

**GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY**  
**(Version: December 2018)**

**1. Scope**

- (1) All deliveries, services and offers from TroFilms GmbH, Technikstrasse 7, 91166 Georgensgmünd, ("**TroFilms**") shall be made solely on the basis of these General Terms and Conditions of Sale and Delivery ("**General Terms**"). These General Terms shall be an integral part of all contracts between TroFilms and their contracting parties ("**Customers**") on the deliveries or the services offered by TroFilms; they apply in particular to the contracts on sale and/or delivery of movable goods ("**Goods**"), notwithstanding whether TroFilms have independently manufactured or purchased the products concerned.
- (2) These General Terms in their current version shall also apply as a framework agreement for all future contracts, follow-up orders, deliveries, services or offers with or to the Customers, without TroFilms having to make another explicit reference thereto in each individual case. The current version of the General Terms is accessible at <https://www.trofilms.de>.
- (3) These General Terms apply solely for Customers who are entrepreneurs in the meaning of Sec. 14 German Civil Code ("**BGB**"), legal persons under public law or special funds under public law.
- (4) Individual agreements made with the Customers on case-by-case basis (including additional agreements, supplements and amendments) shall prevail over these General Terms. Any such agreements shall only be effective, if made in writing. This rule shall also apply for the waiver of the aforementioned written form requirement.
- (5) These General Terms shall apply exclusively. Any deviating, conflicting or supplementary general terms and conditions of the Customer or of a third party shall not apply even where TroFilms have not made an explicit objection to the validity thereof in each individual case. The Customer's general terms and conditions may only become part of the contract if and to the extent TroFilms have explicitly approved the validity thereof in writing. This approval requirement shall apply in any case and in particular even in situations where TroFilms performs its contractual obligations without reservation and in full knowledge of the Customer's general terms and conditions.
- (6) Transmission of the message per post, fax or email shall be deemed sufficient for the compliance with the written form requirement in the meaning of these General Terms.

**2. Offers and Conclusion of the Contract**

- (1) All offers from TroFilms are non-binding and subject to confirmation, including delivery quantities, delivery schedule and price, unless they have been explicitly

marked as binding or indicate a specific acceptance deadline. TroFilms reserve the right to prior sale. A contract with the Customer shall only be deemed concluded upon confirmation of the Customer's orders or requests in writing by TroFilms or delivery of the Goods to the Customer. The Customer's order of the Goods shall be deemed a binding contract offer. TroFilms may accept orders within fourteen days after receipt thereof.

- (2) The legal relationship between TroFilms and the Customer shall be governed solely by the contract which has been concluded in writing and incorporates these General Terms. The contract shall be deemed to reflect the entirety of the agreements between the parties regarding the subject matter of the contract.
- (3) Any documents that are part of the offer (illustrations, drawings, weight or dimension specifications) shall be deemed to state only guideline values, unless TroFilms explicitly confirm the binding nature thereof.
- (4) TroFilms retains title of ownership and/or copyright to all offers and cost estimates submitted as well as all drawings, illustrations, computations, brochures, catalogues, models and other documents and aids made available to the Customer by TroFilms. The Customer may not make these items or the contents thereof available to any third party, disclose them or allow any third party to use or reproduce them without the explicit approval by TroFilms. On the request of TroFilms the Customer shall return these items in entirety and destroy all copies thereof, if any, in case these items are no longer required in the ordinary course of business or if the negotiations do not lead to the conclusion of a contract.

### **3. Prices and Payments**

- (1) The list prices of TroFilms shall apply in the version valid as of the day of conclusion of the contract, unless otherwise individually agreed by the parties. The prices shall apply to the scope of services and deliveries stated in the order confirmations. All additional or special services will be invoiced separately. All prices shall be understood in EURO on the basis of a delivery EXW (INCOTERMS 2010) from TroFilms' premises in Georgensgmünd, Germany plus packaging, statutory VAT, transportation costs, transport insurance, if any, customs duties in case of export deliveries and other official fees and charges.
- (2) If the delivery has to take place in more than four months after the conclusion of the contract, TroFilms will agree on an appropriate price adjustment with the Customer in case the calculation basis of TroFilms has verifiably changed in the meantime and in particular where there has been an increase in wages, material costs or delivery costs.
- (3) The invoiced amounts shall be deemed due and payable within 14 days of invoicing and delivery or rather acceptance of the Goods, unless otherwise agreed in writing.

- (4) The Customer shall be deemed in default in payment after expiry of the above-mentioned payment term. In an event of payment default, interest shall be charged on the invoiced amounts at the statutory default interest rate. TroFilms right to assert a higher damage caused by default and to claim commercial interests on default against merchants shall remain unaffected. Furthermore, TroFilms shall be entitled to claim a lump sum payment of EUR 40.00 from the Customer in the event the latter is in payment default (sect. 288 para. 5 BGB).
- (5) The Customer shall only be entitled to offset or to retain against TroFilms' claims where the Customer's claim is uncontested, or legally binding or a judgement concerning this claim can be anticipated presently. The Customer's offsetting shall be excluded if the Customer is in default in any payment. The Customer's warranty rights in case of any defective Goods delivered shall remain unaffected.
- (6) TroFilms shall be entitled to make outstanding deliveries and to provide outstanding services solely against advance payment or upon provision of security, should TroFilms become aware after the conclusion of the contract of any circumstances threatening to materially impair the Customer's creditworthiness or of insolvency proceedings applied for or initiated against the Customer's assets. TroFilms shall be entitled to withdraw the contract with immediate effect in case of a contract for the manufacture of specific items (custom-made items); the statutory provisions concerning the lack of necessity to set a deadline shall remain unaffected. TroFilms shall be entitled to request appropriate advance payment at any time and even during an ongoing business relationship before they make partial delivery. TroFilms shall notify the respective reservation to the contracting party at latest with the order confirmation.
- (7) If multiple outstanding claims exist, the Customer's payments shall always be credited against the oldest claim. In relation to the individual claims, the costs settled first shall be those connected with the recovery of the claim, then the interest and finally the main claim.

#### **4. Deliveries and Delivery Terms, Risk Transfer**

- (1) Unless TroFilms and the Customer explicitly agree otherwise in writing, the deliveries and passing of the risk shall be deemed EXW (Incoterms 2010) from TroFilms premises in Georgensgmünd, Germany or any other delivery place designated by TroFilms. The dates and terms indicated by TroFilms for their deliveries and services shall always be deemed approximate, unless a fixed period of time or fixed date has been explicitly agreed or promised.
- (2) The Goods can be shipped to another destination on the Customer's request and at the Customer's expense (sales shipment). If sales shipment has been agreed, the delivery periods of time and delivery dates shall refer to the day of handing of the Goods over to the forwarder, carrier or other third party engaged for the transportation. The shipment details (the carrier, the shipment route, the packaging) shall be at the discretion of TroFilms, unless the parties agree otherwise. In case of sales shipment, the passing of risk shall take place when the

Goods are handed over to the forwarder, carrier or other third party engaged for the transportation. The delivery (or the acceptance, if so agreed) shall be deemed to have taken place, should the Customer be in default in acceptance.

- (3) TroFilms shall generally be entitled to use subcontractors at own expense without prior approval thereof by the Customer. The appointment of a subcontractor shall not release TroFilms from their contractual liabilities. The subcontractor shall be considered a person who TroFilms used to perform their obligation.
- (4) TroFilms shall be entitled to make partial shipments solely where the Customer is able to use the resultant partial delivery to a reasonable extent and for the contractual purpose, the delivery of the remaining ordered Goods is ensured and the Customer does not incur any considerable additional costs or expenses as a result (unless TroFilms declare themselves willing to bear these costs).
- (5) TroFilms reserve the right to variations customary in the trade in the items to be delivered, as long as these variations have been caused by important operational needs of TroFilms and do not unreasonably affect the Customer or the serviceability of the Goods.
- (6) If the Customer is in default in acceptance or fails to cooperate or if the delivery from TroFilms is delayed for any other reasons the Customer is responsible for, TroFilms shall be entitled to claim the resultant damages including additional expenses (such as storage costs). To that end TroFilms is entitled to charge a lump sum compensation of 0.5% per completed calendar week, but in any case no more than 5% of the net value of the Goods not accepted, for the period which starts on the delivery period of time or, in the absence of a delivery period of time, on the day of the notification that the Goods are ready for shipment. TroFilms' right to prove higher damages and to assert statutory claims (in particular claims for reimbursement of additional expenses, appropriate compensation, termination of the contract) shall remain unaffected; the lump sum compensation shall be offset against further monetary claims, if any. The Customer shall be entitled to prove that TroFilms has suffered no damages at all or only considerably lower damages than the above lump sum compensation.

## **5. Warranty. Material Defects**

- (1) Claims for defects shall be subject to the statutory provisions, unless otherwise agreed below. In any case the foregoing shall be without prejudice to the statutory provisions for final delivery of the goods to consumers (recourse of the entrepreneur according to sect. 445a, 478, 479 BGB).
- (2) The Customer's claims for defects require that the Customer has carefully examined the delivered Goods promptly upon delivery thereof to the Customer or to the third party designated by the Customer and has promptly notified the possible defects detected (sect. 377, 381 German Commercial Code ("HGB")). Hidden defects which could not be detected by careful inspection shall be notified to TroFilms promptly upon discovery thereof; otherwise the Goods delivered shall

be deemed also accepted with regard to such defects. In general, the Customer's compliance with the prompt inspection and notification obligation shall be determined on case-by-case basis depending on the circumstances. Decisive in all cases shall be the receipt of a defect notice to TroFilms. If the Customer fails to properly inspect the Goods and/or to notify the defect to TroFilms, the latter shall not be liable for any defects not reported, or reported with a delay, or not reported properly in accordance with the statutory provisions.

- (3) In case of a complaint TroFilms shall be entitled to inspect the notified defects in situ independently or by a third party appointed by TroFilms. If TroFilms requests, the delivered product notified as defective shall be returned to TroFilms, carriage free, for inspection. If the complaint is justified, TroFilms shall reimburse the costs of the most favourable shipping route; the foregoing shall not apply however to any cost increases caused by relocation of the delivered item to a place different from the place of its intended use.
- (4) The basis for claims for defects shall be the individual agreement regarding the quality of the goods. In the absence of such agreement, all product descriptions which form the subject matter of the individual contract or which have been disclosed to general public by TroFilms (in particular in catalogues or at <https://www.trofilms.de>) shall be considered the quality agreement. However, TroFilms shall not be liable for any public statements such as advertisement statements made by the manufacturer or by other third parties.
- (5) In case of any defective Goods delivered, TroFilms shall initially be obliged and entitled to remedy the defect or to supply Goods free of defects within a reasonable period of time and at sole discretion of TroFilms. In case of a failed remedy of the defect or replacement delivery, the Customer shall become entitled to withdraw the contract or to request a reasonable reduction of the purchase price. The supplementary performance shall be deemed failed after the second unsuccessful attempt, unless anything to the contrary results in particular from the nature of the item concerned or the defect concerned or the other circumstances.
- (6) TroFilms shall be entitled to make the supplementary performance dependent on the Customer paying the due purchase price. However, the Customer shall be entitled to retain a reasonable part of the purchase price which is proportional to the defect.
- (7) The Customer shall give TroFilms the time and opportunity required for the latter's supplementary performance and in particular a possibility to inspect the Goods claimed to be defective. For this purpose, the Customer shall store the Goods with the care expected of a prudent business person and in compliance with the storage instructions. In case of a replacement delivery, the Customer shall return the defective item to TroFilms in accordance with the applicable legal provisions.
- (8) TroFilms shall bear the necessary costs of inspection and supplementary performance if a defect actually exists. Otherwise TroFilms shall be entitled to claim the reimbursement against the Customer re the costs caused by the

unsubstantiated request to remedy the defect and in particular inspection and transport costs, excluding situations where it was not recognisable for the Customer that the item concerned is defect-free. However, TroFilms shall not be liable for the installation and removal costs in accordance with sect. 439 para. 3 BGB within the scope of their supplementary performance.

- (9) The Customer's claims for damages or reimbursement of futile expenses, even in the case of defects, shall only exist in accordance with clause 6. and shall otherwise be excluded.

## **6. Liability of TroFilms**

- (1) TroFilms shall be liable for damages, notwithstanding the legal grounds thereof, within the 'fault-based liability' scope in case of intent or gross negligence. In case of simple negligence, TroFilms shall only be liable in accordance with the applicable legal provisions (e.g. for the standard of care in one's own affairs), subject to a milder liability standard, for:
- (a) damages resulting from injury to life, body or health and
  - (b) damages resulting from significant breach of a material contractual obligation (i.e. an obligation whose performance is essential for the proper execution of the contract and on whose observance the contractual counterparty usually can rely and does rely); in this case, however, the liability of TroFilms shall be limited to reimbursement for the foreseeable typical damage.
- (2) The liability limitations resulting from Clause 6.1 hereof shall also apply to breach of duty by or on benefit of the persons for whose fault TroFilms are liable under the applicable law. These limitations shall not apply to situations where TroFilms have fraudulently concealed a defect or guaranteed the quality of the Goods and to claims under the Product Liability Act.
- (3) Insofar as TroFilms provide technical information or advice and this information or advice is outside the contractually agreed scope of services owed by TroFilms, this shall be done free of charge and to the exclusion of any liability.

## **7. Retention of Title**

- (1) TroFilms shall retain the ownership of the Goods sold or manufactured by them until full payment of all present and future claims of TroFilms against the Customer arising from the current business relationship (secured claims).
- (2) The Goods subject to retention of title may not be pledged to third parties or collateralized prior to full payment of the secured claims. The Customer shall promptly notify TroFilms in writing if and to what extent a third party has gained access to any Goods owned by TroFilms.



- (3) If the Customer breaches its contractual obligations, in particular if does not pay the outstanding purchase price, TroFilms shall be entitled to withdraw the contract in accordance with the applicable law and to claim the return of the Goods on the basis of the retention of title and revocation. If the Customer does not pay the outstanding purchase price, TroFilms shall only assert these rights if they had unsuccessfully specified an additional period for payment or where the applicable law states that the specification of a period of time is dispensable.
- (4) The Customer shall be entitled to resell, to combine, to mix and/or to process the Goods covered by the retention of title in the ordinary course of business. In this case, the following additional provisions shall apply:
  - (a) The retention of title shall extend to the full value of the products created through processing, intermixture or combination of the Goods of TroFilms and thereby TroFilms shall be considered the manufacturer thereof. If any third party titles remain effective in the event of processing, intermixture or combination the Goods of TroFilms with third party goods, the Customer hereby undertakes to procure the title of co-ownership for TroFilms which title shall be pro rata to the value of the Goods thus combined or blended in the full value of the resultant products;
  - (b) The Customer shall ensure that TroFilms' retention of the title remains effective. The Customer hereby assigns to TroFilms as security all possible claims to third parties arising from resale of the Goods or the products to the full value of these claims or to the amount which is pro rata to the possible co-ownership title of TroFilms emerged in accordance with the preceding clause of these General Terms. TroFilms hereby accept this assignment;
  - (c) After this assignment the Customer shall stay authorised to collect the claim next to TroFilms. TroFilms shall be obliged not to collect the claim as long as the Customer (i) meets its payment obligations to TroFilms and is not in default in payment, (ii) there has been no application for filing an insolvency against the Customer and the Customer's ability to pay has not impaired in any other way. Otherwise, however, TroFilms shall be entitled to request the Customer to inform TroFilms of the assigned claims and debtors thereunder, provide all information necessary for collecting assigned claims and make the relevant documents available and inform the debtors (third parties) of the assignment.
  - (d) If the realisable value of the security exceeds the claim of TroFilms by more than 10%, TroFilms shall release, on the Customer's request, parts of the security chosen at its own discretion.

## **8. Limitation**

- (1) Notwithstanding sect. 438 para. 1 no. 3 BGB, the general limitation period for claims arising from material and legal defects shall be one year, beginning with the handover of Goods to the Customer unless a shorter limitation period has been agreed contractually (e.g. in the technical data sheets on the products).

- (2) Special statutory provisions on third party claims for the return of property *in rem* (sect. 438 para. 1 no. 2 BGB), on fraudulent intent of TroFilms (sect. 438 para. 3 BGB) and on claims with recourse of the entrepreneur regarding final delivery to the consumer (sect. 445b BGB) shall remain unaffected.
- (3) This shall also apply for the Customer's contractual and non-contractual claims for damages based on defective Goods delivered, unless the application of the ordinary statutory limitation period (sect. 195 and 199 BGB) leads to a shorter limitation period in individual cases. However, the Customer's claims for damages under Clause 6 and the Customer's claims under the Product Liability Act are subject solely to the statutory limitation periods.

## **9. Miscellaneous**

- (1) The place of performance for all obligations arising out or in connection with the contract referring to these General Terms shall be Georgensgmünd, Germany, unless agreed otherwise.
- (2) Nuremberg shall be the exclusive place of jurisdiction for any and all possible disputes arising out or in connection with the contract between TroFilms and the Customer referring to these General Terms. However, TroFilms shall also be entitled to commence any litigation at the Customer's place of residence or registered office.
- (3) The agreement between TroFilms and the Customer referring to these General Terms shall be exclusively governed by the laws of the Federal Republic of Germany. The conflict of laws and the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 ("**CISG**") shall not apply.
- (4) Any amendments or supplements to the agreement referring to these General Terms or to the General Terms itself shall only be valid if made in writing. This shall also apply to the waiver of this written form requirement. Individual agreements in the meaning of Sec. 305b BGB shall prevail over these General Terms and not be affected thereby.
- (5) If a provision of these General Terms or a provision of another agreement is found to be or becomes invalid, this shall not affect the validity of all other provisions or agreements.