

LOAN AGREEMENT

Österreichische Nationalbibliothek, a scientific institution under public law, Josefsplatz 1, A-1015 Vienna,
Tel.: (+43 1) 534 10
Fax: (+43 1) 534 10-280
E-mail: onb@onb.ac.at
VAT identification no.: ATU54091307
Represented by its Management

– hereinafter referred to as Lender –

and

Name / Institution:
Address:
Tel.:
Fax:
E-mail:
VAT identification no.:
Represented by (name, function):

– hereinafter referred to as Borrower –

herewith agree as follows:

General Provisions

Title of exhibition:
Venue of exhibition:
Duration of exhibition: from to
Loan duration: from to

Article 1: Subject of Agreement

- (1) Lender shall make available to Borrower the objects specified in Annex 1 as loan for the purpose of staging the above exhibition, including preparation, dismantling, outgoing and return transport.
- (2) Borrower undertakes to apply for any desired extension of the loan period in good time, but in any case no later than four weeks before the originally contemplated end of the exhibition. Lender shall be under no obligation to extend the loan period.
- (3) Annex 1 (List of loaned objects at their insured value) and Annex 2 (Additional terms and conditions) shall be deemed integral parts of this Loan Agreement.
- (4) Lender shall hand over and Borrower shall accept the loaned objects in the premises of the Austrian National Library. Borrower undertakes to return the loaned objects at the same place.

Article 2: Costs

- (1) Any and all costs arising in connection with the loan (including, but not limited to insurance, documentation, packing, accommodation and travel of persons commissioned by Lender, customs duties, scientific editing, administrative handling, adaptation, pro-rated payroll and ancillary costs of the involved employees of the Austrian National Library, and any other costs

- as may arise, such as for instance for restoration work) shall be borne by Borrower. Lender shall have the right to unilaterally determine the amount of all such costs, which amount cannot be disputed.
- (2) Annex 2 (Additional terms and conditions) lists the estimated costs that will have to be borne by Borrower. Lender reserves the right to request Borrower to also pay any costs in connection with the loan that were not yet known or determinable at the time this Agreement was concluded (such as extra cost caused by the courier having to stay longer time than expected, customs duties not yet determined, costs of early termination of the Agreement, etc.).
 - (3) All such costs shall become due and payable upon invoicing. The amount invoiced shall be settled within 14 days without any deductions (such as cash discounts) being made. Where payments are not made in due time, a reminder fee and default interest shall be charged additionally. Lender reserves the right to release the loaned objects for packaging and transport only after having received the amount invoiced.
 - (4) Where one or more loaned objects (Annex 1) are not claimed by Borrower, Borrower shall nevertheless bear all the costs incurred by Lender in preparing such loaned object(s) (cleaning, restoration, conservation, packing for transport, administrative effort, etc.).
 - (5) COVID-19 special provision: Borrower shall bear all (additional) costs caused by the pandemic (extension of insurance period, non-use or early termination of the loan, return transport of loaned objects, etc.).

Article 3: Risk Transfer and Liability

- (1) Without prejudice to existing insurance cover pursuant of Article 4, Borrower shall, for the duration of the nail-to-nail period, be liable, whether at fault or not, for loss, damage and destruction of the loaned objects, including accidental loss, damage and destruction, up to the maximum amount insured as set out in Annex 1. Borrower shall be released from liability only if Borrower is able to prove that the loss or damage would have occurred also without any loan having been effected. Ownership of that object shall at any rate remain with the Austrian state.
- (2) Where an object is damaged, Lender shall have the right to unilaterally determine the amount corresponding to cost of restoration and loss in value, which amount cannot be disputed.
- (3) Lender's notice period for notifying defects pursuant to section 982 Austrian Civil Code shall be extended to one year by mutual consent.
- (4) Borrower shall be liable for full payment of compensation, irrespective of any payments made by the respective insurance company.

Article 4: Insurance

- (1) Borrower shall, for the duration of the loan, including outgoing and return transport from nail to nail, insure the loaned objects against all risks with an insurance company acceptable to Lender for the amount insured specified in Annex 1. Exemption from such mandatory insurance shall – with the exception of transport insurance, which must be taken out in any case – apply only to loaned objects loaned to an Austrian federal museum (see Annex 2), based on the principle of non-insurance of federal property.
- (2) The insurance policy must state that
 - a. Lender is the sole beneficiary entitled to receive any insurance benefits,
 - b. transferability of the insurance is restricted for the benefit of Lender,
 - c. unlike set out in section 11 AÖTB (Austrian Standard Transport Insurance Terms), the value stated by Lender shall be recognised and not be disputed in the event of a claim (= agreed value), and
 - d. any potential lack of cover due to late payment of the insurance premium shall not be to the detriment of Lender.
- (3) The insurance policy as well as any supplements to the insurance contract must have been received by Lender, along with all required powers of attorney and other documents, no later than eight (8) business days before packing and transport of the loaned objects.
- (4) If Lender agrees to extend the loan period, Borrower shall, at Borrower's expense, procure that insurance cover be extended accordingly. The original policy, its transferability restricted for

the benefit of Lender, shall be submitted to Lender no later than eight (8) days before the extended period starts.

- (5) If the loaned object cannot be returned within the agreed loan period to Lender, Borrower shall extend the insurance period no later than eight (8) days before expiry.

Article 5: Packing, Transport

- (1) The loaned objects shall not be packed and transported until the insurance policy as well as any supplements to the insurance contract have been received by Lender, along with all required powers of attorney and other documents.
- (2) The loaned objects shall be transported by a courier appointed by Lender and/or a transport agent that is suitable for and experienced in carrying out art transports. Borrower and Lender shall agree in a binding manner on which company, what type of transport and which routes for outgoing and return transport to use.
- (3) All costs of transport and ancillary costs of transport (for instance, customs duties, insurance), including the cost of the transport being escorted, at Lender's discretion, shall be borne by Borrower.
- (4) The transport shall as a general rule be escorted by a staff member of Lender. On a case-by-case basis, Lender may, provided the head of the relevant collection consents, waive the requirement of transport being escorted by a staff member.
- (5) Transport and/or courier escort costs shall be reimbursed based on applicable Austrian travel expenses regulations (*Reisegebührenvorschrift*). The courier and/or the transport escort shall in general fly economy. Business class flights may be agreed upon for destinations outside Europe (especially for intercontinental flights). When traveling by rail, couriers shall use first class. Borrower shall arrange for adequate accommodation for transport escorts and/or couriers for the duration of their stay. Borrower shall defray the cost of such accommodation. At Lender's, the head of the relevant collection shall have the final say on how long courier escorting is necessary, in consultation with Borrower.
- (6) Where delays in exhibition assembly, acts of god, strike, delayed flights or other circumstances cause courier stays or travel to take longer than planned, Borrower shall also bear all costs arising from such longer stay or travel.

Article 6: Export Permit, Customs Clearance, Immunity

- (1) The Loan Agreement shall be subject to the condition subsequent that – if so required – the Austrian Federal Monuments Office has issued a permit for exporting the loaned objects.
- (2) Borrower shall see to correct and timely customs clearance and ensure that the loaned objects are handled in a most careful manner during customs procedures and shall indemnify and hold Lender harmless in this respect.
- (3) At Lender's request, Borrower shall apply, in good time before handover of the loaned objects, for temporary immunity of the loaned objects with the competent authority and shall inform Lender as soon as legally binding approval has been given. Borrower undertakes to notify Lender in full of any claims asserted by third parties and shall assist Lender as best possible in defending against such claims and protecting Lender's interests.

Article 7: Conditions of Exhibition

- (1) Borrower shall procure all necessary preventive, safety and security measures for protecting the loaned objects. All premises in which the loaned objects are exhibited or temporarily stored shall be sufficiently protected, including, without limitation, against fire, water, burglary and theft. Constant monitoring of the exhibition shall be ensured.
- (2) Borrower undertakes to comply with the additional terms and conditions as set out in Annex 2. Borrower shall, in particular, ensure adequate conditions for the presentation of the loaned objects (e.g. appropriate size of display cases, appropriate hanging systems, etc.) and that the

- values for temperature, relative humidity, illuminance, and UV radiation exposure do not exceed/fall below the values indicated in Annex 2.
- (3) At Lender's request, Borrower shall draw up, prior to execution of the Loan Agreement, a facility report listing not only structural details but also the conditions relevant for conservation (including restoration/conservation support provided for the loaned objects) and circumstances as well as the security features of all rooms.
 - (4) Borrower shall permit Lender to inspect and monitor the measures taken at any time and to take, at Borrower's expense, any additional measures deemed necessary by Lender or have such measures taken.
 - (5) Unless otherwise agreed upon and provided no courier is dispatched by Lender, Borrower shall carry out the mounting and/or attaching of the loaned objects only under the direction of an experienced technical expert commissioned by Borrower. Borrower shall not move the loaned object thereafter without having obtained prior authorisation by Lender.
 - (6) Borrower undertakes not to change the loaned items in any way whatsoever, in particular in the time between hanging and taking down / placing in and taking out of (a display case). Unless otherwise agreed upon herein, Borrower shall specifically undertake not to carry out any framing, mounting, restoration or cleaning work on the loaned objects or have such work performed.
 - (7) Borrower shall furthermore notify Lender of any damage, loss or other relevant circumstances relating to a loaned object without delay via telephone, e-mail or fax as follows:
Collection:
Tel.:
Fax:
E-mail: @onb.ac.at
 - (8) A written report on such damage or loss of a loaned object shall be submitted within 24 hours.
 - (9) Where loss or damage is imminent or has already occurred, Borrower shall immediately take any and all measures required and requested to be taken by the insurance company to mitigate the causes of damage, to identify who caused the damage and to assert claims for compensation and shall notify Lender thereof.
 - (10) Borrower shall notify Lender without delay of any change in postal address or persons authorised to accept mail deliveries on Borrower's behalf.
 - (11) Lender shall, before handover, prepare a report documenting the condition of all loaned objects. Both Lender and Borrower shall sign such report or documentation. The cost of such documentation (photos, etc.) is set out in binding form in Annex 2 and shall be borne by Borrower.

Article 8: Reproductions

- (1) The taking or production of analogue or digital reproductions shall require Lender's written approval. Borrower also undertakes to see to it that no third parties will make reproductions without Lender's approval. Filming and photography without the use of artificial lighting and without tripods shall be allowed for coverage on the exhibition and for private purposes.
- (2) Requests for reproductions and authorisation shall be addressed to Lender's picture library, stating purpose and scope of use (bildarchiv@onb.ac.at; see also Lender's tariff regulations).
- (3) Borrower undertakes to ensure that, before analogue or digital reproductions are made or used, all legal prerequisites, including, without limitation, under copyright law, have been fulfilled.
- (4) Borrower undertakes to indemnify and hold Lender harmless with respect to any third-party claims derived from the use of the loaned objects.
- (5) Borrower undertakes to supply to Lender, without being requested to do so and free of charge, at least two copies of the catalogue as well as specimen copies of all publications published by Borrower on the occasion of the exhibition within three (3) weeks of publication.

Article 9: Early Termination of Agreement

- (1) Lender shall be entitled to early termination of this Agreement for cause with respect to all or specific loaned objects.
- (2) In the event of early termination of the exhibition, Borrower shall, at Lender's request, arrange for immediate return transport of the loaned objects.

- (3) Cause for early termination of this Agreement with respect to specific or all loaned objects shall, regardless of fault on the part of Borrower, include:
- a. Breach of contract by Borrower
 - b. External circumstances which significantly impair the planned execution of the loan (e.g. pandemic/COVID-19, force majeure, etc.)
 - c. Non-compliance with conservation or security terms and conditions imposed by Lender, even if imposed in addition or at a later date
 - d. Use of loaned objects in non-conformity with contractual arrangements, including, without limitation, transfer of loaned objects to third parties
 - e. Initiation of enforcement or similar proceedings (e.g. seizure),
 - f. Death, or dissolution of legal entity of, Borrower.

Article 10: Data Privacy

Borrower confirms having been informed of their personal data (including any contact persons) being collected and electronically stored in compliance with the provisions of the General Data Protection Regulation (GDPR) and the Austrian Data Protection Act (*Datenschutzgesetz, DSG*) and that Borrower agrees thereto. Further information on data privacy and the contact details of Lender's data protection officer are available online at <https://www.onb.ac.at/datenschutz>.

Article 11: Form Requirements, Competent Court

- (1) Any amendments and additions to this Agreement (for instance, extension of loan period, exchange of objects, etc.) shall have to be made in writing to be valid and have to be agreed upon by mutual consent. All notifications and notices between the parties as contemplated under this Agreement shall be made in writing, except in the case of imminent danger. Oral agreements shall not be deemed to have been entered into.
- (2) Should individual provisions of this Agreement be or become invalid or void, this shall not affect the validity of the remaining provisions thereof. Invalid provisions shall be replaced with valid provisions which reflect the purpose of this Agreement.
- (3) Notices by Lender shall be deemed served with legal effect if served to the address last notified for such purpose by Borrower or to the process agent last notified by Borrower (see Article 7, paragraph 10).
- (4) Jurisdiction for all legal disputes arising out of or in connection with this Agreement shall lie with the competent court in Vienna's first district; Austrian law shall apply. Translation into foreign languages shall be permitted, but the German text shall take absolute precedence in terms of interpretation.

For Österreichische Nationalbibliothek:

For the Borrower:
(stamp)

.....
Dr. Johanna Rachinger
Director General and
Scientific Director

.....
[Name]
[Corporate function]

[Place, date]

.....
Richard Starkel
Commercial Director

Vienna,

Annex 2: Additional terms and conditions

Lender:

 Österreichische Nationalbibliothek, Josefsplatz 1, A-1015 Vienna
 Collection / Person in charge: _____ E-mail: _____

Borrower:

 Address: _____
 Person in charge: _____ Tel.: _____ E-mail: _____
 VAT identification no.: _____
 E-mail for electronic invoicing: _____

Invoice recipient if different from Borrower:

 Name _____
 Address _____
 Contact: _____ Tel.: _____ E-mail: _____
 VAT identification no.: _____
 E-mail for electronic invoicing: _____

(1) List of costs to be borne by Borrower

Cost item	Numbers of loaned object(s) as set out in Annex 1	Costs in EUR (incl. statutory VAT)
All-in arrangement fee* covering: Administration, documentation security recordings, preparation (original handwritten manuscript bag, passe-partout mounting, etc.) *The all-in fee includes up to 10 objects; any additional object plus EUR 54 per object	All	at least EUR 180
Fee for providing framing EUR 54 per frame (< 50 x 40 cm) EUR 86 per frame (< 80 x 100 cm) EUR 130 per frame (> 80 x 100 cm)		
Courier / transport escort Travel and overnight expenses, if any (<i>unless paid directly by Borrower</i>) shall be invoiced separately by ÖNB. Per diem All-in rate for hours worked	All	
Restoration Cost: at least EUR 54 per object and hour		
Miscellaneous		
TOTAL:		

<i>Reproduction masters (for catalogue illustrations, etc.) must be commissioned separately by Borrower and corresponding usage fees shall be charged separately.</i>

(2) Borrower warrants that contract award to a transport company shall comply with European Union public procurement law.

(3)

The loaned object must be insured as set out in Article 4 of this Loan Agreement.

When submitting the insurance policy to Lender (Article 4 paragraph 4), Borrower shall include confirmation of payment of the insurance premium.

Borrower is an Austrian federal museum. The loaned objects is not be subject to compulsory insurance, with the exception that Borrower must take out a transport insurance for the loaned objects for the duration of transport from Lender to Borrower (and back).

(4) Any image material passed on to the media must feature the notice "Österreichische Nationalbibliothek Wien" or a translation thereof to unambiguously indicate its origin.

The material's origin must be identified in the catalogue and in the labeling as follows:

(or a corresponding translation thereof).

(5) The following shall be deemed agreed with respect to the image material desired by Borrower (size, delivery periods, etc.):

(6) Borrower warrants, for the entire duration of the loan period, that the loaned object will not be exposed to direct day light or illuminance of more than 50 lux.

(7) Relative humidity in the exhibition rooms and all rooms where a loaned object is stored temporarily must be between 45 and 50%, temperatures between 18 and 22 degrees Celsius.

(8) Borrower shall ensure that values in the exhibition room, the storage room and the display cases be measured and documented on an ongoing basis by trained staff. Where measured values deviate by more than 5% from the target values, Borrower shall immediately secure the objects and notify Lender. Records of ambient data shall be forwarded to Lender.

(9) The loan period set out in Article 1 paragraph 1 of the Loan Agreement shall not apply to the following loaned objects; these objects can be loaned only for _____, i.e. until _____.

(10) The following shall be deemed agreed with respect to transport and escorting of the loaned objects:

Type of transport:

Route:

Courier:

(11) Other additional terms and conditions (air circulation system, air-conditioned display case, etc.):