LETTERS OF AGREEMENT

What to consider for a productive and successful business relationship between an interior designer and their client.

Thyme & Place DESIGN

Sharon L Sherman
ASID CKD CID NCIDQ

INTRODUCTION

When you are running a professional interior design, or design/build firm, it is critically important from the outset that clear communication is established regarding all aspects of your working relationship with your client. That is the purpose of both you and your client signing a Letter of Agreement. It states, in plain language, who is responsible for each aspect of a job, and what each party can expect from the other.

This ebook will take you through the information that should be included in any Letter of Agreement you sign.

DISCLAMER

I am not a lawyer, and nothing contained in this ebook can be considered legal advice. State and local laws will mandate many of the terms of these agreements. Always have an attorney, preferably with experience in the design/build business, review your Letters of Agreement.

Also, check with your attorney to make sure that your letter of agreement is complying with all local, county, state and federal laws in any state or country where you are about to work with a client. This is extremely important if you are doing virtual work or travelling to an out of state location for a client.

WHY LISTEN TO ME?

I am a business owner and professional interior designer. I belong to the American Society of Interior Designers [ASID} which has a code of ethics all members must agree to abide by and was Past President of their New Jersey Chapter.

I am also NCIDQ certified, which means I passed a very difficult test having to do with all aspects of commercial and residential design – including codes – and I am a Certified Interior Designer [CID] in New Jersey as well as a licensed home improvement contractor with more than 30 years of experience in the design/ build business.

Throughout my career I have signed more than 300+ letters of agreement with each client who has chosen to work with my firm.

UNDERSTANDING THE VALUE OF A GOOD LETTER OF AGREEMENT (LOA)

A letter of agreement is an agreement between two parties that puts the terms of the agreement in writing as a means of resolving later disputes that may arise.

Letters of agreement:

* Are written on company letterhead in plain language.
* Provide specific information regarding specific services and the terms both parties are agreeing to.
* Can be written using bullet points, numbered paragraphs, or can be created from a template.
* Once signed by each party, it will become a binding legal document. Each party should keep a final signed copy.
* LOA's are for the protection of both parties.
* LOA's are enforceable in certain states if they contain all of the material terms of transaction and are agreed on by both parties.

HAVE AN ATTORNEY REVIEW ALL OF YOUR AGREEMENTS ANNUALLY TO MAKE SURE THEY ARE STILL IN COMPLIANCE WITH YOUR STATE AND LOCAL LAWS.

Samuel Goldwyn's famous quote "an agreement is only as good as the paper it is written on" has resonated down through the years because it's true. A Letter of Agreement is only as good as the content you have included. Any Letter of Agreement is really there to avoid misunderstandings over who is responsible for a variety of questions I like to call the Who – What – When – Where –Why and How Much of any design/build project.

This ebook is written in a check list format so you can be assured these items are included in any agreement you create or commit to.

LET'S GET STARTED

THE COMPONENTS OF A STRONG LETTER OF AGREEMENT

Before you write your draft or sign a Letter of Agreement, there are 6 important questions to consider regarding what needs to be included based on the project being designed and specified.

THE WHO – the parties involved, the client, subcontractors, vendors, legal entities
THE WHAT – the terms and conditions
THE WHEN – the timelines as dictated by state and local governments
THE WHERE – where products will be stored. How contractors will conduct their work
THE HOW MUCH– compensation and payments

THE WHO

This should be the first part of the agreement. It will include the names and addresses of the involved parties and their contact information. This section will also include what is known as the *scope of work* and general conditions. This will include specific information as it relates to the project.

THE SCOPE OF WORK AND GENERAL CONDITIONS

Specify who is responsible for approving all aspects of the design, including:

* Who will be approving the selections and the budgets? What signatures are needed and who is writing the checks?
* What type of payment is accepted?
* What is/are the rooms to be included?
* Who should be at project meetings and where, when and how will meetings take place?

A description of the services should be expressly outlined including what is and what is not included in the agreement.

EXAMPLE

"John and Mary Smith will jointly approve all selections and budgets. All custom designs must have the sign off of both John and Mary Smith.Mary Smith will be making all payments to Thyme and Place Design. Thyme and Place Design will accept the following forms of payment _____, with the following terms_____.

We will provide the following services for the interior design and remodel of your kitchen_____, _____, _____, All meetings will take place at John and Mary Smith's home between the hours of _____ to discuss selections. Final material selection must be made at the supplier for tile, appliances, and stone during regular business hours. Virtual presentations by Zoom or Skype may be made for floor plan and elevation review. If necessary, arrangements can be made for work outside of normal business hours, but these will be charged at a higher rate of _____."

Communication is a very important component of the success or failure of any design/build project. There should be very specific details regarding the communication aspects of your project.

* What are the hours of business? Define in writing what is considered a timely response, both for email and text, during the week, on the weekends and during your planned vacations and major holidays.
* What type of communications are best? Do you prefer email only so there is a paperwork trail? Or, are you also okay with text? If you're not okay with text, write that into your LOA.
* What are the hours of construction?
* When will contractors arrive and depart? Where should they park?
* Will construction work be allowed on weekends or holidays?
* Who fields questions about a project? Is one person responsible for all communications or will several people oversee communications? If several people are overseeing communications, define who has final authority for each aspect of the job.

GENERAL CONDITIONS

DELAYS AND ACTS OF GOD

It's important in your Letters of Agreement to specify what happens when there are unexpected fees due to delays caused by the pandemic, supply chain issues, storms, flooding, labor strikes – in other words, events you have no control over.

* Who pays for storage, redelivery charges, damage repair?
* What are the costs and who will be billed for these costs?
* What if existing equipment is being reused? Sometimes older products just do not like to be uninstalled and reinstalled.
* Who is responsible for that equipment? In our agreements, we do not guarantee that items can be used or will work once they are reinstalled.

LEGAL CANCELLATIONS OR EXTENUATING CIRCUMSTANCES

* What happens if someone must cancel any part or the entire project?
* Can the project be cancelled beyond the requirements of state and local government? In our state, the purchaser has 3 business days to cancel an agreement without penalty.
* If extenuating circumstances should occur, what is the financial responsibility of each party?
* What is an extenuating circumstance?
* Will cancellation charges be billed and how are the design and expediting costs of the project to be billed?

If your client decides to delay decisions because they can't make a decision, define in your Letter of Agreement what the **interruption in flow of work schedule** will entail, from a standpoint of billing.

WARRANTIES

* Who is responsible for the warranty coverage of materials, and will that include labor costs?
* What are the terms of the manufacturer's warranty?
* What is the timeline to correct warranty issues?
* Who is responsible for packing, shipping, delivery and re-delivery?

NOTE

For the products we design and specify, all warranty coverage is provided by the manufacturer and any labor and shipping costs incurred are the responsibility of the client.

DELIVERIES

* Who is responsible for the receiving of all material to the job site?
* Who schedules the deliveries?
* Who is responsible for damages at the time of delivery and once the materials are received at the job?
* Where will the materials be stored (and at what temperature)? For our projects, tile, hardware and fittings and fixtures are very happy in a garage – our cabinets are not. They need to be kept in a temperature-controlled environment with a minimum temperature of 55 degrees Fahrenheit. Who wants new furnishings left in a damp garage?
* What is the job site access? How will contractors gain access to the job site?
* Will the client always be home or can you install a lock box? Don't forget an alarm access if there is one.
* If working in a gated community what are the access requirements and work hours?
* Where will tools and equipment be stored during the remodel?
* Who is responsible for loss or damage to any equipment left on the jobsite?
* Who is responsible for the condition of materials once received at the job site?

CHANGE ORDERS AND CONCEALED WORK

Change orders and additional work must always be approved in writing. Define a change order process. Who will approve change orders? Is it the same person signing the check, do you need the input and/or signature of the architect or engineer or subcontractor? Be specific about what you want, and what the client wants. In many states an email confirmation or signed PDF is acceptable but check with your attorney re: what your local and state laws require.
Concealed work in existing conditions is subject to material and labor costs to rectify those conditions. An example of concealed work would be termite damage, old non-compliant electrical wiring, the presence of asbestos, leaking pipes, damage from animals like birds, squirrels, or mice. Make sure wording is included in your letter of agreement defining how concealed damages will be billed and figured into the budget.

INTELLECTUAL PROPERTY

Defining ownership of the plans, the designs, any photography taken of the space, before, during and after the project is a very important part of any letter of agreement.

Specifics relating to this part of the agreement should include:

* Who owns the rights to the design and its components?
* Who owns the professional photography?
* How can the photos be used and who can use them?
* Will the project be seen on social media?
* Who can make those posts and how do those posts need to be tagged?
* Can the final project be publicized and what are the terms for publication?

We do not reveal the name and the address of our clients, but we will mention the town, county or state. Make sure that any web-based photos do not contain personal information for the client.

PROFESSIONAL CONDUCT

Define how you will treat your client, and how you expect your client to treat you and your team. Define exactly what is and isn't acceptable and what will happen if the terms are breached. Be specific about time frames and money.

THE WHAT

THE MATERIALS

Approval of all the finishes being used in the project must require a written sign off. Again, specify in this section who is responsible for sign offs.

* This includes paints, stains, hardware tile, stone, wood, fabric, anything that may have even the slightest variation. Explain in your LOA that natural lighting, time of day and lightbulbs [LED, incandescent, fluorescent, etc.] can vary the way a finish will look when it's installed.
* Include a clause stating that there may be variations of wood grain, patterns and textures in stone, tile, metal and other natural material and that these are beyond anyone's control.
* Include a clause that states you will always secure cutting or samples for approval to the best of your ability. Include a clause stating that color and dye lots for fabrics and tiles may have a slight shading difference.
* Discuss if the client wants you to always order an extra amount of specific materials, and how much, in case of future damage from floods, storms, tornadoes, wear and tear, etc
* Always get approval in writing not only for all materials being ordered or specified for the project, but all construction drawings including floor plans, elevations, election specification sheets and anything with dollar amounts attached.

THE WHEN

THE TIMELINE

In many states each LOA must state a start and completion timeline. Find out from your attorney what the local and/or state laws require. Once you know what's legally required, then

DEFINE

When the project will begin. For some, this may be at the time of the contract signing, or it may be based on the availability of materials and products (remember the delays clause).

* How long will the project take from start to finish. Some states require a specific start and end date. Again, define what happens if there are delays due to acts of God, unforeseen circumstances, etc. as outlined in Section 2.
* Define what happens if there are delays due to your contractors getting sick, or their teams getting sick or sustaining a serious injury.
* How long each phase of the process will take, when presentations will be made and how long your clients have to make decisions, before they must incur an *interruptions* fee.

THE WHERE

This section may vary depending on whether this is a design only agreement or if there are remodeling services being provided.

LOGISTICS

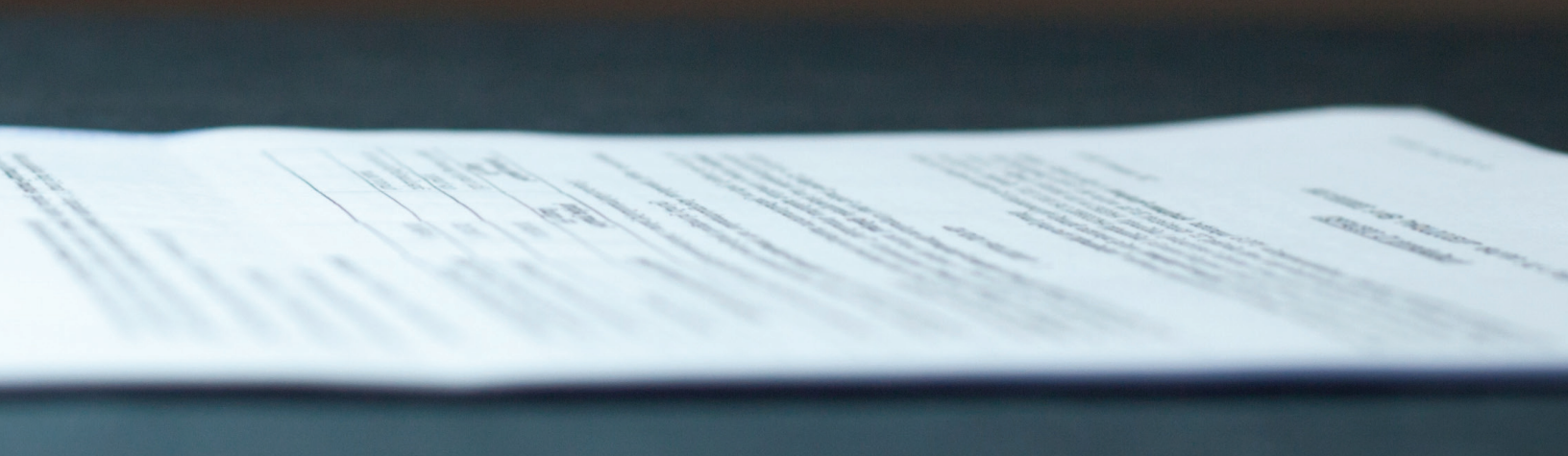
This is a very important component of your LOA and oftentimes overlooked. These are the details that can make or break a job and the working relationship of everyone involved with the project.

* Once ordered, where are materials stored before they are received at the jobsite? For our cabinetry and furnishings, we have everything delivered to a receiver who holds the products until we are ready to have them received at the jobsite.
* If a dumpster is required – where that will go and what can and cannot go into that dumpster? How often will it be dumped? What kind of access will be needed for the dump truck? What hours can the dump truck access the dumpster?
* How long will that dumpster remain on the jobsite?
* Will workers have access to a bathroom or will a *port a john* be necessary? This would be an additional expense. Define where it is to be located on the property.
* Who is responsible for inspecting the materials once they are on the jobsite? Who signs off, on the jobsite, that the materials were received in good condition? If the materials are to be stored on the jobsite for any length of time, who is responsible for inspecting them for damages before they are installed?

JOBSITE CONDITIONS

This is a big one.

* How is dust controlled? Where there is remodeling going on, there will be dust. Define what precautions are taken to reduce dust as much as possible.
* How is asbestos, if present, addressed? Asbestos abatement is an important detail of any remodeling project and state and local laws are very specific on this matter.
* How are other areas of the home protected from the construction portion? Define this carefully. We always tell clients to remove pictures and fragile items from the surrounding areas as construction brings noise, dust and vibration which can easily cause things to fall.
* Specifically, no bare feet are allowed in a construction area.
* Is the job broom swept at the end of every day? Whose responsibility is this?
* How will children and pets be supervised during construction hours? For our jobs, we do not allow them onsite during construction hours as it's not safe because there are power tools, bits of wood, wire, nails and construction debris laying around and we are not comfortable with assuming any liability for their actions. Define this in your letter of agreement very carefully.



THE HOW MUCH

COMPENSATION

The part of the Letter of Agreement addresses the who, what and how related to compensation for the work and materials involved with the project. These terms should be very specific on what is involved with compensation for the designer, the builder, the construction team, and anyone else involved with the project.

* Payment terms for the project.
* When will payments be due?
* How will the billing be handled?
* What type of payments are acceptable? Check, cash, credit card, Paypal, etc., wire transfer, etc.
* What materials or services will the designer, contractor, architect be compensated for? Provide a clear schedule of compensation for each phase of a project: initial consultation, design concept, construction documentation, construction management [if you offer that service], renderings, materials selection, general administration, procurement management and purchasing, receiving, delivery and installation, styling, photography, etc.
* Define how you are being paid, flat fee, hourly on materials and what is the percentage of each product or service you or your firm is providing.
* Final contract totals and what they are based on.
* Terms and conditions for freight, packing, receiving and delivery charges.
* Cancellation terms – define if and when a client can cancel and what is owed if they cancel. Define what is owed to the client if you need to cancel. Check state and local laws.
* Compensation terms for purchasing specified products.
* Clearly specify who is specifying and supplying everything including the conditions of those specifications.
* If the designer is specifying a product and the client goes and purchases that product on their own what happens? Is there still compensation for that product?
* If the contractor specifies materials and the client purchases them, who is responsible for the receipt, payment, delivery, and receipt of those products.

MISCELLANEOUS ITEMS TO CONSIDER ADDING TO YOUR LETTER OF AGREEMENT DEPENDING ON YOUR PARTICULAR BUSINESS AND YOUR STATE AND LOCAL LAWS:

* Terms and conditions for when, where and for how long an architect, engineer or sub-contractor must retain drawings – especially when modifications are made to original plans.
* Your own drawings may not be legally allowed to be used for architectural or engineering purposes – depending on the state. Always check.
* Check what the rule of law is in your state regarding the use of 3D renderings as a construction drawing. In many states renderings are considered an artistic interpretation and not a construction document and may not be enforceable.
* Licensing and insurance. Who carries the insurance, how much is needed and is everyone on the job required to be licensed?
* Are construction liens against the property you are working permitted in your area? Check your state and local laws.
* What are the out of state compliance requirements for live as well as virtual agreements?
* Job completion documentation. Specify what the client will receive once the job is completed.
* Permit requirement for the project. Who is responsible for obtaining and paying for permits?
* If permits are required, who is responsible for scheduling the inspections?
* If there is an issue with any part of the agreement during the working process, how will it be mediated and in what jurisdiction? Who will have final say?

FINAL THOUGHTS

Remember that a Letter of Agreement is for everyone's benefit. It's there to define all of the aspects of the project you are about to embark on with your client. It should clearly outline what will happen, when it will happen, how it will happen, what is involved and what it will cost if unexpected situations arise. If something does arise during the project, hopefully it will be amicably resolved.

Always remember:

* Each state has their own set of rules regarding buyer remorse and some states have rules on how monies collected should be handled. Always consult with an attorney in the state in which you are doing business.
* All agreements should be reviewed annually by an attorney – preferably one familiar with the design/build industry.
* Never sign any agreement without reading it first and do not allow your client to quickly sign your agreement and return it to you. It's always better to go over it with them, line by line, and have them sign on each line, than to run into problems later.

Clarity up front provides for a positive, ethical and enjoyable working business relationship.

GRATITUDE

Thank you for purchasing this ebook. I hope this information has been helpful to you and If you have any further questions, you can reach me at **sherman@thymeandplacedesign.com**

Sharon L Sherman

ASID CKD CID NCIDQ

thymeandplacedesign.com

CONNECT WITH US
Thyme & Place
DESIGN