

Fabric Designers

This chapter looks briefly at the designer-agent relationship and suggests a form of agreement for the agency, the loan of samples and the licensing of designs.

Fabric designers are in a precarious position simply because whilst they are the creators of a design, they rely upon others to actually manufacture and sell the products which utilise the design.

If the designer is commissioned to devise a particular design by a client, the legal relationship is much the same as that of a sculptor or a portrait painter who is commissioned to produce a work and the sorts of issues which are relevant are those discussed in Chapter 4, "Commissioning of Artworks".

Often, however, fabric designers will retain an agent who will show their work to interior decorators, architects and other potential clients. As with any devolution of responsibility for any part of one's business affairs, the success of this relationship will depend not only upon the talents of the respective parties but also the clarity of communication and the fairness of the basic deal to both parties. It is commonplace for there to be written agreements between designers and their agents. The following examples are simple, short form contracts that do not purport to cover every exigency but which set out the important deal points briefly and clearly.

AGENCY AGREEMENT

THIS AGREEMENT is made the day of 19..... between

..... of(the Designer)

and

..... of(the Agent)

Whereas:

1. The Designer produces original designs and fabrics.
2. The Agent wishes to be the Agent of the Designer and the Designer agrees to the grant of such agency upon the following terms and conditions:

Terms and Conditions

1. The agency shall commence on the date hereof and shall continue for a period of one year unless earlier determined by one month's written notice given by either party to the other.
2. The territory of the agency is and shall be exclusive/non-exclusive.
3. The Designer will supply to the Agent such samples, illustrations and photographs of designs and fabrics (the "Samples") as the parties may agree, for the purpose of having the Agent show these Samples to interior decorators and architects ("Clients").
4. The Agent shall complete a loan agreement with respect to all Samples. This loan agreement shall be in the form of the specimen attached as a Schedule to this agreement.

5. The Agent shall be at liberty to display the Samples to Clients with a view to obtaining contracts between the Designer and such Clients for the design and or the supply of fabrics.

6. The Agent will at all times be responsible for the maintenance and security of Samples and shall not leave Samples or representations thereof with Clients or prospective Clients.

7. The Agent shall be entitled to commission of ten per cent on all sales completed pursuant to this agreement.

8. Copyright in all designs will remain the property of the Designer and all fabrics marketed hereunder will carry the name of the Designer.

9. The Designer shall supply the Agent with two ranges of samples; regular and exclusive:

(a) Exclusive. These are designs and fabrics which may only be produced by the Designer. Because these are hand made, orders in excess of 400 metres shall only be accepted after prior consultation with and approval of the Designer.

(b) Regular.

(i) These are designs which are available for printing or manufacturing under licence by the Agent on its own behalf.

(ii) All orders for regular fabrics shall utilise the Designer's Licence Agreement a specimen of which is a Schedule to this agreement.

(iii) Until the Agent is otherwise notified, regular fabrics may be licensed for the payment of \$..... upon signing the Licence Agreement and a royalty of \$..... per metre.

10. The payment of licence fees and Sample loan fees shall be made upon signing such agreement and all royalties shall be accounted and paid for monthly.

Signed by the Designer

Signed by the Agent

LICENCE AGREEMENT

THIS AGREEMENT is dated the day of 19..... between

..... of(the Designer)

and

..... of

(the Licensee)

Whereby the Designer grants the Licensee the non-exclusive right to reproduce the following design(s) upon the following terms:

1. Description of design(s).

1.
2.
3.
4.
5.

2. Term of Licence.

3. Territory.

4. Type of use permitted.

5. Payment.

(a) The Licensee shall pay the Designer

- (i) a fee of \$..... per design upon signing this agreement;
- (ii) a royalty of \$..... per metre/unit upon which the design is reproduced.

(b) Royalty statements will be issued monthly to the Designer by the Licensee, showing the number of metres/units to which each design has been applied and shall include, if the Licensee is not the manufacturer, a copy of the production statements between manufacturer and Licensee.

(c) Payment of royalties shall accompany the statement.

(d) If royalty statements or payments are more than two weeks overdue, this licence shall automatically terminate.

6. Alterations prohibited. The Licensee shall not make or allow any alteration to the design without the prior written consent of the Designer.

7. Attribution. The Licensee shall attribute authorship of the design(s) to the Designer and shall reproduce the name "Designer's name" on each item or (in the case of material), on the selvage. The Designer will also be acknowledged in all advertising and publicity material relating to the designs.

8. Samples. The Licensee will consult the Designer as to the quality of reproduction of the design(s) and to facilitate this will deliver a sample of any article to which the design is applied, at least seven (7) days prior to commencement of the production run.

9. No assignment. The Licensee will not sub-licence, assign, or otherwise alienate any of its rights to the designs except with the written consent of the Designer.

10. Termination.

(a) If this agreement is terminated by either party, the Licensee shall:

- (i) immediately stop all reproduction of the design;
- (ii) provide a full royalty statement, all accompanying documentation and any sums owed to the Designer, within four (4) weeks of such termination;
- (iii) upon request, immediately return all photographs, proofs, samples and other property of the Designer that is in the Licensee's control.

11. Amendments. Any amendment to this agreement shall be in writing.

12. Disputes.

(a) Should any dispute arise concerning any matter in relation to this agreement, the dispute will be referred to the arbitration of two arbitrators, one to be appointed by each party.

(b) In the event of the arbitrators being unable to resolve the dispute within fourteen (14) days of the dispute arising, it will be referred to an umpire selected by the arbitrators.

(c) The proper law of the agreement is that of New South Wales.

Signed by the Designer

Signed for and on behalf of the Licensee

LOAN OF SAMPLES

THIS AGREEMENT is dated the day of 19..... between

..... of(Designer)

and

..... of(Borrower)

1. Description.

Size/Medium/Term/Cost per metre

1.

2.

3.

4.

5.

2. Purpose of Loan. For showing to interior decorators and architects for the purpose of obtaining orders.

3. Conditions of loan.

1. These samples are original works by the Designer.

2. Copyright is retained by the Designer. The works may not be reproduced in any manner without her written permission.

3. The fee for the loan of each sample is \$ This is payable before samples leave the studio.

4. Ownership of each sample remains with the Designer. The Borrower may keep possession of each until the date specified in the schedule above. After that date the Borrower shall return them to the Designer's studio within one week of receiving request for their return.

5. The Borrower shall take care of the samples and be responsible for their loss or damage. Their agreed value is \$..... each.

6. Other conditions

.....

.....

Signed by the Designer

Signed by the Borrower