

# SO YOU WANNA TAKE A COMMISSION

## THE REWARDS AND PITFALLS OF ACCEPTING AND EXECUTING CONTRACTS FOR ARTISTIC WORKS

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One of the greatest compliments—and a source of good money—for a freelance artist is to be asked by a client to execute a commission. One of the most thrilling experiences for a client is to watch an artist bring his vision to life in a commission. One of the biggest nightmares and sources of frustration and lost money for both artist and client is for a commission to go bad. Following are some tips and suggestions for maximizing the good experiences and minimizing or even eliminating possible disasters.

Unfortunately, all too often the first inkling that a commission will go bad comes after the parties involved have already committed to it. Such a frustrating experience most often arises from a poor understanding of what the project actually entails, an inappropriate or changing *scope of work*, a lack of experience with or understanding of pricing, failing to communicate clearly and frequently, or a combination of these factors.

To address these potential problems, both parties *must* understand their obligations and responsibilities to each other. A commission is by definition a contractual relationship: the artist agrees to produce a body of work in exchange for some form of compensation from the client. Past experience indicates that trouble often occurs when both parties fail to understand this arrangement and, as a result, the project is treated as a favor for a buddy.

While a short brief can't cover all the professional and legal aspects of freelance illustration, the following pages provide overviews of the most important topics.

**Ready, Steady, Go!** Are you ready to take the commission? Know your limits and avoid jobs that are beyond your current abilities and experience.

**Step by Step.** Determine the scope of work. Learn what the client expects, when to expect payment, and the basic elements of a contract.

**Adding It All Up.** Determine how much a piece of art should cost. The client wants the sun and the moon but only wants to spend a few bucks. Can you, and should you, take the job for that price?

**Reach Out and Touch Someone.** Communication with the client is an art form in itself. From the moment the client approaches you to the moment you send off the final work, staying in touch is crucial to a successful job.

**The Finishing Touches.** The commission is done and you've just signed it. Make sure you take the same care in shipping the piece to the client as you took in creating it.

**When Commissions Go Bad.** Sometimes, even despite everyone's best efforts, problems and misunderstandings arise. How you deal with them can make the difference between success and failure. There may be some jobs or clients you don't want to touch with a ten-foot pole; learn some of the warning signs that will help you avoid them.

**Is It Bigger Than a Breadbox?** Commissions and the clients who offer them come in all sizes. Some are easier to work with, while others require more effort but can result in great rewards.

**Slinging the Lingo.** Learn some of the jargon used in the business. A precise use of terminology can help avoid misunderstanding later.

## READY, STEADY, GO!

When getting started, it is easy to get in over one's head, taking on commissions that are beyond one's skill or working speed. The client may want items in the piece that the artist has never tackled before. The scope of work may be greater than the artist has ever attempted in the past. The *deadline* for the piece may be impossible to meet due to conflicting commitments in the artist's life. The artist may never have dealt with a client before and may not have the experience to *oversee* or manage a project of such size.

As a general rule, keep it simple at first. If you've never produced a commission for a client, it is best to take small jobs first before embarking on a grand project. Convention sketchbooks are an excellent example of small commissions that are easy to handle. In most cases, an artist will complete the work and be paid for it before the end of the convention. The scope of work usually allows a great deal

of freedom for the artist, and it is a good chance to begin establishing a reputation in the genre.

Even at this early stage, it is important to develop skills that will benefit you later, when you start taking bigger commissions. Working for clients is as much about “people skills” and communication as it is about artistic talent.

## STEP BY STEP

Someone’s asked you to work on a commission! This is the greatest day of your life as an artist—the buying public has finally acknowledged your years of hard work. Soon fans will be beating down your door, seeking your art! First, though, you have to prove you’ve got what it takes to deliver what the client has in mind.

### TWENTY QUESTIONS

What does the client want? If it is a con-book sketch, the client may give you a lot of liberty in the art. When asked, the client often will answer with something like “Oh, anything with foxes,” or “Something with big guns!” Sometimes, particularly with larger commissions, the client may have something very specific in mind: “I want my character standing alongside one of your characters, with a motorcycle behind them.” At that point it is critical you get all the information you can from the client.

**What does the client’s character look like?** You may get an answer along the lines of “He’s a male red fox.” That’s a good start, but you then should ask more questions. “How old is he? What kind of build does he have? How tall is he? What color are his eyes?” Amazingly, the client may never have given serious thought to these or other basic details, or will fail to inform you that the character is a left-hand amputee with a gleaming chrome prosthetic replacement, but it is your responsibility to find out this information before you begin.

**What is the character wearing?** “Nothing at all!” may be the answer, but if so, it is even more important to get a good idea of the character’s physical features. If the client wants a character to wear a specific outfit, do you have examples to look at, or can the client provide reference? This applies to props or background elements as well.

**Does the client have examples** of the character as rendered by other artists, and if so are any of them favorites of the client? This can save you lots of time, since you won’t have to “reinvent the wheel”. Such work also can provide useful information about character personality and other physical features you forgot to ask about and the client forgot to mention.

### YOU NEED IT WHEN?

If it is a con-book sketch, the client may say, “Oh, at the end of the convention,” but he may have a specific timetable to meet: “I’m flying out at three today. Can you have it done by one?” If you have six books in front of you and it’s 10:30 already, it might be best to decline the job politely.

For a complicated piece, get a deadline in a written contract before proceeding. The client gets a time frame of

when to expect the finished piece, and you get a measure of the piece’s urgency, preventing it from sinking to the bottom of a “to do” list as other, short-term projects cut in ahead of it. For such a complex job, deadlines tend to be broken down into a series of smaller stages or milestones.

**Character sketches and designs** let you confirm that your idea of what the character looks like is the same as the client’s. You also can be sure you’re correct about specific details of character wardrobe and equipment.

**Thumbnail sketches** show ideas for the composition of the final picture. Sometimes you may wish to present, or the client may want to see, several alternatives.

**The final black-and-white drawing** shows what the design and pose of the character(s) will be and how the background will look in the completed work. Sometimes you also may want to include a rough color thumbnail to show the color palette to the client.

### SHOW ME THE MONEY!

If the job is a simple con-book sketch, then it probably will be paid in full at the start or end of the project. If the job is more complicated or expensive, this may not be feasible for the client and other arrangements may be required. A fifty-percent deposit at the start of the commission, with the remaining balance coming at the end, is a standard procedure.

### SIGN ON THE DOTTED LINE

Unfortunately, written contracts are all too often viewed, and sometimes used, as tools of manipulation and deception by both artists and clients. It doesn’t have to be that way. A good contract safeguards not only the artist but the client as well. It should spell out clearly the expectations and obligations of both parties. It defines the final price for the piece, its content, size, and medium, and when the client can expect final delivery of the finished work. It should also state when the artist should expect final payment and who holds copyright and reproduction rights for the piece.

## ADDING IT ALL UP

“How much will it cost?” This is one of the toughest questions a client will ask. Many artists tend to undersell themselves when getting started, because they are either new to the genre or uncertain of their ability to produce the work. While it is true that established artists often command much greater prices for their work than those who are just starting out, this doesn’t mean a beginning artist shouldn’t charge a fair price for his or her services. If you consistently undersell your work, it is easy to get a reputation as a source of *cheap* art, not necessarily as a source of *good* art. Ask yourself the following questions.

**How long will it take?** If the picture will take forty hours to complete, charging more for it than for a thirty-minute sketch is perfectly reasonable. Here is where understanding the scope of the work will be handy. If the project requires twenty hours of research, don’t forget to include that in the final price.

**How much is your time worth?** There's an old saying: "It's a pretty sad dog that won't wag its own tail." What do you think your art is worth? To answer this demands some honest soul-searching. If you break it down to dollars per hour, then is your work worth five dollars an hour—less than minimum wage—or twenty-five?

Remember, the client is not paying just for the time it actually takes to produce the picture, but also for how long it took you to develop the ability to produce it. If you spent the last ten years and thirty-five thousand dollars in student loans at art school honing your skills, that should factor into your price, just as it does for any other profession.

**How much will it cost to do it?** If the client wants a five-foot-by-six-foot oil painting on canvas and will pay only a hundred dollars for it, you will lose money on the deal just through the cost of materials alone. Keep track of the money you spend on your supplies.

**How much will shipping cost?** If you have to ship that five-foot-by-six-foot canvas to the client in Germany, then your shipping costs again will exceed the hundred-dollar total price the client is paying for it!

**Can you get back to the client?** Don't commit to a final amount on the spot if you're uncertain what it should be. Instead ask the client if you can contact him later, after you've had time to consider it, and don't let him push you into agreeing on a price before you've had a chance to do your homework. While many artists seriously underprice their efforts, a trip through the art show at a convention sometimes can be good way to get a general idea what other people are charging for similar work.

## REACH OUT AND TOUCH SOMEONE

One of the most important things you can do to promote good relations—and possibly repeat business—is to communicate clearly and frequently with the client. This is even more vital when months or a year may pass before the artist can begin work on the client's actual commission. To the client, the wait can seem like forever, and without regular updates, the client quite reasonably may wonder if you even remember his commission.

Briefing the client about once a month on the status of his picture seems to be a good guideline. Even if the message is nothing more than "Hi! Haven't forgotten about you!" the client knows you're still aware of your business arrangement with him.

How you keep the client informed is as important as the mere fact of doing so. Proper use of grammar and spell-checking of all letters and e-mail messages go a long way toward avoiding confusion on the client's end. When writing a client about details of a commission, be clear and specific about what you wish to discuss. If you send images of some part of the commission, copies, sketches, or electronic files, let the client know how these attachments relate to the commission. Here's an example of such a message.

Hello, John. Attached to this e-mail are three JPEG files showing thumbnails of different options for

poses of the three ninjas attacking the main character, Phillip. Please take a look at them and let me know what you think. Once we have agreed on this part of the picture, I will have all the elements worked out for the final piece. I look forward to hearing from you.

You should save all e-mail and letters related to the commission for later reference. This can be helpful if you won't be starting the commission for some time. Six months after you talk to the client, will you remember what color the character's eyes are? Also, if any disagreement over the commission arises, you have written correspondence to verify or refute the client's claims.

## THE FINISHING TOUCHES

All right, it's done! The last stroke of paint has dried. You've put your signature on it. Now you just have to find some old box or scrap cardboard to slap around the thing, stick some stamps on it, and you're done.

Not quite. How you ship and close a client's commission can determine whether he'll ever do business again with you—and, as importantly, whether he recommends you to anyone else.

**Notify the client** before sending the piece. This prevents the client from suddenly discovering an unexpected package on the doorstep—perhaps days or weeks of outdoor weather later, if he was away from home on vacation or business.

**Send an image** of the piece before shipping, whether scanned or digitally photographed. This gives the client a final chance to review the piece and gives you a chance to correct any last-minute misunderstandings or errors before sending the artwork halfway across the country or around the world. The image doesn't have to be a 600-DPI masterpiece; a good, clear 72-DPI image will do. If you use any kind of finishing coat such as varnish, lacquer, or clear-coat spray, it might be wise to wait until the client states that the art is acceptable before applying it.

**Confirm the client's mailing address** before shipping. If the piece has taken more than a year to finish, the client may have moved during that time. Even if you have kept up a steady correspondence, the client may not have informed you that he's living in another state now. It's always best to double-check.

**Use the correct shipping materials.** If the client spent a thousand dollars on a commission, he deserves better than tattered, oil-stained sheets of cardboard you found by "bin diving". Take the time to assemble a sturdy package for the piece before sending it on its way. Corrugated cardboard is indeed an old standby, but it must be used correctly to assure safe shipping.

For a piece that is unframed and not on a stretched canvas, first sandwich the art between two sheets of news board or chipboard at least as large as the art. Enclose that assembly in a minimum of two layers of corrugated cardboard at least one inch longer and one inch wider than the

outside dimensions of the artwork. If hard overseas travel is expected, use four pieces of corrugated cardboard and, for additional stiffness, make sure the corrugations in each pair of layers are perpendicular to one another.

If you need to use a box, most likely for a framed piece or a work on stretched canvas, make certain the container is large enough to hold the art plus at least one inch of padding around it. It is still wise to sandwich the art inside cardboard before packing it in the box. Finally, however you package the art, don't skimp on the tape! Make certain all corners are carefully sealed.

**Use the proper shipping paperwork.** Just as important as packaging the art is making certain all the proper forms are applied to the package. This eases the client's anxiety and gives the artist legal recourse if the package is damaged in transit. Make certain all forms and labels are filled out clearly and completely. Pay for the appropriate amount of insurance on the piece, and if possible have a tracking number assigned to the package. Let the client know what that number is and how to track it.

If you need to ship internationally, find out what sizes of packages the destination country's postal service will accept. You may have to use a private freight company, such as UPS, Federal Express, or DHL, that can handle much larger and heavier packages and provide much speedier service. Keep in mind that the cost of shipping through such third-party companies can be three to four times greater than regular postal service. Whatever method you use, be sure to fill out all the necessary customs forms.

**Check that the client got it.** This is the last step of the commission. Confirm that client got the package and that he's happy with the final product. Following up on a job helps to reinforce a positive image of you in the client's mind and lets you tie up any loose ends like final payment before moving on to the next project.

## WHEN COMMISSIONS GO BAD

"Where the hell is my picture? It was supposed to be done two weeks ago!" An instructor once said that what defined a professional artist was not how the professional performed when everything went right, but how the professional performed when everything went wrong.

Sometimes a commission will go bad. When that happens, communication skills are as important as artistic skills. If you think a problem might affect the project, discuss it with the client as soon as possible. Waiting can turn a problem into a disaster.

### MURPHY'S LAW

A misunderstanding might arise over the client's desires for the piece. A personal emergency might make it impossible to complete the piece by the deadline. You've broken your painting arm. Your day job began demanding more overtime. Your father passed away last week. You just spilled India ink all over the piece's arctic snowfield.

*Don't* wait until two weeks after the deadline to let the client know you won't finish in time. Get in touch imme-

diately, be honest, and see if he will extend the deadline. If you have been updating him regularly on the progress of the project, the client may say, "That's okay; just get it done as soon as possible." A commercial client may need only part of the project immediately, such as the final black-and-white drawing, and may be willing to accept the final color picture later.

Remember, though: this doesn't mean you can start making up stories to blow off your deadlines. Much of your success in the business will depend on your integrity. Collectors and companies often talk to each other, and if word starts getting around that you're unreliable or dishonest, people will stop approaching you for new work.

### GREMLINS IN THE WORKS

Sometimes the problem will be on the other end. It may be a minor glitch or a major obstacle, but in all cases, good business practices can be a lifesaver—in particular, keeping a paper trail of correspondence and legal documents.

Sometimes the client may experience the same vicissitudes that can affect you. He loses his job. The car gets totaled in an accident. He goes in for an unexpected medical treatment. His National Guard unit suddenly gets called up for overseas deployment. Any of these or other reasons can result in delays in receiving your work or in making final payments on it. You may have to decide whether to hang on to the piece until the client has the funds to pay the final amount in full or to arrange a payment schedule and allow him to pay off the balance over several months.

The client may claim the goods never arrived or that they were damaged or unsuitable on arrival. If you take the time to package the work properly, insure it, and obtain a tracking number, you can verify the arrival of the package and make a claim in the event of damage.

The client may not be satisfied with the final product. Copyright or reproduction rights may suddenly come into question. Among the worst problems that can occur in a commission are fraud and default. This is where a written contract can really save you. Without that document, it is your word against the client's. Did you save all that e-mail you exchanged? If you discussed the project verbally at a convention, you'd better have good witnesses.

When the client simply refuses to pay or demands a discount or refund, that's another matter. If you genuinely made a mistake, you should make amends, but if the client is just trying to avoid paying you, what are your options? A large enough commission might warrant legal action, such as small claims court, a lawsuit, or a collection agency. Bear in mind, those all cost money, so you must decide if you'll recover enough from the client to make pursuing them worthwhile. If the job is small, you may try wrangling with the client for the money, or you may decide that it is better to walk away from that client and cut your losses.

In any event, it is important to maintain a professional attitude when communicating with your clients. Flying off the handle on the phone or flaming them on-line will not help the situation and may result in an unpleasant reputation for being difficult or antisocial.

## A GREAT PLACE TO BE FROM

Some jobs aren't even worth considering, and no artist is obligated to take every job that is offered. If your initial contact with the client leaves you with a bad feeling about the job, then trust your intuition and be on guard! With further contact you may discover that you have misinterpreted something and you've found a great client—but if you still get bad vibes, then politely decline the client's business.

Maybe the subject is not something you want to do. Perhaps the client insists you do something for an unreasonable price or wants the work done by an unrealistic deadline. Some potential clients appear to be okay at first but with further contact reveal unsavory aspects. Once again, good preliminary communication can help avoid many micromanaged "tar babies" and can help prevent the onset of "scope creep". As a rule, any client unwilling to sign a written contract is a client to avoid.

## IS IT BIGGER THAN A BREADBOX?

Generally, a commission will fall into one of a range of categories. While there are occasional exceptions, the following list should provide a useful framework for estimating what to expect from each of those categories in terms of complexity, time, effort, and payment.

**A very small job** may take only a couple of hours or as much as a day, from receiving the order to completing the work. Payment, made in full at time of order or on delivery, generally is no more than about fifty dollars US. The client may grant the artist wide latitude in content and composition, and the job may be otherwise undemanding, involving a verbal contract and little preliminary research. A common example of the small job is the so-called "convention sketch" in the client's black sketchbook.

**A small job** requires at least twelve hours and may demand several days to complete the final piece. Payment ranges from fifty to three hundred dollars US, and may be in full at the beginning or end of the job, or may be split into the *deposit*, paid before work begins, and the *balance*, paid upon delivery of the work.

The client usually has a specific character or situation in mind for the piece, but often yields the artist significant leeway on final composition. However, the client may require that thumbnails and development sketches be provided for approval before final work begins. A basic written contract should suffice for this size of job. The artist may have to conduct a few hours of basic research to confirm some details.

**A medium job** requires several days to a few weeks to finish the final work. Payment ranges from three hundred to one thousand dollars US, nearly always with a deposit up front. The balance may be paid on delivery, or may be split into multiple payments over the course of the work, perhaps tied to "milestone" events.

The client may be an individual or a small company, and usually has a specific character or situation, complete with descriptions of details such as appearance and wardrobe, in an equally specific setting. The artist often must

provide character design sketches, thumbnail sketches of the composition, and perhaps black-and-white sketches showing a fairly complete rough draft of the final work.

A basic written contract may be sufficient, but may contain an addendum with a detailed description of what the final piece should look like. Such exacting, detailed work demands hours or days of extensive research, and may entail visits to libraries or the purchase of specialized sources of information. Simple, quick model shoots may be needed to fill any gaps in available material.

**A large job** demands several weeks or a few months to complete. Payment becomes complicated at this level, involving as it does one thousand to ten thousand dollars US. Deposits, milestone payments, and final balance payments are routine; the typical business practice of "net thirty"—payment thirty days after submission of invoice—may come into play. There may also be royalties for first and second printing rights.

The client is often a small or medium-size company rather than an individual, especially when thousands of dollars are involved. Such a client may require frequent, perhaps daily, briefings on project status, approval of each step before proceeding, and the creation of multiple final works. In addition, the client may request that specific changes be made and may want such things as color thumbnails or detailed research sketches before the project can advance. Extensive contracts are needed to spell out such details, including scope of work, deadlines, and milestones, and they may require notarization.

The artist may wish to consult legal counsel before signing any legal document, especially if there is any uncertainty about terms. If the client is a commercial entity, the artist may have to sign a non-disclosure agreement (NDA) before starting work, and may be working with a committee or development team rather than with an individual contact. If so, it is important to know exactly who is authorized to approve changes or final designs!

Research for a project of this size is significant, consuming days or weeks. The artist may have to consult experts on subjects portrayed in the work, such as talking to a blacksmith to ensure that details of his job are depicted correctly. Photos may be very important, and can include hiring models and studio space for lighting and posing reference. Shooting props, costumes, furniture, vehicles, landscapes, architecture, atmospheric lighting, and locations can provide additional accuracy. If the setting of the work is a real location, the artist may travel to that location or a similar one for study.

**A very large job** goes on for months or even years of full-time work; while it is beyond the scope of this brief, it is described here to illustrate just how complex a project can become. Amounts greater than ten thousand dollars US are involved and may range into the millions for the largest projects; royalties or percentages of sales on merchandising may be included.

The client is almost always a large company or corporation and may make extraordinary demands. The artist might be hired outright for the duration of the project,

drawing a steady paycheck, and may have to move to a location more convenient to the client; an example might be design or illustration work for a studio producing a motion picture or television program. The artist may work not only with design or development teams but with other departments, such as marketing or advertising.

A number of legal documents may be involved, such as an NDA or a non-competition agreement barring the artist from working with anyone else for the duration of the project. The contracts for such projects can be daunting and often demand the services of a lawyer or agent to decipher their full meaning.

Preparations might include travel to specific locations for research and study or enrollment in university classes to become familiar with a subject related to the project, such as taking a class in Japanese language or history before working on a samurai film.

## SLINGING THE LINGO

Following are some common terms useful to the artist accepting commissions. Some of them are slang or jargon, but others have specific legal or professional meanings, and if misused can cause significant misunderstandings. Please note that this list is not exhaustive.

**Client:** A person or company that engages the services of a professional.

**Commission:** An agreement to provide a specific defined service or product in return for remuneration, usually in the form of monies paid. The agreement may include written contracts and other documents describing the terms of the commission, most often a description of the service or products to be provided, terms of payment, and legal protections for both parties.

**Contract:** An agreement, either verbal or written, designed to outline the *scope of work* (q.v.) for both the artist and the client. The contract defines each party's responsibilities and obligations and terms of payment to the artist. If disagreements arise during the course of the project, the contract can be consulted to help avoid further misunderstandings.

**Deadline:** The date by which the client expects certain parts, or all, of a project to be completed. Deadlines can seem daunting, but a deadline can also benefit an artist by keeping a project from slipping to the bottom of a "to do" pile, never to see the light of day again.

**Default:** The omission of or failure to perform a legal or contractual duty. For example, if an artist fails to produce a work by a specified deadline without consulting the client first, the artist can be viewed as defaulting on his or her contractual obligations. Keep in mind that defaulting on a contract is regarded as fraud under the laws of most Western jurisdictions, and in the United States can be charged as a felony if the monies involved are large enough.

**Freelance:** A person who works as a writer, artist, designer, or in another capacity, but not on a regular salaried basis for any one employer.

**Invoice:** A detailed list of goods sold or services provided, together with charges and terms for each.

**Kill fee:** A fee charged to a client who cancels ("kills") a project after it begins, but before it is completed. A kill fee is often one of the terms of a written contract, and acts as an "insurance policy" for the artist should the client back out of a job after considerable time and effort have been expended on it. If properly written, it can also be invoked should a client demand major changes while the final work is in progress; in such a case, the original deposit is forfeited and a new deposit must be paid, since the changes constitute what is effectively a new piece.

**Micromanagement:** The tendency of a client to dictate small details and oversee all aspects of the project to the point of making the project burdensome and difficult to complete.

**Oversight:** The management of the actual project. This is not limited to *scope of work* (q.v.), but includes such details as updating the client on the status of the project. Other important aspects are organizing paperwork such as contracts, packaging and shipping of the piece to the client, and the budgeting of time so the artist can complete the work by the time agreed to in the deadline.

**Scope creep:** "Can you add this? Can you change that?" Scope creep is *scope of work* (q.v.) gone bad! It happens when the client makes changes and adds conditions to a project after it is nominally *signed off* (q.v.) and once final production has begun.

**Scope of work:** The artist's obligations to and responsibilities for a job. Scope of work defines the expectations of the artist and the client and sets the terms of what the piece's dimensions, content, and deadline are.

**Signing off:** Acceptance by the client of part or all of a job. In a simple job, this may be nothing more than the client picking up his sketchbook at the con and paying the artist for the work. In a more complicated job, the work may be submitted to a board or committee for final review, which may take several weeks.

**Tar baby:** A job that never seems to end and is constantly being revised and changed, making it difficult to get the client to *sign off* (q.v.) on the work. The amount of time spent by the artist almost assures that the "tar baby" project will be a money-losing proposition. *Scope creep* (q.v.) is frequently a symptom of a tar baby project.

**Thumbnails:** A term used to describe small and relatively quick sketches or paintings done by the artist to show the client various combinations of composition, lighting, color, and location of characters and objects in a commission before work begins on the final piece

**Work for hire:** The artist relinquishes the right to use a *work made for hire* for any commercial purpose. The client buys all rights to the work created by the artist, including copyright, with the exception of archive and portfolio uses. The client may develop the property however he sees fit and is not required to make any additional payments to the artist for its use in the future.