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Any legal action must be based on the German original.

## **Basic Principles**

### **under which the federal state of Berlin gives a guarantee for loans by third parties for exhibitions in the area of culture and the arts**

#### **Preamble**

The federal state of Berlin's cultural institutions (hereinafter referred to as "Borrower") should in general be given a commitment that the federal state of Berlin will give a guarantee for loans by third parties (hereinafter referred to as "Lender"), rather than Borrower having to take out an additional insurance policy, as long as the following prerequisites are met.

In connection with this guarantee, the federal state of Berlin (hereinafter referred to as "Land") can assume liability, within the context of an exhibition and transport insurance policy, as long as certain prerequisites are met. In the event of damage or loss, Land will assume liability as long as there are no grounds for exclusion.

If another authority is also involved in supporting the cultural institution in question, efforts should be made to ensure that this authority is proportionally involved in the financial risk entailed by a guarantee for an exhibition or a permanent loan.

The cultural benefit to be anticipated from the loan must be in proportion to the financial risk of the guarantee/declaration of liability.

The cultural institutions are free to take out an additional insurance policy sold by a commercial third-party insurer to cover liability in cases in which there are grounds for exclusion by Land, according to the declaration of liability.

In exceptional cases, an insurance policy sold by a third party can be taken out for the full amount if Lender expressly insists on such a policy and the loan is essential to realizing the exhibition concept. A separate review of the situation must determine whether funding provided by Land can be used to pay the costs of this insurance policy; that issue is not covered by this summary of basic principles.

## **1. General information**

- 1) Land can give a guarantee for loans in the area of culture and the arts up to a maximum amount that is set by the respective Budget Act (currently pursuant to Section 3, paragraph 5).
- 2) This guarantee shall ensure that Lender is compensated in the case of damage, regardless of fault, and, in Land, has recourse to a solvent liable party.

In return, Lender shall not require additional insurance to be taken out at Borrower's expense as a condition of the loan.

## **2. Beneficiary**

- 1) Borrower may give a guarantee as a legal entity under public or private law under the jurisdiction of the Senate Chancellery – Cultural Affairs. Beneficiaries can be either state-owned (e.g., Brücke Museum) or indirectly subordinate institutions and institutional recipients of state funding that covers at least 50% of their total budget. As a rule, Land will not give a guarantee to an exhibition receiving project funding.
- 2) Neither Borrower nor Lender has a right to a guarantee.
- 3) Land can give a guarantee only if Borrower is the actual organizer of the exhibition. If Borrower is only providing its premises so that a third party can hold an exhibition, no guarantee shall be given by Land.
- 4) In the case of permanent loans, liability and guarantees can be assumed only for state-owned institutions and institutional recipients of state funding.

## **3. General procedure**

- 1) Borrower shall inform Land as soon as possible about planned exhibitions that include loans from third parties. The exhibition and the anticipated insured value shall be reported for inclusion in the respective budget. The estimate of the insured value should not be inflated and should be commensurate with the theme of the exhibition and the need for loans.
- 2) Borrower concludes a loan agreement with the potential Lender in which Lender consents to having Land assume liability for the loaned objects and to having the certificate of liability with the terms of liability attached to the loan agreement as an appendix (Owner – Guarantee, Appendix 2 I and II). In return, Borrower undertakes to apply promptly to Land for the assumption of liability by Land for the loaned object. In this application, Land must be informed of the content of the loan agreement between Lender and Borrower.
- 3) Borrower concludes a contract, referred to here as an “exhibitor guarantee,” with Land. This guarantee declaration should correspond to the model contract attached here as Appendix 1. Lender must be promptly informed of the content of the declaration.
- 4) In addition, Land concludes its own contract with Lender in order to give Lender the broadest possible degree of security. This contract, referred to here as an “owner guarantee,” should correspond to the model attached here as Appendix 2 I, Land's offer of a declaration of liability. Land's liability conditions, Appendix 2 II, are attached to the contract. Lender signs both this contract and the loan agreement with Borrower.

#### **4. Additional insurance**

- 1) Lender's right to take out insurance against risks not covered by Land's guarantee shall be unaffected.
- 2) Borrower is permitted to take out subsidiarity liability insurance from a third-party insurer.

#### **5. Extent of liability**

- 1) In accordance with the declaration on the assumption of liability, Land is liable "from nail to nail," or from one location to another, pursuant to the principles of the German Civil Code (BGB), for the duration of the loan agreement, although only if there are no grounds for exclusion. In the event of a total loss, Lender shall be reimbursed for the insured value stipulated in the loan agreement, and in the case of a partial loss shall receive pro rata reimbursement. Please see section 3.1 with regard to the insured value.
- 2) Liability covers destruction, loss, theft, burglary, robbery, and damage (including willful or malicious damage by third parties – vandalism), as well as damage caused by force majeure (earthquakes, floods, the outbreak of war, airplane hijackings, terrorism, and strikes). Also included is damage caused by storms, hail, snow, fire, lightning, or explosions.
- 3) In the case of traveling exhibitions, coverage extends only to transport directly from or to Lender.
- 4) No liability shall be assumed during periods – including transport associated with these periods – in which the loaned object is temporarily given to third parties during the term covered by the loan agreement.
- 5) Borrower undertakes to give the loaned objects the same care, maintenance, and security enjoyed by Borrower's own collections.
- 6) Liability is excluded for damages caused either intentionally or as the result of gross negligence by Lender, Borrower, or their employees or vicarious agents.
  - 1) Also excluded are damages caused by:
    - a) Intrinsic defects in or the natural properties of the object to be exhibited.
    - b) Lack of or defects in the customary packaging.
  - 2) Also excluded are indirect damages of all kinds according to the German Civil Code (BGB).
- 7) If the loaned object is damaged, the costs of appropriate restoration, to be agreed upon between Borrower (Exhibitor) and Lender, shall be reimbursed, but shall not exceed the agreed insured value.
- 8) If the loaned object should depreciate in value following such restoration, Lender and Borrower shall come to an agreement on the amount of depreciation. If no agreement can be reached, a recognized independent expert shall be consulted at Borrower's expense to determine the amount of the depreciation.

#### **6. Procedure in the event of damage or loss**

- 1) Settlement of claims is the responsibility of the relevant office in the Senate Chancellery – Cultural Affairs of the federal state of Berlin, which is the service unit for finance in cooperation with the legal affairs section of the Division for General Policy.
- 2) Both Borrower and Lender shall grant Land the right of inspection with regard to the legitimacy of any claim on Land's guarantee. Borrower shall obligate Lender to provide information requested by Land at any time in connection with the guarantee and

to assist with determining any damages. Because Lender has the duty to cooperate, if this is refused, it shall have an impact on the amount of damages to be reimbursed.

- 3) Payment to Lender by Borrower of the amount of the claim for damages may not be made until Land has conducted its examination of the legal situation and the facts of the case. If Borrower pays Lender before this examination has been conducted, Land is not obligated to reimburse Borrower for this payment.
- 4) Land undertakes to carry out its damage inspection without delay. Statutory limitation periods for liability claims against third parties are to be observed.
- 5) In the event of damage or loss, once payment of the amount of the claim for damages has been made, Lender shall cede all claims against third parties who are partially or entirely responsible for the damage to the service unit for finance of the Senate Chancellery – Cultural Affairs of the federal state of Berlin.

## **7. Payment without legal obligation**

- 1) In the event of minor damage of up to €500 with no additional depreciation in value, payment can be made without acknowledging a legal obligation to do so, and, on a case-by-case basis, even if it is unclear whether all the relevant prerequisites for a claim for damages have been met, if a complete investigation of the facts of the case would require disproportionate effort and/or expense. The decision shall be made by the budget officer.
- 2) § 254 of the German Civil Code (BGB) applies accordingly.

## **8. Exceptions**

In clearly justified special cases, the Senate Chancellery – Cultural Affairs can permit exceptions to the above principles or make other arrangements.

## **9. Duration of validity**

These principles supersede the terms first published on 13 January 1994 and are valid indefinitely until they are superseded by new principles.

\_\_\_\_\_, Berlin, 13 September 2013

Dr. Konrad Schmidt - Werthern  
V Abtl

Exhibitor Guarantee

The federal state of Berlin, represented by the Governing Mayor of Berlin – Senate Chancellery/Cultural Affairs

hereinafter referred to as “Land”

and

.....

hereinafter referred to as “Exhibitor”

agree on the following

GUARANTEE:

§ 1 Exhibitor is either a state-owned institution of the federal state of Berlin or receives regular funding from Land (as institutional support or as project-related support that covers at least 50% of the total budget for the exhibition).

According to Exhibitor’s statutes, its tasks include the organization of exhibitions in the area of culture and the arts. For these exhibitions, it also borrows objects from private individuals and public institutions, which regularly requires it to assume liability for damage without proof of fault.

§ 2 Exhibitor will present the exhibition ..... in Berlin in the period from ..... to .....

For this exhibition, it will enter into loan agreements with lenders for exhibition objects with a total insured value of a maximum of ..... EUR.

§ 3

(1) So that Exhibitor can meet contractually agreed liability obligations for damages resulting from this loan, Land shall indemnify Exhibitor up to the amount of the total insured value established by § 2 under the terms of liability specified in § 4.

(2) Liability shall apply for the duration of the exhibition and the transport (“Nail to Nail”).

§ 4

(1) Liability covers destruction, loss, and damage, also as a consequence of strikes, war, terrorism, and vandalism. It also covers damage caused by storms, rain, hail, snow, or lightning. Damage caused by third parties, with the exception of (2), is also covered by this declaration of liability.

(2) Excluded is the risk of theft, embezzlement, or misappropriation by employees or vicarious agents of Exhibitor or of the lender. Also excluded are damages caused by:

- a) Intrinsic defects in or the natural properties of the object to be exhibited
- b) Lack of or defects in the customary packaging

Indirect damages of all kinds according to the German Civil Code (BGB) are also excluded.

(3) In the event of loss or total destruction of the object on loan, the agreed insured value will be reimbursed. It must be commensurate with the value of the object, and the estimate may not be inflated.

(4) If the object on loan is damaged, the costs of appropriate restoration, to be agreed upon by Exhibitor and the lender, will be reimbursed.

(5) If the object on loan should depreciate in value following such restoration, the lender and Exhibitor shall come to an agreement on the amount of depreciation. If no agreement can be reached, a recognized independent expert shall be consulted at Exhibitor's expense to determine the amount of the depreciation in value.

§ 5 Exhibitor shall observe all duties of care and obligations to the lender and to Land in conformity with the usual practice regarding exhibitions and a third-party insurance policy.

§ 6 Exhibitor must have Land's written consent in order to acknowledge a claim for damages and to waive the right of recourse against third parties. Exhibitor shall assert any potential rights of recourse against third parties promptly to the responsible party.

§ 7 Exhibitor grants Land the right of inspection with regard to the legitimacy of any claim on Land's guarantee. Exhibitor shall obligate the lender to grant Land the same right of inspection. The lender is obligated to give Land or its representatives any information requested at any time in connection with the guarantee and to assist with determining any damages. If the Lender refuses to cooperate, such refusal shall have an impact on the amount of damages to be reimbursed.

§ 8 Land is entitled to confirm to individual lenders that their loan is subject to the state guarantee pursuant to § 3 and § 4 of this guarantee declaration up to the amount determined by them and Exhibitor.

§ 9 The place of performance and of jurisdiction is Berlin. German law shall apply.

Berlin, the

.....  
The Governing Mayor  
of Berlin – Senate Chancellery/Cultural Affairs

.....  
Exhibitor

Appendix 2 – Owner Guarantee (Land – Lender) I and Liability Conditions II  
Appendix 2, I

Owner Guarantee – Declaration of Liability for Lender.....

The federal state of Berlin, represented by the Governing Mayor of Berlin, Senate  
Chancellery – Cultural Affairs,  
assumes liability, within the context of an exhibition and transport insurance policy  
("Nail to Nail"), for the objects listed below, which are being borrowed by

..... (Borrower)

The extent of liability is subject to the following liability conditions, which are an integral part of the assumption of liability.

Title of the exhibition:

Duration of the exhibition:

Artist:

Title of the work:

Medium:

Dimensions:

Amount of liability:

Period of liability:

Lender:

Berlin, the

### **Liability Conditions**

1. Liability covers destruction, loss, theft, burglary, robbery, and damage (including willful or malicious damage by third parties – vandalism), as well as damage caused by force majeure (earthquakes, floods, the outbreak of war, airplane hijackings, terrorism, and strikes). Also included is damage caused by storms, hail, snow, fire, lightning, or explosions. Damage caused by third parties, with the exception of (2), is also covered by this declaration of liability.
2. Liability is excluded for damages caused either intentionally or as the result of gross negligence by Lender, Borrower, or their employees or vicarious agents.  
Also excluded are damages caused by:
  - a) Intrinsic defects in or the natural properties of the object to be exhibited.
  - b) Lack of or defects in the customary packaging.Also excluded are indirect damages of all kinds according to the German Civil Code (BGB).
3. In the event of damage, the insured value agreed on in the declaration of liability will be taken as the basis for determining reimbursement. In the event of loss or total destruction of the loaned object, the agreed insured value will be reimbursed. It must be commensurate with the value of the object.
4. If the object on loan is damaged, the costs of appropriate restoration, to be agreed upon by Exhibitor and Lender, will be reimbursed.
5. If the loaned object should depreciate in value following such restoration, reimbursement for depreciation can also be made.
6. Borrower is obligated to report any damage promptly, within 6 days at the latest from becoming aware of the damage, to Lender and Land. If damage is not discovered until the object has been returned to Lender, Lender is also obligated to report such damage to Borrower or Land within 6 days.
7. Once payment of the amount of the claim for damages has been made, Lender is obligated to cede all claims against third parties in connection with the damage to Land.
8. Overall, Borrower shall observe all duties of care and obligations to Land in conformity with the usual practice regarding a third-party insurance policy.
9. German law shall apply, and the place of jurisdiction is Berlin.