

Purchase agreement – annotated model contract

→ Annotation by the touring artists editorial team:

The text of the Agreement is a translation of the "Kaufvertrag" model contract of the Bundesverband Bildender Künstlerinnen und Künstler (BBK) (Source: Bundesverband Bildender Künstlerinnen und Künstler (Ed.), ProKunst 5, p. 164 f., 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 for emphasis.*

The annotations are representative of a purchase agreement between an artist (seller) in Germany and a buyer 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 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. Furthermore, it shall accept 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.

Purchase agreement

between (referred to as "Buyer" in the Agreement)

Address

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

Address

→

The **purchase agreement** regulates the rights and obligations of the buyer and the artist (seller). A sale does not necessitate a written purchase agreement, since verbal agreements are also binding. However, a written agreement may be useful in providing documentation concerning the sale in addition to the invoice, which can then be submitted to the fiscal or customs authorities if required.

The core components of a purchase agreement are as follows:

- the contracting parties, i.e. the full names of the artist (seller) and the buyer,
- the title and a description of the work,
- the purchase price and
- the date of the agreement.

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

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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 and will help to prevent future disagreements.

§ 1 Object of agreement

The Buyer intends to purchase the following artwork from the Artist:

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

Signature (include wording)

Numbering (e.g., for prints)

§ 2 Purchase price

The purchase price of the aforementioned piece is

The purchase price includes VAT at %.

The shipping costs and any import duties incurred shall be borne by the Buyer/the Artist/the Buyer and the Artist equally*.

A separate invoice shall be created detailing the purchase price*.

(*Delete as appropriate.)



*The rules concerning the correct payment of **value added tax (VAT)** are quite complicated, especially in the case of foreign transactions, and vary from country to country. A tax consultant should be consulted for sales abroad and can provide reliable information about the regulations that apply to the specific situation.*

The purchase price includes VAT - yes or no?

"Kleinunternehmerregelung" (Small business regulation)

If the artist is a small business owner, he/she is not obliged to charge VAT (see [The basics of VAT in Germany](#)).

VAT is payable in Germany

– for cross-border sales to other EU countries if the buyer is a private individual. The revenue is taxable in Germany; VAT is paid in Germany (see VAT on supplies and services abroad > [Sales of works of fine art](#)).

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VAT is not payable in Germany

- for cross-border sales to other EU countries if the buyer is a business owner. The revenue is tax-exempt in Germany; VAT is declared at the buyer's place of residence; for accounting purposes, the VAT identification numbers of both the buyer and the seller must be indicated (see VAT on supplies and services abroad > [Sales of works of fine art](#)).
- for cross-border sales to countries outside the EU. In this case, the revenue is also tax-exempt in Germany; VAT does not have to be applied (neither does a VAT ID have to be indicated on the invoice, since it applies only within the EU).

Customs regulations must be observed for sales to countries outside the EU. Import duties (customs duties and import turnover tax) may also be incurred (see [Transport beyond EU borders](#)). The parties should also agree in advance which party will bear the costs.

If, for example, works are initially intended for temporary use abroad, but are later sold there, it may be easier for tax and customs purposes if they are first returned to their country of origin and then sent to the buyer.

If the foreign buyer purchases the work in Germany and then takes it to a country outside of the EU, VAT is payable in Germany. Upon submission of an export confirmation and following the export, the buyer may request a VAT refund from the artist. The invoice must then be changed accordingly so that it no longer includes the VAT (see VAT on supplies and services abroad > [Sales of works of fine art](#)).

Again, it should be noted that the regulations concerning value added tax on foreign transactions 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.

If a work is to be **sent** abroad, the contract should stipulate which party will bear the shipping costs and any import duties that may arise (customs duties, import turnover tax). If nothing is specified in the contract in this regard, the artist will bear the costs!

In addition to the purchase agreement, the buyer and the artist also need an **invoice**, e.g. for the deduction of operating expenses or input tax. This should be specified in the agreement.

§ 3 Payment date of the purchase price

The purchase price is payable upon handover to the Buyer*.

The purchase price is payable no later than*

The purchase price is payable in instalments of on the 15th of each month*.

The work shall remain the property of the Artist until it has been paid for in full*.

The Buyer is responsible for paying any transfer fees incurred*.

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The Buyer shall bear the risk of damage or loss in full*.

(*Delete as appropriate.)



*Note: Only a few countries other than Germany distinguish between the conclusion of a contract and the independent **transfer** of the property in question: Usually the Buyer owns the work immediately upon conclusion of the contract, regardless whether it has been paid for or not. This issue should be clear to both parties at the time the contract is concluded!*

In the case of payment in instalments, it should be agreed that the work will remain the property of the artist until the purchase price has been paid in full.

Fees may apply for international wire transfers. The contract should specify which party shall pay these fees.

§ 4 Copyright

4.1 By signing the Agreement, the Artist declares that he/she is the sole author of the work referred to in § 1.

4.2 The artwork is protected by copyright. Any form of use – with the exception of the resale of the work – requires the written consent of the Artist unless statutory exceptions apply.

4.3 The Artist has the right to borrow the work for exhibition purposes. The Buyer may object to this only if there is an important reason.

The Artist must approve any exhibition of the art work referred to in § 1 [by the Buyer](#)*.

(*Delete as appropriate.)

4.4 If the work of art mentioned in § 1 is resold by the Buyer, he/she is obliged to inform the artist immediately and without delay of the name and address of the new owner.

If no art dealer or auction house is involved in the resale, and if the sale proceeds exceed 400 euros, the seller of the artwork must pay 4% of the proceeds to the author of the work.



*The following principle applies with regard to copyright: Only the ownership is transferred in the case of a sale. The **exploitation rights** remain with the artist, as long as they are not expressly contractually granted to the buyer. Section 4. substantiates the legal situation and informs the buyer that he/she will acquire no further (exploitation) rights through the sale beyond ownership of the work.*

*The **statutory exceptions** in place in the country in which the work will be used shall apply. The question of whether the work may be reproduced in an exhibition catalogue without the explicit consent of the artist, for example, shall be governed by the regulations of the country in which the*

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work is being exhibited. In Germany, Austria and the Scandinavian countries, the artist does not need to give his/her consent (see [Katalogbildprivileg](#), the right to reproduce works for promotional purposes as described in the German Copyright Act/Urheberrechtgesetz), while in many other European countries, he/she does.

Section 4.3 is an agreement that is customary in Germany. There is no legal basis for this - for example according to German copyright law. The recommended wording above concerning the requirement for the artist's consent for the exhibition of the work establishes a contractual claim which is independent of the legal situation.

The contract agreement outlined in Section 4.4 is based on the **resale right** stipulated in German legislation concerning copyright and related rights (see [Resale right](#)). According to this legislation, the right to participation in the resale of a work arises if a gallery owner or art dealer or similar was involved in the sale as a buyer, seller or agent and the selling price exceeded the country-specific threshold (in Germany, this threshold is 400 euros). If the artist is a member of a collecting society, this collecting society will manage his/her statutory rights in all countries in which rights to participate in a resale apply ([Country overview](#)).

In the case of a resale between private individuals, however, the statutory right to participate in a resale does not apply. Thus, the aforementioned contractual clause defines a claim which is independent of the statutory right to participate in a resale.

§ 5

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 Artist.

Signature and date

City/date,

Artist

legally binding signature

Buyer

legally binding signature



*If possible, the parties should agree that the agreement should be subject to the **law** with which the artist 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.*

However: Even if the law of the artist's country of residence applies to the purchase agreement, the law of the country in which the work is to be used applies with regard to the further use of the work without the consent of the artist (see 4.2)!

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