

THE WRITER'S CONTRACTS CHECKLIST

KNOW YOUR RIGHTS

The NZWG Writer's Contracts Checklist is a quick guide to assist writers when first looking at any agreement presented to them. Know Your Rights!

This is intended as a guide only and does not constitute legal advice. NZWG recommends that writers seek out professional advice. This can be through the NZWG Contract Advice Service or through a specialist entertainment lawyer, one familiar with copyright, IP, and rights assignments.

KNOW YOUR RIGHTS

Writers have the following rights when presented with any agreement:

- The right to seek advice on any agreement presented
- Time to seek contract advice
- The right to negotiate any given agreement
- The right to say no

It is the producer's responsibility to draft and present any rights agreements. Unless writers are working together, and then [Collaboration Agreements](#) should be agreed between the writers.

THE BUSINESS OF SCREENWRITING

Before signing any writers' agreements, first writers need to understand the business of screenwriting. Every person has their role to play in getting works from script to screen. Research, ask questions and fully understand how each role contributes to the successful creation of written works for screen. From producers through to the make-up artists.

- Roles & Responsibilities – every role has a clear responsibility and liability if not performed. Writers are responsible for writing, re-writing, and delivering the shoot script(s) within an agreed timeframe / deadline.
- The Best Collaborators – these are the right people for the right job. Your producing partner(s) should be on the same page creatively and from a business perspective as you and the direction of the work.
- Professionalism – deliver to deadline, know who is responsible for which elements in the creation process, and have a professional attitude, these are some of the keys to success.
- Perseverance – successful people in the screen business are the ones who have endured. You will get more NO's than you will YES's, it is your job to ensure you work out the best way for you to manage rejection and critique of your works.

CHAIN OF TITLE

Chain of Title (CoT) is made up of all the rights agreements presented to the writer – and other copyright holders linked to the works. These can also be music rights, performers rights, life rights etc. Depending on the format of the project there can be multiple agreements that make up the rights agreements within a CoT.

- Original feature film CoT can be made up of:
 - ✓ Option Agreement
 - ✓ Purchase Agreement
 - ✓ Writers Agreement(s)

A project cannot be funded without all rights agreements in place. Every agreement creates a link in the CoT. If one agreement is missing the chain is broken and needs remedy, this is much harder to do once the project is up and running.

Variations in the types of CoT agreements occur with projects that are adaptations, or are based on real-life events and people, have multiple creators, and/or cover multiple formats.

THE BASICS

These are non-negotiables; they need to be correctly listed on any agreement. Ensure that the spelling is accurate, roles are assigned correctly and that the details align directly with the nature of the work and the deal as discussed.

- ✓ Parties AKA the people and production companies involved
- ✓ Addresses
- ✓ Script / Story Title
- ✓ Format
- ✓ Deal Terms

BACKGROUND / DEAL TERMS

The background as listed within any agreement needs to accurately reflect the intention of who and how this work was created, and how it will get to screen. Some points that can be included are:

- ✓ The original author / creator of the work
- ✓ Any underlying works the story is based on
- ✓ The intended format of the work
- ✓ The development or funding plan in brief
- ✓ Roles and responsibilities of each party
- ✓ Fees and percentage of profit offer
- ✓ Future usage of rights

MINIMUM TERMS & CONDITIONS

Below is a minimum checklist of the terms and conditions presented in an agreement to a writer. These ensure a clean acquisition of all rights necessary to produce and market a story for screen.

- ✓ Definition of terms – such as ‘Film’ and ‘screenplay’ to adequately cover all mediums of transmission and all forms of the works that may be developed.
- ✓ Credits – covers the appropriate credits for the work to be created.
- ✓ Grants of rights – this can include a full grant of rights or a limited grant of rights and can include the following rights:
 - ✓ All copyright necessary to produce and market a film
 - ✓ Rights to adapt, change use, and rearrange the project
 - ✓ Right to make, produce, exhibit, and exploit a film without limitation
 - ✓ Right to exhibit, screen, broadcast, transmit or reproduce either theatrically or non-theatrically, or by any other means eg: television, cable, streamer, or platform
 - ✓ Rights to sequels, spin-offs, remakes, TV series, literary and other ancillary and merchandising rights
 - ✓ Right to receive all proceeds realised from the sale, use, licence, lease, or exploitation of these rights
 - ✓ Rights to use the writer’s name and likeness on agreed terms
- ✓ Warranties – this a declaration from the writer / creator / author covering:
 - ✓ Sole authorship and/or ownership of the works
 - ✓ Right to enter into an agreement and that the grant of rights will not violate or infringe on any rights of any other person.
- ✓ Indemnities – from both the writer / creator / author and from the producer.
- ✓ If there is a time limit on the rights assignment or licence, then provisions for renewal and reversion of rights to be included.
- ✓ Reversion of rights, all parties – all rights agreements must include this clause. If no time limit is stipulated in the agreement, this allows for another way for the reversion of rights back to the writer / creator / author for any agreed reason.
- ✓ Termination clauses, all parties – all rights agreements must include these clauses. They set out the terms for the termination of the agreement by each party and will allow for appropriate credits for work completed under the agreement, rights reversions, and any considerations due to and by any party.
- ✓ Breach of Agreement, all parties – this clause must be in all agreements and sets out the terms of remedy and resolve for any breach by any party under the agreement.

SCREEN INDUSTRY WORKERS ACT (SIWA)

SIWA is now legislation, and all Individual Contracts must contain the following mandatory terms.

1. A clear explanation of the process for raising and responding to complaints about bullying, harassment, or discrimination.
2. A clear explanation of the processes available for resolving disputes (eg. either the default system or some other agreed process.)
3. The period of notice (if any) and compensation (if any) for termination.

4. A term saying that both parties will comply with the Health and Safety at Work Act and the Human Rights Act.

DELIVERY SCHEDULE

This element is essential to ensure the writer is delivering scripts and written materials on time. This clause could include:

- ✓ Schedule – a clear and achievable schedule of what is required and when.
- ✓ Deliverables – this is the written materials which can include re-writes, revisions, or polishes within a determined timeframe.
- ✓ Obligation – an agreement by both parties about delivery of services.

FEES AND PAYMENT STRUCTURES

In any agreement presented there should be provision or clauses that allows for fair and appropriate consideration (legally this means payment) for services and rights assignments, licences, or acquisition of rights.

All fees and percentages offered are negotiable and it is your role as the writer to ensure the fees and payment structures accurately reflect the nature of the work and value that your work brings to the project.

The fee can appear in many forms, some of them are listed below and not all are applicable:

- ✓ Option fee
- ✓ Purchase fee
- ✓ Writer's fees – as the Original Creator or Writer-for-hire
- ✓ Percentage of profit
- ✓ Producers Share of the Screen Production Grant (SPG)

These fees can be paid in several ways, as follows:

- ✓ On signing
- ✓ On delivery
- ✓ First Day of Principle Photography AKA First day of PP
- ✓ Deferred payment – based on funding received or higher percentage of profit share

MONEY MONEY MONEY

As a writer you need to be aware of how you will earn an income from screenwriting, they are separated into four parts, as follows:

1. The Idea – you can sell or option your original ideas to producers and production companies, and once they are produced you will receive a Purchase Price and a percentage of profit and/or a share of the producers SPG, if applicable.

2. The Writing – you will be paid to write your own works (as above) or write other people’s works AKA Writer-For-Hire – please note, a writer-for-hire does not acquire rights within the works, they are credited and paid.
3. Percentage of Profit – this can come in many forms, for example and if applicable: box-office sales, a percentage of the Producers Share of the SPG, format sales, and merchandising profits.
4. Residuals and Rights Collections – these payments are not directly linked to the production budget and cannot be contracted out of; these are fees collected on behalf of the production when screened in territories that have Collective Management Organisations (CMO’s). They collect the licence fees paid and distribute these to the authors based on the published credit.