The Business of Business

Contract Clause Examples

The Good Bits

The clauses below are from my own contracts and were drafted by my lawyer. **Do not reuse these without your lawyer's approval. I am not a lawyer and this is not legal advice.**

Client IP & Company IP

What does this section mean? In short, I ("Company") own and retain all rights to knowledge and skill I bring to the table, including knowledge and skill I learn during the course of helping a client. Likewise, the client ("Client") retains ownership of everything they have and I have no claim over any of it. My lawyer and I went to great pains with these clauses to make sure they are extremely fair to both parties and neither side is getting more than the other. To date, no one has requested a modification to this.

> 4. Company IP and Licenses.
> 4.1 Client acknowledges and agrees that Company has certain specialized knowledge and skills in the design and development of deliverables, which forms an integral and continuing part of its business; and in the process of performing the Services under this Agreement and services for others, Company has developed, and will continue to develop, certain underlying concepts and ideas, techniques, skills, improvements, methods, and know-how applicable to design and development services (collectively referred to as the "Business Methodologies"). Notwithstanding anything to the contrary in this Agreement, Company shall retain all right, title, and interest in and to all Business Methodologies, which it may discover, adapt, or create in the performance of the Services for Client. Furthermore, Client acknowledges that, as part of performing the Services Company may utilize pre-existing tools and/or software programs owned by Company, or which have been licensed to Company by a third party (collectively, "Company IP").
> 4.2 Client agrees that Company IP is the sole property of Company (or its licensor) and that Company (or its licensor) will at all times retain sole and exclusive title to and ownership thereof. In the event any Deliverable provided to Client contains Company IP, Client shall have a perpetual, non-exclusive, irrevocable, worldwide, royalty-free license to use, copy modify, distribute, and create derivative works based on such Company IP that is incorporated into any Deliverable. However, for any content or service Company licenses on behalf of Client including but not limited to stock photography or website hosting (a "Third Party License"), shall become Client's sole

responsibility and obligation to maintain and comply with the license after acceptance of any Deliverable in which a Third Party License was integrated.

5. Client IP.

5.1 For the purposes of this Agreement, “Materials” shall mean all works of authorship, text, content, designs, graphics, HTML and other code, databases, audio, video or other files or other content, documentation, computer programs, algorithms, inventions, developments, and improvements, and any right to or interest in any intellectual property rights (including, without limitation, patent rights, copyrights, trademark rights, trade secrets and the like, anywhere in the world) therein created, developed, made, or otherwise resulting from or in connection with the Services or this Agreement. Subject to Section 4, Company acknowledges that the Materials have been specially commissioned or ordered by Client as “works made for hire” as that term is used in the Copyright Law of the United States, and that Client shall and will be the owner of all copyrights therein as well as all other intellectual property rights in and to such Materials (together, “Client IP”), and Company acknowledges and agrees that it has no right to or interest in the Client IP once Client has provided full payment for the Materials pursuant to the terms of this Agreement.

5.2 In the event that such Materials, or any portion thereof, are for any reason deemed not to have been works made for hire, or in the event that Client is not deemed to be the owner thereof of the Materials, then Company hereby unconditionally and irrevocably assigns, transfers, and conveys to Client any and all right, title, and interest in and to the Client IP, including, without limitation, all copyrights, all present and future patent rights, all publishing rights, all other intellectual property rights, including, without limitation, all rights to use, reproduce, or otherwise exploit Client IP throughout the world in all languages, in any manner whatsoever, including, without limitation, in any format or medium now known or hereafter known.

5.3 Company agrees to promptly execute and deliver such further instruments as Client may from time to time deem necessary or desirable to evidence, establish, maintain and protect Client ownership of such Client IP, and all the rights, title, and interest therein provided Client has fully paid for the corresponding Materials pursuant to this Agreement.

Publicity

What does this section mean? It means I can talk about the client in my marketing materials (eg, my website), use their logo in my marketing materials, and that they’ll also give me a testimonial. The reason this is in my contract is that it primes the conversation around testimonials later, since they’ll be expecting it, and it makes my own desires known. To date, no one has refused or modified this clause.

6. Publicity and License.

6.1 Company may use final Deliverables and work for portfolio purposes and may mention Client as a “client” in the capacity of these projects.

6.2 Client hereby grants Company an exclusive, perpetual, irrevocable, transferable, royalty-free, sublicensable, worldwide right and license to use, reuse, modify, enhance, or improve any Materials created by Company hereunder for marketing purposes.

6.3 Client hereby grants Company an exclusive perpetual, non-transferable, royalty- free right and license solely for marketing purposes to use Client’s logo and name when listing Client as a client. Additionally, Client shall use good faith efforts to review and approve a testimonial as to Company’s customer service quality (written by Company to ease the burden on Client) at the conclusion of the Services provided such testimonial does not contain any Confidential Information as defined within this Agreement.

The Bad Bits

These are examples of clauses you do **not** want to sign your name to. They're often found in contracts from clients who haven't put much (if any) effort into their vendor contracts. A surprising number of people will call their lawyers or investors and ask for a contract to use for contractors—then just use it without even looking at it. Don't confuse a bad contract for the client being a bad client. In fact, some of these clauses were taken from a contract a great client of mine uses with their other vendors.

> Non-Compete. Contractor agrees not to engage in any activity that is competitive with any activity of Company during the course of their relationship. For purposes of this paragraph, competitive activity encompasses forming or making plans to form a business entity that may be deemed to be competitive with any business of Company. This does not prevent Contractor from seeking or obtaining employment or other forms of business relationships with a competitor after termination of employment with Company so long as such competitor was in existence prior to the termination of relationship with Company and Contractor was in no way involved with the organization or formation of such competitor.

What's wrong with this one: non-competes restrict your right to work without giving you anything in return. As a freelancer and business owner, any restrictions on who you can work for will spell the end of your business quite quickly. In some states, they're flat-out illegal (eg, California). As a hard rule, do not sign any contract with a non-compete. If the client refuses to remove it, walk away.

> Following the termination of the relationship with the Company, Contractor shall not, directly or indirectly, make known to any person, firm or corporation the names or addresses of any of the customers of Company or any other information pertaining to them, or call on, solicit, take away, or attempt to call on, solicit, or take away any customer of Company on whom Contractor called or with whom Contractor became acquainted during the time of this Agreement, for either himself/herself/itself or for any other person, firm, or corporation.

What's wrong with this one: it basically says you can't ever work with a lead who is also a client of Company, whether you found out about this lead through Company or entirely by happy accident. In a nutshell, it restricts your ability to work.

> Company shall own as its sole and exclusive property, and Contractor agrees to assign, transfer, and convey and or its authorized nominees all of his or her right, title and interest in and to any and all said "ideas" that related generally to Company's business, including but not limited to any inventions, processes, improvements, ideas, copyrightable works of art, trademarks, copyrights, formulas, manufacturing technology, developments, writings, discoveries, and trade secrets that Contractor may make, conceive, or reduce to practice, whether solely or jointly with others, copyrightable, patentable or unpatentable, from the date of this Agreement or the date of first employment with Company if earlier, until the termination of Contractor's employment. Contractor is not required to assign any invention where no Company equipment, supplies, facilities or trade secret information was used and that was developed entirely on Contractor's own time and: that does not relate to Company's business or to Company's actual demonstrably anticipated research or development or; that does not result from work performed for Company. Contractor hereby assigns to Company all releases and discharges Company, any affiliate of Company and their respective officers, directors and employees, from and against any and all claims, demands, liabilities, costs, and expenses of Contractor arising out of, or relating to, any Propriety Information.

What's wrong with this one: This is a great example of an "invention assignment" clause. Put simply, it lays claim to nearly everything you think of or create. There appears to be an olive branch in the form of "on Contractor's own time," but even that's misleading as it really puts the burden of proof on the contractor to prove, and it incredibly restrictive. How bad is it, really? Let's say that you, a musician who does paid gigs in addition to freelancing, land a gig doing the website redesign for Gibson Guitars (congratulations!). That week, during band practice, you suddenly think of a new design for a foot pedal. With this contract clause, who owns that new foot pedal? Hint: it's not you.