

Free drafting of contracts checklist

There are different types of contracts for different employment relationships, live performances, collaborations, projects, sales etc. Although many artists, creatives and other people engaged in the cultural sector find contract negotiations bothersome, it is advisable to formulate and specify in writing the main rights and obligations of the contracting parties during the contract initiation phase.

This checklist offers information for contract negotiations and the free drafting of important contractual components in the international cultural sector, e.g. for artist, guest performance, engagement, concert, service, coproduction, licensing, and purchase contracts and agreements, etc. German law generally provides for freedom of contract, i.e. anyone has the right to conclude freely composed contracts. The checklist below provides some pointers to assist with this process.

Note: The checklist is neither complete nor can it replace expert legal advice. The information on individual components are for orientation purposes only and are meant to provide guidance for the drafting of international contracts. Contractual clauses must always be adapted to the individual case and examined for their suitability with regard to the specific use.

Tips regarding key contract components and explanations thereof

Contract language

The contract should be concluded in a language that is understood by all contractual partners. Translations into the respective languages of the contracting parties may also be provided.



If several language versions are provided, the contract must stipulate which version is binding in order to have a legal means of dealing with translation errors, for example.

Object of agreement

Precise description of the work or service to be delivered.

Description of the purpose for which the work/service will be used. Details of the event, exhibition, or tour including time, place etc.

Identification of the completion period or date, date of performance, or loan period.



When will the rehearsals take place? When will the performance take place? How long will the performance last? When should the artist arrive? Exhibition period, duration of the performance, setup and takedown time etc.

Contracting partners

Details of the contracting parties including addresses and, in the case of legal entities, the legal forms and agency relationships.

Is the artist himself/herself, an agency, a guest performance company or a gallery owner the contracting partner? Who is the contact person?



Booking or management agencies act as representatives of the artist. Do they have the authority to make contractual arrangements?

Price/fee/remuneration

Specification of the agreed price, fee, remuneration, licensing fee etc.



With regard to income tax, it should be noted that the taxation of cross-border payments is regulated differently depending on whether a double taxation agreement is in place between the contracting states, whether the contract is a service agreement between two companies, and depending on the type of service or activity being remunerated. It is important to observe regulations that determine whether the tax must be paid in Germany or in the other respective country and who is the tax debtor. This may prompt the question of whether gross or net remuneration should be agreed upon in the contract. The issue of income tax for activities abroad is a complex one. Please see the detailed information under [Income Tax](#)

Does the price for the service, work, use etc. include value added tax?



Which contracting party must tax the revenue and where? In the case of the cross-border provision of goods/services, the question of whether the recipient is a business person or a private individual is relevant. It may also make a difference whether he or she is resident in the EU or in a country outside the EU. In the case of taxation abroad, the respective national VAT rate applies. The questions regarding VAT in this context are no less complex. Information on this subject, including the reverse-charge procedure, can be found [here](#)

Which currency will the payment be made in (euros, dollar etc.)?



Some currencies are subject to export restrictions!

What exchange rate will be applied?



In view of economic fluctuations, the exchange rate should be contractually fixed, e.g. rate at the time the contract is signed ([Oanda currency converter](#))

What is the agreed payment method?



Many countries restrict cash payments. Foreign cheques may be subject to high fees and may not be accepted by some banks. Payment by transfer (bank, WesternUnion etc.) or online payment via services such as PayPal, Giropay etc. are usually secure forms of payment. Fees and transfer times vary depending on the bank or payment service, the currency and the amount.

When must the payment be made? Must the total amount be paid or will instalments be acceptable?

Detailed billing address.



It is quite common to have a copy of the bank transfer slip sent to you on the day of the performance or on the agreed payment date.

Please note that the recipient is obliged to pay the tax owed on the fee.

Visa

Who will take care of the necessary formalities such as issuing an invitation, letter of reference, if necessary, travel health insurance etc.?



The visa application must always be completed and submitted by the traveller himself/herself.

Who will pay the visa fees, the additional fees for the Visa Service Centre of the diplomatic mission, any travel expenses incurred if the applicant has to travel to the embassy or consulate – especially considering the possibility that the authorities may not actually issue the visa?



The application sometimes requires one or more trips to another country, for example if there is no competent diplomatic mission in the country of residence. This can involve considerable costs, especially in the case of ensembles for whose members visas must be obtained.

Information about Visa and Stay can be found on the touring artists website [here](#)

Work permit

Who will apply for the work permit?

Who will cover any costs that may arise in connection with obtaining a work permit?



It must be determined whether a work permit is required and, if so, for whom. Information on this topic can be found on the touring artists website [here](#)

Travel/accommodation/meals

Who will be traveling?



The name of the artist should be included in the contract in the same spelling as in their passport, especially if he/she performs using a pseudonym or stage name. The following is important when booking flights or train tickets: If the names on the various documents do not match, it is almost certain that the airline will refuse boarding due to security regulations.

From where and to where will the person(s) in question travel? Precise definition of the travel route.



Subsequent changes to the travel route of the artist may involve significant costs (more expensive fares, rebooking costs or expiry of tickets that cannot be changed or cancelled).

Which party is responsible for booking the trip? Who pays?



When it comes to the costs, the specifications of the funding agency must be taken into account, if applicable.

Will a mileage allowance be paid for travel by car? If so, how much?



The specifications of the funding agency, if any, must be taken into account.

Where will the artists, technicians etc. stay? Attach a list with the number and types of rooms, such as single/double rooms, including or excluding breakfast, hotel category etc.

Which contracting party is responsible for booking the accommodation?

How will the accommodation be paid for?



When it comes to the costs, the specifications of the funding agency must be taken into account, if applicable.

Many hotels will not agree to the transfer of accommodation costs by the organiser, but require advance payment or payment upon check-in. This can lead to unpleasant surprises for the traveller if a payment is still outstanding but the funding agency is not available, e.g. upon arrival late at night.

Will the organiser provide catering? To what extent?



Also note any dietary restrictions (vegetarian, vegan, kosher, food intolerances etc.).

Are the costs of meals and drinks included in the fee?

Will a daily allowance be paid? If so, how much?



The specifications of the funding agency, if any, must be taken into account.

Technical plan

What instruments, materials or equipment are required? A technical plan should be attached to the contract.



This plan should be written in a language that can be understood by the contracting parties and should be as accurate as possible. Be sure to take into account the technical standards in the country of performance (current, noise protection regulations, etc.). If necessary, provide alternative technical and equipment specifications.

Which contracting party will provide which equipment?

List the necessary backline to be provided by the organiser.



Rental costs for additional materials and backline requested after conclusion of the contract or on site are often charged to the artist; this must be specified in the contract. There are some countries in which material and backline can only be rented at great expense or not at all!

Will the organiser provide technical support personnel? To what extent?

Transport of artworks, instruments, equipment and stage design

Will musical instruments, works of art, equipment, stage design etc. need to be transported?

Who will organise the transport? Note addresses for outward and return transport.

How will the items in question be transported (self-transport, forwarding agency, courier service etc.)?

Who will pay for the transport and any import duties, deposits etc.?



Information about travel, transport and customs can be found on the touring artists website [here](#)

How will the artworks, instruments, equipment and stage design be insured during transport and the event/stay? Is additional property insurance required? Who must take out the insurance policy?



Relevant policies must be attached to the contract. Information about property insurance can be found on the touring artists website [here](#)

Organiser's liability insurance/business liability insurance/professional liability insurance

What kind of insurance is required? Which contracting party must take out and submit an additional insurance policy, if any?



In the case of existing insurance policies, the scope of the insurance cover must be examined and, if necessary, extended to cover cross-border activities. The corresponding policy should be attached to the contract.

Additional information on insurance policies can be found on the touring artists website [here](#)

Damages/liability in the event of cancellation

Who is liable for damage to works of art, instruments, equipment?

Who is liable for losses due to force majeure (fire, extreme weather, persistent loss of transport facilities, strike, lawful or unlawful actions by an authority etc.)?

Who is liable in case of illness?

Regulations in cases where one of the contracting parties is at fault.



Additional information on contracts can be found on the touring artists website [here](#)

Additional information on insurance can be found [here](#)

Social insurance contribution obligations

Since social legislation is governed by national law, a clause to this effect should be included in the contract.



Social security systems are harmonized within the EU; however, it may be necessary to submit an A1 certificate in order to avoid double payment of contributions. For information on social security issues – including for collaborations across EU borders – see the information in the [Social Security](#) section of the touring artists website.

Social security contributions for artists: If an artistic or journalistic service is provided in Germany, the organiser or collaboration partner in Germany is obliged to pay the artist's social security contributions (Künstlersozialabgabe, KSA). The KSA must be paid by the organiser; it must not be charged to the artist. See the ["Künstlersozialabgabe": Social Security Contributions for Artists](#)

Insurance in case of illness/accident insurance/transport back to the home country

Each contractual partner should have a valid international health insurance and accident insurance policy (valid abroad), in particular to cover transport back home in an emergency.



Append the policy to the contract.

Information on health insurance cover abroad can be found [here](#).

Copyright

Mention of the author: Note regarding the correct procedure for naming the author, e.g. on advertising materials, in documents or catalogues etc.

Rights of use: What will be used and for what purpose? Determine the fee or remuneration payable for the use of the works (see also Price/fee/remuneration).

Resale of artworks and licensing of compositions and productions: The artist must receive a share of the proceeds of any such sales; the percentage should be specified in the contract.



The range of possible copyright issues is broad, depending on the service, work, agreed collaboration etc. the touring artists website provides some advice with regard to [copyright](#)

Press and public relations

Which contracting party will undertake which advertising measures? What sound, image and text material must be made available for this purpose?

Confidentiality/data protection

Add a note that information must remain confidential even after termination of the contract.

Add a note on the collection and storage of data.

Termination/cancellation of the contract

Document agreements on deadlines and reasons for termination.

Law/jurisdiction

This contract shall be subject to the law of ... , for example, the Federal Republic of Germany.

The place of jurisdiction is the domicile of ...



If possible, the parties should agree on the law that the company/artist is familiar with – the law of its/his/her country of residence. This is also useful with regard to the jurisdiction clause, since it means that the law of the ensemble's/artist's country of residence can be applied in the event of a dispute.

touring artists provides a number of **annotated model contracts** for use in the fields of performing arts and visual arts. These can be found [here](#) in the right-hand column under "Documents".