

PLAYING MUSIC AT YOUR WINERY



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Davis Wright Tremaine LLP is a full service law firm providing services to the wine industry in the areas of mergers and acquisitions and other business transactions, land use and real estate, alcohol regulatory and licensing, intellectual property, employment, and litigation.

INFORMATION ON LEGAL PROVISIONS TO INCLUDE IN AGREEMENTS WITH LIVE MUSIC PERFORMERS AT YOUR WINERY

You may consider including the following language in the agreement between your winery and the artist performing live at your winery. This language is not meant to constitute an entire contract, nor legal advice. We recommend you contact a lawyer to discuss the specifics of your situation.

In addition to the below, your agreement with the artist should clarify at least the following terms:

- Performance date (including arrival time), location, and duration
- If the winery does not have blanket licenses with ASCAP, BMI, and SESAC—or if you don't have permission from the artist's label for particular songs—consider specifying the songs that the artist will perform. For instance, you could limit songs to: only original content from an unsigned band, songs in the public domain, or songs that the winery has otherwise obtained necessary permissions for the artist to perform
- Whether you will be recording, streaming, or distributing the performance, or if you will be using the performance in any marketing or publicity
- What equipment the winery and the artist will provide, as well as any necessary set up or takedown
- Compensation, including total amount, any revenue shares, and reimbursable expenses
- Whether either party may terminate the agreement before the performance
- Whether the winery will have rights to promote the performance, and if performer will provide promotional materials
- Whether artist will have right to sell merchandise at the performance
- That artist will comply with your winery's policies (fire, safety, conduct, etc.)
- Whether artist must maintain any insurance policies

The following provisions clarify that the artist has the ability to perform the relevant songs, and will pay for any legal costs arising from its breach of the agreement. Note that "Artist," "Winery," and "Performance" should match whatever terms you otherwise use in the agreement.

- **Warranties.** [Artist] represents and warrants to [Winery] that: (a) the [Performance] will not violate any agreement or obligation between the [Artist] and a third party; (b) the [Performance] will not infringe or violate any copyright, patent, trademark, trade secret or other intellectual property, proprietary, privacy, personal or publicity right of any third party; (c) any and all worldwide mechanical rights, synchronization rights, master use rights, and performing rights for music delivered to [Winery] or performed in the [Winery] are controlled by [Artist] or fully licensed to comply with this Agreement; (iv) [Artist] has acquired all third-party rights and releases necessary for [Artist]'s [Performance] and/or grant of rights to [Winery] under this Agreement without [Winery] incurring any further obligation or payment, including, but not limited to, copyrights, rights with respect to all individuals and their likenesses appearing in photographs, videos, recordings, and all other media (including, but not limited to, models, members of the public, interviewees, actors, talent), moral rights, music rights, photo rights, sound rights, and video rights; and (d) the [Performance] is not libelous, defamatory or unlawful.
- **Indemnification.**
 - [Artist] will indemnify, defend and hold [Winery] its directors, officers and employees harmless from and against any and all losses, liabilities, damages, costs and expenses (including reasonable attorneys' fees) ("Losses") arising from or relating to any claim, action or proceeding (each a "Claim") brought by any third party (including agents, producers, labels, publishers, or other representatives of the party) based upon (a) any breach by [Artist] of its representations, warranties or obligations set forth in this Agreement; or (b) any negligent act or omission or intentional misconduct of [Artist].
 - [Winery] will (a) provide [Artist] with reasonably prompt notice of Claims; (b) permit [Artist] through mutually acceptable counsel to answer and defend Claims; and (c) provide [Artist] with reasonable information and assistance to help [Artist] defend Claims at the [Artist]'s expense. Any indemnified party will have the right to employ separate counsel and participate in the defense of any Claim at its own expense. [Artist] will not stipulate, admit, or acknowledge any fault or liability on the part of the indemnified party without prior written consent.