

Performance Designer Check List

When agreeing to design a production you should consider the following:

1. Contract

Equity has agreements with the TMA, SOLT and the ITC. As part of these there are standard contracts and forms of engagement. If you are working with a company outside of these management organisations you can use the Standard Equity Contract or attach your terms of trade to any contract you are offered. If you are contracted by a simple letter contract or verbally you can provide the Producer with your terms of trade and make clear that these form part of the contract between you.

2. Payments

Any contract should outline how much and when you are to be paid.

The agreements Equity has with TMA SOLT and ITC include a range of minimum fees. On no account should a manager offer you less than the relevant minimum. It must be stressed that these fees are minimums and in many cases are far below any "going rate".

Usual practice is to receive payments for design services in three parts.

Part 1 on signing contract

Part 2 on delivery of designs

Part 3 on the date of the first performance.

You must provide an invoice for the full amount or for each payment.

Equity's agreement with ITC provides for interest to be charged for late payment for technical work. Terms of trade can include late payment interest charges. In addition to this, the Late Payment of Commercial Debts (Interest) Act 1998, applies to all contracts agreed after 7 August 2002, and gives you the right to charge interest at the Bank of England base rate plus 8 per cent.

In standard Equity contracts it is clear that payment is for designing the show only. If you are to do any practical/technical work this should be stated in the contract and a rate agreed.

It should also be clear that this payment covers the first use of the design only and subsequent reuse will attract further payment (see copyright below).

When agreeing your fee you should be aware that payment for this use of your work is included and should be additional to payment for your time to create and execute the design. As Equity contracts stipulate a reuse fee of at least 25% of the original fee it is fair to presume that 25% of your original fee is a first use copyright payment.

The United Nations Universal Declaration of Human Rights Article 27 (2) states that 'Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.'

In the light of this Equity policy is that it is our right not only to retain the copyright but to have it clearly stated in our contract what part of our fee is payment for the use of our work.

Formula for calculating Design Fees:

We have therefore devised the following formula for calculating fees which illustrates how much we are being paid for each element of our work.

- A. **The Creative Fee** - payment for the conceptual/preparation period and the work done to create and embody the design ie making models, creating drawings etc. etc.
- B. **Production Services Fee** - which pays for work done to supervise the realisation of the design ie production meetings, briefing makers, costume fittings, fit ups techs etc. etc.
- C. **Copyright payment** - for the first use of the design which represents 25% of the total fee.

(this shall be calculated by adding A+B and dividing by 3 thus forming 25% of the overall fee).

To calculate this give yourself a nominal daily rate – estimate how many days you will spend creating the design add to the days you will spend supervising then divide by 3 to get C –copyright payment. Add creative fee, production services and copyright payment to get the minimum you should expect.

If you are likely to incur large model making costs you can either include an amount in your overall fee calculation to cover this or agree a separate payment under expenses. You will probably have to agree an upper limit on these costs with the producer.

3. Schedule and Design brief

It should be clear at the point of contract who you will be working with, the dates of the production, when you are required to attend, details of production budgets and what costs they must cover (e.g. materials for sets, costumes, props, lighting, additional labour) also what facilities and staff are available to realise the design. It is best if all this is included in the contract or a separate design brief. Any other stipulations such as get in time, size of vehicles should also be made clear from the start.

It is advisable to inform the producer of your availability during the production period and notify any changes in that availability at the earliest possible opportunity.

4. Copyright

It is important that you assert your copyright under the Copyright, Designs and Patents Act 1988 and that the copyright in the products of your services remain vested in the you. You licence the copyright to the producer for the purposes of live theatrical production only and for the initial run only – unless stated otherwise in the contract.

The producer shall not have the right to assign, lease, sell licence or use either directly or indirectly any designs created by you for any purpose whatsoever without your prior written consent and agreed further payment.

5. Alteration of design

The producer should not alter or cause to be altered the design in any aspect after the opening of the production (except for reasons of safety) without the permission of the designer. Where a change is required for reasons of safety the designer should be consulted on the nature of that change at the earliest possible opportunity.

6. Tours/transfers/revivals

If the producer wishes to further tour, transfer, revive or extend the production beyond its initial run a further fee shall be payable. This shall be negotiable. Standard Equity contracts stipulate a Minimum of 25% of your original fee. If the production transfers to an area where there is a standard Equity agreement the terms and conditions of that agreement, including minimum fees, shall prevail but shall not worsen the terms of any existing contract.

7. Billing

The designer shall be credited in all posters, programmes or other publicity material where the director or cast is credited.

8. Expenses

The producer shall pay the designer all reasonable expenses incurred in providing the services. It is advisable to agree what expenses are reasonable in advance.

Expenses might include model making expenses if you have not factored that into your fee. If you agree payment for model making you must be clear that you still own the model and any drawings, cue sheets or other paperwork you produce.

Equity contracts have clauses about expenses and subsistence allowances.

9. Rescheduling/ failure to produce

If the producer for whatever reason changes the agreed dates of the production and because of that change you are unable to fulfil the contract, or if the producer abandons the production before the first performance, you should receive payment up to and including the next one third payment due and any expenses incurred to that date.

10. Illness

If you should fall ill and be unable to complete the contract you should be paid up to and including the next payment together with any expenses incurred up to that point.

11. Health and safety

Everyone has responsibilities under Health and safety legislation. You must work with the producer to ensure good Health and Safety practice on the production. Equity has produced a Health and safety policy for Designers which you are advised to adopt. Provide a copy of this policy to the producer. Do not carry out work outside the provisions of that policy. Particular attention is drawn to Risk Assessment. You should participate in risk assessment, but not assess anything where it is beyond your competence/knowledge to do so.

The producer should provide you a copy of their Health and Safety policy.

12. Disputes and arbitration

Any dispute arising that can not be resolved between you and the producer should be referred to a joint meeting between representatives of Equity (for you the designer) and the producer or their representatives.