

## Guest performance agreement – annotated model contract also suitable for guest performances abroad

*The present Agreement is a model contract for guest performance contracts customary in the performing arts sector in Germany. The annotations (in boxes) provide additional information on guest performances abroad: They are based on the example of an agreement drawn up in Germany between a **German company** and an **organiser abroad**. Accordingly, annotations have been added, making note of what has to be considered and taken into account with regard to such a cross-border guest performance agreement.*

*There are also paragraphs and references that are relevant for the opposite case (a foreign company gives a guest performance in Germany) – for example § 7 on social security contributions for artists (Künstlersozialabgabe).*

*Disclaimer: The touring artists editorial team shall not be liable for the completeness of the model contract nor its suitability for use and shall not be responsible for ensuring that it duly reflects the interests of any specific user. It also assumes no liability for ensuring that the contractual content is up to date.*

*touring artists wishes to expressly point out that model contracts can only act as a starting point for an optimal final draft in any specific case of use and generally cannot be adopted without review but must rather be adapted to the individual requirements in each case. Model contracts are intended to be used for orientation and inspiration. Their use cannot replace expert legal advice under any circumstances.*

*Last updated: January 2019*

*Annotation: It is essential that the contract is concluded in a language that both parties can understand. If one of the parties insists on concluding a contract in a language that the other party cannot understand, a translation of the contract must be provided in a language that both parties understand. If such a translation is provided, the agreement must stipulate which version (language) is binding in order to have a legal means of dealing with translation errors, for example.*

### The following guest performance Agreement is hereby concluded between

Name: .....

Address: .....

Represented by:

.....,

hereinafter referred to as **Organiser**,

and

Name: .....

Address: .....

Represented by:

.....,

hereinafter referred to as **Company**.

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## § 1 Object of agreement

The object of the Agreement is the following performance of the Company:

Title and premiere of performance: .....

Location: .....

Date(s) and time: .....

Duration: .....

Cast: .....

## § 2 Organiser fees/services

2.1 The Company shall receive a total fee of ... euros (..... euros) net for the performance(s) specified above.

The Company agrees to pay tax on the total fee paid.

*It should be noted that the fee of the performing artists (artists "on stage") may be taxed by the country in which the performance takes place; see also the annotation pertaining to "Foreigner tax" under Point 2.1 of this model contract.*

*The country in which the artists reside (country of residence) must take into account the income tax paid in the country of performance. Further explanations can be found on the touring artists website here: [Income tax > Business to Germany](#) and > [Business abroad](#).*

### **"Ausländersteuer" ("Foreigner tax" or withholding tax)**

*It is important to consider how the right of taxation is assigned between the Company's country of residence and the country in which the performance takes place (country of performance): the country that is allowed to tax the income depends on existing double taxation agreements as well as on the specific activity being performed. The following special regulation, which is the same almost worldwide, applies to performing artists: the country of performance may levy income tax on the fee – i.e. a tax known as "foreigner tax" (also: withholding tax or tax deduction at source) is payable. Accordingly, it may be necessary to divide the fee into fees for performing artists (artists "on stage") and artists creating works (artists "behind the stage"). The latter include set designers, for example.*

*If withholding tax is payable, there are two payment options for the fee (the option chosen must be specified in the contract):*

- a) *A net fee is agreed upon: any taxes incurred will be paid separately by the organiser and will not be deducted from the fee.*
- b) *A gross fee is agreed upon: all taxes are included in the negotiated fee and will be deducted at source by the organiser. Only the amount less taxes will be paid to the company.  
Note: Tax rates vary widely from country to country. If a gross fee is agreed upon, the exact tax rate should be clarified in advance.*

*The country in which the artists reside (country of residence) must take into account the income tax paid in the country of performance.*

*More information about withholding tax in Germany (including calculation and phrasing examples) can be found here: [Income tax > Business to Germany](#) and > [Business abroad](#).*

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**Value-added tax**

- a) **Value added tax within the EU:** if a business that is subject to value added tax (e.g., a company) headquartered within the EU provides a service to a foreign company (e.g., an organiser) within the EU, the reverse-charge procedure applies; i.e. the turnover is not subject to value added tax in the company's country of residence, but the organiser is obliged to pay VAT as the payment debtor; the company therefore does not list VAT on its invoice.
- b) **VAT regulation for organisers from third countries:** if a company based in Germany provides a service to an organiser outside of Europe, this service is not subject to VAT in Germany.

Further information about value added tax and options for exemption from value added tax can be found [here](#).

**Payment abroad and exchange rate fluctuations**

If the guest performance takes place outside of Europe, it may be difficult to claim payment of the fee from abroad afterwards. Therefore, you should insist on payment in cash at the venue if possible.

In order to avoid the risk of exchange rate fluctuations, it is recommended to conclude a fee agreement stipulating the euro amount. If fees are agreed in another currency, a minimum exchange rate on a certain date should be stipulated and, if applicable, the agreement should include a note that the organiser shall bear the risk of exchange rate fluctuations. In order to avoid the risk for both sides, the organiser could be asked to acquire euros at the time of signing the contract. This way, both sides know how high the actual costs/revenues will be and the fee will be paid in cash (euros) after the performance.

Note: Cash amounts exceeding 10,000 euros must be declared at customs and their legal origin must be proven.

Tip: For increased security, the company may transfer money to itself from abroad via WesternUnion (please note that fees apply for this service!).

The Company will issue an invoice to:

.....  
 .....  
 .....

[Billing address of the Organiser]

The invoice will be paid:

immediately after completion of the service/no later than ..... days after receipt of invoice (+)  
 in cash/by bank transfer to the following account (+):

.....  
 .....  
 .....

[Company account details]

**(+) delete where inapplicable**

2.2 In addition, the Company shall receive daily expense allowances in the amount of ... euros per person, payable on site in cash/by ... (date) by bank transfer to the following account (+):

.....  
 .....  
 .....

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**(+) delete where inapplicable**

Furthermore, the Organiser shall bear the cost of the trip/flight and accommodation for the persons specified below.

*The agreement should contain a detailed breakdown of the daily expense allowances (i.e. number of travellers x days). It should also specify how overnight stays will be handled: the number of people travelling and the number of single and double rooms required should be listed.*

*In the event that the organiser agrees to make the bookings, it should be agreed that no booking will be made without prior coordination. If necessary, the maximum duration of the trip, the maximum number of connections or ideally the booking of a direct connection will be agreed upon in order to avoid unnecessarily long travel times.*

*In the event that the company agrees to make the bookings, an advance payment for travel expenses should be agreed upon so that the company does not have to advance the total costs.*

*In cases where additional funding is received from institutions or foundations (e.g., guest performance funding from the Nationales Performance Netz – NPN), the requirements of the sponsors must be taken into account. If the company receives public funding in Germany, the regulations of the Federal Travel Expenses Act must be observed when calculating daily expense allowances and accommodation costs.*

List of travellers:

	<u>Name</u>	<u>Position</u>	<u>Date of arrival</u>	<u>Date of departure</u>	<u>Single/double room(s)</u>
1					
2					
3					
4					

*It is recommended that a manager be included. The options in this regard certainly depend on the financial circumstances of the organiser. While in some countries, e.g. France, this may hardly be cause for discussion, in others it may be difficult to enforce. If it is not possible to take a manager along, contact persons should be determined for arrangements in advance and for the duration of the time spent on site.*

The Organiser shall pay the Company's travel expenses up to a maximum amount of ..... euros.

In addition, the Organiser shall pay transport costs up to a maximum amount of ..... euros.

*Note: Please research the maximum sums carefully before concluding a contract. Do not exaggerate, but also do not budget too tightly. A certain inflation factor between the time of research and the time of booking should be taken into account.*

2.3 The Organiser is not subject to any further claims (also from third parties). The contracting parties agree to treat the fee amount and other agreements as confidential.

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### § 3 Technical requirements

The Company shall submit a detailed technical plan by .../.../... [date]. This technical rider shall be a binding part of the Agreement – see Appendix.

In addition, the Organiser shall make available all technology and staff listed in the technical rider.

*Any necessary costume cleaning or assistants should be mentioned here, for example.*

Should the stage, light and sound facilities at the performance venue be inadequate, adaptations will be made in consultation with the Technical Director of the Company (for contact details, see Technical Rider in the Appendix). Any additional material required shall be provided by the Organiser or shall be brought along by the Company against payment of the related costs by the Organiser.

The stage shall be available on .../.../... [date] for set-up and rehearsal.

The set-up and rehearsal times for this day and the day of the event shall be agreed in advance between the Technical Director of the Company, ..... [name and contact details], and that of the Organiser, ..... [name and contact details].

### § 4 Advertising/PR

4.1 The Company agrees to provide the Organiser with photo and press materials and publication rights free of charge no later than .../.../... [date].

4.2 The Company confirms that it has obtained the rights to the image material (photo and video) and that it will make the image material available to the Organiser or the responsible press offices free of charge in connection with the performance for the purpose of documentation, PR, advertising (in print, TV, radio, on the Internet, etc.) worldwide and for an unlimited period. Additional remuneration may have to be agreed on for other unforeseen uses, e.g. by television or radio stations or the press, that are not directly related to promoting the performance(s). Use of the photographic material shall only be permitted provided that reference is made to the photographer/videographer. A separate agreement regarding the use of the advertising material must be concluded for any use beyond the immediate promotion of the event agreed upon here.

4.3 Furthermore, the Organiser reserves the right to use recordings exclusively for documentation/PR (including on the Internet) – without temporal or spatial restrictions. The Organiser shall be entitled to produce video recordings of the performance no longer than three minutes in duration/in full length format for documentation purposes (+).

**(+) delete where inapplicable**

4.4 The Organiser agrees to take the usual advertising measures.

### § 5 Copyright (performance rights, royalties, GEMA performing rights society)

5.1 All copyright claims of the Company shall be settled upon receipt of the performance fee. If the performance rights lie with a third party, the Organiser shall conclude a separate performance contract with the rights holder (e.g. author) or his/her representative (e.g. publisher) (+).

**(+) delete where inapplicable**

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5.2 The Organiser agrees to pay fees to collecting societies (e.g. GEMA performing rights society or the like) in accordance with the laws applicable in the country in question. Such payment shall not be deducted from the fee. The Company agrees to provide the Organiser with a list of musical pieces including title, length and composer (detailed GEMA performing rights society list) by the date of the first performance or to inform the Organiser if the music used is not protected by GEMA, its contractual partners or its partner organisations.

5.3 The Company shall guarantee the securing of all copyrights and ancillary copyrights. The Company shall indemnify the Organiser against any claims asserted by third parties.

## § 6 Insurance cover

6.1 The Organiser shall take out liability insurance for organisers.

*In general, care should be taken to ensure that the organiser has taken out its own organiser's liability insurance. However, different rules apply in some countries, e.g. in England and Ireland, where invited companies are obliged to insure themselves. In such cases, the company should check whether it makes sense to take out a professional liability insurance policy – this is usually recommended. In some cases, however, the standard insured sums in Germany are not as high as the sums required by foreign organisers, so that even where there is an existing professional liability insurance policy in place, separate insurance policies may sometimes have to be taken out for a guest performance. If the company has to take out a separate professional liability insurance policy for the guest performance, the costs should be borne by the organiser (e.g., by increasing the fee accordingly). Additional information on liability insurance can be found on the touring artists website [here](#).*

6.2 The Company shall be responsible for providing (international) health insurance and accident insurance cover for all participants.

*Social security systems are harmonised within the EU; however, an A1 certificate must be applied for and submitted in order to avoid double payment of contributions. Additional information about social security within the EU can be found on the touring artists website [here](#).*

*Information on insurance obligations beyond EU borders can be found [here](#) and information on international insurance cover can be found [here](#).*

*Information on accident insurance can be found [here](#).*

## § 7 Social security contributions for artists (Künstlersozialabgabe or KSA)

Under German law, the Organiser is obliged to pay social security contributions for artists (Künstlersozialabgabe) to the artists' social security fund (Künstlersozialkasse) for the fee received by the Company. These contributions shall not be deducted from the fee.

*Note on the geographical area in which this applies: social security contributions for artists (Künstlersozialabgabe or KSA) must only be paid if the event takes place in Germany!*

*Note regarding foreign organisers: even if the event taking place in Germany is mainly being organised by a foreign entity, the German partner (e.g., the landlord of the venue) is obliged to pay the social security contributions. The foreign organiser cannot be made liable for payment of the contributions.*

*More information about social security contributions can be found [here](#).*

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## § 8 Confidentiality and data protection

The contracting parties shall treat as confidential any information relating to the other party obtained as a result of their collaboration, even after termination of this Agreement. The contractual partner agrees to the collection and storage of his/her personal data to the extent necessary for internal processing and documentation.

## § 9 Liability in the event of cancellation

### 9.1 Liability in case of force majeure

If either party refuses to fulfil their obligations under this Agreement because a problem has occurred which (a) neither of the parties could reasonably have influenced, (b) the terminating party could not reasonably have foreseen or taken into account at the time the Agreement was entered into and (c) which cannot otherwise reasonably be avoided or overcome (force majeure), neither party shall owe the other party compensation for costs and expenses incurred in connection with this Agreement. All advances shall be refunded. All costs already incurred shall be paid by the Organiser: transport/travel/accommodation costs (+).

**(+) delete where inapplicable**

It shall be presumed that the conditions in (1) a)-c) are fulfilled if at least one of the following problems occurs: war/armed conflict or serious risk thereof, terrorist attack, lawful or unlawful act of an authority/state authority, natural disasters, explosion, fire, sustained loss of transport facilities, strike.

### 9.2 Liability in case of illness

If, as a result of illness or accident, the Company is unable to fulfil its obligations under this Agreement, the right to any payment shall be forfeit. In case of doubt, a medical certificate shall be presented to the Organiser. All costs already incurred shall be paid by the Organiser: transport/travel/accommodation costs (+).

**(+) delete where inapplicable**

### 9.3 Liability in case of fault

In the event of culpable non-fulfilment of the Agreement by one of the two contracting parties, a contractual penalty in the amount of the net fee agreed shall be paid to the injured contracting party by the party at fault.

In the event of culpable non-fulfilment of the Agreement by the Organiser, the latter shall pay the accommodation, travel and transport costs already incurred by the Company in addition to the net fee.

## § 10 Termination

In the event that either party fails to fulfil any of its respective obligations under this Agreement, the other party may terminate this Agreement immediately by notice to the other party and the party terminating this Agreement shall be released from all its obligations under this Agreement, without prejudice to its right to claim damages or other compensation to which it is entitled by law.

## § 11 Final provisions

Only this written Agreement shall be authoritative. Amendments and supplements must be made in writing. If one or more provisions should be invalid, the validity of the remainder of the Agreement

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shall remain unaffected. Any invalid provisions shall be replaced by legally valid ones that come as close as possible to the original version in content-related and economic terms.

In addition, the law of the Federal Republic of Germany shall apply; the place of jurisdiction shall be the place of residence of the Company.

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

... [city], ... [date]

... [city], ... [date]

\_\_\_\_\_  
on behalf of the Organiser

\_\_\_\_\_  
on behalf of the Company

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