

NOTES AND GUIDANCE

WHAT IS A CONTRACT?

Generally contracts are in writing but this is not necessary. Terms that have been agreed orally also form a valid legal contract - however oral contracts are more difficult to enforce as it is usually a case of one person's word against the other. This is why it is always better to get something in writing even if it is a simple letter setting out the key points of what has been agreed.

There are many agreements that as a musician, writer, producer, DJ or performer you may have to consider and enter into. These include:

1. **MANAGEMENT**
2. **RECORDING**
3. **PUBLISHING**
4. **AGENCY**
5. **VENUE**
6. **MERCHANDISING**
7. **PRODUCTION**
8. **TELEVISION AND RADIO APPEARANCES**
9. **SYNCHRONISATION**
10. **PRODUCER**

The more successful you are, the more likely it is that you will encounter all of the above types of agreements. When entering into any kind of contractual arrangement that you do not understand, you should take specialist advice.



TIP

Free advice can be obtained from The Musician's Union (if you are a member) and the various collection societies such as the PRS and MCPS are usually happy to explain how things work.

If seeking legal advice from a solicitor, you should ensure that you choose a solicitor that is experienced in the music industry. Your MIC (Music Industry Consultant) or MOLP adviser should be able to help you with this. Ask people within the industry to recommend someone. The Musicians Union, the PRS, the Law Society, and the Music Week Directory are all sources that will be able to give you details of specialist music solicitors. Personal recommendation is always good. It is also important to shop around and make sure you are dealing with professionals that you feel comfortable with and that speak your language.

You should also assure that the advice you are given is independent. So for example, if you are signing a Management Agreement, you should not really be taking advice from your Manager's solicitor. It is important that you have your own solicitor who will look after your own personal interests.

MUSIC AGREEMENTS

Outlined in the following pages is an explanation of the most popular types of agreement. These are explained in more detail together with an explanation of some of the key industry terms and jargon frequently used.

SYMBOLS USED



ARTIST



MANAGER



RECORDING
COMPANY



PUBLISHING
COMPANY



PRODUCTION
COMPANY



AGENCY



MERCHANDISE
COMPANY



PRODUCER

MANAGEMENT AGREEMENT

BETWEEN ARTIST & MANAGER



This is an agreement between you (The Artist) and the person or company who agrees to develop and guide your career. The management of your affairs will include the negotiation of all other music contracts and the engagement of other professionals to assist you such as agents, promoters and tour managers. In return for managing your affairs, your Manager will expect to be paid a commission based upon your earnings.

The Manager will usually require a commission of about 20% of the artists "gross earnings" (This is your total earnings).

From an artist's point of view here are the key things to look at when considering your management deal:

How long you are committed for?

The length of the contract is referred to as the "Term". You need to make sure that you are happy with the length of the deal and what provisions are in the contract to allow you to get out of it, if you are not happy with the representation you are getting. As a general rule, particularly if you are unsure as to the experience of your manager, it is best to try and limit the contract to a few years. So for example, you could have a one year term with an option to extend it for future years. A key point here is that if the management failed to achieve anything for you within a specified time period, you should be able to get out of the deal and go elsewhere.

Is it exclusive?

It is important to understand that when you sign an exclusive management deal with a Manager or management company you are making a legal commitment that allows those Managers to represent you exclusively for a stated period of time. Whilst it may be possible to get out of the contract at a later date, this is not always easy and can often involve a great deal of expense. This is why it is best to have a short term which can be renewed so that both parties can see how it goes and get out if they are not happy.

What will the manager do for you?

It is also important to establish in writing what the Manager says he/she will do for you. So for example, if you meet a potential manager who claims he/she will be able to sign you up with a major record company without any problem, you should include this in the terms of the contract. You could agree the management contract on the basis that if the manager fails to secure a recording contract for you with a major record company within the first 6-12 months, you will have an option to terminate the Management Agreement.

Can the manager spend money in your name?

Many management contracts allow your manager to freely spend money in your name. If you are not careful a rogue manager could end up spending a great deal of money on your behalf, perhaps even without your knowledge, that you will ultimately be liable to repay. It is therefore important to ensure that the clauses within your contract relating to expenditure include some kind of provision to ensure that you are kept regularly informed as to what money your manager is spending on your behalf. You should also be able to have the right to approve expenditure over an agreed amount.

CHECKLIST FOR MANAGEMENT AGREEMENTS

	COMPLETED
Seek independent professional legal advice	Yes / No
Check how long you are committed for.	Yes / No
Make sure you specify exactly what the manager gets a share of and the extent of how they will be representing you.	Yes / No
Seek to limit this particularly if you have potential income from a variety of other sources (for example acting, teaching, producing, and so on).	Yes / No
Check whether your manager is entitled to a continued commission after he ceases to manage you.	Yes / No
Consider a limit on the amount of money your manager can spend on your behalf (the expenses) and consider joint signatures between members of the group / act and the manager, if you have any serious doubts.	Yes / No

FREQUENTLY ASKED QUESTIONS ON
ARTIST MANAGEMENT

Would I sign a management contract for the UK or world-wide?

Established major management companies would want world-wide representation. If the manager is inexperienced in international music business dealings or if you are at an early stage in developing your career, you may wish to contract for the UK only (possibly extending to Europe – based on performance).

What is the manager’s role and what are management responsibilities?

To administer your day to day business affairs, get work for you and negotiate contracts in an effort to develop and promote your career and maximise your income

How long should a management contract last?

In general, contracts vary from between one and five years. Normally an established manager may start with three years and have the option to extend to five. A trial period is recommended. You may wish to include some performance targets (for example, a recording agreement to be found within eighteen months of start-up)

What is a reasonable management commission?

Depending on what the manager does for you, the common rate is 15 -20%, this may be reduced to 15%, even 10 % if the job entails administration for an already established act (say as their second manager).

What happens when the agreement expires or is prematurely terminated?

If the agreement comes to a natural ending, the manager may still be entitled to a continued commission, in respect of contracts signed or recordings made within the duration of the management agreement. Sometimes the continued commission is at a reduced rate. You should ensure that any right to continuing commission has a cutoff date when the commission stops.

TIP

Managers should keep separate bank accounts for band income and a proper set of books relating to money received and spent. You should have the right to inspect these accounts.

Managers normally charge 20% of gross earnings – but there are times when it is appropriate to pay a manager based on net earnings.

Income from live performances:
If the Manager was to take 20% of gross, this may leave you in debt should the tour run at a loss. It is best to pay the manager a share of net profit in respect of tour income.

Also there should be no management commission payable upon record royalties which are retained by the record company in recoupment of any recording costs, the same would apply in connection with costs paid by the artist towards videos or tour support, all of which would be recoupable expenses by the record company.

If you have any doubts over who pays for the many goods and services such as travel, hotels, backstage drinks, taxis, accountant bills, promotional videos and guitar rigs, assume it's on your tab!

FANCY A CAREER AS A MANAGER?

You may find that your skills are suited to management. You may be business minded, have good communication skills and can find solutions to problems. You will also be adept at dealing with creative people like musicians and songwriters, and have clear ideas and vision about which directions to take.

The Music Managers Forum is a membership organisation that offers benefits such as training, information, advice and networking opportunities. They lobby on behalf of artists and managers in the music industry and they also publish an excellent book on music management.

➤ See the links at the end of this chapter for more details.

RECORDING AGREEMENT

BETWEEN ARTIST & RECORDING COMPANY



The parties to the Agreement will be a record company and a recording artist. The agreement provides that the artist should provide its exclusive recording services to the record company for a specified period of time. The record company will own the sound recordings produced and will be entitled to exploit the rights in the recordings.

The artist usually receives an up front payment known as the "Advance" and an ongoing royalty (share of revenue) based upon the number of records sold. The type of record deals available differ hugely depending on the track record of the artist and record company involved. The principles however are the same.

Duration or ‘Term’

As with the Management Agreement, look to see what the duration or ‘Term’ of the contract is and what your commitment to the record company is. The "minimum commitment" clause sets out how many albums or singles you will be expected to deliver to the record company. The company will expect you to assign all your rights in the recording to the company.

Advance

The advance that is paid to the artist will be offset against record royalties earned under the contract, therefore the artist will not receive any royalty payment until his advance has been fully recouped. This is known as recoupment and the advance is usually referred to as a "recoupable advance". It is important to note however that the advance should only be recoupable from the artists record royalties. There should be no liability on the artist to repay the advance if the artist does not generate enough royalties to repay the advance.

➤ See P70 ‘Advances and Recoupment’

Recoupable costs - What do I have to pay back to the record company?

Recoupable costs are those costs that have to be paid back to the record company from any royalties earned by the artist.

➤ See P70 ‘Advances and Recoupment’.

CASE STUDY

In the George Michael case against Sony one argument George Michael raised against the alleged unfairness of his contract with Sony was the fact that although he had repaid Sony the recording costs of his albums in full, under the terms of the contract Sony were entitled to retain full ownership of the copyright in the sound recordings. George Michael was unsuccessful and the industry “norm” is still that all of the major record companies will insist on retaining all of the copyright in the sound recording for the full term of copyright (see previous chapter – Duration of copyright’) even if the recording costs have been fully recouped.

Royalties

A royalty is a payment based on a share of the income that your work has generated. For example, if you signed to a record label as an artist, you would be entitled to a share of the income from those record sales. A recording agreement specifies what level of royalty to expect, which is usually expressed as a percentage of the dealer price of every record that is sold. More on this in workbook 8.

Release commitment

A recording contract should include an obligation on the part of the company to release the artists recordings, otherwise the artist may be obliged to deliver recordings that could then sit on the shelf if the record company decides not to release them. The contract should therefore state that the recordings should be released within a stated time period after delivery and if the recordings are not released within the specified time the rights in those recordings should be given back to the artist. This is known as "reversion of rights".

CHECKLIST FOR RECORDING AGREEMENTS

Key points to check if you are offered a record deal	COMPLETED
Seek independent professional legal advice	Yes / No
Check the duration or ‘term’ of the deal Recording contracts are often made up of an initial period, usually one year or one single/album, followed up with a number of options for further years/albums. Options give the company 'first refusal' on further product. Advances and royalties should increase as each successive option is taken up.	Yes / No
Minimum Commitment Check what your minimum commitment to the record company is. (For example, how many recordings you have to ‘make for release’ per year).	Yes / No
Check what your advances and other recoupable costs are. (see P70 – advances)	Yes / No
Royalties Check your percentage royalties on sales. Are you getting paid against 100% of sales or less?	Yes / No
Check which territories you have signed for.	Yes / No
Release commitment It may seem obvious but check that the record company actually has a commitment to release your recordings.	Yes / No

FREQUENTLY ASKED QUESTIONS ON RECORDING CONTRACTS

Does the record company have to release the records I make?

Generally yes, if you have a guaranteed release commitment in the contract. However, if they are not completely convinced of its viability, they are unlikely to want to spend money putting out a record which in their opinion has no chance of success. In this case, they may elect not to accept the master recordings.

Will the record company want worldwide rights?

In most cases, yes. Major labels and many independents will want the rights for the world. This situation changes when you sign to a smaller independent without an international track record or when you are an act that is already established. If this was the case, you might give UK rights only. (The record companies make money by signing your rights for the world, then licensing to different territories such as Germany, Japan and the USA)

Should I sign for one album or more?

Do not be fooled into thinking a six album deal is better than a one album deal. If the first release flops or does not make money for the company they will have the option to not record the subsequent five.

If I get dropped by a label, is my career over?

Not at all. There are many examples of recording artists who are dropped by one label only to be picked up by another and go on to great success. There are numerous factors involved when an artist is dropped from a label. One of the most common reasons is that a key member of staff leaves the record company and the act no longer has its flag bearer within the organisation.

Each recording agreement is different. For example, it could be an exclusive deal, A licensing deal (see later) or a development deal. ➤ See the links in ‘More Information’.

PUBLISHING AGREEMENT

BETWEEN ARTIST & PUBLISHING COMPANY



This is a contract between a writer or composer and a music publishing company. The music publisher is responsible for

Finding, developing and supporting writing talent

Registering works with the royalty collecting societies

Tracking, collecting and distributing royalties

Promoting and marketing the music in its catalogue

Licensing and monitoring all uses of the music in its catalogue

Editing and producing performance materials and printed music or licensing others to do so

Commercial exploitation of the copyright in the music and lyrics of the song.

Whilst the MCPS and the PRS collect this income in the UK and it is possible for an artist to simply become a writer member of those particular organisations and receive their income directly from the collection societies, there are several reasons why an artist usually engages a publishing company.

Publishers often pay annual advances to a songwriter against future royalties.

Many songwriters are not also performers and in this case the publishing company will use their industry contacts to sell the songs to well known artists who will perform the songs or place the music in a TV advert or TV programme.

If the songwriter is a performer but does not yet have a recording contract the publishing company will then be able to use its contacts to help secure a recording deal.

Each deal is different but a writer could expect to sign up with a publisher for 1- 6 years. A typical deal might be where you receive 70-80% of your publishing income and have to sign your copyrights away for up to 15 years.

CHECKLIST FOR PUBLISHING AGREEMENTS

Key points to check if you are offered a publishing deal

COMPLETED

Seek independent professional legal advice Yes / No

Check how long you are signed as a writer to the publisher and how long your copyrights are retained for. Yes / No

Check if you have to make a minimum commitment, for example, how many songs you have to write per year. Yes / No

Check what your advances and other recoupable costs are. Yes / No

Royalties Check on your 'split' of the earnings. (for example 70 / 30 or 80 / 20) Yes / No

Check which territories you have signed for. Yes / No

**FREQUENTLY ASKED QUESTIONS
ABOUT MUSIC PUBLISHERS**

Do you need a publisher?

If you have written or co-written any music which appears in recorded form or is broadcast or performed to the public, it is worthwhile thinking about a publishing deal. Remember that you can receive royalties directly from MCPS and PRS in the UK - you do not need a publisher to do this for you.

What does the publisher do?

The publisher should register your work with the appropriate collection agencies and generally promote your songs. Promoting your songs may include ‘placing’ them with other artists, getting them recorded (covered) by other artists, getting them synchronised to film or TV commercials, and helping to promote any recordings released by the writer. A publisher may also help the writer find a recording deal if they are also a performer.

There are other types of publishing deal, for example the administration deal, the sub-publishing deal, the single song assignment – as well as the exclusive publishing deal. See in the More Information section for links.

**INDEPENDENT
RECORD LABELS**

There are many hundred of independent record labels in the UK. They range in size, from tiny one-man-band operations to quite large businesses. They offer an alternative to the 'majors' and the bonus often perceived by the artist includes closer contact with the label in his or her development.

It is worth noting that some independent labels are often funded by, and ultimately controlled by major companies. They will, however, not have as many artists on their roster and will usually provide a more focused and personal approach. Independents are unable to offer large advances and often suffer a financial handicap in terms of marketing spend and perhaps the wealth of contacts that a major label enjoys.

Major record companies tend to favour artists who already have some success and an established fanbase. Sometimes, a major label will buy an independent label to get hold of their artists – the independent label does the development work to build up the act, then the major comes in with greater resources.

The Association of Independent Music (AIM) looks after the interests of independent labels in the UK and is a powerful lobbying organisation for the independent music industry.

**MUSIC
PUBLISHING COMPANIES**

British music publishers come in many shapes and sizes – there are a small number of majors (which operate quite separately from their ‘sister’ record labels), independent pop publishers, publishers specialising in production / library music or printed music and classical publishers. The type of agreement and relationship that a writer or composer has with his / her publisher will vary according to the individual and company concerned and it is not unusual for a publishing deal to be secured in advance of a record contract.

The Music Publishers Association [MPA] looks after the interests of all music publishers based or working in the UK and exists to safeguard and improve the business and legal environment within which its members are operating.

CASE STUDY

ROB

Indie label manager

Let's look at someone who became an Indie label manager.

Rob is the manager of an independent record label based in Manchester. From science graduate to club promoter, he landed in the job by accident and with little experience. But by involving himself in the local scene and though a ton of musicians and industry folk, he gained some valuable insight. After taking a web design course he took some work experience at a label, created his own job there and soon decided to branch out on his own.

Now his days are filled with updating the labels website, mail orders, shipping to distributors, liaising with distributors, getting stock manufactured, dealing with press enquiries, organising press for artists and arranging live shows. As with all small labels the lack of funding means limited resources and doing a bit of everything is common practice, mailing out 600 hand - filled envelopes of promo CD's can also be a label managers responsibility. But on the other hand hearing new music first hand makes up for all the tedious work.

TIP

Experience is key

You should be willing to work for free for a small period of time. Don't write to a bunch of labels and hope one of them will employ you. Find out EVERYTHING you can about someone you want to work for, the personal touch looks far better.



LICENSING AGREEMENT

USUALLY BETWEEN ARTIST AND RECORDING COMPANY OR BETWEEN TWO RECORDING COMPANIES



What is a licence?

A license is an agreement to loan the rights in your recording to another company. They will market and distribute your recording and in due turn, pay you a share of sales. An international license is when you loan your rights to a company in another territory (country or group of countries).

How will it differ from a distribution deal?

The licensee (company) will normally give you an advance (usually a small loan against future sales) and they will manufacture and market your recordings based on the masters and artwork you licence to them. With a distribution deal, you would supply all finished product and even help with the marketing.

How long will a licence last for?

A license can last any period of time.

What are the benefits?

The principal benefit is that you retain ownership of the sound recording. If you are licensing internationally, the benefit is that you have local companies which will work your product in their own territory because they want to (rather than being obliged to do so). Effectively your possibilities are extended with so many countries to exploit.

And another thing! (exclusive/non-exclusive)

You can demand non-exclusive licences for your product on-line and in traditional release format, this leaves you in control, with ownership of your rights and with greater freedom of choice.

What’s the norm?

A licence for a recording might fetch an average £1000 advance (often less) and an average 20% earned from retail sales. It is though, completely negotiable!

AGENCY AGREEMENT

BETWEEN ARTIST & AGENCY



This is an agreement made between the artist and a company to find live work including tours. The agent’s fee will range from to 10-20%. The contract might run for a year with an option to extend. The territories may also be split (i.e. you can contract with an agent to represent you only in the UK, whilst you may employ other agents for different territories of the world).

VENUE OR PERFORMANCE AGREEMENT

BETWEEN ARTIST & VENUE



When you organise a live gig, you may be asked to sign an agreement to perform at a certain place, date and time in exchange for an agreed fee. The formula may include a guarantee (i.e. a fixed payment) plus a percentage of ticket sales, a straight fee or an agreed split of the door takings. Negotiated extras may also be included in a "Rider". This ranges from specified free food and drink, free admission, guest lists, hotels and bonuses for a large audience to flowers and sweets etc. The Rider is usually an integral part of the venue contract, often negotiated via the agent.

PRODUCTION AGREEMENT

BETWEEN ARTIST & PRODUCTION COMPANY



A production agreement can resemble a recording agreement in some ways.

A production company may develop an artist, getting them to the stage where they can secure a record deal. They are doing part of what a record company does, but not taking all the risk involved with marketing and promoting the music.

Another type of production deal may be offered by a recording studio or manager, offering the act free studio time and/or expertise in return for a share of future success. Some production deals extend to making and releasing records in the form of an independent record deal.

The production company will earn money through a royalty or one off payment (also referred to as a finders fee) if they introduce a recording or publishing deal.

The rights in the master recordings will remain with the production company. Studio owners may also ask you for a reasonable undertaking to re-record with them when successful.



Agree the recording bill in advance, get a copy of the recording and agree a contingency for the safe return of masters in the event of no deals being struck.

MERCHANDISING AGREEMENT

BETWEEN ARTIST & MERCHANDISING COMPANY



Artists in the early stages of their career tend to create and sell their own merchandise (for example, T-shirts) at gigs as a valuable source of additional income. Profit margins can sometimes outsell records many fold. Later on, a group may wish to either set up a merchandising company to make and distribute goods or to contract with an official merchandising company. A contract would normally be negotiated for a fixed period and would involve the merchandiser advancing a sum to the group (to be reclaimed at future sales) and sharing the profits from sales having first paid the manufacturing costs and distribution.

TELEVISION AND RADIO APPEARANCES

BETWEEN ARTIST & TV OR RADIO PRODUCTION COMPANY



If you are performing on a television or radio programme you will be asked to sign a short contract which is known as a “Release and Consent”. This document basically gives your consent to the television or radio company to record and broadcast your performance.

SYNCHRONISATION

BETWEEN COPYRIGHT OWNERS (SONGWRITER, PUBLISHING COMPANY, COPYRIGHT OWNER OF SOUND RECORDING, RECORDING COMPANY) & FILMS, TV, VIDEO COMPANIES etc. - WHO WANT TO USE THE MUSIC



“Synchronisation” is the combining of recorded sound with visual images, for example music used in films, TV programmes or videos. Before the music can be used with the visual images a synchronisation licence must be obtained from the copyright owner/s of the music and lyrics (the writer/s or his/their publishing company) and the copyright owner of the sound recording (the record company)

Synchronisation deals offer writers and indeed artists a valuable income and promotional boost when the music is linked to a credible commercial or film.

PRODUCERS AGREEMENT

BETWEEN PRODUCER AND RECORDING COMPANY



Record producers use agreements in the work they do for record labels and artists. Important points in the contract would include :

Who will pay costs and when?

‘There are two types of Music Producer deals. These are generally referred to like this:

‘Costs deal’ – with this type of deal the producer is paid an advance fee, which is generally recoupable against royalties. The record company will pay all of the studio, musician and equipment hire costs. This type of deal is common in the Rock and Jazz genres.

‘All-in deal’ - with this type of deal the producer is paid everything as one lump sum and the Producer has to pay themselves and all other costs incurred. Only part of this fee will normally be recoupable against royalties. This type of deal is common in the Pop and Dance genres.

These fees are normally paid by the Record Company, 50% on commencement of recording and 50% on completion and delivery.

How many tracks, with what versions and on what format?

In the Rock and Jazz genres the Producer will generally record and mix the whole album. In the Pop and Dance genres, Producers will often only record and mix 4 songs. The main versions delivered to the Record Company are the Radio version, a Backing track version with no lead vocal and an Instrumental version. Formats vary from half-inch analogue and DAT through to all types of stereo audio files on data cd’s and DVD’s.

What is the deadline?

Deadlines are negotiable and flexible, they are rarely written down or contracted.

Who will sort out contracts and label copy?

Contracts are normally negotiated between the Producer’s Manager and the Record Company A&R Executive. These negotiations are then passed onto the Producer’s Lawyer and the Record Company business affairs to finalise contracts. Full contracts are normally preceded by 2 page deal memos or ‘Heads Of Agreements’ which lay out the main points of the contract. Label copy is usually organised by the Record Company A&R administrator in co-ordination with the Music Producer and the Artist Manager

Label Copy is the credits on the album artwork, listing everyone who was involved. The information is also required for royalty payments. This could apply to anyone who works on the project, such as programmers or engineers.

A producer would normally be expected to get signed agreements from session musicians, giving away any rights, in return for their fee.

Payment for a producer will nearly always be as a fee plus royalties based on sales. The fee may be recoupable against the royalties. Producer royalty points can range from 1- 6%, the average is 3% of retail price. Always be sure as to whether the deal is on retail or dealer price, clearly there is a big difference. 3% on retail is roughly equivalent to 4% on dealer.

Cautionary Note!

As in normal business practice, your scope for negotiations in contracts depends on the strength of your bargaining position.

You can over-play the deal and effectively ruin it by making unrealistic demands. At the same time, you may not be aware of your true potential and give your rights away for next to nothing! This is why it is important to have experienced and trustworthy business advisers.