

LENDING AGREEMENT

The

Österreichische Nationalbibliothek, Scientific Institution based on federal law,
Josefsplatz 1, A-1015 Wien,
Tel.: 00431 53410
Fax: 00431 53410 280
E-Mail: onb@onb.ac.at
VAT-Nr.: ATU54091307
represented by the management

- in the following referred to as "Lender" -

and

Name / Institution:
Adresse:
Tel.:
Fax:
E-Mail:
VAT-Nr.:
represented by (Name, Function):

- in the following referred to as „Borrower“ -

agree as follows:

§ 1 Subject of the Agreement

- (1) In the term from _____ to _____
an exhibition with the title:
takes place in:
- (2) The Lender leaves to the Borrower in the term
from _____ to _____
for the purpose of the implementation of the named exhibition, including preparation,
assembling, outgoing- and return transport, the loan items specified in attachment 1
as a loan.
- (3) The Borrower commits himself to absolutely comply with this term. Any change to and
extension of the term has to be agreed upon by the parties in writing before the end
of the term. In case the borrower desires to extend the term, he commits himself to
file an application for the extension of the term in time, not later than four weeks
before the end of the term. The Lender is not obliged to extend the term of loan.

- (4) Attachment 1 (List of loan items with their insurance value) and attachment 2 (additional provisions) are part of this lending agreement.
- (5) The effective date of this agreement shall be the date when both parties sign this agreement.

§ 2 Costs

- (1) All Costs connected with this loan (Insurance, Documentation, Packaging, costs for accommodation and travel expenses of servants authorized by the Lender, customs, scientific editing, administrative Costs, Adaption, labour – and ancillary labour costs on a pro-rated basis of the Lender's employees that are prevented from their usual performance by this loan, and all other costs that may arise eg. for restoration) are borne by the Borrower. The Lender has the right to determine the amount of the costs unilaterally and incontestably.
- (2) A summary of the estimated costs to be borne by the Borrower is provided in the additional provisions (attachment 2). The Lender reserves the right to claim those costs that arise in conjunction with this agreement from the Borrower that cannot be fixed or were not known at the time of the effective date of this agreement (eg. additional costs caused by a longer detention of a courier, not yet fixed customs fees etc.).
- (3) The costs are due upon invoicing. The amount has to be paid by the Borrower within 14 days after the invoicing without any discount. In case of belated paying, a reminder fee and default interest will be charged additionally. Packaging and transport of the loan items occur only after the Lender has received the invoiced amount.
- (4) In case the Borrower does not require one or several loan items (attachment 1), he however has to bear all expenses incurred in connection with the preparation of the loan item(s) by the Lender (eg. cleaning, restoration, conservation measures, packaging for transport, administrative costs etc.).

§ 3 Risk transfer and liability

- (1) Notwithstanding the existence of an insurance coverage according to § 4 of this agreement, the Borrower is, irrespective of his fault, liable for the loss, damage and destruction, including acts of god or force majeure, for the term of „Pin to Pin“ up to the amount of the insurance value fixed in attachment 1. The Borrower is free from liability only if he can demonstrate that the damage would also have occurred without the loan. Any destroyed item remains in the ownership of the Federal State.
- (2) In case of any damage to the item, the Lender is entitled to unilaterally and incontestably determine the amount equal to the costs of repair and the obsolescence up to the insurance value.
- (3) The parties mutually agree to extend the Lender's notice period according to § 982 ABGB to one year.
- (4) The Borrower is, irrespective of any insurance indemnification payments, liable for full payment of compensation.

§ 4 Insurance

- (1) The Borrower commits himself to insure the loan items for the term including outgoing and return transport from „Pin to Pin“ at his own expense against all risks with an insurance company excepted by the Lender and the insurance sum specified in attachment 1. Due to the principle of non-insurance of federal property loan items don't have to be insured when the Borrower is an Austrian federal institution (see attachment 2), with the exception of a transport insurance which is mandatory in all circumstances.
- (2) The insurance policy must show that
 - a. the Lender is the sole beneficiary entitled to receive any insurance benefits,
 - b. the insurance has been assigned to the benefit of the Lender
 - c. in departure from Sec. 11 of the AÖTB (Austrian Standard Transport Insurance Terms), the value specified by the Lender shall be recognised and shall not be disputed in the event of a claim (=agreed value), and
 - d. a potential lack of cover due to late payment of the insurance premium will not detrimentally affect the Lender
- (3) The insurance policy and any amendment to the insurance contract including all necessary authorisations, powers and documents have to arrive at least eight (8) business days before packaging and transport of the loan items at the Lenders address.
- (4) In case the Lender agrees to extend the term, the Borrower assures at his own expense the prolongation of the insurance coverage. The original insurance policy restricted to the Lender as Named Insured is provided at least eight (8) days before the beginning of the extended term.
- (5) In case of theft, loss, or total destruction etc., the total insurance value of the loan item specified in attachment 1 has to be reimbursed.

§ 5 Transport, Packaging

- (1) Packaging and transport of the loan items occur only after the insurance policy and any amendment to the insurance contract including all necessary authorisations, powers and documents have arrived at the Lender's address.
- (2) The transport of the loan items is carried out by a carrier / or a transport company that is appropriate for and experienced in carrying out art transports. If the insurance value exceeds € 10.000,-, the transport has to be carried out by a specific art transport company. The choice of the transport company, the type of transport and the definition of the route of the outgoing and return transport are obligatory agreed on between Lender and Borrower. If the calculated insurance value of all loan items listed in this lending agreement does not exceed € 10.000,-, the Borrower is in accordance with the Head of the concerned collection of the Lender and ensuring appropriate security measures free to organize the transport by himself (eg. pickup by a professional employee). Items which need special care and transport due to their dimensions or conditions are excluded from this regulation (eg. globes).
- (3) All transport- and ancillary transport costs (eg. customs and insurance costs), including the costs of a transport guide necessary at the discretion of the Lender by an employee or agent of the Lender are borne by the Borrower.
- (4) Basically, the transport will be guided by an employee of the Lender if the insurance value of all loan items mentioned in this lending agreement exceeds € 10.000,- (1 Person Courier Guidance). If the total value of the insured items exceeds € 10.000 and

the value of the single loan items does not justify courier Guidance, the Lender can in accordance with the head of the concerned collection refrain from such courier guidance.

- (5) Refund for the costs of transport- and/or courier guidance is based on the Austrian travel cost Regulation (Reisegebührenvorschrift). The courier or the transport guide basically travels economy class by plane. Outside of Europe, business class travelling can be agreed upon (especially for overseas flights). When travelling by rail, the courier is entitled to book first class. The Borrower arranges appropriate accommodation for the courier or transport guide during the stay. The costs for accommodation are borne by the Borrower. The Lender's decision about the duration of necessary courier guidance shall be made by the head of the concerned collection in accordance with the Borrower.

In case the assembling of the exhibition is delayed by act of god, strike, flight delay or other circumstances that justify a longer stay or a longer overall travel time of the courier, the Borrower bears all costs in conjunction with this longer stay or overall travel time of the courier.

§ 6 Exhibition and Storage Rooms, Security Measures, Reporting Requirements

- (1) The Borrower arranges the necessary care and security measures for the loan items. The Exhibition and Storage Rooms are especially protected against fire, water, burglary and theft. Constant observation of the exhibition is provided.
- (2) The Borrower commits himself to fulfil the additional provisions of attachment 2. In particular he guarantees suitable presentation conditions for the loan items (e.g. appropriate display cabinet size, appropriate hanging devices etc.) and that the temperature, relative humidity, illumination or ultraviolet radiation in the exhibition rooms and in the storage rooms shall not exceed or fall below the values stated in Schedule 2.
- (3) By request of the Lender, the Borrower preliminary to the effective date of the contract, provides a „Facility Report“, which discloses the edificial facts as well as the protective circumstances and conditions and the security-related equipment of the exhibition and storage rooms.
- (4) The Borrower commits that the measures taken can be examined and inspected by the Lender at any time and that the Lender can undertake additional measures by himself or by an agent at the expenses of the Borrower.
- (5) Unless otherwise agreed and if no courier has been sent by the Lender, the Borrower carries out the assembling and fixation of the loan items only under the direction of a professional assigned by the Borrower. Without written regulation, no subsequent movement of the loan items is carried out by the Borrower.
- (6) The Borrower commits himself not to change the loan items in any way, especially in the timeframe between hanging and haging up / inlaying and removing (presentation in a showcase). Unless otherwise agreed, the Borrower commits himself to undertake no reframing-, mounting-, restoration-, or cleaning work by himself or by an agent.
- (7) The Borrower furthermore immediately discloses any damage, loss and all other relevant circumstances concerning a loan item via phone, e-mail, or fax to: Collection:
Tel.:
Fax.:
E-mail: @onb.ac.at
- (8) A written notice of damage or loss of a loan item is filed subsequently within 24 hours.

- (9) In case of an upcoming or already occurred damage, the Borrower immediately takes all necessary actions and all actions required by the insurance to restrain the cause of damage, to identify the wrongdoer, to ensure the claim and informs the Lender hereof.
- (10) Furthermore, the Borrower informs the Lender of any change concerning his address or concerning the persons authorized to receive Mail (process agents).
- (11) The Lender prepares a protocol of condition for all loan items before the handover and keeps records of the conditions of the loan items. The Lender as well as the Borrower have to sign the protocol and the documentation. The costs arising thereof (Photos, etc) are obligatory subject to attachment 2 and are borne by the Borrower.

§ 7

Recordings, Catalogue, Promotion

- (1) The production of photos, slides, analogue or digital reproductions, film-, video,- or TV recordings requires the written authorization of the Lender. The Borrower furthermore commits himself to ensure that no such recordings are produced by third parties without the written authorization of the Lender.
- (2) On request of the Borrower and at his own expenses, the Lender provides the Borrower with analogue or digital masters for reproduction in the Catalogue and for the promotion of the exhibition by brochures and the press. These Photos, as well as other slides, printing plates, film-, or video recordings and other media of any kind may not be used in a different way as agreed on between the parties.
- (3) The Borrower commits himself to ensure that prior to the production or the use of photos, slides, etc., all legal (especially copyright) requirements are met.
- (4) The Borrower furthermore commits himself to indemnify the Lender from and hold him harmless against any claims of third parties that may derive from the use of the loan items.
- (5) The Borrower commits himself to identify the Lender as the source of every loan item (origin declaration as specified in amendment 2) in the exhibition as well as in the catalogue.
- (6) The Borrower commits himself furthermore to send at least 2 copies of the catalogue unasked and free of charge to the Lender as well as copies of evidence of any publications on the occasion of the exhibition made by the Borrower, all within four (4) weeks after the publication.

§ 8

Preterm termination of contract and return of single loan items

- (1) This contract can be terminated prior to the end of the term on reasonable grounds in respect of single or all loan items. The costs of such preterm termination of contract, especially expenses occurred to the Lender because of the preparation of the loan items (cleaning, restoration, conservation measures, packaging and transport, administrative costs, etc.) are borne by the Borrower.
- (2) Reasonable grounds for preterm reclamation of single or all loan items are, irrespective of fault, especially:
 - a. acts of the Borrower contrary to contract,
 - b. the failure to fulfil conservation or security conditions claimed by the Lender, even if additionally or subsequently,

- c. use of the loan items contrary to contract, especially transfer of loan items to a third party,
- d. death or loss of the legal entity of the Borrower, nomination of a solicitor for the Borrower, or commencement of insolvency proceedings.

§ 9

Formal requirements, Jurisdiction

- (1) Any amendment of this agreement has to be done in written form to be valid. All notifications between the parties according to this Agreement, are made by registered letter, unless otherwise agreed or specified in this agreement. Oral Agreements are considered as non existent.
- (2) Any invalid or void provisions of this agreement shall not affect the validity of the other provisions of this agreement. Invalid provisions are to be exchanged by valid provisions according to the intention of the agreement.
- (3) Notifications of the Lender are delivered legally effectively to the last known Mail Address or to the appointed process agent. (§ 6/9).
- (4) Any dispute out of or in connection with this agreement shall be subject to the exclusive jurisdiction of the courts in Vienna (Wien Innere Stadt). This agreement shall be governed by the laws of Austria. Translations of this agreement are permitted, for the purpose of interpretation only the German text is applicable.

Lender:

Borrower:
(Stamp)

.....
Dr. Johanna Rachinger
Director General

.....
Name
Position in Company

City, Date

.....
Mag. Richard Starkel
Commercial Director

Vienna, on

Attachment 1: List of the loan items

Lender:

Österreichische
Nationalbibliothek

Josefsplatz 1, A-1015 Wien

Collection:

Person in charge:	Tel.:
	E-Mail

Borrower:

Address:

Person in charge:	Tel.:
	E-Mail

	shelf mark / inventory number	Name / artist	Dated	Dimensions of the item	Insurance value in €
1)					
2)					
3)					
4)					
5)					
6)					
7)					
				Total:	

Attachment 2: additional provisions

Lender:

Österreichische Nationalbibliothek	Josefsplatz 1, A-1050 Wien
Collection:	
Person in charge:	Tel.:
	E-Mail

Borrower:

Address	
Person in charge:	Tel.:
	E-Mail
UID (Vat) Nr:	

invoice recipient:

Address	
Person in charge:	Tel.:
	E-Mail
UID (Vat) Nr:	

(1) List of costs to be borne by the Borrower

expense factor	Number of the loan item(s) according to Attachment 1	Costs in € (Incl. 10% VAT!)
Arrangement fee* including: Administration Documentation Security recordings Preparation Autograph bag Passepartout Framing etc. * Arrangement fee covers up to 10 items; from 11th item on additionally € 50,- /item	all	minimum € 165
Courier / Transport monitoring Travel costs Travel expenses (round trip) Hotel expenses for..... accomodation (<i>unless directly paid by the Borrower</i>) Daily allowance Labour time allowance	all	
Miscellaneous		
TOTAL		

Reproduction samples and dispsition fee (for catalogue pictures etc.) have to be separately ordered by the Borrower and are charged separately.

Important information: The allocation of the lending costs does not include 10% VAT for borrowers from EU member states with a valid UID-Number and from EU-third states.

(2) The borrower undertakes to contract the transport company in accordance with the European Union's procurement law.

(3)

The loan shall be insured in accordance with Sec. 4 of this loan agreement.

When sending the insurance policy to the lender (Sec. 4 Para. 3), the borrower shall attach a confirmation of the payment of the insurance premium.

The Borrower is an Austrian federal museum. The loan items don't have to be insured, with the exception of a transport insurance which has to be concluded by the Borrower for the transport of the loan items from the Lender to the Borrower and back.

(4) The graphic material handed to the media has to clearly identify the Austrian National Library by the origin declaration „Österreichische Nationalbibliothek, Wien“ or by an adequate translation as the definite rightholder.

In catalogues and descriptions the origin declaration has to be as follows:

(or an adequate translation).

(5) Graphic material required by the borrower is stipulated as (by dimensions, terms of delivery etc.) :

(6) The borrower assures for the whole lending period that the loan items won't be exposed to the influence of daylight or brightness more than 50 Lux.

(7) In the exhibition rooms and all the other rooms where a loan item are stored, the relative air humidity has to be between 45 – 50 %, and the temperature between 18 - 22 °C .

(8) The borrower has to arrange constant recording and documentation of the data in the exhibition room, in the storage room as well as in the show cases by skilled employees. The borrower has to secure the items in case of a divergence of more than 5 % of the required value and to contact the Lender. Control strips of the Thermo hygrometer have to be transmitted.

(9) The following loan items may be borrowed from the date defined in § 1 of the contract from _____ to:

(10) Concerning transport and accompaniment of the loan items, the following is agreed:

Form of transport:

Route:

Courier:

(11) Other supplementary provisions (air circulation, show case air-conditioning, etc.):