

**Business and  
Legal Forms**  
*for*  
**Illustrators**

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About the Author

**F**orm 1 (Estimate), Form 2 (Confirmation of Assignment), and Form 3 (Invoice) are closely related. In a perfect world, the client would describe the assignment and would then receive the estimate from the illustrator. After agreeing to the specifications and terms of the estimate, both parties would sign the confirmation of assignment, which repeats the nearly identical specifications and terms. When the assignment has been completed, the invoice would be given to the client. It too would conform to the specifications and terms of the estimate and the confirmation of assignment.

As we know, illustrations are frequently sold without proper documentation. If the client calls for a rush job, the illustrator wants to meet the deadline and may skip the paperwork. If the client has sent a purchase order, the illustrator may feel that the purchase order is sufficient documentation or may be concerned about contradicting its terms in the confirmation of assignment.

The truth is that inadequate documentation is a disservice to the client as well as to the illustrator. There are a number of issues that the parties must resolve. The client as well as the illustrator wants to know the rights being transferred. The rights must be adequate for the client's intended use of the art. The nature of the art to be done, the due dates for sketches and finishes, and the fee to be paid are important to have in writing, since a talk on the phone can more easily be given different interpretations by the parties. The client as well as the illustrator wants to know if there will be reimbursement for expenses, how payment will be made, what happens in the event of cancellation, and how revisions will be handled. Some of the other provisions in the estimate include authorship credit, copyright notice, releases, ownership of the original art, and arbitration.

The estimate, confirmation of assignment, and invoice exist for different reasons. If the illustrator knew that a confirmation of assignment

would be signed for every job, the estimate and invoice could be far briefer. The estimate would merely describe the assignment, give a fee, and state that the assignment will be governed by a confirmation of assignment that must be signed by both parties before work commences. If there were a confirmation of assignment signed by both parties, the invoice would show an amount due and state that it was being issued in conformity with the terms of the confirmation of assignment.

In fact, the illustrator cannot be certain that a confirmation of assignment will be signed by the client or, if it is signed, when it will be signed. For that reason, and the possibility that the client may provide a purchase order or check with a restrictive legend, it is wise to have the specifications and terms on each document that the illustrator provides to the client.

The illustrator should resolve conflicts between his or her forms and those of the client immediately. If the estimate is given, work commences, and no other forms are exchanged until the invoice is sent, then the estimate will probably be found either to be a contract or, at least, to be evidence of an oral contract. On the other hand, if the estimate conflicts with the client's purchase order, it will be very difficult to know in retrospect which terms the parties agreed to on those points where the forms differ. So, the illustrator should point out and resolve such issues without delay. Or, if the illustrator has not given an estimate or confirmation of assignment, but disagrees with the terms of a purchase order, reliance on the invoice to resolve these issues would not be wise. It is unlikely, for example, that an invoice alone can govern the terms of a transaction simply because it is given to the client after the transaction has been concluded.

The estimate, like any of the forms in this book, could be simplified as either a form or a letter including only the terms that the illustrator feels are most important. Form 1 seeks to

resolve issues that frequently arise and to protect the illustrator. Certainly, it is better to raise such issues at the outset of the assignment, rather than disagree later. Such disagreements are far more likely to cause the loss of clients than is a frank discussion of the terms before any work has been done.

With slight modifications in Forms 1, 2, and 3, the illustrator may choose to develop an estimate/confirmation of assignment/invoice form. A box would be checked to indicate for which purpose the form is to be used and it would be filled in appropriately. In this book, however, the forms are separate, since each has a different purpose and is intended for use at a different time in the relationship with the client.

Because the estimate, confirmation of assignment, and invoice are closely related, the negotiation checklists are very similar. For that reason, the negotiation checklist for Form 1 covers the points that should appear in a short-form estimate and assumes that Form 2 will be signed before work commences. If Form 1 is to be used, and especially if Form 1 is likely to be the only form used, then the negotiation checklist for Form 2 must be reviewed by the illustrator. The negotiation checklist for Form 2 should also be used to review the purchase order or contract form offered by a client.

### **Filling in the Form**

The illustrator should provide his or her letterhead, then fill in the date, the client's name and address, the illustrator's number for the job, and the number of any purchase order given by the client. In Paragraph 1, the work should be described in detail. In Paragraph 2, specify how many days it will take to go from starting work to sketches and from approval of sketches to finished art. In Paragraph 3, give the limitations on the rights granted. In Paragraph 5, state the fee. In Paragraph 7, specify the types of expenses to

be reimbursed by the client and the amount of any advance to be paid against expenses. In Paragraph 8, give a monthly interest rate. Fill in Paragraph 9 if advances on the fee are to be paid. Check the boxes in Paragraphs 11 and 12 to indicate whether copyright notice or authorship credit will be given in the name of the illustrator. State in Paragraph 13 the percentages of the total fee that will be paid for cancellation at various stages of work. In Paragraph 14, fill in a value for the original art. In Paragraph 16, specify who will arbitrate disputes, where this will be done, and the maximum amount that can be sued for in small claims court. In Paragraph 17, give the state whose laws will govern the contract. The illustrator can then sign the estimate. If the client agrees to the estimate and it will not be possible to obtain a signed confirmation of assignment before work begins, the words "AGREED TO" can be added and the client can sign the estimate.

### **Negotiation Checklist**

- State that a confirmation of assignment form is to be signed before the commencement of work. (Preamble)
- Describe the assignment in as much detail as possible, attaching another sheet to the contract if necessary (in which case the line for "subject matter" would refer to the attached sheet). (Paragraph 1)
- Give a due date for sketches, which can be expressed as a number of days after client's approval for illustrator to start work. (Paragraph 2)
- If the client is to provide reference materials, the due date should be expressed as a number of days after the illustrator's receipt of these materials. (Paragraph 2)

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- The due date for finishes should be expressed as a number of days after the client's approval of sketches. (Paragraph 2)
  - Limit the grant of rights and state that the transfer of rights takes place when the illustrator is paid in full. (Paragraph 3)
  - Specify whether the client's use of the art will be exclusive or nonexclusive. (Paragraph 3)
  - Reserve electronic rights to the illustrator unless the client negotiates and pays for specific electronic rights. (Paragraph 3)
  - All rights not granted to the client should be reserved to the illustrator, including rights in sketches and any other preliminary materials. (Paragraph 4)
  - The fee must be specified, including the obligation of the client to pay sales taxes. (Paragraph 5)
  - Any expenses, including markups, that the client will reimburse to the illustrator should be specified to avoid misunderstandings. (Paragraph 7)
  - If expenses will be significant, provide for an advance against expenses. (Paragraph 7)
  - Require payment within thirty days of delivery of the finished art. (Paragraph 8)
  - Specify advances to be paid against the fee, either on signing the contract, on approval of sketches, or at both times. A schedule of payments is especially important for an extensive job. (Paragraph 9)
  - State whether the illustrator's copyright notice will appear with the art. (Paragraph 11)
  - State whether the illustrator will receive name credit with the art. (Paragraph 12)
  - Fees for cancellation at different stages of the assignment must be specified, plus payment of any expenses incurred. (Paragraph 13)
  - State that the illustrator shall own all rights in the work in the event of cancellation. (Paragraph 13)
  - Specify a time for payment of cancellation fees, such as within thirty days of client's stopping work or the delivery of finished art, whichever occurs first. (Paragraph 13)
  - Require the client to return the art within thirty days after use. (Paragraph 14)
  - Review the standard provisions in the introductory pages and compare with Paragraph 17.
  - Review the negotiation checklist for Form 2, especially if Form 1 is going to be used without Form 2 or if the illustrator is reviewing a purchase order or contract provided by the client.
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&lt; Illustrator's Letterhead &gt;

**Estimate**

Client \_\_\_\_\_ Date \_\_\_\_\_

Address \_\_\_\_\_

Client Purchase Order Number \_\_\_\_\_ Job Number \_\_\_\_\_

This Estimate is based on the specifications and terms that follow. If the Client confirms that the Illustrator should proceed with the assignment based on this Estimate, it is understood that the assignment shall be subject to the terms shown on this Estimate and that Client shall sign a Confirmation of Assignment form incorporating the same specifications and terms. If the assignment proceeds without a Confirmation of Assignment being signed by both parties, the assignment shall be governed by the terms and conditions contained in this Estimate.

**1. Description.** The Illustrator shall create the Work in accordance with the following specifications:

Subject matter \_\_\_\_\_

Number of illustrations in color \_\_\_\_\_ Number of illustrations in black and white \_\_\_\_\_

Size of illustrations \_\_\_\_\_ Medium for illustrations \_\_\_\_\_

Other specifications \_\_\_\_\_

**2. Due Date.** Sketches shall be delivered within \_\_\_\_\_ days after either the Client's authorization to commence work or, if the Client is to provide reference, layouts, or specifications, after the Client has provided same to the Illustrator, whichever occurs later. Finished art shall be delivered \_\_\_\_\_ days after the approval of sketches by the Client.**3. Grant of Rights.** Upon receipt of full payment, the Illustrator shall grant to the Client the following rights in the finished art:

For use as \_\_\_\_\_

For the product or publication named \_\_\_\_\_

In the following territory \_\_\_\_\_

For the following time period \_\_\_\_\_

Other limitations \_\_\_\_\_

With respect to the usage shown above, the Client shall have  exclusive  nonexclusive rights.

If the finished art is for use as a contribution to a magazine, the grant of rights shall be first North American serial rights only, unless specified to the contrary above.

This grant of rights does not include electronic rights, unless specified to the contrary here \_\_\_\_\_

in which event the usage restrictions shown above shall be applicable. For purposes of this agreement, electronic rights are defined as rights in the digitized form of works that can be encoded, stored, and retrieved from such media as computer disks, CD-ROM, computer databases, and network servers.

**4. Reservation of Rights.** All rights not expressly granted shall be reserved to the Illustrator, including but not limited to all rights in sketches, comps, or other preliminary materials.**5. Fee.** Client shall pay the purchase price of \$\_\_\_\_\_ for the usage rights granted. Client shall also pay sales tax, if required.**6. Additional Usage.** If Client wishes to make any additional uses of the Work, Client shall seek permission from the Illustrator and pay an additional fee to be agreed upon.**7. Expenses.** Client shall reimburse the Illustrator for the following expenses:  Messenger  Models  Props  Travel  Telephone  Other \_\_\_\_\_. At the time of signing the Confirmation of Assignment or the commencement of work, whichever is first, Client shall pay Illustrator \$\_\_\_\_\_ as a nonrefundable advance against expenses. If the advance exceeds expenses incurred, the credit balance shall be used to reduce the fee payable, or, if the fee has been fully paid, shall be reimbursed to Client.

- 8. Payment.** Client shall pay the Illustrator within thirty (30) days of the date of Illustrator's billing, which shall be dated as of the date of delivery of the finished art. In the event that work is postponed at the request of the Client, the Illustrator shall have the right to bill pro rata for work completed through the date of that request, while reserving all other rights. Overdue payments shall be subject to interest charges of \_\_\_\_ percent monthly.
- 9. Advances.** At the time of signing the Confirmation of Assignment or the commencement of work, whichever is first, Client shall pay Illustrator \_\_\_\_ percent of the fee as an advance against the total fee. Upon approval of sketches, Client shall pay Illustrator \_\_\_\_ percent of the fee as an advance against the total fee.
- 10. Revisions.** The Illustrator shall be given the first opportunity to make any revisions requested by the Client. If the revisions are not due to any fault on the part of the Illustrator, an additional fee shall be charged. If the Illustrator objects to any revisions to be made by the Client, the Illustrator shall have the right to have his or her name removed from the published Work.
- 11. Copyright Notice.** Copyright notice in the name of the Illustrator  shall  shall not accompany the Work when it is reproduced.
- 12. Authorship Credit.** Authorship credit in the name of the Illustrator  shall  shall not accompany the Work when it is reproduced. If the finished art is used as a contribution to a magazine or for a book, authorship credit shall be given unless specified to the contrary in the preceding sentence.
- 13. Cancellation.** In the event of cancellation by the Client, the following cancellation payment shall be paid by the Client: (A) cancellation prior to the finished art being turned in: \_\_\_\_ percent of fee, (B) cancellation due to finished art being unsatisfactory: \_\_\_\_ percent of fee, and (C) cancellation for any other reason after the finished art is turned in: \_\_\_\_ percent of fee. In the event of cancellation, the Client shall also pay any expenses incurred by the Illustrator and the Illustrator shall own all rights in the Work. The billing upon cancellation shall be payable within thirty (30) days of the Client's notification to stop work or the delivery of the finished art, whichever occurs sooner.
- 14. Ownership and Return of Artwork.** The ownership of original artwork, including sketches and any other materials created in the process of making the finished art, shall remain with the Illustrator. All such artwork shall be returned to the Illustrator by bonded messenger, air freight, or registered mail within thirty days (30) of the Client's completing its use of the artwork. Based on the specifications for the Work, a reasonable value for the original, finished art is \$\_\_\_\_\_.
- 15. Permissions and Releases.** The Client shall indemnify and hold harmless the Illustrator against any and all claims, costs, and expenses, including attorney's fees, due to materials included in the work at the request of the Client for which no copyright permission or privacy release was requested or uses that exceed the uses allowed pursuant to a permission or release.
- 16. Arbitration.** All disputes shall be submitted to binding arbitration before \_\_\_\_\_ in the following location \_\_\_\_\_ and settled in accordance with the rules of the American Arbitration Association. Judgment upon the arbitration award may be entered in any court having jurisdiction thereof. Disputes in which the amount at issue is less than \$\_\_\_\_\_ shall not be subject to this arbitration provision.
- 17. Miscellany.** If the Client authorizes the Illustrator to commence work, the terms of this Estimate Form shall be binding upon the parties, their heirs, successors, assigns, and personal representatives; the Estimate Form constitutes the entire understanding between the parties; its terms can be modified only by an instrument in writing signed by both parties, except that the Client may authorize expenses and revisions orally; a waiver of a breach of any of its provisions shall not be construed as a continuing waiver of other breaches of the same or other provisions hereof; and the relationship between the Client and Illustrator shall be governed by the laws of the State of \_\_\_\_\_.

Illustrator \_\_\_\_\_

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# Confirmation of Assignment

FORM  
2

**F**orm 2, the Confirmation of Assignment, follows Form 1, the Estimate, almost exactly. Ideally, the client will review the estimate and request whatever changes are necessary. Then, both client and illustrator will sign Form 2 to make a binding contract. If Form 1 has not been given to the client, or if an estimate has been used that only gives limited information such as a project description and a price, then it is even more important to use Form 2. By signing Form 2 before the commencement of the assignment, the parties resolve many of the issues likely to cause disputes. Since the goal with any client is to create a long-term relationship, the avoidance of needless disputes is a very positive step. If the client requests changes in Form 2, the illustrator can certainly make revisions. Nonetheless, the agreement between the parties will be clear, which promotes creating the best art and a long-term business relationship.

## Filling in the Form

Fill in the date and the names and addresses for the client and the illustrator. In Paragraph 1, describe the assignment in detail, attaching an additional sheet to the form if needed. Give the illustrator's number for the job and the number of any purchase order given by the client. In Paragraph 2, specify how many days it will take to go from starting work to sketches and from approval of sketches to finished art. In Paragraph 3, give the limitations on the rights granted and specify whether the client's rights are exclusive or nonexclusive. In Paragraph 5, state the fee. In Paragraph 7, specify the types of expenses to be reimbursed by the client and the amount of any advance to be paid against expenses. In Paragraph 8, give a monthly interest rate for late payments. Fill in Paragraph 9 if advances on the fee are to be paid. Check the boxes in Paragraphs 11 and 12 to indicate whether copyright notice or authorship credit will be given in the name of the illustrator. In

Paragraph 13, state the percentages of the total fee that will be paid for cancellation at various stages of work. In Paragraph 14, fill in a value for the original art. In Paragraph 16, specify who will arbitrate disputes, where this will be done, and give the maximum amount that can be sued for in small claims court. In Paragraph 17, give the state whose laws will govern the contract. Both parties should then sign the contract.

## Negotiation Checklist

- Describe the assignment in as much detail as possible, attaching another sheet to the contract if necessary (in which case the line for "subject matter" would refer to the attached sheet). (Paragraph 1)
- Give a due date for sketches, which can be expressed as a number of days after client's approval for illustrator to start work. (Paragraph 2)
- If the client is to provide reference materials, the due date should be expressed as a number of days after the illustrator's receipt of these materials. (Paragraph 2)
- The due date for finishes should be expressed as a number of days after the client's approval of sketches. (Paragraph 2)
- Time should not be of the essence.
- State that illness or other delays beyond the control of the illustrator will extend the due date, but only up to a limited number of days.
- State that the grant of rights takes place when the illustrator is paid in full. (Paragraph 3)
- Limit the grant of rights to the finished art, so that rights in sketches or other work products are not transferred. (Paragraph 3)



- ❑ Specify whether the client's use of the art will be exclusive or nonexclusive. (Paragraph 3)
- ❑ Limit the exclusivity to the particular use the client will make of the art, such as for a book jacket, point-of-purchase ad, or direct-mail brochure. This leaves the illustrator free to resell the art for other uses. (Paragraph 3)
- ❑ Name the product or publication on which the illustration will appear. (Paragraph 3)
- ❑ Give a geographic limitation, such as local, regional, the United States, or North America. (Paragraph 3)
- ❑ Limit the time period of use. (Paragraph 3)
- ❑ Other limitations might include the number of uses. One-time use, for example, means that the illustration cannot be given other uses. Or the use might be restricted to one form of a book, such as hardcover, which would mean that the illustrator would receive reuse fees for subsequent use in paperback. Or the use might be for only one printing of a book, so a second printing would require a reuse fee. It might also specify the size of the illustration's usage, such as a spot as opposed to a full page. The concept behind such limitations is that fees are based on the type and number of usages. (Paragraph 3)
- ❑ For contributions to magazines, the sale of first North American serial rights is common. This gives the magazine the right to be the first magazine to make a one-time use of the illustration in North America. This could be limited to first United States serial rights. If no agreement about rights is made for a magazine contribution, the copyright law provides that the magazine has a nonexclusive right to use the illustration as many times as it wishes in issues of the magazine but can make no other uses. (Paragraph 3)
- ❑ If the grant of electronic rights is included, consider whether an additional fee should be paid. This might take the form of a reuse fee and be a percentage, such as 25 or 50 percent, of the initial fee. If the electronic usage is the first and only use, of course, no reuse fee would be payable. If the electronic and non-electronic uses occur at the same time, the negotiation to set the initial fee might settle on an amount adequate to cover both types of usage. However, if one usage comes before the other (most likely nonelectronic before electronic), a reuse fee might be appropriate.
- ❑ Make any grant of electronic rights subject to all the limitations as to type of use, language, product or publication, territory, time period, exclusivity or nonexclusivity, and other limitations. (Paragraph 3)
- ❑ Do not allow electronic usages to involve abridgments, expansions, or combinations with other works unless specified in the contract. This can be set forth under "other limitations." (Paragraph 3)
- ❑ If possible, when electronic rights are given, limit the form of the electronic usage to known systems such as CD-ROM, online, or database.
- ❑ For electronic rights, seek to avoid a situation in which the party acquiring the rights will make them freely available to the public (for example, by allowing downloading from a Web site), unless that is intended by the illustrator. The restriction might take the form of a grant of "display rights only," so that the party acquiring the rights would not allow users to make digital copies.
- ❑ All rights not granted to the client should be reserved to the illustrator, including rights in sketches and any other preliminary materials. (Paragraph 4)

- ❑ If the client insists on all rights or work for hire, offer instead a provision stating, "Illustrator shall not permit any uses of the art that compete with or impair the use of the art by the Client." If necessary to reassure the client, this might also state, "The Illustrator shall submit any proposed uses to the Client for approval, which shall not be unreasonably withheld."
- ❑ Many illustrators refuse to do work for hire, since the client becomes the author under the copyright law. The illustrator can point out to the client that work for hire devalues and can damage the creative process.
- ❑ In the face of a demand for all rights or work for hire, advise the client that fees are based on rights of usage. The fee for all rights or work for hire should be substantially higher than that for limited usage.
- ❑ If the work is highly specific to one client, selling all rights for a higher fee would be more acceptable than for a work likely to have resale value for the illustrator.
- ❑ If the client demands a "buyout," find out how the client defines this. It can mean the purchase of all rights in the copyright, it may be work for hire, and it may or may not involve purchasing the physical art as well as the copyright.
- ❑ Do not allow the client to assign usage rights without the consent of the illustrator, since the client may benefit from reuse fees that more appropriately belong to the illustrator.
- ❑ The fee must be specified. (Paragraph 5)
- ❑ The obligation of the client to pay sales tax should be included. Many states charge sales tax on the transfer if a physical object is sold to or altered by the client, while sales of reproduction rights (where the illustrator receives the art back without changes) would not be subject to sales tax. However, the laws vary widely from state to state. The illustrator must check the law in his or her state, since the failure to collect and pay sales tax can result in substantial liability. (Paragraph 5)
- ❑ If additional usage rights are sought by the client, additional fees should be agreed upon and paid. (Paragraph 6)
- ❑ If it is likely that a certain type of additional usage will be made, the amount of the reuse fee can be specified. Or the reuse fees, including for electronic reuses, can be expressed as a percentage of the original fee,
- ❑ Any expenses that the client will reimburse to the illustrator should be specified to avoid misunderstandings. (Paragraph 7)
- ❑ If expenses are going to be marked up, this should be stated. The rationale for marking up expenses is that the expenditure ties up the illustrator's funds until he or she receives reimbursement and makes extra paperwork for the illustrator. If expenses are modest, however, most illustrators cover them in the fee.
- ❑ If expenses will be significant, provide for an advance against expenses. (Paragraph 7)
- ❑ Specify that any advance against expenses is nonrefundable unless, of course, the expenses are not incurred. (Paragraph 7)
- ❑ If the client insists on a binding budget for expenses, provide for some flexibility, such as a 10 percent variance, or for client's approval of expense items that exceed the variance.
- ❑ Require payment within thirty days of delivery of the finished art. (Paragraph 8)
- ❑ Avoid a usurious interest rate. (Paragraph 8)

- ❑ Deal with the issue of payment for work-in-progress that is postponed but not cancelled, perhaps by pro rata billing. (Paragraph 8)
- ❑ Specify advances to be paid against the fee, either on signing the contract, on approval of sketches, or at both times. A schedule of payments is especially important for an extensive job. (Paragraph 9)
- ❑ State that any advances against the fee are nonrefundable. This is not included in Paragraph 9 because of the interplay with the cancellation provision in Paragraph 13.
- ❑ Revisions can be a problem. Certainly the illustrator should be given the first opportunity to make revisions. (Paragraph 10)
- ❑ If revisions are the fault of the illustrator, no additional fee should be charged. However, if the client changes the nature of the assignment, additional fees must be charged for revisions. (Paragraph 10)
- ❑ Consider limiting the amount of time the illustrator must spend on revisions, whether or not the revisions are the illustrator's fault.
- ❑ If the client ultimately has revisions done by someone else, the illustrator should reserve the right to have his or her name removed from the art. (Paragraph 10)
- ❑ With respect to revisions or the assignment itself, additional charges might be specified for work that must be rushed and requires unusual hours or other stresses.
- ❑ Any revisions or changes in the assignment should be documented in writing, if possible, since there may be a question later as to whether the changes were approved and whether they came within the initial description of the project. (Paragraphs 10 and 17)
- ❑ State whether copyright notice in the illustrator's name will be required to appear with the art. (Paragraph 11)
- ❑ State whether the illustrator will receive name credit with the art. (Paragraph 12)
- ❑ For editorial work, require authorship credit as the general rule. One of the values of editorial work is its promotional impact, so name credit is important.
- ❑ Specify that the type size for authorship credit shall be no smaller than the type around the illustration and that the credit must be adjacent to the illustration.
- ❑ If authorship credit should be given but is omitted, require payment of an additional fee.
- ❑ Fees for cancellation at different stages of the assignment must be specified. This very much depends on the work patterns of the illustrator. For example, sketches may be very rough or they may be nearly finished art. Cancellation fees might be 50 percent of the total fee for rejection of sketches or for unsatisfactory finished art, but 100 percent for cancellation for any other reason once art has been turned in. The illustrator must also be reimbursed for expenses incurred. (Paragraph 13)
- ❑ State that the illustrator shall own all rights in the work in the event of cancellation. (Paragraph 13)
- ❑ Specify a time for payment of cancellation fees, such as within thirty days of client's stopping work or of the delivery of finished art, whichever comes first. (Paragraph 13)
- ❑ Never work on speculation (a situation in which no fees will be paid in the event of cancellation or a failure to use the work).

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- Specify that if the illustration is not published within a certain time period, the rights shall revert to the illustrator. This would avoid, for example, a situation in which a magazine purchases first North American serial rights but never uses the illustration. Since the illustrator cannot make use of the illustration until after publication, the failure to publish would be damaging to the illustrator.
  - State that the illustrator owns the finished art and any preliminary sketches or materials. (Paragraph 14)
  - If preliminary sketches are published, the fee should increase to the price for finished art.
  - If physical art is to be sold, a separate price should be specified.
  - Require the client to return the art within thirty days after use. (Paragraph 14)
  - Specify a safe method for the return of the art. (Paragraph 14)
  - Indicate a value for the art, which can serve as a basis for damages if the client does not take reasonable care of it.
  - Raise the standard of care that the client must give the art, such as making the client strictly liable for loss or damage to the art while it is in the client's possession or even in transit.
  - Require the client to insure the art at the value specified for it.
  - Try not to give a warranty and indemnity provision in which the illustrator states the work is not a copyright infringement and not libelous and agrees to pay for the client's damages and attorney's fees if this is not true (falsity would be a breach of warranty).
  - If there is a warranty and indemnity provision, try to be covered under any publisher's liability insurance policy owned by the client and ask the client to cover the deductible.
  - If the client insists on a warranty and indemnity provision, seek to limit the illustrator's liability to a specified amount. For example, liability might be limited to the amount of the fee for the assignment.
  - Require the client to indemnify the illustrator if the client wants certain materials to be included in the illustration but does not request that the illustrator obtain needed copyright permissions or privacy releases or uses the illustration in a way that exceeds the use allowed by the permissions or releases. (Paragraph 15)
  - Specify that the illustrator will receive samples of the work as actually used, since such samples have value as portfolio pieces.
  - Provide for arbitration, except for amounts that can be sued for in small claims court. (Paragraph 16)
  - Review the standard provisions in the introductory pages and compare with Paragraph 17.
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## Confirmation of Assignment

AGREEMENT entered into as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between \_\_\_\_\_ (hereinafter referred to as the "Client"), located at \_\_\_\_\_, and \_\_\_\_\_ (hereinafter referred to as the "Illustrator"), located at \_\_\_\_\_, with respect to the creation of certain illustrations (hereinafter referred to as the "Work").

WHEREAS, Illustrator is a professional illustrator of good standing;

WHEREAS, Client wishes the Illustrator to create certain Work described more fully herein; and

WHEREAS, Illustrator wishes to create such Work.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants hereinafter set forth and other valuable considerations, the parties hereto agree as follows:

**1. Description.** The Illustrator agrees to create the Work in accordance with the following specifications:

Subject matter \_\_\_\_\_

Number of illustrations in color \_\_\_\_\_ Number of illustrations in black and white \_\_\_\_\_

Size of illustrations \_\_\_\_\_ Medium for illustrations \_\_\_\_\_

Other specifications \_\_\_\_\_

Client purchase order number \_\_\_\_\_ Job number \_\_\_\_\_

**2. Due Date.** The Illustrator agrees to deliver sketches within \_\_\_\_ days after the later of the signing of this Agreement or, if the Client is to provide reference, layouts, or specifications, after the Client has provided same to the Illustrator. Finished art shall be delivered \_\_\_\_ days after the approval of sketches by the Client.

**3. Grant of Rights.** Upon receipt of full payment, the Illustrator grants to the Client the following rights in the finished art:

For use as \_\_\_\_\_

For the product or publication named \_\_\_\_\_

In the following territory \_\_\_\_\_

For the following time period \_\_\_\_\_

Other limitations \_\_\_\_\_

With respect to the usage shown above, the Client shall have  exclusive  nonexclusive rights.

If the finished art is for use as a contribution to a magazine, the grant of rights shall be for first North American serial rights only unless specified to the contrary above.

This grant of rights does not include electronic rights, unless specified to the contrary here \_\_\_\_\_ in which event the usage restrictions shown above shall be applicable. For purposes of this Agreement, electronic rights are defined as rights in the digitized form of works that can be encoded, stored, and retrieved from such media as computer disks, CD-ROM, computer databases, and network servers.

**4. Reservation of Rights.** All rights not expressly granted hereunder are reserved to the Illustrator, including but not limited to all rights in sketches, comps, or other preliminary materials.

**5. Fee.** Client agrees to pay the purchase price of \$\_\_\_\_\_ for the usage rights granted. Client agrees to pay sales tax, if required.

**6. Additional Usage.** If Client wishes to make any additional uses of the Work, Client agrees to seek permission from the Illustrator and make such payments as are agreed to between the parties at that time.

**7. Expenses.** Client agrees to reimburse the Illustrator for the following expenses:  Messengers  Models  Props  Travel  Telephone  Other \_\_\_\_\_.

At the time of signing this Agreement, Client shall pay Illustrator \$\_\_\_\_\_ as a nonrefundable advance against expenses. If the advance exceeds expenses incurred, the credit balance shall be used to reduce the fee payable or, if the fee has been fully paid, shall be reimbursed to Client.

- 8. Payment.** Client agrees to pay the Illustrator within thirty (30) days of the date of Illustrator's billing, which shall be dated as of the date of delivery of the finished art. In the event that work is postponed at the request of the Client, the Illustrator shall have the right to bill pro rata for work completed through the date of that request, while reserving all other rights under this Agreement. Overdue payments shall be subject to interest charges of \_\_\_\_ percent monthly.
- 9. Advances.** At the time of signing this Agreement, Client shall pay Illustrator \_\_\_\_ percent of the fee as an advance against the total fee. Upon approval of sketches, Client shall pay Illustrator \_\_\_\_ percent of the fee as an advance against the total fee.
- 10. Revisions.** The Illustrator shall be given the first opportunity to make any revisions requested by the Client. If the revisions are not due to any fault on the part of the Illustrator, an additional fee shall be charged. If the Illustrator objects to any revisions to be made by the Client, the Illustrator shall have the right to have his or her name removed from the published Work.
- 11. Copyright Notice.** Copyright notice in the Illustrator's name  shall  shall not be published with the Work.
- 12. Authorship Credit.** Authorship credit in the name of the Illustrator  shall  shall not accompany the Work when it is reproduced. If the finished art is used as a contribution to a magazine or for a book, authorship credit shall be given unless specified to the contrary in the preceding sentence.
- 13. Cancellation.** In the event of cancellation by the Client, the following cancellation payment shall be paid by the Client: (A) cancellation prior to the finished art being turned in: \_\_\_\_ percent of fee, (B) cancellation due to finished art being unsatisfactory: \_\_\_\_ percent of fee, and (C) cancellation for any other reason after the finished art is turned in: \_\_\_\_ percent of fee. In the event of cancellation, the Client shall also pay any expenses incurred by the Illustrator and the Illustrator shall own all rights in the Work. The billing upon cancellation shall be payable within thirty (30) days of the Client's notification to stop work or the delivery of the finished art, whichever occurs sooner.
- 14. Ownership and Return of Artwork.** The ownership of original artwork, including sketches and any other materials created in the process of making the finished art, shall remain with the Illustrator. All such artwork shall be returned to the Illustrator by bonded messenger, air freight, or registered mail within thirty days of the Client's completing its use of the artwork. The parties agree that the value of the original finished art is \$\_\_\_\_\_.
- 15. Permissions and Releases.** The Client agrees to indemnify and hold harmless the Illustrator against any and all claims, costs, and expenses, including attorney's fees, due to materials included in the Work at the request of the Client for which no copyright permission or privacy release was requested or uses that exceed those allowed pursuant to a permission or release.
- 16. Arbitration.** All disputes arising under this Agreement shall be submitted to binding arbitration before \_\_\_\_\_ in the following location \_\_\_\_\_ and settled in accordance with the rules of the American Arbitration Association. Judgment upon the arbitration award may be entered in any court having jurisdiction thereof. Disputes in which the amount at issue is less than \$\_\_\_\_\_ shall not be subject to this arbitration provision.
- 17. Miscellany.** This Agreement shall be binding upon the parties hereto, their heirs, successors, assigns, and personal representatives. This Agreement constitutes the entire understanding between the parties. Its terms can be modified only by an instrument in writing signed by both parties, except that the Client may authorize expenses or revisions orally. A waiver of a breach of any of the provisions of this Agreement shall not be construed as a continuing waiver of other breaches of the same or other provisions hereof. This Agreement shall be governed by the laws of the State of \_\_\_\_\_.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement as of the date first set forth above.

Illustrator \_\_\_\_\_

Client \_\_\_\_\_

Company Name

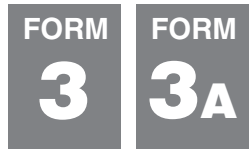
By \_\_\_\_\_

Authorized Signatory, Title



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# Invoice and Basic Invoice



**F**orm 3, the Invoice, is rendered to the client when the assignment is completed. It can be handed over with the final art or after the final art has been approved. If Form 2, the Confirmation of Assignment, has already been signed by the client, then the invoice can be quite simple (such as Form 3A, the Basic Invoice). It need only supply the fee, any expenses to be reimbursed, plus any sales tax; subtract advances paid against either the fee or the expenses; and show a total due. The time for payment would be that specified in Form 2, probably thirty days after delivery of art (although the illustrator could certainly require payment on delivery, if the client is set up to pay that quickly). The title or description of the assignment would be referred to along with the client's purchase order number or the illustrator's job number. Return of the original art would be required. Restating the rights granted would also be wise.

Form 3 really cannot replace Form 1, the Estimate, or Form 2, the Confirmation of Assignment. Waiting until after an assignment is completed to show the terms and conditions that the illustrator wants to govern the assignment is asking for trouble. If the client has not already given the illustrator a form with terms that contradict the invoice, the client may well respond to the terms of the invoice by payment with a check that has writing on its back that contradicts the terms of the invoice. Such a situation is filled with ambiguity and places at risk the business relationship. If the parties review proposed terms prior to working together, a disagreement can be resolved or the parties can agree not to work together on that particular project. Once the work has been done, disagreement over terms is far more difficult to resolve and is likely to leave the kind of bad feeling that makes future ventures dubious.

The invoice repeats almost exactly all the terms that either the estimate or the confirmation of assignment would have contained. As stated

above, this would not be necessary if the illustrator definitely had a confirmation of assignment signed by both parties. If an estimate alone has been supplied or the client has not signed the estimate or a confirmation of assignment, ambiguity remains as to the terms, and repeating the terms (on the invoice) may be of value since payment based on the invoice may be viewed by a court or arbitrator as acquiescence to its terms (although this cannot be guaranteed).

The negotiation checklist covers the terms that an invoice would need to contain if a confirmation of assignment has been signed by the client. If a confirmation of assignment has not been signed by the client, the negotiation checklist for Form 2 should also be reviewed.

## Filling in the Form

Use the illustrator's letterhead at the top of the form. Give the date, the client's name and address, the client's purchase order number, and the illustrator's job number. State the fee, expenses to be reimbursed, charges for revisions, advances (in parentheses to show that they should be subtracted to arrive at the total due); determine the balance, add any necessary sales tax; and show the balance due. (This information, plus a brief description of the assignment and the date on which the Confirmation of Assignment was signed, would complete Form 3A, the Basic Invoice.) In Paragraph 1, describe the assignment briefly. In Paragraph 2, specify when the finished art was delivered. In Paragraph 3, give the limitations on the rights granted and specify whether the client's rights are exclusive or nonexclusive. In Paragraph 5, state the fee. In Paragraph 7, show the amount of any advance paid against expenses. In Paragraph 8, give a monthly interest rate for late payments. Fill in Paragraph 9 if advances on the fee were paid. Check the boxes in Paragraphs 11 and 12 to indicate whether copyright notice or authorship

credit will be given in the name of the illustrator. In Paragraph 13, state the percentages of the total fee payable for cancellation at various stages of work. In Paragraph 14, fill in a value for the original art. In Paragraph 16, specify who will arbitrate disputes, where this will be done, and give the maximum amount that can be sued for in small claims court. In Paragraph 17, give the state whose laws will govern the contract. Both parties should then sign the contract.

### **Negotiation Checklist**

- Describe the assignment briefly. (Paragraph 1)
- Give the date of delivery of finished art. (Paragraph 2)
- State that the grant of rights takes place when the illustrator is paid in full. (Paragraph 3)
- Limit the grant of rights and specify whether the client's use of the art will be exclusive or nonexclusive. (Paragraph 3)
- Limit the rights granted to finished art only. (Paragraph 3)
- All rights not granted to the client should be reserved to the illustrator, including rights in sketches and any other preliminary materials. (Paragraph 4)
- The fee plus any sales tax must be specified. (Paragraph 5)
- Detail the nature and amount of expenses that the client must reimburse to the illustrator. (Paragraph 7)
- State the amount of any advance given against expenses. (Paragraph 7)
- Require payment within thirty days of delivery of the finished art. (Paragraph 8)
- State the amount of any advances paid against the fee. (Paragraph 9)
- If the client has changed the nature of the assignment, additional fees must be charged for revisions. (Paragraph 10)
- With respect to revisions or the assignment itself, additional charges might be billed for work that had to be rushed or required unusual hours or other stresses.
- State whether the illustrator's copyright notice will appear with the art. (Paragraph 11)
- State whether the illustrator will receive name credit with the art. (Paragraph 12)
- If authorship credit should be given but is omitted, require payment of an additional fee.
- Fees for cancellation at different stages of the assignment should be restated. (Paragraph 13)
- State that the illustrator shall own all rights in the work in the event of cancellation. (Paragraph 13)
- Specify a time for payment of cancellation fees, such as within thirty days of either the client's stopping work or the delivery of finished art, whichever occurs first. (Paragraph 13)
- Specify that if the illustration is not published within a certain time period, the rights shall revert to the illustrator.
- State that the illustrator owns the finished art and any preliminary sketches or materials. (Paragraph 14)



- If preliminary sketches are published, the fee should increase to the price for finished art.
- If physical art is to be sold, a separate price should be specified.
- Require the client to return the art within thirty days after use. (Paragraph 14)
- Specify a safe method for the return of the art. (Paragraph 14)
- Indicate a value for the art, which can serve as a basis for damages if the client does not take reasonable care of it.
- Require the client to indemnify the illustrator if the client provides certain materials to be included in the illustration but does not request that the illustrator obtain needed copyright permissions or privacy releases or uses the illustration in a way that exceeds the use allowed by the permissions or releases. (Paragraph 15)
- Provide for arbitration, except for amounts that can be sued for in small claims court. (Paragraph 16)
- Review the standard provisions in the introductory pages and compare with Paragraph 17.
- Especially if the client has not signed Form 2, the Confirmation of Assignment, review the negotiation checklist for Form 2.

< Illustrator's Letterhead >

# Invoice

Client _____	Date _____
Address _____	
Client Purchase Order Number _____	Job Number _____

Fee.....	\$ _____
Expenses.....	\$ _____
Revisions.....	\$ _____
Advances.....	(\$ _____)
Balance.....	\$ _____
Sales tax.....	\$ _____
Balance due.....	\$ _____

This Invoice is subject to the terms and conditions that follow.

- 1. Description.** The Illustrator has created and delivered to Client \_\_\_\_\_ illustrations for the following project \_\_\_\_\_
- 2. Delivery Date.** The finished art was delivered on \_\_\_\_\_, 20\_\_\_\_.
- 3. Grant of Rights.** Upon receipt of full payment, Illustrator shall grant to the Client the following rights in the finished art:  
 For use as \_\_\_\_\_ For the product or publication named \_\_\_\_\_  
 In the following territory \_\_\_\_\_ For the following time period \_\_\_\_\_  
 Other limitations \_\_\_\_\_  
 With respect to the usage shown above, the Client shall have  exclusive  nonexclusive rights.  
 If the finished art is for use as a contribution to a magazine, the grant of rights shall be first North American serial rights only, unless specified to the contrary above.  
 This grant of rights does not include electronic rights, unless specified to the contrary here \_\_\_\_\_  
 in which event the usage restrictions shown above shall be applicable. For purposes of this Agreement, electronic rights are defined as rights in the digitized form of works that can be encoded, stored, and retrieved from such media as computer disks, CD-ROM, computer databases, and network servers.
- 4. Reservation of Rights.** All rights not expressly granted are reserved to the Illustrator, including but not limited to all rights in sketches, comps, or other preliminary materials.
- 5. Fee.** Client shall pay the purchase price of \$\_\_\_\_\_ for the usage rights granted. Client shall also pay sales tax, if required.
- 6. Additional Usage.** If Client wishes to make any additional uses of the Work, Client shall seek permission from the Illustrator and pay an additional fee to be agreed upon.
- 7. Expenses.** If Illustrator incurred reimbursable expenses, a listing of such expenses is attached to this Invoice with copies of supporting documentation. Illustrator has received \$\_\_\_\_\_ as an advance against expenses.

**8. Payment.** Payment is due to the Illustrator within thirty (30) days of the date of this Invoice, which is dated as of the date of delivery of the finished art. Overdue payments shall be subject to interest charges of \_\_\_\_\_ percent monthly.

**9. Advances.** Illustrator received \$\_\_\_\_\_ as an advance against the total fee.

**10. Revisions.** The Illustrator shall be given the first opportunity to make any revisions requested by the Client. If the revisions are not due to any fault on the part of the Illustrator, an additional fee shall be charged. If the Illustrator objects to any revisions to be made by the Client, the Illustrator shall have the right to have his or her name removed from the published Work.

**11. Copyright Notice.** Copyright notice in the name of the Illustrator  shall  shall not accompany the Work when it is reproduced.

**12. Authorship Credit.** Authorship credit in the name of the Illustrator  shall  shall not accompany the Work when it is reproduced. If the finished art is used as a contribution to a magazine or for a book, authorship credit shall be given unless specified to the contrary in the preceding sentence.

**13. Cancellation.** In the event of cancellation by the Client, the amount charged to the Client as the fee in this Invoice has been computed as follows based on the fee originally agreed upon: (A) cancellation prior to the finished art being turned in: \_\_\_\_\_ percent of fee, (B) cancellation due to finished art being unsatisfactory: \_\_\_\_\_ percent of fee, and (C) cancellation for any other reason after the finished art is turned in: \_\_\_\_\_ percent of fee. In the event of cancellation, the Client shall pay any expenses incurred by the Illustrator and the Illustrator shall own all rights in the Work. The Invoice upon cancellation is payable within thirty (30) days of the Client's notification to stop work or the delivery of the finished art, whichever occurs sooner.

**14. Ownership and Return of Artwork.** The ownership of original artwork, including sketches and any other materials created in the process of making the finished art, shall remain with the Illustrator. All such artwork shall be returned to the Illustrator by bonded messenger, air freight, or registered mail within thirty (30) days of the Client's completing its use of the artwork. A reasonable value for the original, finished art is \$\_\_\_\_\_.

**15. Permissions and Releases.** The Client shall indemnify and hold harmless the Illustrator against any and all claims, costs, and expenses, including attorney's fees, due to materials included in the Work at the request of the Client for which no copyright permission or privacy release was requested or uses which exceed the uses allowed pursuant to a permission or release.

**16. Arbitration.** All disputes shall be submitted to binding arbitration before \_\_\_\_\_ in the following location \_\_\_\_\_ and settled in accordance with the rules of the American Arbitration Association. Judgment upon the arbitration award may be entered in any court having jurisdiction thereof. Disputes in which the amount at issue is less than \$\_\_\_\_\_ shall not be subject to this arbitration provision.

**17. Miscellany.** This Invoice shall be governed by the laws of the State of \_\_\_\_\_.

Illustrator \_\_\_\_\_

< Illustrator's Letterhead >

### Basic Invoice

Client \_\_\_\_\_ Date \_\_\_\_\_

Address \_\_\_\_\_

Client Purchase Order Number \_\_\_\_\_ Job Number \_\_\_\_\_

Assignment Description \_\_\_\_\_

Fee..... \$ \_\_\_\_\_

Expenses..... \$ \_\_\_\_\_

Revisions..... \$ \_\_\_\_\_

Advances..... (\$ \_\_\_\_\_)

Balance..... \$ \_\_\_\_\_

Sales tax..... \$ \_\_\_\_\_

Balance due..... \$ \_\_\_\_\_

This Invoice is subject to the terms and conditions set forth in the Confirmation of Assignment dated \_\_\_\_\_.