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## GENERAL TERMS AND CONDITIONS OF DELIVERY

### Article 1 Definitions

1. In these General Terms and Conditions the terms listed below have the following meaning, unless these General Terms and Conditions explicitly indicate otherwise:
  - a. FiT: Filmtechniek B.V., a private limited liability company located in Rotterdam, the Netherlands, the user of the General Terms and Conditions, also operating under the names Openluchtbioscoop, Dick Moesker Projectietechniek and MvB Film- en Projectietechniek;
  - b. Principal: each other party with which FiT concludes an agreement; and
  - c. Agreement: each agreement between FiT on the one hand and another party on the other.

### Article 2 General

1. These General Terms and Conditions govern every offer made by FiT and every Agreement insofar as the parties have not explicitly deviated from these Terms and Conditions in writing.
2. If one or more of the provisions contained in these General Terms and Conditions are null and void or are declared null and void, the remaining provisions contained in these General Terms and Conditions will continue to apply in full, in which case FiT and the Principal will consult in order to agree on new provisions to replace the provisions that are or that have been declared null and void, in which context the purpose and the purport of the original provision will be taken into consideration if and insofar as possible.

### Article 3 Offers and quotations

1. All offers and quotations are without engagement unless a specific offer or quotation contains a term for acceptance.
2. The prices contained in such offers and quotations are exclusive of VAT and other government levies and any costs to be incurred in the context of the Agreement, including shipping costs and administrative costs, unless the offer or quotation indicates otherwise.
3. FiT will not be bound if the acceptance deviates from the offer that was made or the quotation that was given (even if the divergence relates to minor matters). In such cases the Agreement will not be concluded in accordance with that divergent acceptance, unless FiT indicates otherwise.
4. A composite price quotation will not oblige FiT to perform part of the assignment in exchange for a proportionate part of the price indicated.
5. Offers or quotations do not automatically apply in respect of future assignments.

#### **Article 4 Performance of the Agreement**

1. FiT will be entitled to have certain work performed by third parties if the proper performance of an Agreement so requires.
2. The Principal must ensure that all the information that FiT indicates is necessary, or in respect of which the Principal should reasonably understand that the information in question is necessary for the performance of the Agreement, is provided to FiT in a timely manner. If the information that is necessary to perform the Agreement is not provided to FiT in a timely manner, FiT will be entitled to suspend the performance of the Agreement and/or charge the Principal the extra costs that ensue from the delay.
3. FiT is not liable for any damage, of any kind whatsoever, that is caused as a result of FiT acting or refraining from acting on the basis of incorrect and/or incomplete information provided by the Principal.
4. If the parties have agreed that the Agreement will be performed in phases, FiT will be entitled to suspend the implementation of the parts that form part of a subsequent phase until the Principal has approved the results of the preceding phase in writing.
5. If FiT or third parties that FiT has engaged perform work at a location designated by the Principal, the Principal must provide the facilities, power supply (including high voltage current if necessary), etc. desired by FiT or those third parties free of charge.
6. The Principal indemnifies FiT against any claims brought by third parties that sustain damage in connection with the performance of the Agreement that can be attributed to the Principal.

#### **Article 5 Amendments to the Agreement**

1. If during the performance of the Agreement it appears that in order to properly perform the Agreement that it is necessary to change or supplement the work to be performed and/or the products to be delivered, the parties will consult and amend the Agreement accordingly in a timely manner.
2. If the parties agree that the Agreement will be amended or supplemented, that may affect the time at which the work must be performed and/or the products must be delivered. FiT will notify the Principal as quickly as possible in this respect.

#### **Article 6 Term of the contract; term of the implementation**

1. The Agreement between FiT and the Principal is entered into for an indefinite term, unless a fixed term ensues from the nature of the Agreement or the parties explicitly agree otherwise in writing.
2. If the parties have agreed on a specific term within the term of the Agreement for the completion of certain work and/or the delivery of certain products, under no circumstances will that term be of the essence. Therefore, the Principal must give FiT written notice of default in the event that the term for the implementation is exceeded.

#### **Article 7 Fee**

1. The parties may agree on a fixed fee for each assignment, a fixed hourly rate or a combination of the two. If the parties do not agree on a fee, the fee will be determined on the basis of the actual number of hours worked multiplied by FiT's customary hourly rate that applies for the period in which the work is performed.
2. The fee and the cost estimates are exclusive of VAT.
3. FiT is entitled at all times to charge price increases on to the Principal if the prices of raw materials or auxiliary materials increase more than average between the time at which the offer is made and the implementation and/or delivery. Each increase on the basis of a collective labour agreement may be charged on to the Principal in the wage costs or the hourly rate.
4. Moreover, FiT may increase the fee if during the execution of the assignment it appears that the quantity of work originally agreed upon or expected was so inadequately estimated when the Agreement was concluded, and that cannot be attributed to FiT, that FiT cannot reasonably be expected to perform the agreed work in exchange for the fee

originally agreed. In such cases FiT will notify the Principal of the increase in the fee as quickly as possible, in which context FiT will indicate the scope of increase and the date on which it will enter into effect.

#### **Article 8 Payment**

1. Payment must be made within 14 days of the invoice date in the manner indicated by FiT and to the account indicated by FiT, in the currency indicated in the invoice. Objections in respect of the amount of invoices will not lead to a suspension of the payment obligation.
2. FiT will be entitled to charge 25% of the total amount of the Agreement immediately after the Agreement is concluded, 25% when the work commences, 25% when the work is halfway completed and 25% within 14 days after the work has been completed.
3. If the Principal fails to make payment within the 14-day term the Principal will be in default by operation of law, in which case the Principal will owe interest at a rate of 1% per month, unless the statutory interest rate (or the statutory commercial interest rate) is higher, in which case that statutory interest rate (or the statutory commercial interest rate) will apply.
4. In the event that the Principal is liquidated or declared bankrupt, an attachment is levied against the Principal or the Principal is granted a suspension of payment, FiT's claims against the Principal will be immediately due and payable. If an attachment is levied against FiT on the amounts that are or will become due to the Principal from FiT, the Principal will owe FiT compensation that is due on call in the amount of EUR 500 in respect of the costs that FiT incurs in order to handle the matter.
5. FiT will be entitled to apply payments made by the Principal first in respect of the costs, subsequently in respect of the interest that has fallen due, and finally in respect of the principal amount and the current interest. FiT will be entitled to refuse an offer to make payment, without being in default as a result, if the Principal indicates another order in which it wishes to have a payment applied. FiT will be entitled to refuse to accept the full payment of the principal amount if the interest that has fallen due and the current interest and the costs are not also paid.
6. FiT will be entitled to charge a 2% credit penalty mark-up. That mark-up will not be due if payment is made within seven days of the invoice date.
7. The Principal is not permitted to set off payments against any amounts that it is of the opinion it is owed by FiT or third parties.

#### **Article 9 Retention of title**

1. All the goods that FiT delivers will remain the property of FiT until the Principal has fully complied with all its obligations pursuant to any and all Agreements that it has concluded with FiT.
2. The Principal is not authorised to pledge the goods that are subject to the retention of title or to encumber them in any other manner.
3. The Principal is required to notify FiT immediately in the event that third parties levy an attachment (or wish to levy an attachment) on the goods that have been delivered subject to the retention of title or wish to establish rights in respect of such goods.
4. The Principal undertakes to insure the goods that have been delivered subject to the retention of title and to maintain such insurance against fire, water damage, damage caused by explosion and against theft. The Principal will provide FiT with the relevant insurance policy for inspection immediately upon request.
5. The Principal may sell the goods that FiT delivers that are subject to the retention of title in accordance with subsection 1 of this Article only in the context of its normal business operations and under no circumstances may it use such goods as a means of payment.
6. In the event that FiT wishes to exercise its ownership rights as provided for in this Article, the Principal hereby unconditionally and irrevocably grants FiT (or third parties to be designated by FiT) permission to enter all the locations where FiT's property is located and to take back those goods.

#### **Article 10 Collection costs**

1. In the event that the Principal is in default or fails to comply with one or more of its obligations, any and all reasonable costs incurred in order to obtain satisfaction both in and out of court will be paid by the Principal. In the event that the Principal fails to pay a sum of money in a timely manner it will forfeit a penalty that is due on call equal to 15% of the amount that is still due, with a minimum of EUR 250.
2. In the event that FiT has incurred higher costs that were reasonably necessary, those costs will also be eligible for reimbursement.
3. The Principal will owe interest at the statutory commercial interest rate on the collection costs that are incurred.

#### **Article 11 Inspection; complaints**

1. The Principal must notify FiT in writing with regard to any shortcomings in respect of FiT's compliance with the Agreement within eight days after such shortcomings are discovered, and in any event within 14 days after the work in question has been completed. In the event that the Principal fails to give such written notice in a timely manner all the Principal's rights with respect to FiT's shortcomings will lapse. The notice of default must contain as detailed a description as possible of the shortcoming so that FiT is able to respond adequately.
2. In the event that FiT commits an attributable breach in respect of its compliance with the Agreement, FiT will subsequently perform the work as agreed, unless that has become demonstrably pointless for the Principal, in which case the Principal must give written notice to that effect.
3. If it is no longer possible or worthwhile to subsequently perform the work, FiT will be liable only within the limits stipulated in Article 15.

#### **Article 12 Termination and cancellation**

1. Both parties are entitled to terminate the Agreement at any time. In the event that the Principal terminates the Agreement or otherwise cancels the performance up to one month prior to the planned date of the performance, the Principal will owe 40% of the agreed fee. In the event that the Principal otherwise terminates or cancels the Agreement one month or less before the planned date to the performance, the Principal will owe 100% of the agreed fee.
2. In the event that the Agreement is terminated by FiT, FiT will transfer to third parties, in consultation with the Principal, the work that still has to be performed unless there are facts and circumstances underlying the termination that can be attributed to the Principal, in which case the Principal will owe FiT all or part of the agreed fee in accordance with subsection 1 of this Article. The Principal will be charged for any extra costs that ensue for FiT in connection with the transfer of the work.
3. Only in the event that the Principal is forced to cancel an open-air performance as a result of bad weather conditions will the Principal owe 40% of the agreed fee in the event that the performance is cancelled up to 48 hours before the planned commencement. In the event of a cancellation up to 10 a.m. on the day of the open-air performance the Principal will owe 60%, after which the Principal will owe 100% of the agreed fee.
4. FiT will be entitled to cancel an open-air performance at any time or to refrain from commencing, to suspend and/or to terminate its work in that respect if in its opinion there could be a danger for the public, FiT's staff members or materials – for example (but not limited to) as a result of bad weather conditions – in which case the Principal will owe 60% of the agreed fee unless the open-air performance had already started, in which case the Principal will owe the full agreed fee.
5. Only in the event that an open-air performance is cancelled on the ground of subsection 3 or subsection 4 before 10 a.m. on the day on which the performance was to take place will it be possible to reschedule the open-air performance for another date (within one year after the planned date) in consultation with FiT, in which case FiT will additionally

(and immediately) charge only the costs and for the work that has been performed up to the time of the cancellation.

#### **Article 13 Suspension and dissolution**

1. FiT will be entitled to suspend the obligations or to dissolve the Agreement if:
  - a. the Principal has failed to comply with the obligations under the agreement in whole or in part;
  - b. FiT becomes aware of circumstances after the Agreement has been concluded that give it well founded grounds on which to fear that the Principal will not comply with the obligations. In the event that there are well founded grounds on which to fear that the Principal will comply only in part or improperly, the suspension will be permitted only insofar as the shortcoming justifies it; or
  - c. the Principal is requested to furnish security for its compliance with its obligations under the Agreement when the Agreement is concluded and such security is not furnished or is insufficient.
2. FiT will also be authorised to dissolve the Agreement (or to have it dissolved) in the event that circumstances arise that are of such a nature that compliance with the Agreement has become impossible or can no longer be expected of it on the basis of the standards of reasonableness and fairness, or in the event that other circumstances arise that are of such a nature that it cannot reasonably be expected to maintain the agreement.
3. If the Agreement is dissolved FiT's claims against the Principal will be due and payable immediately. In the event that FiT suspends its compliance with the obligations, FiT will retain its claims under the law and the Agreement.

#### **Article 14 Secondment**

1. In the event that FiT's employees are seconded to the Principal, the Principal will have a duty of care towards those seconded employees as though they were its own employees and the Principal will be obliged to take out adequate non-life insurance for those seconded employees. The Principal will be obliged to submit a copy of the relevant insurance policy to FiT immediately upon request.
2. In the event that a seconded employee becomes ill or is otherwise unable to perform work during the agreed term of the secondment FiT will look for a replacement as quickly as possible.
3. The Principal bears the risk of any damage that it sustains itself or that a third party sustains as a result of an act or omission on the part of the seconded employee. The Principal indemnifies FiT with respect to any and all such claims brought by third parties.
4. The Principal is obliged towards FiT to compensate any and all damage and costs that the seconded employee sustains in or as a result of the performance of his work for the Principal, unless the damage and costs are the result of an intentional act or omission or wilful recklessness on the part of the seconded employee.

#### **Article 15 Insurance and return of goods to FiT**

1. In the event that FiT installs or uses goods (such as equipment, etc.) at a location where it performs work on the Principal's instructions or otherwise rents goods or makes goods available to the Principal, the Principal will be obliged to adequately insure all such goods against theft, damage, etc. by means of an event insurance policy. The Principal will be obliged to submit a copy of the relevant insurance policy to FiT immediately upon request.
2. The Principal will be required to return those goods to FiT within 10 days after the end of the performance or festival for which those goods were used, in their original condition, free of any defects and in full. In the event that the Principal fails to comply with that obligation it will owe all the costs that ensue from its failure to comply.

### **Article 16 Liability**

1. In the event that FiT is liable on any grounds whatsoever, that liability will be limited to the provisions set forth in this Article.
2. Under no circumstances is FiT liable for any indirect damage, including consequential damage, loss of profit, loss of savings and damage as a result of business interruption.
3. In the event that FiT is liable for any direct damage, that liability will be limited to a maximum equal to two times the amount, exclusive of VAT, that was charged for the relevant part of the Agreement to which the damage relates. However, in all cases FiT's liability is limited to EUR 10,000 (in words: ten thousand euros). If it is possible to invoke an insurance policy in this respect the liability will be limited at all times to a maximum equal to the amount that FiT's insurance company pays out in respect of the incident in question.
4. Notwithstanding the foregoing provisions, in respect of an Agreement having a term of more than six months the liability will be further limited to the amount invoiced in the last six months, exclusive of VAT.
5. Direct damage is taken to mean:
  - a. the reasonable costs incurred to determine the cause and the scope of the damage, insofar as the determination relates to damage within the meaning of these Terms and Conditions;
  - b. any reasonable costs that are incurred to ensure that FiT's defective performance is brought in line with the provisions contained in the Agreement, unless the defect cannot be attributed to FiT; and
  - c. reasonable costs that are incurred in order to prevent or limit damage, insofar as the Principal demonstrates that those costs led to a limitation of direct damage within the meaning of these General Terms and Condition.
6. The limitations of liability contained in these General Terms and Conditions in respect of direct damage do not apply in the event that the damage in question can be blamed on an intentional act or omission or gross negligence on the part of FiT or its subordinates.

### **Article 17 Indemnifications**

1. The Principal indemnifies FiT against any claims brought by third parties with respect to intellectual property rights in respect of materials or data provided by the Principal that are used in connection with the performance of the Agreement.
2. In the event that the Principal provides FiT with data carriers, electronic files or software, the Principal guarantees that those data carriers, electronic files or software are free of any viruses and defects.

### **Article 18 Transfer of risk**

1. The risk related to loss or damage of goods that are the subject of the Agreement will be transferred to the Principal at the time at which they are legally and/or actually delivered to the Principal and thereby come under the control of the Principal or a third party to be designated by the Principal.

### **Article 19 Force majeure**

1. The parties will not be obliged to comply with any obligation pursuant to the Agreement in the event that they are prevented from doing so as a result of a circumstance for which they cannot be blamed and that cannot be deemed to be for their account on the ground of the law, a legal act or in accordance with generally accepted standards.
2. In these General Terms and Conditions *force majeure* is taken to mean, in addition to what that term is taken to mean in accordance with the law and case law, any and all external causes, whether expected or unexpected, over which FiT cannot exercise any control but as a result of which FiT is unable to comply with the obligations, including strikes within FiT's business.

3. FiT will also be entitled to invoke *force majeure* in the event that the circumstances that prevent compliance (or any further compliance) arise after FiT should have complied with its obligations.
4. During the period in which the situation involving *force majeure* continues the parties will be entitled to suspend the obligations under the Agreement. If the situation involving *force majeure* continues longer than two months, either party will be entitled to dissolve the Agreement, without being obliged compensate any damage sustained by the other party.
5. Insofar as FiT has already partially complied with its obligations under the Agreement or will be able to do so at the time at which the situation involving *force majeure* arises and the part of the obligations that has been or that will be complied with can be attributed independent value, FiT will be entitled to separately invoice the part that has already been complied with or that will be complied with. The Principal will be obliged to pay that invoice as though it related to a separate Agreement.

#### **Article 20 Confidentiality**

1. Both parties are obliged to maintain confidentiality with respect to any and all confidential information that they obtain from each other or from another source in the context of the Agreement. Information will be deemed to be confidential if the other party is so informed or if that ensues from the nature of the information.
2. If on the ground of a statutory provision or judicial decision FiT is obliged to provide confidential information to third parties designated by the law or the competent court and FiT cannot invoke any right to refuse to give evidence in that respect that is recognised or allowed under the law or by the competent court, FiT will not be obliged to pay any compensation or to indemnify and the other party will not be entitled to dissolve the Agreement on the ground of any damage that ensues as a result.

#### **Article 21 Intellectual property rights and copyrights**

1. Without prejudice to the other provisions contained in these General Terms and Conditions, FiT reserves the rights and powers that are accorded to FiT on the ground of the Dutch Copyright Act (*Auteurswet*).
2. Any and all documents that FiT provides, such as reports, recommendations, agreements, drafts, sketches, drawings, software, etc., are intended exclusively to be used by the Principal and the Principal may not duplicate them, disclose them or bring them to the attention of third parties without FiT's permission, unless that would be permitted on the basis of the nature of the documents.
3. FiT reserves the right to use knowledge that it acquires from performing the work for other purposes insofar as no confidential information is disclosed to third parties in that context.

#### **Article 22 No takeover of personnel**

1. During the term of the Agreement and for a term of one year after it has been terminated the Principal will not in any way employ employees of FiT or of companies that FiT has engaged in connection with the performance of the Agreement who are (or were) involved in the performance of the Agreement, or allow such employees to work for it, either directly or indirectly, unless FiT has given it written permission to do so.

#### **Article 23 Disputes and applicable law**

1. The court in the city where FiT has its registered office has exclusive jurisdiction to take cognisance of any disputes. Nonetheless, FiT will be entitled to submit a dispute to the court that has jurisdiction in accordance with the law.
2. The parties will not apply to the court until after they have made every possible effort to resolve the dispute in consultation.
3. Every Agreement between FiT and the Principal is governed by Dutch law.

**Article 24 Amendment, interpretation and location of the Terms and Conditions**

1. These Terms and Conditions have been filed at the offices of the Chamber of Commerce of Rotterdam under number 27236259 and will be sent to third parties free of charge immediately upon request.
2. In the event that it is necessary to interpret the content and purport of these General Terms and Conditions the Dutch text will be decisive in all cases.
3. The last version that has been filed or the version that applied at the time at which the Agreement is concluded will always apply.

Rotterdam, 30 Jun 2011