

GENERAL CONDITIONS OF SALE AND DELIVERY CONDITIONS 2018

CINEMATEN SOUND AND VISION B.V.
Hettenheuvelweg 26
1101 BN AMSTERDAM

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ARTICLE 1: APPLICABILITY

1. These general terms and conditions are applicable to all offers and agreements of CINEMATEN SOUND AND VISION B.V., based in Amsterdam, the Netherlands, hereinafter referred to as "CINEMATEN".
2. The customer/purchaser shall hereinafter be referred to as "the Client".
3. Possible deviations from the present general terms and conditions shall only be valid provided they have been explicitly agreed upon in writing.
4. The acceptance and retention of a quotation or order confirmation, in which reference is made to these terms and conditions, by the Client without comment, shall indicate the Client's approval of the application of these conditions.
5. The possible inapplicability of one part of a provision of these general conditions shall not affect the applicability of the other provisions.

ARTICLE 2: QUOTATION

1. All quotations, offers, price lists, delivery times etc are free of obligation, unless they contain a deadline for acceptance. If a quotation/offer contains an offer without obligation, and this is accepted by the Client, CINEMATEN reserves the right to withdraw the offer within two days of receiving the acceptance.
2. Any samples, brochures and/or models issued to the Client are indicative only. No rights can be attached to these, unless expressly agreed upon otherwise in writing.
3. The Client shall be under an obligation of secrecy to keep confidential any relevant information pertaining to the offers, quotations etc. issued by CINEMATEN and to refrain from disclosing such information to third parties, unless expressly agreed upon otherwise in writing.

ARTICLE 3: AGREEMENT

1. The agreement is concluded as soon as CINEMATEN has received a verbal and/or written acceptance from the Client, within the period stated on the quotation.
2. In addition to the provisions of subsection 1, the agreement shall become effective as soon as CINEMATEN commences activities, having issued a written confirmation in response to the verbal request of the Client.
3. Deviations from and supplements to any provision of these General Conditions of Sale and Delivery Conditions shall only apply in each individual case and insofar as these have been laid down by CINEMATEN in writing.
4. Any promises, commissions, agreements or undertakings made by a member of staff employed by CINEMATEN shall only be binding upon CINEMATEN when confirmed in writing by the directors of CINEMATEN.
5. Should, during the performance of the agreement, the Client request more services, and/or request a service or services for a period exceeding the contracted period, the Client is obliged to inform CINEMATEN accordingly in a timely fashion and in writing. If the changes are communicated verbally or by telephone, the risks involved in implementing the changes shall be borne by the Client.
6. Any additional costs connected therewith will be charged separately and shall be borne by the Client.
7. Changes made to work already contracted and undertaken may result in CINEMATEN exceeding the originally agreed implementation time.

ARTICLE 4: PRICES

1. If, between the date of concluding the agreement and the delivery, the cost price of the ordered products rises, and/or changes are made by the authorities and/or professional associations to wages, conditions of employment or social provisions, CINEMATEN shall be entitled to pass on these increases to the Client. If, between the aforementioned dates, a new price list is issued by CINEMATEN and/or subcontractors and comes into effect, CINEMATEN shall be entitled to charge the Client the prices specified therein.

2. All prices quoted by CINEMATEN are expressed in Euros and are exclusive of VAT, packaging, postage, shipping, transportation, insurance and accommodation costs, unless the parties have expressly agreed upon otherwise in writing.
3. If the fee stated on the quotation is exceeded, CINEMATEN reserves the right to adjust the total invoice amount. Retrospective settlement shall be based on actual costs.

ARTICLE 5: CANCELLATIONS

1. CINEMATEN reserves the right to cancel an option in favour of undertaking an order issued by a third party, unless the option holder converts the option into an order following consultation with CINEMATEN.
2. The Client shall only be entitled to terminate the agreement before CINEMATEN has commenced activities, and must notify CINEMATEN accordingly in writing. With due observance of the following provisions, all preparation costs incurred by CINEMATEN shall at all times be borne by the Client.
3. If an order is cancelled more than 48 hours before commencement of activities, the Client shall owe 50% of the agreed fee, in addition to the preparation costs set forth in subsection 2 of this article.
4. If an order is cancelled less than 48 hours before commencement, the Client shall owe 100% of the agreed fee, by way of compensation.
5. Furthermore, all financial commitments undertaken by CINEMATEN towards third parties in respect of the cancelled agreement shall be borne by the Client.

ARTICLE 6: Force Majeure

1. CINEMATEN shall not be liable for deficiencies in the discharge of its contractual obligations, if there is any question of Force Majeure or circumstances beyond the control of CINEMATEN. In such instance, CINEMATEN is entitled, without a warning or judicial intervention being required, either to suspend the performance of the agreement in full or in part or to dissolve the agreement in full or in part, without being obliged to pay any damages.
2. In these present conditions, "circumstances beyond one's control" is understood to mean: strikes, exclusions, fires, machine failures and other operational failures, either at the premises of the commissioned party or at the premises of his suppliers of goods and/or services, transport failures and other events beyond his control, such as acts of war, blockades, riots, epidemics, devaluations, floods and storms, as well as sudden increases in import levies and/or taxes, delays or the failure on the part of his suppliers to deliver goods and/or services, the failure to obtain the necessary licences and other government measures
3. Insofar CINEMATEN has already partially fulfilled its obligations resulting from the agreement at the moment the circumstance of Force Majeure commenced, and insofar as separate value can be attributed to the part already fulfilled, CINEMATEN shall be entitled to submit a separate statement of expenses of the part already fulfilled. If the Force Majeure is of a temporary nature, CINEMATEN reserves the right to temporarily suspend execution of the agreement until the circumstance yielding the Force Majeure no longer exists. In such instance, The Client shall owe CINEMATEN all costs incurred in the fulfilment of its obligations under this agreement.

ARTICLE 7: DELIVERY

1. All materials produced by CINEMATEN shall be delivered to the domicile address of CINEMATEN, unless expressly agreed upon otherwise in writing. If the Client wishes to have the products delivered to an alternative address, he must notify CINEMATEN accordingly in writing. All costs and risks associated therewith shall be borne by the Client.
2. The delivery periods and/or deadlines specified by CINEMATEN are provided as an indication only and shall never constitute a fixed deadline within the meaning of the law, unless expressly agreed upon otherwise in writing. In the event of non-timely delivery, CINEMATEN shall only be deemed to be in default following a written notice of default.
3. Any extra costs incurred by CINEMATEN in meeting delivery periods earlier than those originally agreed upon, which must be requested in writing by the Client, shall be borne by the Client. CINEMATEN will issue the Client with a breakdown of costs.
4. If, irrespective of cause, CINEMATEN has not been provided in due time with the information, instructions, documentation, materials etc necessary to perform its contractual obligations, including but not limited to scripts, texts, images, audio-visual and/or data carriers, CINEMATEN reserves the right to extend the deadlines agreed upon in writing accordingly.
5. Should CINEMATEN and the Client agree in writing that the Client shall collect from CINEMATEN the finished products and any documents and/or materials provided by the Client at an agreed date, CINEMATEN reserves the right to return all materials to the Client by registered post, postage-unpaid, if the Client fails to fulfil these obligations.

ARTICLE 8: COMPLAINTS/RETURNS

1. In accordance with the requirements of the agreement, the Client must lodge any complaint with regard to visible faults in writing to CINEMATEN immediately after the CINEMATEN has completed, performed or presented the activities or products to the Client, or within 8 (eight) days. The Client is required to return the product(s) concerned to CINEMATEN within 8 (eight) working days; delivery shall be carriage paid.
2. Complaints with regard to invisible faults must be made in writing within 8 (eight) days after such faults could reasonably have been discovered.
3. Claims made with regard to invoices must be submitted to CINEMATEN in writing within 8 (eight) days following the date of despatch of the invoices in question.
4. Claims submitted after the aforementioned periods will not be accepted. The Client will then have forfeited all rights, and the products and/or the activities to be performed will be deemed to be of a satisfactory nature.
5. Subject to the provision of supportive evidence to the contrary, CINEMATEN is at all times decisive.
6. Submitted claims or returned consignments do not relieve the Client from his obligations with regard to the term of payment, unless expressly agreed upon otherwise in writing.
7. Returned goods will only be accepted in this case if neither the product nor the packaging is damaged in any way whatsoever, and the returned goods are still in their original state (not used). In all other cases, any right to complaint shall become null and void.

ARTICLE 9: PAYMENT

1. Prior to executing any agreement with the Client, CINEMATEN reserves the right to request that the Client issue an advance payment.
2. Without regard to the payment conditions agreed upon, CINEMATEN is entitled at all times to require from the Client security of payment approved by him in the form of a letter of guarantee from the bank.
3. CINEMATEN shall submit to the Client an invoice for the work performed and/or products delivered. Part invoices are possible at all times, unless expressly agreed upon otherwise in writing.
4. Payments must follow within a period of 14 days from invoice date, unless expressly agreed upon otherwise in writing. All payments must be made to a bank account nominated by CINEMATEN.
5. If the Client fails to meet his obligations towards CINEMATEN in respect of payment within the agreed period of time:
 - A. CINEMATEN is entitled to charge interest on the amount specified on the invoice from the date on which payment of the invoice should otherwise have been made, amounting to 2% per month, to be calculated cumulatively over the principal sum. Part of a month will count as a whole month;
 - B. after being notified by CINEMATEN that he is neglecting to comply with his payment obligations, the Client shall owe, with regard to extra-judicial collection costs, a minimum of 15% of the sum of the principal sum and the late payment interest, with an absolute minimum of €150.00;
 - C. CINEMATEN is additionally entitled to charge the Client an administration fee of at least €20.00 for each reminder and demand for payment sent out to the Client. CINEMATEN will note this information in the agreement and/or on the invoice.
6. At CINEMATE's discretion, in the preceding or equivalent circumstances, the agreement may be dissolved in whole or in part, without further notification of default or judicial intervention, which measure may or may not be combined with a demand for compensation.
7. If the Client has not fulfilled his payment obligations in good time, CINEMATEN shall be entitled to suspend the fulfilment of the obligations entered into with the Client for deliveries/performance of activities until payment has been made or reliable security has been provided for this. The same applies before the moment of default/omission if the supplier suspects that there are reasonable grounds to doubt the Client's creditworthiness.
8. All payments made by the Client shall firstly serve to settle all interest and costs owed, and secondly to settle all longest outstanding invoices, unless the Client specifies that the payment relates to a later invoice.
9. If the Client, for whatsoever reason, has or will acquire one or more counterclaims against CINEMATEN, the Client renounces the right to adjustment with regard to this (these) claim(s). The said renunciation of the right to adjustment also applies if the Client requests suspension of payment or is declared bankrupt.

ARTICLE 10: RETENTION OF TITLE

1. All products supplied and to be supplied remain the property of CINEMATEN until such time as the Client has fulfilled the relevant payment obligations towards CINEMATEN. These payment obligations consist of the payment of the purchase price, any corresponding work performed, as well as claims relating to any compensation on account of shortcomings on the part of the Client in the fulfilment of his obligations.
2. In the event that CINEMATEN invokes the retention of title, the relevant agreement shall be considered to have been dissolved, without prejudice to CINEMATE's right to demand compensation for damages, lost profit and interest.

3. The Client is obliged immediately to inform the supplier in writing of the fact that third parties are asserting rights to products to which retention of title applies in accordance with this article.

ARTICLE 11: OBLIGATIONS CINEMATEN

1. CINEMATEN shall ensure that the supplied products are of standard customary quality and reliability, produced using technically adequate equipment. However, CINEMATEN cannot guarantee the finished results.
2. CINEMATEN undertakes to treat with due care all materials provided by the Client, including but not limited to audio-visual and data carriers, documents etc and other materials to be reproduced or recorded.

ARTICLE 12: LIABILITY

1. CINEMATEN assumes no liability for the quality of the items delivered.
2. CINEMATEN assumes no liability for the quality of unmodulated audio-visual tapes.
3. If CINEMATEN is requested by the Client to work with unique items of an irreplaceable or valuable nature, the Client is required to adequately insure such items; the costs and risks shall be borne entirely by the Client. The insurer relinquishes his right of recourse against CINEMATEN
4. The Client indemnifies CINEMATEN against any claims made by third parties, including in respect of any infringement of intellectual property rights or any other statutory regulation in connection with the agreement concluded between CINEMATEN and the Client and/or work performed or items delivered by CINEMATEN within the scope of the agreement.
5. The liability of CINEMATEN in respect of any damage resulting directly or indirectly from faults in the goods and/or services provided by CINEMATEN shall in all cases be limited to the amount equal to the payment CINEMATEN is entitled to receive, less all out-of-pocket expenses incurred by CINEMATEN on account of goods and/or services supplied by CINEMATEN. Any suspension, discontinuation and/or dissolution does not relieve the Client from his obligations with regard to payment of any activities which have already been undertaken.
6. CINEMATEN assumes no liability in the event of theft of any property belonging to the Client, a member of staff or persons admitted to the Client's premises, loss or damage of said property as a result of leaks, fire, damp or similar circumstances within the premises, unless said damage or loss was caused by gross negligence or intention on the part of a member of staff employed by CINEMATEN.
7. CINEMATEN assumes no liability for any damage, loss or destruction of audio-visual and/or data carriers and any material stored thereon, or for any damage to or loss of items or materials provided by the Client to enable CINEMATEN to fulfil its obligations under the agreement, unless said damage or loss was caused by gross negligence or intention on the part of a member of staff employed by CINEMATEN
8. CINEMATEN assumes no liability for trading loss, consequential damage or lost profit suffered by the Client as a result of any claims instituted by third parties against the Client, unless said damage or loss was caused by gross negligence or intention on the part of a member of staff employed by CINEMATEN.
9. The Client abandons his rights against CINEMATEN shall be liable for all losses, and shall indemnify CINEMATEN against any claim by third parties relating to compensation for losses if and insofar as:
 - A. the aforementioned losses have arisen as a result of incompetent usage, and/or usage of the finished product contrary to CINEMATE's instructions;
 - B. the aforementioned losses have arisen because the Client has acted in a manner not in accordance with the instructions and/or recommendations given by CINEMATEN.
 - C. the aforementioned losses have arisen as a result of errors, incompleteness or irregularities in information, materials, data carriers etc. that were provided and/or prescribed by or on behalf of the Client, including recommendations, documents etc supplied by third parties;
 - D. the aforementioned losses have arisen as a result of the Client providing inadequate or incorrect information to CINEMATEN, and CINEMATEN based and/or performed its activities on the basis of such information.

ARTICLE 13: BREACH OF CONTRACT

1. CINEMATEN is entitled, by written notification and with immediate effect, to terminate the agreement in full or in part without giving notice of default and without judicial intervention, and without being obliged to pay any damages or issue a refund, without prejudicing the other rights of CINEMATEN, if the Client fails to fulfil, or fails to fulfil in a full, a proper or timely manner, any obligation arising from the agreement, enters into payment arrangements with creditors, is granted a - provisional - moratorium on payments or if bankruptcy proceedings are instituted against the Client, is placed under conservatorship and/or an overseas equivalent, or loses the authority to dispose of property and/or the full legal capacity with respect to his assets or parts thereof, unless the official receiver or administrator recognises the obligations arising out of the agreement as a debt of the estate.
2. The consequences of any suspension, discontinuation and/or dissolution shall be entirely at the risk and for the account of the Client.

3. Any suspension, discontinuation and/or dissolution does not relieve the Client from his obligations with regard to payment of any activities which have already been undertaken. Furthermore, CINEMATEN shall be subsequently entitled to claim from the Client compensation in respect of any damages, expenses or other interests resulting from the non-fulfilment of the agreement, not excluding any resulting loss of income incurred by CINEMATEN and dissolution of the agreement.

ARTICLE 14: OBLIGATIONS CLIENT

1. The Client commits himself to rendering the necessary assistance to CINEMATEN to fulfil its obligations, including but not limited to issuing all information, items, materials etc that are necessary to execute the order.
2. The Client ensures that all information which CINEMATEN indicates to be necessary, or which the Client should reasonably understand to be necessary for the execution of the order, will be supplied to CINEMATEN in the desired format and at an agreed time.
3. CINEMATEN reserves the right to suspend the execution of the order until such time that the Client has fulfilled its obligations under subsection 2.
4. The Client guarantees the accuracy and comprehensiveness of the information provided. CINEMATEN assumes no liability for any damage, of whatever nature, arisen as a result of CINEMATEN basing itself on incorrect and/or incomplete information supplied by the Client.
5. CINEMATEN undertakes to treat the information supplied by the Client with the utmost confidentiality, and shall refrain from disclosing any information to third parties.
6. The Client is obliged to ensure that the information is provided within the tolerances set out in the specifications issued by the manufacturer concerned. Any additional costs arising from the Client's failure to fulfil these obligations shall be passed on to the Client.

ARTICLE 15: COPYRIGHT

1. The Client indemnifies CINEMATEN against any claims made by third parties, including infringement of copyright, neighbouring rights and other intellectual property rights, in respect of any work performed or services delivered by CINEMATEN on behalf of the Client.
2. CINEMATEN retains the intellectual property rights regulating the design and creation of the items delivered or made available on behalf of CINEMATEN or other entitled parties. The Client undertakes to respect these rights, and shall be held liable for any infringement of those rights.

ARTICLE 16: APPLICABLE LAW AND COMPETENT COURT

1. All agreements concluded between CINEMATEN and the Client are subject to the laws of the Netherlands. Any disputes arising between the CINEMATEN and the Client are also governed by the laws of the Netherlands.
2. All disputes, arising from or relating to the agreement will be settled by the competent court in Rotterdam, unless the sub-district court has jurisdiction over the dispute, or unless CINEMATEN is granted authority to have the dispute settled by a court in the domicile or in the immediate vicinity of the Client.
3. In the event that the Client is a natural person who does not act in the exercise of a profession or business, within 1 (one) month of CINEMATEN informing the Client that the case is to be submitted to the court, the Client may make it known that he chooses settlement of the dispute by the legally competent court.
4. In the event of disputes, arising from or relating to the agreement concluded with a Client who is domiciled outside the Netherlands, CINEMATEN is entitled to act in accordance with the provisions of subsection 2 of this article or - at its discretion - to submit the dispute for arbitration to the competent court in the Client's country and/or state of domicile.

ARTICLE 17: TRANSFER OF RIGHTS AND OBLIGATIONS

1. Neither party is entitled to transfer the rights and obligations arising from this agreement in full or in part to a third party, unless expressly agreed upon otherwise in writing.
2. In the event that (any activity) of the company of the Client is joined with or is continued in a newly established company, in whatever form and by whatever method, the Client shall become severally liable for the original and the newly established company in respect of the Client's obligations as referred to in subsection 1.