In general
When negotiating, context and identity matter, and don’t let the perfect be the enemy of the good.
Pacta sunt servanda
Verba volent, scripta manent
Over promising has consequences

• scope

• representations and warranties

• indemnification and exculpation

• waivers and limitations of rights
The economic structure matters

- If you watch the pennies, the dollars watch themselves
- payment schedule mismatches
- record keeping & audit rights
- avoid partnerships
Respect the property and rights of others

• potential liability
  – trespass, infringement, invasion of privacy, appropriation of likeness, unfair competition

• red flags
  – real and personal property
  – intellectual property
  – data and privacy rights

• solution, get permission when required
In specific
Website Terms of Use

• Likely binding and not negotiable

• Can grant broad rights to the website

  – ex: “X hereby grants to Y a non-exclusive, fully paid and royalty-free, transferable, sub-licensable, worldwide license to use the Content that you post on or through the Service . . . and you hereby agree that Y may place such advertising and promotions on the Service . . . on, about, or in conjunction with your Content.”
Design services agreements

• Common issues
  – concept phase & design phase?
  – client deliverables and the effect of delay?
  – ownership of final expression / “work for hire”?
  – permissions for third-party materials?

• Sample agreement and discussion:
  http://www.aiga.org/standard-agreement/
Sales of Art & Consignments

• Sales of art objects treated akin to a “good” subject to the Uniform Commercial Code of each State.

• Prints and Multiples may require disclosures.

• Additional rules for consignments:
  – Entrustment rule
  – May be subject to claims from creditors
  – Risk of loss rests with who has possession
Gallery representation and other agents

• Scope of their representation?

• Fiduciary duties
  – loyalty, care, candor, obedience

• Economic structure
  – responsibility for costs and advanced funds?
  – fees?
  – studio sales?
  – record keeping and audit rights?
Fiscal sponsorship agreements

• where a 501(c)(3) oversees the financing of a charitable or educational project by another
  – ex. project educating underprivileged youth about art.

• subjects the project to:
  – oversight
  – record keeping and reporting requirements

• but, the project gets access to funding
Commissions

• Common problems:
  – Maintaining artistic freedom
  – Cash flow mismatch with rate of expenditures
  – Subjective expectations of the Buyer
  – Waivers of moral rights
  – Limitations on collateral sales, ex. small scale multiples?