

WORK FOR HIRE EXPLAINER

GENERAL CONTRACT KNOWLEDGE:

Elements that make a contract valid: Intent, Consideration and Capacity are needed for a contract to be valid... But what does that mean?

Consideration: Consideration within a contract basically means that there is an exchange of goods or services, that shows an understanding of the value of a service being offered.

Capacity: Capacity is a person's legal ability to enter into a contract. There are a lot of things that make someone *non compos mentis*, or "of unsound mind," and these include (but aren't limited to):

- Age (minors under the age of 18 in most states must have a parent/legal guardian to sign off for them)
- Intoxication (people who sign a contract while intoxicated can be considered lacking capacity to enter into a contract. So have your celebratory beers after you sign that contract!)
- Mental Incapacity (mental capacity is usually determined by whether or not the person who signed understood the meaning and effect of the words comprising the contract. This usually comes into play when a signing party has a serious mental disorder.)

Intent (ie; Meeting of the Minds): Intent refers to the mutual determination of parties to enter into the agreement, and it explains why you always see something like this at the beginning of a contract:

THIS AGREEMENT is made this 14th (fourteenth) of June, 2020, by and between Jane Doe ("Employer"), and John Doe ("Musician", and collectively, the "Parties").

WHEREAS, Employer wishes to engage Musician to contribute to the work by writing original and creative melodies to be played and recorded as electric guitar parts to contribute to the musical whole (the "Work") as a "work for hire"; and

WHEREAS, the Parties both intend for Employer to be considered the author of the Work for the purposes of all copyright and intellectual property issues, and for Employer to be the sole and exclusive owner of the copyright in the Work;

THEREFORE, in consideration of the mutual promises, covenants, warranties, and other good and valuable consideration set forth herein, the Parties agree as follows:

These **clear statements of intent** set up the parties for an understanding of the general reasoning for the agreement, and acts almost like a thesis statement- telling the reader the main purpose of the contract.

SPECIFIC TO THE CONTRACT:

Employer: The person who will ultimately own the full copyright of the work. This is whoever is compensating the musician to contribute in some way to the musical work.

Musician: The person who is ceding their rights to copyright ownership in the work. This is whoever is getting compensated to contribute in some way to the musical work.

Work: the final musical piece which the musician is ceding their rights to ownership in, so that the Employer can own and control the work in full.

Ramifications for the Employer: When this work for hire has been signed, the Employer will have signed off to the following:

1. They understand that they are now considered to be the author of the work by Copyright Law.
2. They understand that they are now the owner and controller of the composition, meaning that they have the full right (and responsibility) to copyright renewal and registration.
3. They agree to compensate the Musician in exact accordance with the consideration outline in the contract.
4. They understand that the Musician, not them, is 100% financially responsible for any damages arising out of the "Representations and Warranties" clause.
5. They understand that the Musician is an independent contractor, and not an employee of them.
6. They understand that the stated location of Governing law will determine which set of laws will be used to govern the agreement if disputes arise

Ramifications for the Musician: When this work for hire has been signed, the Musician will have signed off to the following:

1. They understand that they give up any claim to copyright ownership in the work they contribute to.
2. They agree that their stated consideration in the contract will be their full and only compensation for the services they provide.
3. They understand that the stated location of Governing law will determine which set of laws will be used to govern the agreement if disputes arise
4. They understand that they waive all moral rights in the work.
5. They understand that they must represent and warrant that they have the right to enter into this agreement. This includes having all proper licenses to contribute what they want to contribute to the work (this includes sample clearances), that they're not currently in any other agreements that interfere with their work for the Employer, and that they will never attempt to grant rights or interest to another person or entity.
6. They understand they will be 100% financially responsible for any damages arising out of the "Representations and Warranties" clause.
7. They understand that they are an independent contractor, and not an employee of the Employer.
8. They understand that they are legally required to not disclose any confidential information as defined by the contract.

Assignment of Rights— Essentially, this clause ensures that if for some reason the work done by the musician can't be considered a work for hire and is given joint ownership, the Musician *still* agrees to transfer over their copyright to the Employer. This clause clarifies that the copyright will be fully held by the Employer.

Clause 13: Entire Agreement— This clause has a very important subtext for the Musician. If the Employer told the Musician earlier that you'll have joint ownership of the composition, you can't use that claim later, as you're signing that you understand previous "handshake agreements" are now void. This clause essentially means that you understand any and all prior agreements relating to copyright ownership of the work will be overridden and deemed invalid.

Confidentiality— A confidentiality clause legally binds a person to not disclose any confidential information, as defined within the agreement. In this contract, it encompasses any confidential information that may have (even accidentally) been disclosed by the Employer to the Musician. If for some legal reason the Musician *must* disclose information, the Musician is required to notify the Employer of this right away.

In this clause, you'll find that there's a long list that clearly outlines what is considered "Confidential Information." Following the definition of what "Confidential Information" entails is a brief statement of what it *doesn't* entail: information (a) which is disclosed pursuant to subpoena or other legal process, (b) which has been publicly disclosed, or (c) which is subsequently disclosed to any third party not in breach of a confidentiality agreement.

Consideration— In order for a contract to be valid, the Employer must provide the Musician consideration (also known as some sort of *compensation*). Consideration basically means that the Employer recognizes the value of the work the Musician has put in, and promises to do something for the Musician in return for their services. Consideration is usually given in the form of money, and although monetary compensation is of course the preferred form of consideration, if the Musician agrees, the Employer can also compensate them in other various forms, such as credit or promotion.

It's essential, however, that if the Musician agrees to consideration in a form other than monetary, that they are clear and specific about their expectations for alternate consideration. For example, consideration in the form of social promotion might entail four social media posts of the Musician on x's account, with a tag to their Instagram handle, and media and a caption mutually agreed upon by the Employer and Musician.

Copyright ©— the exclusive rights held by a person or entity who owns a creative work.

Hereby— "as of this writing".

Exclusive— Held by or granted to a single person or entity, at the exclusion of all others; restricted to the person, group, or area concerned, barring access to all others.

Governing Law— This clause clarifies which set of laws will be used to govern the agreement if disputes arise. Different commonwealths have different rules and laws, so it's important that you know where the agreement is governed, in case of dispute.

"In accordance with"— by the rules of; as stated by.

Indemnification— Indemnity is a contractual agreement between two parties where one party agrees to pay for potential losses or damages caused by another party. Basically, this contract means the musician will be 100% financially responsible for any damages arising out of the “Representations and Warranties” clause.

Independent Contractor— An independent contractor is a person who has been contracted to provide a service to another person as a nonemployee. This clause is here to show this is contracted work, and that there are no future expectations or requirements of the Musician or Employer to continue work together after the terms of this agreement have been fulfilled.

Jurisdiction— The official power to make legal decisions and judgements; The territory or sphere of activity over which the legal authority of a court or other institution extends.

Moral Rights— In places other than the US, creators may have “moral rights.” These rights ensure attribution when their work is used, and allows artists to object to use of their work when they feel use is harmful to their reputation. These rights include:

1. The Right of Attribution: The right of the creator to be credited when a work is copied or otherwise used.
2. The Right of Anonymity (or Pseudonymity): The right of the creator to not be attributed or to be attributed under a different name if they chose.
3. The Right of Integrity: The right to prevent uses of the work that might be offensive to the creator or harmful to their reputation

Notice— This essentially tells both parties how to receive or send notices about contractual matters. A notice is the legal concept describing a requirement that a party be aware of legal processes affecting their rights, obligations or duties. For this clause, you’ll have to provide an address where you’d like to receive all notices, should they arise.

Representations and Warranties— A representation is an assertion that what you are signing to is factual and true. A warranty is a promise of indemnity if the assertion is false.

In other words, in this Work for Hire, as the Musician, you are asserting (a representation) that the work you have contributed to the piece is yours (for example, you’re not using any uncleared samples, plagiarized lyrics, etc.) and that you are legally able to carry out the agreement you’re signing on (you’re not in any other agreement that has to approve before you yourself sign, for example). The warranty makes sure that you’ll have to pay up if you’ve lied.

Service— an action or provision performed for profit (i.e. the service of public performance).

Severability— A severability clause in a contract states that its terms are independent of one another. This makes sure that the rest of the contract will remain in force even if a court decides one or more of its provisions is unenforceable.

Trade secrets— Broadly, trade secrets include any type of confidential business information, ideas, formulas, designs, etc. that give a company or individual a competitive advantage.