

Indigenous Artists and Art Centre Sample agreement – Information for artists

This information sheet discusses the main aspects of the Indigenous Artist and Art Centre Agreement Sample Agreement.

Is this the right agreement for me?

If you are an artist of Aboriginal or Torres Strait Islander descent and would like an Art Centre to represent and promote you and your work on an ongoing basis and arrange sales of your art work, then the Indigenous Artist and Art Centre Agreement Sample Agreement is the right agreement for you.

The agreement is only a sample agreement and needs to be adapted to suit your particular circumstances. You and the Art Centre will need to discuss and agree on particulars to be included in the agreement. The document has been designed so that it is easy to use and adapt to your circumstances; if the body of the agreement suits you and the Art Centre, the only specific details you need to insert are contained in Schedules 1 and 2 (the pages at the very end of the agreement).

Do the standards of the Indigenous Art Code apply to my agreement?

The agreement refers to the Indigenous Australian Art Commercial Code of Conduct (Indigenous Art Code). The Indigenous Art Code is a code of conduct designed to set standards of ethical behaviour for Art Centres and galleries in the way they deal with Aboriginal and Torres Strait Islander artists and art works. Arts Law will provide a more detailed explanation of the Indigenous Art Code and the advantages of dealing with Art Centres that are signatories during the course of these seminars.

The agreement has been designed to comply with the Indigenous Art Code. It is assumed that any Art Centre you will be dealing with will have signed up to be bound by the Code, but you should check this with the Art Centre. As a 'signatory', the Art Centre must provide you with a copy of the Indigenous Art Code before you sign the agreement. If the Art Centre is not a signatory to the Code, the sample agreement will need to be changed in a few places.

What are some of the things I need to consider before signing the agreement?

The Art Centre and you need to agree on what is to be included in the contract. Schedules 1 and 2 need to be completed. You will need to consider the following:

What portion of the sale price of your art work will the Art Centre be allowed to take? This is called ‘commission’.

Will you allow the Art Centre to give your art to other galleries to sell? If yes, what commission can the Art Centre and the other gallery take from the sale price? The Art Centre may agree to reduce the commission they take in such circumstances.

How long do you want to be in a contract with the Art Centre? This is called the ‘term’ of the agreement. If you don’t know, you may like to leave this open, with the option of simply providing three months’ notice when you or the Art Centre decide to end the agreement.

Is the Art Centre the only person allowed to sell your work? If so, you will have an ‘exclusive’ relationship with the Art Centre. Or, do you want to deal with other galleries or buyers? If so, you will have a ‘non-exclusive’ relationship with the Art Centre.

How soon after an art work is sold should you be paid? The number of days should be inserted in Schedule 1 under ‘Time for Artist’s Payment’. The Indigenous Art Code recommends that an artist be paid within 30 days of sale. The amount of interest payable on any late payments also needs to be inserted.

If you have existing art that you want the Art Centre to sell on your behalf, this art should be listed in Schedule 2 of the Agreement.

What must the Art Centre do under the agreement?

The Art Centre is responsible for promoting you as an artist and selling your art work. In performing this role, the Art Centre may do a number of things, such as organise exhibitions, place your work on consignment with other galleries, catalogue your work and produce promotional material.

Many Indigenous Art Centres provide artists with artistic materials, such as canvas and paint (free of charge) and also provide a suitable place for artists to create their work. This agreement assumes that this is the position. The amount of commission payable to an Art Centre may vary depending on the level of services provided by the Art Centre to the Artist.

After you have delivered your art to the Art Centre, the Art Centre is responsible for damage to, or loss of, your art work. The Art Centre must have adequate insurance cover.

The Art Centre must provide regular written reports (at least every six months) setting out details of the artwork in their possession, any sales it has made and promotional activities it

has undertaken on your behalf. You may also ask the Art Centre to provide you with this type of report.

What must I do under the agreement?

If you create art outside the Art Centre (and it is covered by the agreement), you are responsible for delivering it to the Art Centre.

If you have an exclusive relationship with the Art Centre, you are not allowed to sell your art directly to any other person or ask any other person (other than the Art Centre) to sell your art. You must give all your art to the Art Centre.

There is no obligation on you to produce a certain amount or type of art work.

What are my intellectual property rights under the agreement?

The agreement assumes and confirms that you own copyright in the art work as the sole creator of the art work. If you made the art with someone else, created the art work under employment or for a government body, or you have entered into a contract about the copyright in the work, this assumption may be incorrect and you should obtain advice about who owns the copyright.

You give the Art Centre permission to take and use photographs of you and your work for promotional purposes.

You authorise the Art Centre to register with a copyright collecting society and to collect royalties on your behalf (which are then to be paid to you).

What if my art contains Indigenous Culture and Intellectual Property?

If your art contains your community's cultural or ritual knowledge, the agreement assumes that you have obtained permission from your community for the display, sale and reproduction of your art, however you should also tell the Art Centre about the existence of any such knowledge in your art. This is because the agreement requires the Art Centre to display a notice warning prospective purchasers of the existence of the traditional ritual knowledge; the notice also informs purchasers how to make inquiries regarding permitted future use of the work.

For more information see Arts Law's Artist in the Black information sheet on ICIP.

When can the agreement come to an end?

The agreement can end (or terminate):

within 14 days of signing the agreement if you decide you made the wrong decision (the cooling off period);

on 3 months notice by either party; or

if either party does not fulfil its end of the bargain and is in 'breach' of the agreement (as long as the party which is in 'breach' has been told about it and given a chance to fulfil its end of the bargain).

Even after the agreement comes to an end, the Art Centre has the right to keep and sell the art in its possession, but it must pay the artist for all sales (unless the artist has ended the agreement within the cooling off period; in which case the artist is entitled to collect the art work from the art centre and sell it elsewhere).

What happens if I have a complaint or a dispute with the Art Centre?

Contact the Art Centre's Complaint's Coordinator. Their name and contact details should be found in Schedule 1 of the agreement. This person is responsible for trying to resolve any complaints you may have. If a complaint cannot be resolved this way, the agreement says that the parties will use the Arts Law Centre's mediation service. Arts Law will appoint an independent mediator to talk to both parties and attempt to resolve the dispute.

How can I be sure that the agreement suits my needs?

The Arts Law Centre provides legal advice on draft contracts. Before signing an agreement you may wish to contact the Arts Law Centre for further advice.

If you have questions about any of the topics discussed above please contact Arts Law.

Need more help?

Contact Arts Law if you have questions about any of the topics discussed above.

Telephone: (02) 9356 2566 or toll-free outside Sydney 1800 221 457

Also visit the Artists in the Black website (www.aitb.com.au) for more articles and information sheets..

Disclaimer

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