

# **General Terms and Conditions for the Sale of Goods between Vantage Film GmbH (Seller) and its customers (Buyer)**

## **§1 General Terms and Conditions, Personal Scope, Order and its confirmation**

1. The following General Terms and Conditions for the Sale of Goods shall apply for all sales between Vantage Film GmbH (Seller) and its customers (Buyer). Any Buyer's Terms and Conditions or rules and regulations which deviate from these General Terms and Conditions do not apply except upon written acknowledgement of the Seller. The following General Terms and Conditions for the Sale of Goods shall govern all sales of Vantage Film GmbH to enterprises (wholesale or retail businesses) and consumers with residence outside of Germany.
2. The Seller shall confirm written orders (Vantage Film GmbH order form) sent by the Buyer within 3 days upon receipt in writing. An order via fax and its binding confirmation via fax shall be deemed valid. The seller's written offer (or offer sent by fax) shall be valid for 10 days after Seller's dispatch of the offer to the Buyer unless revoked by the Seller before receipt of the Buyer's acceptance.

## **§ 2 Place of Performance, Delivery and Receipt**

1. Place of performance for all aspects of the sales contract is the Seller's domicile in Weiden, Germany.

The delivery of the goods occurs ex works (Weiden, Germany). The Buyer bears the costs of shipment. Delivery will be effected by the Seller's freight forwarder. The Buyer may – by written declaration before the shipment – choose the freight forwarder. The goods are sent without insurance. A delivery notice can be agreed upon.

2. The Buyer bears costs of packaging for special packing.
3. Sorted partial shipments and partial shipments containing combinations of the ordered goods as well as unsorted shipments are permissible. If due to the fault of the Buyer, receipt does not occur on time the Seller has the option, after setting a cure period of 12 days, either to issue an invoice for the amount due, to rescind the contract or to demand damage compensation.

## **§ 3 Content of the Contract, Delivery time**

1. The delivery of the goods will occur on dates agreed on in the order confirmation (i. e. a particular calendar week), if any, or within usual delivery periods upon confirmed order. All sales are concluded only for particular quantities, articles, quality and prices set. Both parties are bound hereby. Commission transactions are not performed.
2. If the parties agree on prepayment of the sales price or prepayment of parts of the sales price delivery shall not occur before payment of the amount agreed has been fully effected.

#### **§ 4 Interruption of Delivery**

1. In the case of force majeure, work disputes and other interruptions of business that are not due to the Seller's fault, which last longer than a week or apparently will last longer than a week's duration, the period of delivery and the period of receipt are extended for the period of delay, at the longest however for 6 weeks in addition to an extended period of delivery (see § 5). The extension occurs when the other party is given prompt notice of the reason for the delay as soon as it is foreseeable that the named period cannot be adhered to.
2. If the delivery or acceptance does not occur on a timely basis, the other contract party can rescind the contract. It must nevertheless provide written notice at least two weeks prior to exercising the right of rescission.
3. If the other contract party upon request is not informed promptly that a delivery or receipt did not occur on a timely basis and if the delay lasted longer than 5 weeks, the other contract party can rescind the contract immediately.
4. Damage compensation claims are excluded if the contract party has not fulfilled its duty under § 4 (1) - (3).

#### **§ 5 Extended Period of Delivery**

1. After end of the period for delivery an extended period of delivery of 12 days occurs automatically without the need for a declaration. After expiration of the extended period of delivery, rescission is deemed to have occurred under exclusion of damage compensation claims if the Buyer has not given written notice for maintaining the contract.

Rescission under § 5 (1), sentence 2 does not occur if the Buyer declares to the Seller during the extended period of delivery that it seeks performance of the contract. The Seller is nevertheless released from the delivery obligation if the Buyer, upon inquiry of the Seller, does not make a statement within the extended period of delivery as to whether it insists on performance of contract.

2. Transactions for fixed delivery dates are not entered into. If the parties expressly agree in a particular instance that the goods are intended for a particular occasion, a firm delivery date without extension period can be expressly agreed upon. In case the delivery period is exceeded, the Buyer may demand reimbursement of special expenditures for the ordered goods not exceeding the amount of the purchase price of the ordered goods. Further claims are excluded. Before being entitled to claim damage compensation instead of performance the Buyer must notify the Seller in writing that it has a period of 4 weeks to complete performance and that otherwise upon expiration of this period it will reject performance and rescind the contract. The period is calculated from the day on which the notice of the Buyer is delivered to the Seller by registered mail. This provision also applies in the case of § 5 (1), sentence 2, in place of the right of rescission stated there. In this case the Buyer's notice must reach the Seller within the extended period of delivery.
3. Claims of the Buyer on account of late delivery made before expiration of the extended period of delivery are excluded.

## **§ 6 Transportation, Import Regulations**

The Buyer shall bear all costs and risks of transportation. This shall apply especially in cases where the Seller or its agents effect delivery. The Buyer bears the costs of packaging which shall be billed by the Seller. The Buyer will ensure that all necessary customs procedures are complied with in a proper manner. The Buyer will inform the Seller of all import regulations applicable at the place of consignment and the optimum consignment conditions for import. The Buyer is also responsible for compliance with all import arrangements and regulations at the place of consignment and the Buyer shall bear all risks in this regard.

## **§ 7 Notice of Defects**

1. Notice of defects (in writing, by fax or email) is to be sent to the Seller and must reach the Seller at the latest within 10 calendar days after receipt of the goods. The Buyer shall return the defect items to the Seller. The Seller shall bear the costs of the return shipment in case of proven defects.
2. Minor, technically unavoidable deviations from quality, color, width, weight, outfitting or of design may not be claimed as defects. This applies also to deviations customary in the trade unless the Seller has assured delivery according to a sample in writing.
3. In case of a justified notice of defects the Seller has the right of repair or delivery of a replacement product free of defects within 12 days after receipt of the returned item. In this case the Seller bears the freight costs. If repair is not successful and if the Seller is not able to supply a replacement product free of defects, the Buyer only has the right of reduction of the purchase price or may rescind the contract.
4. After expiration of the period provided in § 7 (3) the Buyer can only obtain reduction of the purchase price or rescission of the contract.
5. The Buyer has to inform the Seller without delay (3 work days) of hidden defects after their discovery. The Buyer can on account of a timely notice of defects only obtain reduction of the purchase price or rescission of the contract.

## **§ 8 Payment Conditions, Delay**

1. The invoice will be issued upon order confirmation or – at the latest – on the day of delivery or the day of availability of the goods. Postponement of maturity (valuation time) is in principle excluded. If the parties agree on prepayment before delivery (see confirmed order), payment due shall be effected before processing or delivery of the order.
2. Invoices without fixed payment conditions are due immediately, at the latest within two weeks upon the date of the invoice.
3. Discounts only apply if agreed on in writing or via fax in the order form which has been confirmed by the Seller. In absence of such an agreement, discounts do not apply and are excluded.
4. Checks are only accepted if the sales price is finally credited to the Seller (not in lieu of performance).

### **§ 9 No Discounts, Omission of discounts**

1. Any discounts agreed to by the Seller shall cease to apply in the event of judicial or extrajudicial composition proceedings, bankruptcy or default in payment (Art. 286 of the German Civil Code) on the part of the Buyer, and if judicial process is invoked to recover the full or parts of the invoiced sales price.
2. In the case of bank transfer, the day preceding the crediting of the amount transferred to the bank of the Seller is deemed to be the day of payment.

### **§ 10 Payment after Due Date, Consequences of Default**

1. For payments after latest due date and after notice of non payment, the Seller's interest at the rate of 8 percentage points above the then current base interest rate of the European Central Bank will be calculated. If the Buyer is a consumer the interest shall be 5 percentage points above the then current base interest rate of the European Central Bank.
2. Before complete payment of invoiced amounts due including interest and costs due, the Seller is not obligated to make any further delivery from any current contract. Additional claims damages for delayed payment is reserved.
3. In the case of delay in payment of the Buyer or in the case of threatened insolvency or other essential deterioration of assets of the Buyer, the Seller can demand, after providing a notice period of 10 calendar days, payment in cash before delivery for still outstanding deliveries from any current contract or rescind the contract or demand damage compensation.

### **§ 11 No Set Off**

The Buyer is not entitled to off-set any claims against any sales price payable to the Seller unless the amount sought to be off-set is undisputed by the Seller or finally judicially determined without right of further appeal.

### **§ 12 Reservation of ownership**

1. The goods remain the property of the Seller until the complete payment of all claims from delivery of goods from the entire business relationship, including ancillary claims, damage compensation claims and costs for cashing of checks etc. The retention of title also remains where particular claims of the Seller have been incorporated in an outstanding invoice and the balance is reflected and acknowledged.
2. Insofar as in the business relationship between the Seller and the Buyer a centralized authority is invoked that takes over delcredere liability, the Seller transfers with shipment of the goods the ownership to the centralized authority subject to the condition of payment of the purchase price by the central authority. The Buyer is relieved of payment liability only with payment by the central authority.
3. The Buyer is entitled to further sale or processing of the delivered goods only with consideration of the following conditions.

The Buyer may sell or process the goods subject to retention of title only in the course

of ordinary business and insofar as its asset standing does not significantly deteriorate.

- a. The Buyer assigns hereby the claim, with all related rights, i. e. resale, rent, rental fees of the goods subject to retention of title – including any accounts receivable – to the Seller.
  - b. If the goods are connected, mixed or processed and the Seller has obtained co-ownership in the amount of the outstanding invoiced value, it is entitled to any purchase claim for the goods in proportion to its rights (share of ownership).
  - c. If the Buyer sells the claim against the Buyer's customer within the scope of genuine factoring, the Buyer assigns the claim it has against the factor to the Seller and will send to the Seller its sales proceeds in proportion to the value of the rights of the Seller to the goods. The Buyer is obligated to disclose the assignment to the factor when payment on an invoice is more than 10 days overdue or when its assets' situation deteriorates significantly. The Seller accepts this assignment.
4. The Buyer is entitled to collect the assigned claims insofar as it is in compliance with its payment obligations. The collection authorization ends with payment delay of the Buyer or in the case of significant deterioration of the assets of the Buyer. In such case the Seller is hereby authorized by the Buyer to inform customers of the assignment and to collect the claims itself.
  5. The Buyer has to provide information that is necessary for collecting the assigned claims and for review of such information. In particular it has to hand over to the Seller on request an exact listing of the claims it has with the names and addresses of the customers, the amount of the particular claims, the date of invoice, and so forth.
  6. If the value of the security held by the Seller for the entire claims exceeds the amount invoiced and due including interest and costs by more than 10 %, the Seller is obligated on request of the Buyer to release the security to such extent per its choice.
  7. Using the goods subject to retention of title for a lien or as security is impermissible the Seller is to be informed immediately of any lien seizures, with provision of information concerning the lien creditor.
  8. If the Seller takes the delivered good back in exercise of its right of retention, contract rescission only exists where the Seller expressly declares it. The Seller can satisfy its claims by private sale.
  9. The Buyer keeps the goods under retention of title for the Seller without cost. It has to insure them within the usual scope against common dangers such as for ex. fire, theft and water. The Buyer assigns hereby to the Seller its compensation rights, which it has as a result of damages of the aforementioned type, against insurance companies or other obligated parties in the amount of the invoiced value of the goods. The Seller accepts this assignment.
  10. All claims and rights from retention of title in all the special forms set out in these Terms and Conditions remain until complete satisfaction of any possible obligations (check/bill of exchange) that the Seller has incurred in the interest of the Buyer. The Buyer is in principle permitted in the case of sentence 1 to pursue factoring for its accounts receivable. Before entering any such conditional obligations it must nonetheless inform the Seller.

**§ 13 Applicable Law, Legal Venue, Final Provisions**

1. The contractual relationship between the Seller and the Buyer is governed by the laws of the Federal Republic of Germany without regard to conflict of law rules. The Treaty of the United Nations on Contracts for the International Sale of Goods from April 11, 1980 is excluded and shall not apply.
2. The place of performance for the delivery of the goods and for payment of the sales price shall be 92637 Weiden, Germany.

The legal venue for all disputes arising from any contractual transaction of the parties (Buyer and Seller) shall be 92637 Weiden, Germany.

The seller may also elect or invoke legal action in the courts of the jurisdiction in which the contractual partner is located.

3. No other collateral agreements have been made and any such claimed agreements prior to this agreement are null and void. Any modifications to this sales agreement and any amendments and additions hereto must be in writing (or via confirmed fax-correspondence) in order to be legally binding. This includes any change of the agreed written form.
4. If any provision of the above terms and conditions is held to be invalid, then the validity of the remaining terms and conditions shall not be affected thereby. In such event, the invalid provision shall be deemed replaced by a legally valid provision that most closely reflects the economic content of the valid provision.