

Important:

Contracts must always be constructed on a case-by-case basis. There is no one simple formula. This **sample** contract 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 to enable an organisation to acquire a newly created artwork.

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.

Artist Contract (Sample for discussion only)

This agreement relates to the commissioning of [artist name] by [name of commissioner]

The Parties to this agreement are:

The Commissioner:

[Name and address of commissioner]

Key Contact: [Contact details for main contact person]

The Artist:

[Artist name]

[Artist contact details]

Context

About the commissioner

[Insert contextual information as relevant. This may include the strategic aims of the commissioner generally and relevant artistic, programming, audience development, business or community objectives of the commissioner as a whole]

Funding and investment

[Insert funding context if relevant, for example if the commission is part of lottery-funded project]

Marketing and Branding

The Artist agrees to include information about their collaboration with [name of commissioner] and to include the funders' logos* on their website and to insert a link to the commissioner's website on their web site.

* [insert name of funder(s)]

The Artist undertakes to ensure that the wording of all information – including Press Releases - that they place in the public domain about the commission is agreed with the Commissioner, and to include the logos of the Commissioner and funder on all material placed in the public domain.

Monitoring and Evaluation

The Artist undertakes to participate in the on-going monitoring and final evaluation of the commission – as a minimum this will involve [insert minimum requirements, for example taking part in a conversation/interview and/or completing an artist questionnaire at the start and finish of the project and providing numerical and financial data]. **The Artist's time for this is built into the commission fee.**

Community Engagement and Learning Activity:

As an integral part of the Commission, the Artist will give a talk to museum staff – including front line staff and, if appropriate, volunteers – to enable them to understand the inspiration/ideas/intention of the work. The purpose of this is to assist staff to develop a sense of pride/ownership in the commission, which they can communicate with visitors to the museum.

Additional work may be commissioned for the purpose of community engagement. This will be agreed throughout the development of the project and invoiced separately.

The Commissioner will be responsible for risk assessments, safeguarding participants, recruiting participants – and liaising with external gatekeepers as needed and ensuring that the numbers recruited build in a margin to account for 'no-shows', loss of motivation etc (that could lead to disappointing numbers); marketing, enrolment, registration (taking details of participants name/postcode/contract details); refreshments, provision of space, basic materials, supervision of participants, gathering participants feedback.

If the Artist agrees to undertake community engagement or learning activity they will be responsible for designing the creative content of the activity (with support and advice as needed) and leading the workshop activity.

The Commission

The Commissioner hereby commissions the Artist to undertake and complete the Work using reasonable skill, care and diligence throughout their creative practice and in accordance with these terms and conditions.

The Artist will provide a fully detailed Design and Specification 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 work may be changed through consultation and agreement between the Artist and Commissioner. The Artist should also indicate which elements of the work may change as fabrication proceeds, for example colour and/or materials, components or dimensions, and to specify any elements that the artist considers to be integral, for example plinth, access, etc.

Any such changes must be recorded in writing and agreed by the signatories to this agreement.

The Artist will provide a method statement detailing the proposed plan for delivery and installation of the work, which the Commissioner will review – ensuring that it complies fully with their needs, including Health and Safety requirements.

Design and Approval

The Artist will submit the Design and work Specification to the Commissioner for approval before the Artist proceeds with the production of the Work (See Commission Milestones). In the event that it is evident that the Design does not meet the scope and standard required the Artist agrees to amend the Design to ensure compliance and any additional costs arising will be borne by the Artist.

Sub-contractors

The Artist may subcontract or delegate all or part of the fabrication or execution of the Work but the Artist shall personally supervise the design and execution of the Work and shall retain responsibility for the fabrication and execution of the Work.

If the Artist appoints sub-contractors to manufacture/fabricate 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.

Acceptance & Completion

The Artist agrees to complete the Work in accordance with the programme as detailed in the Commission Milestones.

The Artist shall permit the Commissioner to view the work during its fabrication, if requested, at reasonable times and on reasonable notice. See Commission Milestones.

The Artist will decide when the work is complete. The Commissioner agrees that it will accept the completed Work unless in the Commissioner's reasonable opinion the Work was not executed substantially in accordance with the description given in the approved Design and Specification. 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.

Delivery of the Work

The work is to be delivered to the Commissioner or produced by the Artist and/or their sub-contractor by **[insert date]**.

The Artist will be responsible for costs of delivery and insurance for work and/or any material relevant to the work during transit, as part of the agreed overall fee.

The Artist must keep the Commissioner informed about progress of the work in order that a plan to mitigate the impact of any potential delays on the schedule can be agreed.

Damage in transit will be the responsibility of the Artist. The Commissioner will be responsible for inspecting the work on arrival to check for damage during transit.

Installation of the Work

The work will be installed by **[insert date]** to an agreed schedule. This schedule will be agreed and confirmed after submission of the final Design in **[insert date]**.

Site Based work (Museum/Organisation): the Commissioner is responsible for carrying out preparatory site works within their building 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.

Off Site Work: The artist will work in partnership with the Commissioner to ensure all relevant information about the work is available in order to arrange any necessary planning consents and approvals and ensure that all necessary health & safety procedures are being followed.

An installation Method Statement should be submitted by the Artist for approval and sign-off by the Commissioner prior to installation commencing. The Commissioner and relevant responsible parties will be responsible for the final sign off and authorisation of any Work in the public Realm.

The work will be installed by the Artist and their nominated assistant(s). The costs of installation will be met by the Artist included in the total fee.

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.

Payment of Commission Fee

The total value of the commission is **[insert amount]** exclusive of VAT, to include:

- artist's fee
- cost of materials and manufacture
- cost of delivery of the work to the site and cost of installation
- costs associated with production of Work/Live events
- attendance at [insert key meetings or events that the artist needs to participate in or be present at as part of the commission]

The commission fee will be paid to the Artist in three stages:

- the first installment, of 20%, on receipt of the signed agreement,
- the second, of 60%, on sign-off of the final designs
- the third, of 20%, is on completion of the installation of the work

Additional work may be commissioned for the purpose of community engagement. This will be agreed throughout the development of the project and invoiced separately.

If the commissioning schedule has to be extended due to unforeseen delays on the Commissioner's part, the Commissioner will meet reasonable costs incurred by the Artist in meeting the consequences of such delays and comply with the commission funder's payment schedule.

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 or relevant supporting material will be presented in a public arena/displayed in the Museum from [insert date] and is expected to be in place until [insert date].

Ownership

New Expressions Artist Contract (sample for discussion only)

The Artist will retain legal title and ownership of the Work, excluding any materials paid for by the Commissioner which are owned and are the property of the Commissioner, until delivery to the Site, and receipt of the final payment, when legal title and ownership shall pass to the Commissioner.

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.

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, delivered and installed. Once the work is delivered on site the Commissioner is expected to take out permanent all-risks and public liability cover for the period of installation, display, de-installation and storage, except where work is undertaken by the Artist or their agents.

****Subject to agreements between relevant parties (site) on final Design and Specification submission.***

A 'defects period' of six months will be established immediately following installation, during which time 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.

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.

The Commissioner agrees to consult with the Artist on the long term maintenance of the artwork.

Relocation & deterioration

While the work is on display the Commissioner undertakes to notify the Artist in advance of any proposed alteration to the site.

The Commissioner undertakes to 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.

Interpretation and Display

The Commissioner undertakes to consult the Artist to develop interpretation of the work to immediately follow installation. The Commissioner will consult with the Artist should any changes to the interpretation be necessary based on audience feedback.

In the longer-term, interpretation of the work will be determined by the Commissioner with reference to the Artist's wishes expressed during the production, development and installation of the work.

The Commissioner undertakes to consult the Artist to develop audience engagement with response to the work immediately following installation.

Long-term interaction and engagement with the work will be determined by the Commissioner with reference to the Artist's wishes expressed during the production, development and installation of the work.

Copy & Reproduction Rights

Copyright in all work produced will remain with the Artist during their lifetime.

The artist agrees to images of the art work being used for educational purposes and promotion, including any associated moving image documentation, and on the Commissioner's web site in perpetuity.

The artist agrees to images of the work being used in the general promotion of the museum and its collections.

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

The Artist agrees to ensure that the Commissioner is credited wheresoever images of the work are placed in the public domain in perpetuity.

Credits & moral rights¹

The Commissioner is responsible for arranging signage for 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.

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

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

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 New Expressions Artist Contract (sample for discussion only)

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.

Aspects of this agreement relating to production and installation/de-installation 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.

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's 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

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:
 (Senior Manager with signing authority)

The Artist:

Date:

Commission Milestones

Please note the importance of agreeing a realistic schedule

Date – On or By [insert dates in this column as appropriate]	Item
	Initial concept development by artist complete
	Face – to – face meeting for artist to present concept to and discuss with Commissioner
	Concept agreed
	Contract for the Commission/installation including milestone dates, agreed by Artist and Commissioner
	First payment invoiced @ 20% of total
	R&D period: <ul style="list-style-type: none"> - Site visits - Curator and partner meetings as required - Concept development - Development of project plan, logistics and H&S planning - Filming of development stages – as agreed - Development of community engagement ideas
	Final concept submission by Artist to Commissioner for approval

Date – On or By [insert dates in this column as appropriate]	Item
	The Artist and The Commissioner to place initial information about the project – the commission and associated activities - on their web sites. The funders logos must be placed on both web-sites (to be provided by Project Manager) NOTE: Second payment is contingent on this milestone being met.
	Second payment invoiced @ 60% of total
	Outline of the Community Engagement and Learning Programme and the involvement of the Artist to be agreed between Artist and Commissioner. Details to be referenced separately and contracted / commissioned / invoiced as independent piece of work
	Nature and timetable for photography of work agreed
	Nature and timetable for any associated publications agreed
	Fabrication of work
	The Commissioner to make visit to Artist’s studio
	Face to face meeting to review detailed drawings to be considered by Commissioner, relevant partners and Artist: to resolve practical /installation issues in good time.
	Site meeting to discuss final designs with the Commissioner
	Side contracts with other artists/fabricators agreed by the Artist with the Commissioner
	Commissioner signs off final designs
	Method statement for installation agreed and submitted with relevant Health & Safety paperwork for review (allow 2 months for review, recommendations and updates).
	Final project sign off from all relevant parties
	Details of marketing campaign agreed with Museum including: <ul style="list-style-type: none"> - Press release - Launch details – including date, time, text and production for invitation, guest list and mail out arrangements

Date – On or By [ininsert dates in this column as appropriate]	Item
	Relevant signage and interpretation agreed with museum (to include text, design of sign, including typeface and size of type, placement of sign in relation to work)
	Preliminary works carried out
	Participation in learning and community engagement activities as agreed.
	The Artist will provide a talk for the Commissioners staff and volunteers
	Visit to Artists’ studio by Commissioners staff and volunteers to be arranged
	Work installed by: [insert date]
	Private View and Launch held
	Photography of work and documentation
	Artist and museum update their web sites
	Final invoice @ 20% of total NOTE: This invoice to be accompanied by full breakdown of all costs incurred – with receipted invoices The deadline for receipt of this is [insert date] (to meet funders deadlines)
	Visitors and community feedback their opinions on work – Artist involvement as agreed
	Artist participates in final evaluation