



SUISA

Cooperative Society of Music Authors and Publishers

SWISSPERFORM

Collecting Society for Neighbouring Rights

Common Tariff K 2017 - 2021

Concerts, concert-like performances, shows, ballet, theatre

Approved by the Federal Arbitration Commission for the Administration of Copyright and Neighbouring Rights on 20 December 2016 and published in the Swiss Official Gazette of Commerce (SOGC) No. 250 of 23 December 2016.

Responsible collecting society

SUISA

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A. Customers

- 1 This tariff is aimed at organisers of concerts, concert-like performances, shows, ballet or theatre performances. They are hereinafter referred to as “customers”.

B. Scope of the tariff

- 2 Copyright in musical works

This Tariff shall apply to

- performances of non-theatrical musical works of the SUISA repertoire protected by copyright (hereinafter referred to as “music”) during concerts, concert-like performances, shows, ballet or theatre performances by musicians, via sound or audiovisual recordings or broadcasts,
- recording of music onto sound carriers; these recordings may only be used during the concerts, concert-like performances, shows, ballet or theatre performances of the customer and not be passed on to third parties.

- 3 Neighbouring rights

This Tariff shall apply to

- remuneration claims of performing artists and producers of sound and audiovisual carriers for the performance of commercially available sound and audiovisual carriers of the SWISSPERFORM repertoire during concerts and concert-like performances, shows, ballet or theatre performances.
- the exclusive rights of performing artists and producers of sound recordings of the SWISSPERFORM repertoire for the production of sound recordings; these sound recordings may only be used during the concerts, concert-like performances, shows, ballet or theatre performances of the customer and not be passed on to third parties.

- 4 Concerts, concert-like performances, shows, ballet or theatre performances

- 4.1 Concerts are events where the audience attends specifically in order to listen to music.

Major concerts are concerts which

- take place in venues or on grounds with a capacity of more than 1,000 persons
or
- generate ticket sales of more than CHF 15,000.

All other concerts are “small concerts” in terms of this Tariff.

- 4.2 Concert-like performances are self-contained types of performances with music, other than concerts, where the audience attends specifically in order to see and hear the presentation, and where music is paramount. Music is thus presented on its own or in connection with other artistic, entertaining, sportive or any other performances.

Tattoo-Festivals, for example, or events with vocal numbers before or after a sketch are “concert-like performances” in terms of this Tariff.

Open air festivals equate “concert-like performances” pursuant to the provisions of this Tariff.

- 4.3 Shows are self-contained types of performances with music, other than concerts or concert-like performances, where the audience attends specifically in order to see and hear the presentation. Music is performed simultaneously with other works or work fragments protected by copyright and only has a subordinate or accompanying character. Variety performances, revues and sports events are particularly considered to be shows, i.e. where music is indispensable (e.g. rock’n’roll tournaments, figure skating).

- 4.4 Ballet performances are regarded as performances of artistic stage dance with music as long as non-theatrical musical works are involved.

- 4.5 Theatre performances are regarded as performances of theatrical works with musical interludes, before/after music (musical settings and the like).

- 4.6 Concerts, concert-like performances, shows, ballet and theatre performances shall hereinafter be referred to as “events”.

- 5 As for neighbouring rights, this Tariff shall also apply to the use of sound recordings at the occasion of performances of theatrical musical works.

C. Reservations and Exceptions

- 6 Reservations regarding copyright

SUISA administers music copyright only. Other authors’ rights (such as playwrights, choreographers, [film] directors, script or screenwriters in the case of performances of audiovisual recordings) shall remain reserved.

- 7 Reservations regarding neighbouring rights

SWISSPERFORM does not administer

- exclusive reproduction rights of producers of audiovisual recordings,
- performance rights of performing artists and producers of non-commercially re-leased sound and audiovisual recordings.

- 8 The following items shall not be covered by this Tariff, as long as they are governed by other tariffs,
- concerts of music associations and orchestra consortiums (tariff B), concert societies (tariff D) and church associations (CT C)
 - film presentations (tariff E) and broadcast reception during so-called public screening (CT 3c)
 - circus (CT Z)
 - short intermissions in other events with music (CT Hb, CT H)
 - recording of protected music onto audiovisual carriers (tariffs VN, VI and PI)

D. Common Tariff

- 9 SUISA shall also act as representative of SWISSPERFORM with respect to this Tariff.

In cases where only the repertoire of SWISSPERFORM is used, but not that of SUISA, SWISSPERFORM shall be entitled to collect the due remuneration directly.

E. Licence fee

a) Calculation

- 10 The fees shall be calculated as a percentage of the income, subject to the provisions in item 13.

- 11 "Income" shall be all income generated from the use of music, in particular

- 11.1 gross income from the sale of tickets and subscriptions (tickets and subscriptions shall hereinafter be referred to as "admission tickets") less taxes effectively payable on tickets and value added tax.

This income shall also include the income of any external ticket sales organisations or any other agents.

- 11.2 Contributions, subsidies and claimed guarantees for shortfalls related to the execution of the event plus the customer's share in third party profits from the sales of consumer goods (drinks, food, T-shirts, souvenirs etc.).

This income (11.2) shall only be used as a basis for the calculation of the fees as long as it is necessary to cover the costs of the music usage as follows:

- any payments made to the performing artists (salaries, travel and accommodation expenses etc.)
- rental fees for the venue
- hire charges for the musical instruments or PA systems (public address systems).

- 12 It is possible – upon providing the relevant evidence - to deduct the value of services to the event audience which are included in the admission fee and are not related to

the communication of music (e.g. free drinks, free use of public transport, free parking included in the admission fee). These services may be mutually agreed to be covered by a blanket fee.

This deduction shall be limited in as far as the income remaining must at least cover the costs of the music use pursuant to item 11.2.

13 In the following circumstances, the fees shall be calculated alternatively as a percentage of the costs:

- If the income cannot be ascertained or in cases where no income can be realised,
- if the costs are higher than the income and the customer has not created a budget or if the customer assumes up front that he would cover the costs partially or entirely with his own means,
- in the case of charitable events, where the excess income will go to the needy.

14 The percentages shall be:

14.1 for major concerts 10% for copyright and 3% for neighbouring rights, subject to the provisions in the following section:

Concerts with non-musical performances shall attract the following percentages:

- 9% for copyright and 2.7% for neighbouring rights, in the case of events in venues or on grounds with a capacity of 1,000 persons or less.
- 8.5% for copyright and 2.55% for neighbouring rights, in the case of events in venues or on grounds with a capacity of more than 1,000 persons.
- 8% for copyright and 2.4% for neighbouring rights, in the case of events in venues or on grounds with a capacity of more than 5,000 persons.
- 7.5% for copyright and 2.25% for neighbouring rights, in the case of events in venues or on grounds with a capacity of more than 10,000 persons.

The number of persons admissible for each event subject to fire / health and safety regulations shall apply.

Non-musical performances shall include light shows, costumes, stage sets, LED and video projections. Similar elements that accompany the musical performance without being a component of the former shall also be considered to be non-musical performances.

14.2 for small concerts 9% for copyright. For neighbouring rights, there shall be no percentage-based distribution, the licence fee for the uses of commercially published sound and audiovisual recordings shall attract a lump sum of CHF 20.00 per small concert.

14.3 for concert-like performances:

- 8.5% for copyright and 2.55% for neighbouring rights, in the case of events in venues or on grounds with a capacity of 1,000 persons or less.
- 8% for copyright and 2.4% for neighbouring rights, in the case of events in venues or on grounds with a capacity of more than 1,000 persons.
- 7.5% for copyright and 2.25% for neighbouring rights, in the case of events in venues or on grounds with a capacity of more than 5,000 persons.
- 7% for copyright and 2.1% for neighbouring rights, in the case of events in venues or on grounds with a capacity of more than 10,000 persons.

The number of persons admissible for each event subject to fire / health and safety regulations shall apply.

14.4 for shows and ballet performances, 5% for copyright and 1.8% for neighbouring rights.

14.5 for theatre performances, 3% for copyright and 1.08% for neighbouring rights.

b) Pro rata temporis reductions

15 The percentage shall be reduced as follows:

15.1 For concerts, based on the ratio

Duration of protected music : Total duration of the music performed
for copyright

and

Duration of the use of the pro- : Total duration of the music performed.
tected commercially available
sound and audiovisual record-
ings

for neighbouring rights, with the exception of small concerts

if the customer supplies a list of the sound and audiovisual recordings on time (item 31).

15.2 for concert-like performances, shows, theatre and ballet performances based on the ratio

Duration of protected music : Total duration of the performances
for copyright

and

Duration of the use of the protected commercially available sound and audiovisual recordings : Total duration of the performances

for neighbouring rights,

if the customer supplies a list of the performed music on time (item 31) as well as a list of all performances during the event indicating the relevant duration.

c) Minimum licence fees

- 16 The minimum licence fee for copyright shall be CHF 40.00 per event.
- 17 The minimum licence fee for neighbouring rights shall, subject to the exception of item 18 below, be the following per event:
- for major concerts and concert-like performances: CHF 40.00
 - for shows and ballet performances: CHF 20.00
 - for theatre performances CHF 10.00
- 18 The licence fee for neighbouring rights shall be 0.25% of the income, with a minimum rate of CHF 20.00 per event, for the use of sound or audiovisual recordings only during the breaks as well as before and after the event. .

d) Taxes

- 19 The licence fees as provided by this Tariff do not include value-added tax. If, due to an obligatory objective tax liability or due to the exertion of opting in or out of tax, value-added tax is due after all, it shall be paid by the customer at the applicable tax rate (2017: regular rate 8%, reduced rate 2.5%) in addition to the amount already invoiced.

e) Discounts

- 20 Customers who adhere to a Swiss national association of organisers of concerts, concert-like performances, shows, ballet or theatre performances, which supports SUIISA in its duties, and who commit in writing to respect this Tariff and to adhere to its tariff provisions, shall have the right to receive a discount of 10% on the fees payable for copyright and neighbouring rights.

- 21 The support by the association must include:
- admission of solely professional organisers as association members
 - regular, at minimum annual request to its members to declare its musical events with SUIA in due time
 - regular, at minimum annual communication of SUIA issues to members of the association
 - readiness to exclude members who infringe tariff-related or contractual provisions despite reminders and warnings
 - upon request, mediation in cases of dispute between a member and SUIA.
- 22 Customers must provide evidence of their association membership each year by means of suitable supporting documents. Alternatively, the association may also provide the evidence by regularly submitting a members' list with names and addresses of the individual entities to SUIA on a regular basis, but at least once a year. Without such evidence, the customers shall not be subjected to a discount. Evidence must be submitted with the details in time for the first distribution of the relevant year at the latest, it is not possible to take it into consideration retrospectively.
- 23 Association members that organise small concerts and commit to respecting this Tariff and to adhering to the tariff provisions in writing, shall receive an additional discount on the licence fee payable for copyright and neighbouring rights for small concerts:
- 5 %, if they organise more than 10 concerts per year;
 - 10 %, if they organise more than 15 concerts per year;
 - 15 %, if they organise more than 25 concerts per year;
 - 20 %, if they organise more than 35 concerts per year;
- The number of concerts organised in the previous year subject to this Tariff shall form the basis for the calculation.
- 24 The following shall apply for the calculation of the number of concerts:
- several simultaneous concerts shall be counted as several individual concerts
 - in the case of festivals with more than three bands performing, concerts in the morning (6 am to 12 am), in the afternoon (12am to 6pm) and in the evening (6 pm to 6am) shall count as one concert each
 - in the case of other events lasting several days, each day's concerts count as one concert each.

f) Supplements

- 25 The fees may be doubled if
- Music is performed without authorisation by SUIA.
 - The customer intentionally or grossly negligently supplies incorrect or incomplete information.

F. Accounting

- 26 The customer shall provide SUI SA with all details required for the calculation of the licence fees, in particular all details relating to income in line with items 11 and the costs of the music use in line with item 11.2 within 10 days after the event or within the period mentioned in the licence.

Customers offering tickets via a sales agent independent of the customer, shall be obliged for accounting purposes to provide – in addition to the information as per the paragraph above – the gross income in terms of item 11.1 of this Tariff (customers income from the sales of tickets including income from the ticket sales agency) and the net income (customers income from the sale of tickets without the share allocated to the ticket sales agency) and to add the invoice from the ticket sales agency. SUI SA shall deduct 10% from the income by the ticket sales agents as long as all documents are provided in due time and without any necessary reminder.

- 27 SUI SA may ask for evidence in order to verify the information provided by the customer or – after prior announcement – audit the customers' books.
- 28 If the information or evidence is not provided even after a written reminder before the respective deadline or an audit of the books is refused, SUI SA may estimate the information necessary and issue invoices based on these estimates. Invoices issued based on estimates shall be considered to be accepted by the customer if he does not provide complete and correct information within 30 days from the date of the invoice. Instead of estimating the information, SUI SA may charge a fee of CHF 4.50 per seat or standing space (the total capacity of the concert venue shall be authoritative). Invoices issued on this basis shall also be considered to be accepted by the customer if he does not provide complete and correct information within 30 days from the invoice date.

G. Payment

- 29 The fees shall be payable within 30 days or subject to the deadlines in the authorisation.
- 30 SUI SA may request payments on account at the anticipated level of the fees and/or any other deposits.

H. Lists of works performed

- 31 Unless otherwise stipulated in the licence, the customer shall be obliged to provide SUISA with a complete event programme with the following details:
- titles of all works performed including interludes and encores
 - names of the composers and (where applicable) arrangers
 - duration of the performance in minutes for each work
 - duration of the entire performance without breaks
 - in the case where sound or audiovisual recordings are used during the concert: the (record) label, catalogue number and duration of performance. It is not necessary to provide a list for music played during the breaks.
- 32 Such event programmes shall be sent to SUISA within 10 days after the event – or after the last one in a series of events of the same nature.
- 33 An additional fee of CHF 100 may be charged in the case where – even after a reminder has been issued to the customer - lists have not been supplied within the deadline. The relevant fee shall be doubled in cases of recurrence.

I. Validity

- 34 This Tariff shall be valid from 01 January 2017 to 31 December 2021.
- 35 The period of validity of this Tariff shall be automatically extended by one year, but no longer than until 31 December 2026, unless one of the negotiating parties gives the other party notice in writing one year before the expiry of this Tariff. Such a termination shall not exclude an application for renewal of the Tariff to the Federal Arbitration Commission for the Administration of Copyright and Neighbouring Rights.
- 36 If, after this Tariff has lapsed and despite an application for approval, no subsequent tariff has entered into force, the period of validity of this Tariff shall be extended for a transitional period until the time limitation for an appeal against the authorisation decision of the Federal Arbitration Commission in relation to the subsequent tariff has lapsed.

This document is a free translation into English of the Tariff originally issued in the official French, German and Italian languages. The translation is provided solely for the convenience of English speakers. In the event of a discrepancy between the English translation and the French, German or Italian version, the version in the official language shall prevail.