhold you are at a serious disadvantage. Production Companies often do not pay because they cannot. Don't find out they are insolvent after you have done the work.

One possible inclusion to an agreement is a caveat that you own the copyright to the footage shot by you until paid in full. Normally the person who pays for the making of the film will be the owner of copyright in the film/tape but this can be altered by agreement. I have only done this once when I was seriously suspicious of a Production company so I

included this in the agreement and yes they went belly up and I retained the footage and returned my money through stock footage sales.

### One-off jobs

Often camera people just work single day jobs for a corporate, television or TVC production. In these cases a formal contract may seem overkill, but something in writing that sets out key terms is still beneficial. One alternative is once booked on a job, you can simply send a "Confirmation Letter" to the client outlining your responsibilities and also include any other information you wish to convey. A sample letter is set out below, but it is not necessarily proscriptive.

#### Figure 1 – Sample Letter Confirming Terms of Engagement

CONFIRMATION  
from Harry Flex Productions  
Re: John Doe "Cadavers" Shoot

To John Doe of John Doe films 1 John Doe St Ph: 96630004  
Arri Flex Productions confirms your booking of Harry Flex Productions camera services on the following date and time: 0530AM 2/12/08

Harry Flex Productions has been engaged by John Doe of John Doe films 1 John Doe St Ph: 96630004 and will send the invoice to above address. If this is incorrect please inform Harry Flex immediately, but in any event no later than 48 hours prior to the shoot day.

Daily rate for camera/lighting person with Digital Betacam is \$1,300 +gst for a nine hour full day including meal break. Please inform us if you have any special requirements.

All equipment and travel within the city is included in the price noted above although tolls, parking and stock costs will be passed on as well as fuel costs when outside Sydney. Shoots include one hour travel time to location and return to home. After the one hour travelling the shooting day begins.

All images, footage and copies will remain the property of Harry Flex Productions until such time as the account is paid in full. Once paid all right title and interest to the results and proceeds of the work completed for John Doe Films pursuant to this letter is hereby assigned to John Doe Films for no further consideration. A confirmed booking constitutes acceptance of these terms and conditions

Harry Flex numbers are 0412 xxx xxx. Home. Please contact immediately if there is a cancellation of the booking as cancellation of a confirmed booking or a cancellation less than 48 hours incurs a charge.

We look forward to working together.  
Signed Harry Flex Production

### Long Form Drama

Another scenario is a long form drama project. Although traditional issues, including on-screen and advertising/marketing credits etc, always need negotiation, the main problems DOPs are having today are not “industrial”, as per the customary standard MEAA/SPAA contract (and the marketplace really determines how much we are paid) but relate to creative control of the final image on screen and the availability of samples of our work for showreels, websites etc.

If you have an agent representing you the contract is an easier proposition, but you still need to clearly outline to your agent any issues important to you.

The following are some draft clauses that you may want to add to your contracts depending on the circumstances.

In some circumstances the clauses in italics may be sent as a request for insertion into a draft contract, but the other points noted which should be addressed are just set out as suggested starting points for discussion with producers and once terms are agreed a clause can be drafted by the parties or their representatives. Actual final agreement details will depend on the type and scale of a production and your own personnel bargaining power.

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### DRAFT additional conditions

#### Credit

In consideration of her/his creative and technical contributions to (insert name of production) through the cinematography, (insert name of production company) also agrees to the following:

The cinematographer’s screen credit is to be on a single screen and read “Director of Photography (insert DOP’s name here)” and will include any accreditation acronym/s after her/his name in a smaller font and in alphabetical order – e.g. “John Doe ACS BSC”

This condition also applies to any re-release of the film, whether on television, the internet, DVD, or other media.

The production will endeavour to ensure that cinematographer name is credited as “Director of Photography (insert name here)” in all advertising and marketing material where other heads of departments are listed. This stipulation will also apply to any EPKs and “making of” the production.

#### Awards

Whenever (insert name of film or video program) is entered in the Best Film category of any Awards - e.g. AFI, or US Academy of Arts and Sciences - (insert name of company) will endeavour to ensure the film is also entered in the Best Cinematography category. (Insert name of company) will also automatically allow the Director of Photography to

enter the film in dedicated cinematography awards, such as those of the Australian Cinematographers Society, and will loan a high-quality copy of the program for such purposes.

#### Grade

The production company (insert name of company) will engage the Director of Photography (insert DOP's name here) with reasonable notice to supervise visual grading before the film is released. [Possibly add the more contentious issue of creative control/responsibility?]

It is critical to get an agreement on the final grade of any project. Traditional workflows are changing rapidly and as grading becomes more powerful and flexible it is in both the productions and cinematographers interest to be intimately involved. At a minimum the cinematographer should ask to be given reasonable notice so as to attend and supervise visual grading before the film is released. Payment for grading time and the level of creative control/responsibility for the grade should be clearly addressed.

#### Access to Master

The production company will grant access to a digital master (add required format) of the production and allow the cinematographer to select extracts from the program for personal professional promotion via showreels and brief excerpts on internet websites or other media. (There may need to be negotiated a reasonable time limited embargo based around the film's release).

#### Conclusion

Readers if you have any advice, constructive suggestions or criticisms please forward your thoughts to us as we see this article as a work in progress that we are happy to update with any advice from members.

Email to : [acsnsw@austcine.org.au](mailto:acsnsw@austcine.org.au)

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