

License agreement – annotated model contract

→ Annotation by the touring artists editorial team:

The text of the Agreement is a translation of the "Nutzungsvertrag" model contract of the Bundesverband Bildender Künstlerinnen und Künstler (BBK) (Source: Bundesverband Bildender Künstlerinnen und Künstler, ProKunst 5, p. 168, 2012). The touring artists editorial team has amended the Agreement as appropriate with regard to contracts with partners abroad. [These amendments have been added in coloured text.](#)

The annotations are representative of a contract between an author in Germany and a user abroad. They indicate what has to be considered and taken into account with regard to such a cross-border agreement.

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 assumes no liability for the currency of the contractual content. touring artists wishes to expressly point out that model contracts can only provide 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. Model contracts are intended for orientation and inspiration. Their use cannot replace expert legal advice under any circumstances.

(As of 2017)

License agreement

The following License agreement is concluded between

..... (referred to as "User" in the Agreement)

Address

and (referred to as "Author" in the Agreement)

Address

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A **license agreement** governs the rights and obligations of the user of a work and its author, i.e. the artist. In general, contracts do not necessarily have to be concluded in writing since verbal agreements are also binding. In order to avoid later disagreements and problems, however, it is advisable to conclude all agreements in writing.

The core components of a license agreement are as follows:

- the contracting parties, i.e. the full names of the user and the author,
- the title and the description of the work,
- the precise definition of the form of use,
- arrangements concerning remuneration and
- the date of the agreement.

These contractual elements are the same worldwide and result from practical requirements.

In many cases, it is not absolutely necessary to draft a separate license agreement, since agreements on the form of use are often already part of other contracts, e.g. loan agreements.

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In general, no "legalese" is required when concluding a contract. It is important to state clearly and comprehensibly for both contracting parties what exactly has been agreed upon. Even before the contract is concluded, all important points should be discussed, clarified, and documented – this is all the more important if the contracting parties reside in different countries.

A user may be, for example, a gallery, an artist-run space, a publisher, a newspaper, a magazine or a blog. Even an editor can be considered a user if the agreement includes producing editions of a certain work.

§ 1 Object of agreement

The object of agreement is the sculpture, the painting, etc.

.....
(title, technique, dimensions, materials, framing, year)

created by the Author.

The Author declares that he/she is entitled to the unrestricted transfer of rights, has not otherwise exercised the rights to the work of art mentioned in the Agreement and that the Agreement does not infringe upon the rights of any third party.

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If the author is a member of a collecting society, this must be indicated in the Agreement. As a rule, he/she has transferred the authority to exercise his/her rights of use to the collecting society. Alternatively, he/she may coordinate with the collecting society prior to conclusion of the Agreement regarding who should represent the rights. If this has been coordinated in a timely fashion, license agreements concluded between the author and another party will not pose a problem - however, in this case, the collecting society will not offer (legal) support if problems arise in the execution of the contract (see also § 2).

§ 2 Rights of use

The User is hereby granted rights of use pertaining to the work named above for a period (from to),

- limited to years/months/days/the event (+)
- for an indefinite period within the statutory period of protection (+) (1)

(+) Delete as appropriate.

for the following purposes: (2)

..... (e.g. reproduction, film adaptation)

The rights of use are valid for an edition comprising..... copies. (3)

The use is permitted in analogue form (print, physical form) and/or digital (CD, DVD and/or Internet) form. (4)

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The User is granted non-exclusive/exclusive (+) rights of use for the period of use indicated above. (5)

(+) Delete as appropriate.

Insofar as the Author has transferred his rights to a collecting society, he/she shall obtain its consent to the intended use. Other than that, his/her rights of use remain unaffected.

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(1) We recommend caution with regard to granting **rights of use for an unlimited period**. However, if these are nevertheless part of the agreement, the fee should be settled on an annual basis.

The **statutory term of copyright** refers to copyright protection that applies throughout the lifetime of the author and for a period of 70 years after his/her death.

(2) Instead of individual rights of use, the concrete **use** should be indicated in this case.

(3) In the case of editions and book publications, it is important to specify the **number of copies**.

(4) It must be agreed and documented in advance whether the use should be in **analogue and digital** format or only on the internet/in print.

(5) When granting an **exclusive right of use**, only the User may use the work in the manner agreed upon. She/He may even prohibit the author from using the work in this way. Therefore, only non-exclusive rights of use should be granted if possible.

§ 3 Fee/remuneration

The fee for the use of the aforementioned work is

The amount includes the statutory VAT. (+)

(+) Delete as appropriate.

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The rules for the correct **payment of value added tax** are complicated, especially in the case of foreign transactions, and vary from country to country. As soon as fees arise from rights of use exercised abroad, a tax advisor should be consulted. This person can provide reliable information about the regulations that apply to the individual situation.

Fees from rights of use exercised abroad and value added tax (VAT)

"Kleinunternehmerregelung" (Small business regulation)

If the author is a small business owner, VAT does not have to be paid (see [The basics of VAT in Germany](#)).

VAT is payable in Germany

– for fees arising from rights of use exercised in other EU countries if the user is a private individual. The revenue is taxable in Germany; VAT must be declared and paid by the author in Germany (see VAT on foreign transactions > Transactions from Germany > [Rights of use](#)).

VAT is not payable in Germany:

– for fees arising from rights of use exercised in other EU countries if the user is a business owner. The revenue is tax-exempt in Germany. VAT is declared at the user's place of residence; for

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accounting purposes, the VAT identification numbers of the author and the user must be indicated on the invoice (see further explanations under VAT on foreign transactions > Transactions from Germany > [Rights of use](#)).

– for fees arising from rights of use exercised in countries outside the EU if the user is a business owner. In this case, the revenue is not taxable in Germany; VAT must not be listed on the invoice; the user abroad must declare and pay the VAT (see further explanations under VAT on foreign transactions > Transactions from Germany > [Rights of use](#)).

In the case of services rendered to private individuals in countries outside the EU, the regulations are unfortunately not very clear (see further explanations under VAT on foreign transactions > Transactions from Germany > [Rights of use](#)).

Again, it should be noted that the regulations concerning value added tax are complicated and that the expertise of a tax consultant should be sought with regard to the respective individual situation! The information offered by touring artists can only serve as basic pointers.

§ 4 Payment date of the fee

- The fee is payable no later than (+) (1)
- The fee is payable in instalments of on the 15th of each month. (+) (2)
- The fee will be settled annually on the basis of copies sold. The invoice must include information on the number of copies produced, sold and remaining by the end of the third calendar month of each year for the previous year. (+)

The Author shall receive an offsettable but non-refundable advance in the amount of (+) (3)

(+) Delete as appropriate.

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The **type of billing** (flat fee, instalments, annual settlement etc.) depends on the type of use. A flat fee arrangement is common, for example, if the work is to be used in a film or book. If an editor or gallery owner agrees to create an edition, annual sales figures will be used to determine the fee, with a non-refundable advance being the rule.

(1) Wording for a **one-off flat fee agreement**.

(2) Wording in the event of **payment in instalments**.

(3) If fees are settled on the basis of copies sold (for example for **editions**), the data used in the invoice should be specified. The information on the number of copies, the inventory and the sales figures serve to ensure transparency in the billing process. The non-refundable advance should also be listed here.

§ 5 Copyright notice

The User is obliged to give credit to the Author in a suitable way every time the work is mentioned in print or reproduced.

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The legal basis for this is § 13 German Copyright Act (**Recognition of Authorship**). If the author is a member of a collecting society, the name of the collecting society should be mentioned in brackets after the artist's name (for example: Claudia Mayer (VG Bild-Kunst)). This ensures that interested parties know whom they may approach with regard to licensing for their respective use of the work.

§ 6 Processing

Any processing of the work of art in connection with its use requires the Author's consent.

The work must be reproduced in its entirety. Colour changes, overprints and trimming require prior express consent.

If the processing is necessary for the use of the work, the Author may only refuse to give consent for important reasons, for example in the event of a distortion (§ 14 UrhG).



The user should not be granted the right to decide freely on the **form of use** of a work. The reference to unauthorized processing and complete reproductions of the work is needed in order to prevent the work from being presented in a manner other than that intended by the author. In Germany, the legal basis for this is § 14 German Copyright Act (**Distortion of the work**). If a specific form of use is under discussion, the author and the user may, of course, agree on whether the design is acceptable or not. In the specific case, the author may thus allow processing - but it should not be granted as a blanket permission.

§ 7

Amendments to this Agreement must be submitted in writing.
The law of the Federal Republic of Germany applies to this Agreement.
The place of jurisdiction is the domicile of the Author.

Signature and date

City/date,

Author
(legally binding signature)

User
(legally binding signature)



If possible, the parties should agree that the agreement should be subject to the **law** with which the author is familiar - i.e. the law of his/her home country. This is also useful with regard to the **jurisdiction clause**, since it means that the law of the artist's place of residence can be applied in the event of a dispute.

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