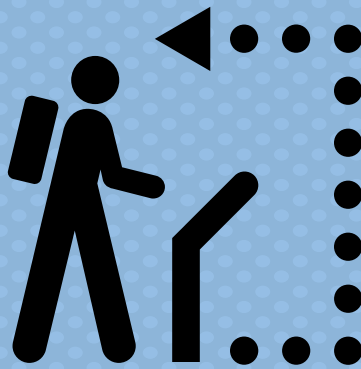


BAM! Complete Guide to Negotiating Contracts

by Robert Baird



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A guide for artists,
agents, and presenters

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BAM! Complete Guide to Negotiating Contracts

Basic Negotiating Strategies

1. Know your Negotiating Range

Any negotiator has an endgame in mind from the very beginning. Before you enter negotiations, you should know what you'd like to ask for, and what your minimum requirement is – the point below which you will not go. Obviously, you need to leave room to negotiate and the distance between asking fee and minimum requirement allows for meeting the other party halfway. I have known artists whose fee is one figure and if a presenter does not match that fee, the artist does not perform. I have also known presenters for whom a maximum artistic fee is set and they will not go above that under any circumstances. It is a good idea to have alternative suggestions to break any impasse in negotiations: suggesting a split-fee basis, a deposit and escalating fee depending upon ticket sales, added benefits which might reduce the fee but provide benefits to either side in the negotiations.

2. Do Your Research

Given the information available on the internet, in such reference guides as Musical America or reports such as Pollstar, it would be foolish not to find out as much as possible about the parties with whom you are about to negotiate. An artist can ascertain the presenting budget for a venue, the types of past programming ; a venue can find out how many tickets an artist has sold at past events, etc. Knowing the history, background, focus, etc. can inform your negotiations. Discovering shared interests, attitudes, background, etc. can make negotiating a lot easier since there is already a connection between the two parties.

3. Clarify

A good negotiating tactic is to be sure that you articulate your position clearly and that you understand the meanings of what is said. Often it helps to repeat what the other side as said to make sure that they said what they meant and that your interpretation of what they said is the right one – e.g. “So, you are saying that I have to . . . ” or “If I understand correctly, you are offering me \$X and 2 night’s accommodation but no hospitality.” If a presenter says that they never provide accommodation, you may discover through adroit questioning that they have an arrangement with a local hotel which can provide accommodation at a discounted rate. While the statement may be true, it does not clarify the full meaning which could be: We never provide accommodation, however, we have an arrangement with a local hotel and can offer you a discounted rate for accommodation. Be sure that your statements accurately reflect your position in all aspects of the negotiations. And remember that it is better to question than to demand.

4. Be Sensitive and Reasonable

Be sensitive to pick up on cues and clues which may help you to identify roadblocks to successful negotiation. Successful negotiation is not an emotional struggle, it is ascertaining the other person’s point of view and seeing if a mutually satisfactory solution can be found. If you take the stand that solutions can be found by working together, then the negotiations will proceed much better. The approach should be: “Let’s work together to see if we can find a way to solve this problem and see if your budget guidelines and my tour budget can both be served.” Be reasonable. Consider the other side in the negotiation and if, in asserting your interests, you are ignoring theirs.

5. Be a Good Listener

Encourage the other side to start talking first. It is better to react to a proposal, if possible. Don't interrupt but let the other person express their position fully. Listen carefully and try to gauge what the issues really are and address them in a creative way.

Finally, note that a good negotiation is a win-win for both sides. To paraphrase the song, "you've got to give a little, take a little and let your negotiations change a little – that's the story of, that's the glory of human interaction." Find the middle ground that works for everyone involved.

Letter of Intent/Deal Memo

An intermediary step between negotiations and contract issuance may be a Letter of Intent or a Deal Memo. These usually outline agreed-upon details and are typically used for funding applications.

Contract Issuance

Once you receive the contract read it through carefully. If you don't understand something, ask for clarification. Sometimes legalese can be very confusing. If there is a contentious point, ask to discuss it in person or via telephone. Emails are NOT the best negotiating tool. If you feel the need to consult a lawyer on contract language or for a legal opinion, do not hesitate to do so. Once a final contract is issued it MUST be thoroughly read before being signed. And please note that contracts are NOT written in stone – they can and should be questioned if necessary: items can be struck but must be initialled by both sides to be legal. Items can be renegotiated if necessary. Also note that any attachments to a contract should be initialled on every page as should most contracts. When in its final version the contract should be signed/initialled by both parties and each party should receive at least one signed copy.

What is a Contract?

“A contract is a verbal agreement between two people. Period. The rest is just paperwork.”

Jim Fleming (Fleming, Tamulevich & Associates)

Contract Basics:

1. Every contract must be framed to suit the particular circumstances for which it is intended. It would be foolish to utilize any contract sample without ensuring that it suits your specific needs.
2. A contract does not have to be written in convoluted or obscure legal language. Plain English is adequate to the task.
3. An oral agreement can constitute a contract (but is often difficult to enforce).
4. A series of emails can constitute a contract.
5. Both parties must agree to the terms of a contract and sign off on them (or agree to them verbally or through email). If one party makes changes to an agreed-upon contract, signs it and sends it to the other party, the other party must agree to the changes or there is no contract.
6. Once you have signed a contract you are bound to its terms.
7. If the terms of a contract fail to clarify any issues then these issues are not part of the contract.
8. Contracts are written so that both parties understand the pertinent details. A contract is the form used to communicate these details between parties.
9. Be clear on your signing authority before you sign a contract. An agent would normally sign “on behalf of” an artist or would, obviously, be liable for the contract details personally; similarly, if signing for a business, the contract would be in the name of the business and signed by an authorized person on behalf of that business.

What Every Contract Should Include

1. What both parties agreed to, in detail
2. What action(s) breach the contract, in part or in whole
3. What to do about a breach: consequences and resolution

Contract Details to be Negotiated: A Checklist

- Whose contract will be used?
- Performance Date(s)
- Performance Time(s)
- Performance Fee (Currency):
- Payment Method (Cash, Cheque, Wire)
- Payment Schedule: Deposit date/amount; balance date/amount
- Additional Services
 - Pre-Show (Meet and Greet)
 - Post-Show (Receptions)
 - Strolling
 - Workshops
 - Community Events
- Exclusivity: no other performances allowed before or after contracted date/no additional artists on bill without approval
- Radius Clause: constraints regarding performances in the same area (usually a certain radius around the performing venue)
- Promotion

- Materials to be provided by Artist; promotion to be undertaken by Presenter
- Promotional Activities to be undertaken, when and by whom

Licensing Fee Payments: who pays?

Complimentary Tickets: Number/when released back to presenter

Insurance Coverage: Liability Amount/Tulip?

Sales of Merchandise: What sold/who will see/when sold/split/

Accommodation: Quality of rooms/how many rooms/how many nights

Hospitality: Meals? Snacks? When provided?

Dressing Rooms: How many/furnished with/access to bathrooms

Load-in/Set-up: When/time required/assistance required?

Sound Check/Rehearsal: When/how long

Strike: When/how long/assistance provided?

Technical Equipment: Who will provide any extra equipment needed?

Recording: Allowed?

Cancellation: deadline for cancellation and consequences

Deadlines: date for signed contract

Final Thoughts

Be calm, cool and collected. Take your time. The process of negotiating contracts requires careful consideration. Don't sign anything without reading it and read everything more than once so you are sure that you understand exactly what it is you are signing. Give the process the thought and time it deserves.

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Robert Baird, President of Baird Artists Management, is now available for consultation and advice regarding Canadian and U.S. regulations and information for performers, agents/managers and performing arts venues. Mr. Baird has been in the performing arts for over fifty years and has had distinguished careers in education, publishing and musical theatre. He served on the Board of Directors (2008-2010) and was President (2011-2013) of the North American Performing Arts Managers and Agents (NAPAMA). He was Treasurer and Vice-President of Festivals and Events Ontario (FEO) and served on that Board on various committees (2010-2013). Mr. Baird received the Arts Northwest Coyote Award and the Performing Arts Exchange Mary Beth Treen Award in 2012. He is Chair of Team Agent Network (TAN) and APAP Showcase Coordinator.

Robert is a regular columnist in *International Musician: The Official Journal of the American Federation of Musicians of the United States and Canada* (Circulation 100,000+ Monthly) where he writes a monthly column entitled "Crossing Borders". The column focuses on what artists need to know to get into Canada or the United States. He also writes a monthly column entitled "Artist Manager's Toolkit" for *International Arts Manager*, based in London, England.

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