

Sample Contract 2

Important:

Contracts must always be constructed on a case-by-case basis. There is no one simple formula.

Sample contract 2 offers a different approach that will suit some commissioners and artists.

We recommend that artists and museums look at *both Sample 1 and Sample 2* (regardless of whether the work is to be acquired or not), as each sample contract is written in a different style. We recommend that artists and museums make a mix of the same and different points, drawing on both sample contracts according to their needs and aspirations. This will enable discussion of the particular points and timetable that artists and museums want to build into their own agreement.

Sample contract 2 is offered as a scaffold to support wide-ranging discussion between artist and commissioner, taking account of the particular aspirations of each party for their joint project, the artist's practice and the commissioning context. It is an edited example of a contract that was used in the past, tailored to meet the particular needs of a specific project - in this case a commission for an artist to make new work for exhibition/installation, with the option of acquisition by the museum at a future date.

Commissioners and artists must always take responsibility for satisfying themselves that any contract they agree between them meets the particular needs of their collaboration.

Please Note: New Expressions does not offer legal advice.

Agreement relating to the artwork [name of artwork] by [name of artist]

The Parties to this agreement are:

The Commissioner:

Sample Artist Contract (sample for discussion only)

Name [Name of commissioner]
Address [Address of commissioner]
Contact details: [Contact details of main contact]
[Phone number]
[Email address]

The Artist

Name: [Name of artist]
Permanent/Address [Permanent home address of artist]
Contact details: [Phone number]
[Mobile phone number]
[Email address]

Temporary/Address
Contact details: [Temporary address if relevant]
[Temporary phone number if relevant]

The Project Consultant [If appropriate, details of any external consultant who is a party to the contract]

Name [Name]
Address [Address]
Contact details: [Phone number]
[Mobile phone number]
[Email address]

The Commissioner will be responsible for:

Preparing the site prior to installation of the artist's work in [insert date]
Arranging for appropriate agreed structures/fixings eg scaffolding during installation and de-installation to meet safety standards (costs to be agreed)
Ensuring that the necessary risk assessment has been undertaken and that health & safety requirements are implemented
Interpretation and marketing of the work and associated activities
Final presentation of the work to be agreed with the artist
Ensuring that the work is maintained and undertakes to inform the artist promptly of any change or damage that may occur
De-installation of the work at a date to be agreed with the artist
Consulting with the artist on the preparation for storage of the work, as necessary
Preparation of the work for storage if the work is to be acquired by the Commissioner

The Artist will be responsible for:

Production of the work as selected and agreed by the Commissioner and outlined in the attached schedule
Transport, packing (including allowance for long term storage) and delivery of the work on the agreed date
Installation of the work by [insert date]
Named assistant(s) for the installation

Sample Artist Contract (sample for discussion only)

Advising the Commissioner on the maintenance of the Work during the initial period of display until and including the de-installation

Advising the Commissioner and supervising the de-installation of work at a date to be agreed

Advising the Commissioner on the long-term maintenance needs, if acquired by the Commissioner

In the event of acquisition, the artist will provide the Commissioner with detailed storage and re-assembly notes

The Project Consultant will be responsible for

Preparation of the agreement and its implementation

Supporting the artist on production, transport and installation

Consulting with the artist and commissioner's schedules for production and installation

Ensuring that the installation, maintenance period and de-installation is undertaken to a standard agreed with the Commissioner and the artist

Sub-contractors

If the Artist is appointing any sub-contractors to manufacture components of their work, additional letters/agreements will be required. These should replicate the defects period agreed with the Commissioner, as well as indicating how each stage of manufacture will be signed off.

The Commission

The Artist will provide a fully detailed description of the commissioned work including the theme/subject matter, material or medium, approximate size, location, method of fabrication, lighting, structural/environmental requirements and any other specific requirements. The Artist will also provide information for use in the associated education and interpretation programme to deadlines provided by the Commissioner.

The Artist will participate in a supporting education and interpretation programme for which they will receive additional fees.

The Artist should also indicate which elements of the work may change as fabrication proceeds, for example colour and/or dimensions, and to specify any elements that the artist considers to be integral, for example plinth, access, etc.

Acceptance & Completion

The Artist will inform the Commissioner of an appropriate time to view the work during its fabrication, if requested.

The deadline for the installation is [date].

The Artist will decide when the work is complete. The Commissioner cannot reject the work if it accords substantially with the agreed designs. If the Commissioner does not like the final work they are at liberty to terminate the agreement, but would be required to pay for the work completed by the Artist.

Formal acceptance of the work will be demonstrated by release of the final installment of the Artist's agreed fee/costs payment.

In the case of the Commissioner's failure to meet the deadline for preparation of the site, the Commissioner will agree to release final payment on delivery of the work to site, in order to comply with the commission funder's payment schedule.

Delivery of the work

The work is to be delivered to the Museum by the Artist and/or their sub-contractor at an agreed date.

The Artist will be responsible for costs of delivery and insurance during transit.

The Artist must keep the Commissioner and the Project Consultant informed about progress of the work in order that any potential delays can be absorbed into the schedule.

The Commissioner and the Project Consultant will be responsible for inspecting the work on arrival to check for damage during transit.

Installation of the work

The Commissioner is responsible for carrying out preparatory site works as identified in the schedule, and for the consultation of a structural engineer if required. This work will be signed off by the Commissioner in consultation with the Artist.

The work will be installed by [insert date] to an agreed schedule. The Artist will have access to the site [insert times and dates when artist will have access to site].

The Commissioner will be responsible for arranging all necessary planning consents and approvals. They will also be responsible for ensuring that all necessary health & safety procedures are being followed.

The work will be installed by the Artist and their nominated assistant(s). The costs of installation will be met by the Artist and charged to the Commissioner.

It is the Artist's responsibility to arrange personal accident or injury insurance to cover themselves and their assistant(s).

The Commissioner will pay for storage of the work if for any reason, once complete, it cannot be installed as timetabled.

The total value of the commission is [insert amount in pounds] exclusive of VAT, including artist's fee, cost of materials and manufacture, unless specified otherwise. The total also includes cost of delivery of the work to the site and cost of installation.

The commission fee will be paid to the Artist in three stages, the first installment on receipt of the signed agreement, the second on receipt of the work by the commissioner, and the third on completion of the installation of the work taking into account costs invoiced direct to the Commissioner for materials and installation. The amount of each payment to be agreed by each party.

If the commissioning schedule has to be extended due to unforeseen delays the Commissioner will meet reasonable costs incurred by the Artist in meeting the consequences of such delays.

If the Commissioner changes the brief or specification for the work unilaterally after the commission starts, the Artist reserves the right to increase their fees commensurately.

The commissioned work will be displayed in the Museum from [insert date] until [insert date].

Ownership

The Commissioner reserves the right to the first refusal to acquire the work for the collection and agrees to reach a decision on the acquisition no later than six months from the date of installation. The agreed fee for the acquisition is [insert amount in pounds] with payment at point of acquisition, when ownership of the installed work will be transferred to the Commissioner.

The Project Consultant may undertake a survey of the work, to be agreed by both parties prior to acquisition.

While the Artist is working off-site during the production of the work it will be their responsibility to provide 'all risks' insurance and public liability cover to cover physical loss or damage to the work until it is finished and delivered on site. Once the work is delivered on site the Commissioner will be expected to take out permanent all-risks and public liability cover for installation, display, de-installation and storage where applicable.

Warranties and repairs

The Artist guarantees that the work will be original and will not infringe copyright or other rights belonging to any third party.

A 'defects period' of six months will be established immediately following installation, during which the Artist agrees to undertake any necessary repairs at the Artist's cost. The artist will have the first option of repairing the work if it becomes damaged after the defects period.

Sample Artist Contract (sample for discussion only)

The Artist must ensure that they have obtained guarantees from any suppliers and fabricators that match the guarantees and length of 'defects period' that the Artist has given to the Commissioner.

If the work is acquired, the Commissioner agrees to consult with the artist on the long term maintenance of the artwork.

Relocation & deterioration

While the work is displayed at [name of exhibition / installation site], the Commissioner undertakes to notify the Artist in advance of any proposed alteration to the site.

In the event of the acquisition of the art work, the Commissioner undertakes to notify the Artist if the work sold; and in addition consult with the artist at the time of acquisition as to suitable physical environments in which the piece might be located in the future, retaining the artistic integrity of the artwork.

Copy & reproduction rights

Copyright in all work produced will remain with the Artist during their lifetime. During the period of installation and display the artist agrees to images of the art work being used for educational purposes and promotion of the project, including the associated moving image documentation.

In the event of the finished art work being acquired by the Commissioner the artist agrees to images of the work being used in the general promotion of [insert name of commissioner] and its collections.

In the instance of commercial promotion of the art work, the Commissioner agrees to consult with the artist.

Credits & moral rights¹

The Commissioner is responsible for arranging signage of the work, using wording agreed with the artist.

The right of attribution requires the Artist to be identified as the creator of the work whenever it, or a reproduction of it, is exhibited or issued to the public. This right must be asserted in writing unless the Artist is identified on the work itself, or on the frame mount or plinth, in which case assertion is automatic.

¹ ¹ Note: The right of attribution and right of integrity are moral rights. Moral rights protect an artist's authorial, rather than economic, interest in the work

The right of integrity², which enables the Artist to have some control over their work and the way it is displayed after it is sold or out of the artist's possession, is automatically assigned to the Artist, regardless of whether the Artist owns the copyright. This right will allow the Artist to have their name removed from 'distorted or mutilated' works or if the 'honour or reputation' of the Artist is put at risk.

Changing the agreement

All changes or modifications to the agreement must be made in writing and signed by both parties.

Disputes

If there is a dispute about aesthetic or design-related matters, these will be resolved by an independent expert.

Termination

The agreement can be terminated by either party if the other party breaches any of the agreed terms of the agreement. The agreement can also be terminated by the Commissioner if they do not accept the designs or later decide not to proceed with the work.

If the Commissioner decides not to accept the designs, or not to proceed with the work, or other circumstances arise beyond the control of the Commissioner that prevent the continuation of the commission, the Commissioner agrees to pay the Artist for work undertaken to that stage against submission of an invoice identifying day/rate completed.

If the Artist voluntarily terminates the agreement they will be in breach of agreement and will not be paid any further fees and will have to return any fees that were paid in advance for work not yet completed.

If the commission is ended for any reason the Artist should continue (unless the artist dies or cannot finish the work due to illness) to own the copyright and have the legal ownership in the unfinished work and have the sole right to complete, exhibit or sell the work.

² Note: In 'Commissioning Contemporary Art: A Handbook for Curators, Collectors and Artists' (Thames and Hudson, 2012), authors Louisa Buck and Daniel McClean advise that the Integrity Right is viewed objectively in the UK in terms of what 'a reasonable person' would think was detrimental. They also suggest that in the UK it is unlikely that the Integrity Right would apply to work being exhibited in a particular context as being 'detrimental to the artist's reputation'. Further details of Buck and McClean's book can be found on the New Expressions website: www.newexpressions.org

Aspects of this agreement relating to production and installation/deinstallation may be terminated on the death or incapacity of the Artist, at the behest of the museum. The Artist or their estate will then receive all payments due up to the date of death/incapacity and the Commissioner may keep the work in progress and any preliminary designs for the purpose only of completing the work using an artist acceptable to the Artist or their estate.

Neither the Artist nor the Commissioner will be treated as being in default of the agreement if any delay in completing the work is due to any cause beyond their reasonable control.

Signed:

The Commissioner:
([Insert name], on behalf of [Commissioner])

The Artist:
([Insert artist name])

The Project Consultant [If relevant]:
.....
([Insert consultant name])

Date: [Insert date]