

PRODUCER AGREEMENT FACT SHEET

REMEMBER TO CHECK OUT THE PRODUCER AGREEMENT CHECKLIST THAT GOES WITH THIS FACT SHEET. THE CHECKLIST OUTLINES KEY TERMS IN A PRODUCER AGREEMENT, AND THIS FACT SHEET PROVIDES MORE DETAIL ON THOSE TERMS.

WHEN DO YOU NEED A PRODUCER AGREEMENT?

A producer agreement is used when an artist or label hires a producer to record and produce a song (or an album). It can be used to define the scope of the producer's services, expectations around the finished product, and rules and restrictions about how the producer completes the work.

Key Terms of a Producer Agreement

PRODUCER DETAILS

As always in contracts, it's important to identify the correct contracting party. If the producer is contracting through a service company, then you need the producer to personally guarantee the company's performance of the production obligation. (Otherwise, you'll have a claim against nothing but a company, which may be broke, with the human behind the corporate structure escaping liability.) Where the contract is with a producer's services company, the company should also promise to provide your chosen producer's personal services to make the recording.

DETAILS OF PARTY ENGAGING PRODUCER

It is important that you define the hirer clearly because, in the case of a group for instance, you'll want each member to have rights to enforce the agreement against the producer.

PROJECT AND SERVICES

As with any contract for services, it's important to define the scope clearly. Customarily, this will be by reference to a list of track titles (or working titles) or a number of tracks, which the producer is undertaking to produce for the artist.

You should specify whether the producer is required to do any pre-production as well as principal tracking. You may also want to be clear that the producer must do a mix of the recordings. In rare cases, the producer will also be responsible for mastering the recordings, but that is usually outsourced and subject of a separate arrangement with a mastering engineer, given the specialist discipline involved.

You'll need to make sure you have the producer's full time and attention for the key parts of the production, so, you will likely need to negotiate an exclusive period during which they are only working on your recordings.

RECORDING PROCESS

It's important to specify where and when the recording is going to happen.

When it comes to outboard gear, guest musicians, session musicians and other extras, it is a matter for negotiation whether the responsibility for identifying, hiring, and paying those persons belongs to the producer or the hirer, and whether the cost comes out of separate line items in the recording budget, or the fee is "all-in", i.e. the producer gets a lump sum of money and then meets overheads and third party costs out of that.

The agreement should state that the producer must deliver not only master stereo recording, but also the underlying separate multitrack sessions. Without those materials, the artist will not be able to remix or fix up the recordings.

It's also important to specify that the recordings, once delivered, must be commercially acceptable for release. It might be possible to negotiate a process for delivery and testing, but that is unusual in practice.

Given the current use application of social media to build up interest from followers of the band etc. and create content, the agreement should also specify whether the band can record "making of"-style clips etc. from the recording process. There might also be negotiation about whether the producer can do a similar thing themselves, and if so, if there are any embargos on when they may release such material via their own channels. Artists will want to minimise such releases from the production team, To better preserve the commercial impact of their own recordings and content. Further, under the artists recording contract, the artist may be banned from allowing any third parties to record them performing, which might put the producers request to be able to do a "making of" themselves at odds with the requirements of the band's recording contract.

PRODUCER AS CO-WRITER

Refer to the Publishing Agreement Checklist and Publishing Agreement Fact Sheet for some basics on composing and writing with other people.

If the producer is going to be a co-writer of the music, that should be agreed up-front and there should be a default setting (say, 50/50, or some other split) so that if the parties cannot agree on who contributed what to a song, there is at least a basic agreed ratio. Generally, artists would prefer to have the producer as a "gun for hire", with all musical ideas contributed by the producer to the recordings etc, to be included and assigned, along with a copyright in the session recordings. However, in some genres, the producer is much more prominent as a composer, and it may be a term of the producer's engagement that they are included as a co-writer.

If these matters are not resolved ahead of time, the producers can gain leverage as the recording approaches release if they have contributed musical composition to tracks but the splits and the relevant licence have not been negotiated.

If the producer is a composer who's assigned to a publisher, there's an added complication of clearing their contribution with their publisher.

COPYRIGHT AND STEM FILE OWNERSHIP

Producers will usually negotiate that copyright does not pass to the artist until the producer has been paid. The artist, on the other hand, will want the assignment in copyright to vest in the artist "on creation", so if there is a dispute, with a creative, or over payment, at least the artist or their label owns the copyright in the sessions.

PRODUCER FEES, ROYALTIES, AND CREDIT

As foreshadowed above, there are a variety of methods for compensating producers, ranging from one all-in lump sum fee through to a combination of that, a budget for costs and a producer's royalty or "points". In this context a "point" generally means a percentage point (that is, 1%) of the whole income from the track, that is, the sum on which the label pays the artist, also known as the "royalty base". So, for example, if the artist's royalty is expressed in the artist's contract as "50% of Net Receipts" or "22% of [the label's] Published Price to Dealer" (or "PPD"), then it is said the artist is on "50 points" or "22 points," respectively. If the producer wants "2 points" it means they want 2% of the same royalty base.

These discussions can become very nuanced. The producer's fee should be recoupable, at least in part, from the producer's royalty, and there'll need to be a negotiation about whether the producer's royalty accrues from the first income in from the recordings, known as "from record one", or only kicks in once agreed recording costs are recouped. It is a matter of bargaining power in each case.

In some genres, producers use a lot of outside source material, such as sampling-heavy genres, so it is vital that the producer clears those external materials before including them in your recording. There must be a warranty that the producer has done so, as well as an indemnity to cover you for damages if an infringement comes to light. In this regard, the artist is entirely reliant on the producer's word about what is included in the recordings, if the producer is getting the sounds from software or other sources. There can be a high degree of risk of uncleared samples slipping into released recordings within certain genres. This can create a serious copyright infringement liability.

For more information, you can speak to your local Industry Association, the Arts Law Centre of Australia or a legal practitioner.



This checklist is an initiative of the Australian Music Industry Network. For more information visit www.amin.org.au.