

# General Business Conditions for the Buying of Event Technique moving movies - Prause, Mönke limited partnership

## I. Scope of Conditions

The seller's deliveries, services and offers are exclusively based on these General Business Conditions. Hence, they are also valid for any future business connections, even if they are not expressly agreed upon once again. With signing the purchase order or at least against receiving / delivery of the material, these conditions are understood to be accepted. They will not allow of any restriction or modification mentioned in a purchaser's counterconfirmation referring to his General Business Conditions respectively Buying Conditions. **The paragraphs I until XI are indispensable components of these Terms and Conditions.**

## II. Conclusion of a Contract / Transference of the Purchaser's Rights and Obligations

1. The purchaser is bound to the order not more than for 4 weeks. The contract is concluded when the seller confirms his acceptance of the precisely specified product in writing within this period of time or when delivery has already taken place. However, the seller is obliged to announce in writing a possible rejection of the order immediately after clarification of the availability.
2. Any agreements are to be fixed in writing. This holds also true for supplementary agreements and assurances as well as for later modifications of the contract.
3. Transferences of the purchaser's rights and obligations stemming from the contract require the the seller's written consent.

## III. Prices

1. The price of the subject matter of contract is understood ex import warehouse Germany plus transport costs. Any further services agreed upon are to be charged additionally.
2. The total sum mentioned in the contract has to be paid as purchase price when delivery will be carried out within 4 months. Otherwise, the list prices of the moving movies - Prause, Mönke Limited Partnership which are valid the day of delivery plus sales tax will be agreed upon as purchase price.
3. In case the purchaser is a legal entity of public law, a public legal property or a merchant for whom the contract belongs to carrying on his commerce, the prices of the moving movies - Prause, Mönke Limited Partnership which are valid the day of delivery plus sales tax will be agreed upon as purchase price.

## IV. Payments and Delay of Delivery

1. The purchase price is due to be paid when handing over the subject matter of contract, however, at least 8 days after receiving the notification of provision and handing over respectively remittance of the invoices or any other clearing documents for payment in cash. The representative of the moving movies - Prause, Mönke Limited Partnership is revocably authorized to receive the purchase price.
2. If partial payments are convened upon, the total amount remaining is due without taking into consideration the maturity of any drafts. This is the case if:
  - a) the purchaser who is not registered as merchant in the register of companies pays at least two successive instalments completely or partly with delay and the amount paid with delay is of at least 1/10 of the total purchase price.
  - b) the purchaser who is registered as merchant in the register of companies pays an instalment with a delay of 14 days, stopps his payments or if the insolvency proceedings or bankruptcy proceedings have been applied for his property.
3. Clearing documents, cheques, and drafts are only accepted after a special agreement and only for payment reasons; costs for the cash and discount will be charged separately.
4. The purchaser can only offset against the seller's demands if the seller's counterclaim is undisputed or if a legally valid title is present, the right of retention can only be raised if it is based on demands stemming from the purchase order.
5. If the purchaser falls into arrears with payments – when having agreed upon partial payments in case of two successive payments, the seller, regardless of this rights as mentioned in paragraph VII section 2, may give the purchaser in written a grace period of 14 days with the declaration that after the period stipulated the fulfilment of the contract will be rejected by him. After the deadline has expired without any success, the seller is entitled to refrain from the contract by a written declaration or to claim compensation because of non-fulfilment.
6. Interest payable on arrears will be charged with 4 % p.a. over the minimum lending rate formulated by the Federal Bank of Germany. The interest is to be defined higher or lower if the seller proves a charge to be of a higher interest rate respectively the purchaser proves a charge to be of a lower interest rate.

## V. Delivery and Delay in Delivery

1. Delivery dates or delivery times which may be agreed upon with or without commitment are to be defined in writing. Delivery times start with concluding a contract. In case of later modifications of the contract, at the same time, the delivery date or the delivery time has to be newly agreed upon if necessary.
2. 6 weeks after exceeding a non binding delivery date or a non binding

delivery time, the purchaser may demand from the seller in writing to deliver within an adequate period of time. With this reminder, the seller falls behind with delivery. The purchaser can claim compensation for the delay apart from the delivery only if the seller may be charged with intent or culpable negligence. In case of delay, the purchaser may also give the seller an adequate grace period in writing with the notice that he rejects the acceptance of the subject matter of contract after the deadline has passed. After unsuccessful passing, the purchaser is entitled to withdraw from the purchase contract by means of a written declaration or to claim compensation for non-fulfilment. In case of slight negligence, the compensation is restricted to not more than 10 % of the purchase price. If the purchaser is a legal entity of the public right, a separate estate subject to public law or a merchant, for whom the contract belongs to carrying on his commerce, he is only entitled to compensation in case of the seller's intent of culpable negligence. In the cases mentioned in this article, the right to delivery is excluded. In case delivery will become impossible for the seller due to accident during he is in delay with delivery, he is, however, liable in accordance with articles 1 and 2, unless the damage would have also been there in case of punctual delivery.

3. If a binding delivery date or a binding delivery time is exceeded, the seller will already be in delay with exceeding the delivery date or the delivery time. The purchaser's rights are determined in accordance with section 2, article 1, sentence 3, article 2 as well as article 3 of this paragraph.

4. Acts of God or breakdowns at the purchaser's or his suppliers' plant, such as industrial disputes, strike, lockout, which temporarily prevent the purchaser from no fault of his own from delivering the subject matter of contract to the agreed date or within the agreed period of time, prolong the dates and periods of time mentioned in sections 1 and 2 by the duration of the default caused by these circumstances.

5. During the delivery time, there are subject to alterations: changes regarding construction, form, deviations concerning the shade as well as changes with regard to the scope of delivery from the supplier's side as far as the product in question has not been modified considerably and the modifications are reasonable for the purchaser.

6. It is not possible to derive any rights merely from the seller's or producer's using signs or numbers for marking the order or the bought product.

## VI. Acceptance

1. The purchaser has the right to carry out an acceptance test at a place convened upon within 8 days after the supply of the subject matter of contract and he is obliged to finalize this acceptance test within this period of time.

2. In case the offered object of purchase reveals considerable defects which cannot be eliminated completely after reprimanding within a period of 8 days according to section 1, the purchaser may reject his acceptance.

3. If the purchaser falls behind with the acceptance test willfully or due to culpable negligence more than 14 days counted from receipt of the notification of provision, the seller may extend in written the purchaser's deadline for 14 days with declaring that he rejects an acceptance test after this deadline has passed.

After the deadline has passed unsuccessfully, the seller is entitled to withdraw from the purchase contract in form of a written declaration or to claim compensation because of non-fulfilment. There is no need for a deadline if the purchaser seriously and finally rejects receipt or if he is obviously unable to pay the purchase price even when granting an extension of the deadline.

4. In case the purchaser claims compensation it will be of 15 % of the purchase price. The amount of compensation will be higher or lower if the seller may prove a higher damage or the purchase may prove a lower damage.

5. If the seller does not make use of the rights according to sections 4 and 5, he may dispose of the subject matter of contract and instead of it, he may deliver a similar product within an adequate period in accordance with the contractual conditions.

## VII. Retention of Title

1. The subject matter of contract remains the seller's property until he receives the payment as agreed upon in the purchase contract. The retention of title also remains valid for any debts the seller acquires later against the purchaser in connection with the subject matter of contract, for example because of repairs or any other services.

The retention of title also expands to debts to representatives arranging the contract for the seller in connection with selling the subject matter of contract, especially in case of presenting for payment or financing the purchase price. As far as such representative's debts exist, after satisfying his own debts, the seller is entitled to transfer the subject matter of contract to the representative. On the purchaser's demand, the seller is obliged to renounce the retention of title if the purchaser has fulfilled any debts which are connected with the subject matter of contract and if for the remaining debts there is another adequate security stemming from current business connections.

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2. As long as he complies with his obligations formulated in the following regulations of this paragraph and if he does not fall into arrears with payments (according to paragraph IV, section 5), during the duration of the retention of title, the purchaser is entitled to owning and using the subject matter of contract.

Anyway, if the purchaser falls into arrears with payments or if he does not come up to the obligations as described in the retention of title, the seller may demand from the purchaser return of the subject matter of contract and, after a written announcement and an adequate period of time, the seller may make best possible use of the subject matter of contract by over-the-counter trade, allowing the proceeds of utilization on the purchase price. In case of instalment payments of a merchant who is not registered in the register of companies, this return is regarded as a withdrawal. In these cases, the legal requirements of the repayment law are valid.

If the seller demands the return of the subject matter of contract, the purchaser is obliged to do so immediately under the exclusion of any rights of retention unless they are based on the purchase order.

As the seller wishes, an officially nominated and sworn expert witness at the purchaser's option may determine the valuation price. However, this is only possible immediately after return of the subject matter of contract. The seller is obliged to balance the subject matter of contract with this valuation price. The purchaser will be charged with all the costs of the return and the utilization of the subject matter of contract. The costs of utilization will be of 10 % of the utilization proceeds without evidence. The costs are to be calculated as higher or lower if the seller proves them to be higher or the purchaser proves them to be lower. The proceeds will be credited to the purchaser after deduction of the costs and further debts which are in connection with the purchase order.

3. As long as the retention of title exists, a disposal, pledging, transfer of ownership as security on a debt or any other surrender of the subject matter of contract impairing the seller's assurance as well as the modification of the subject matter of contract is only permissible after the seller's previous written consent.

4. In case of acting by third persons, especially when pledging the subject matter of contract or when realising the employer's lien of a workshop, the purchaser has to inform the seller in written immediately and he has to inform the third person at once about the seller's retention of title.

5. During the duration of the retention of title, the seller is obliged to keep the subject matter of contract in a proper state.

## VIII. Guarantee

1. During the legal obligation of guarantee, the seller guarantees for the faultlessness which corresponds to the state-of-the art technology of the type of the subject matter of contract.

2. The purchaser is entitled to the elimination of faults and damages which have been caused by them at other parts of the subject matter of contract (improvement). The following is valid for the conclusion:

a) The purchaser has to indicate the claims to the seller in written immediately after assessment.

b) Improvements have to be carried out immediately and in accordance with the technical requirements by replacement or overhauling of defective parts which are necessary for the improvement, free of any charge.

c) For the parts which have been integrated for the improvement the guarantee is valid until the guarantee holding true for the subject matter of contract based on the purchase contract expires.

3. Should it not be possible to eliminate the fault or should further trials of improvement be unacceptable for the purchaser, instead of the improvement, the purchaser may claim a modification (cancellation of the purchase order) or reduction (reduction of payment). There is no claim for compensation deliveries.

4. Guarantee obligations are not touched by changes of property of the subject matter of contract.

5. The guarantee does not contain the elimination of damages which have been caused because

- the purchaser has not indicated a defect as described in section 2a or after he has not given immediately the opportunity to improvement or  
- the subject matter of contract has been put to improper use or it has been overstrained or  
- the purchaser has not followed the instructions concerning the treatment, maintenance and care

6. Natural wear and tear are excluded from the guarantee.

7. In case of the lack of some assured characteristics, the claim for compensation because of non-fulfilment remains unaffected.

8. The previously mentioned claims for compensations will be in lapse with the ending of the guarantee period according to section 1. For any defects which have been asserted within the period of guarantee but which have not been eliminated during this time the guarantee is valid until the defect is eliminated; during this period of time, the limitation period for this defect is hindered.

## IX. Liability

1. Regardless of section 6, the seller is liable for damages which were caused by slight negligence - independent from the legal justification - only if the damage increases any benefits of the national insurance, a private accident insurance or a private insurance of property (such as vehicle damage insurance, luggage insurance and transport insurance). However, the reduction of value of the subject matter of contract and failed benefit will not be compensated. The same holds true for improvements.

2. The purchaser's rights stemming from the guarantee according to paragraph VIII remain unaffected.

3. The claims because of delay of delivery are finally regulated in paragraph VI.

4. The purchaser is obliged to indicate to the seller or to make him take down at once damages and losses the seller has to bear the costs for.

5. The liability of the seller's legal agent, accomplice and employee to the purchaser is excluded with the exception of cases of intent and of culpable negligence

6. Independent of the seller's fault any of the purchaser's claims the seller is confronted with remain unaffected according to the product liability law.

## X. Place where the contract is to be fulfilled and Venue

1. The place where the contract is to be fulfilled is the seller's seat.

2. For any present of future claims stemming from the business connection with traders including debts by drafts and cheques, the venue is exclusively Münster. The same venue is valid if the purchaser does not have a general venue in Germany, if he changes his domicile or his usual residence from Germany to another country after concluding the contract or if his residence or usual residence is not known at the moment of charge. In case of the seller making claims to the purchaser, the residence of the latter will be the venue.

## XI. Salvatorian Clause

In case that one of the regulations of the contract or of this condition should not be valid or lacking legal efficiency, the rest of the contract remains unaffected. Instead of the invalid regulation a regulation becomes valid which has been accepted deliberately by both contractual partners.