

## **Terms of supply**

### **I. Conclusion of contract**

1. This agreement will come into existence by the Exhibitor's signing of the confirmation of date / office agreement (in the following referred to as **office agreement**) sent by Transit in answer to the Exhibitor's inquiry.
2. For purposes of execution of the agreement each film title shall be considered to be a separate order. If the acceptance of one film title shall be made dependant on the supply of other film titles, a special agreement will be required.
3. These Terms of Supply are exclusively valid; in the event of any conflict between the provisions of these Terms of Supply and provisions of the Exhibitor the latter shall be repudiated, unless Transit has explicitly given its written consent concerning their validity. The Terms of Supply of Transit shall be valid if Transit, having knowledge of provisions of the Exhibitor contrary to or deviating from its Terms of Supply, delivers without reservation film titles to the Exhibitor.

### **II. Accounting for and payment of the distributor's share (film rental)**

1. In case of an agreed percentage share the Exhibitor undertakes and agrees to hand over without delay, at the latest however within seven (7) days following the last play day, a final and significant statement of account established in accordance with regular commercial principles. The payment of the film rental shall be effected within 14 days following the date of invoice at the latest. In case of non-observance of this term the Exhibitor shall be deemed to be in default without any specific notice of default being required.
2. From Transit's second notice of default onward the Exhibitor shall be obliged to pay 5 Euro per notice for the expenditure of Transit caused by this notice.
3. Notwithstanding their economic and legal independence, the contracting parties agree that the Exhibitor has to administer his box-office receipts pursuant to the care

of a prudent businessman and to avoid any impairment through Exhibitor's fault of Transit's share in receipts.

4. The Exhibitor's accounting and payment obligations in case of an agreed percentage share shall be based on his gross receipts of the ticket sale for the film title to be accounted for.
5. The entrance fees which have to be accounted for shall be the prices actually demanded by the Exhibitor, at least however the prices specified in the respective office agreement. Complimentary tickets shall only be allowed to the extent agreed with Transit. If no such agreement has been made, the weekly quota of complimentary tickets must not exceed five (5) percent of the seating capacity. General reductions in price of all kind, also for special screenings within or outside the normal playing period will require a special agreement. The same applies to special reductions in price, unless the reductions are stipulated by law.
6. A possibly agreed advance payment shall, (a) if the print of the film title is collected at the premises of Transit, be effected versus the handing over of the print, (b) if the print is dispatched, be paid to Transit in advance. An advance payment agreed upon in the office agreement will become due 14 days after the signing of the office agreement or 14 days before the first day of screening, depending on which date occurs earlier. The Exhibitor will not have a right to the delivery of the print, if the amount payable in advance has not been paid in time to be credited to Transit's account 14 days before the first day of screening. Transit may however send the print to the Exhibitor on a C.O.D. basis.
7. Any payment has to indicate for which film title it is affected.
8. In case of an agreed percentage share of Transit or of one of the agencies charged by Transit or by the Verband der Filmverleiher (VdF)<sup>1</sup> (e.g. an auditing company or an agency of accounting control) the Exhibitor, for purposes of inspection, undertakes and agrees to present on demand all documents necessary for the accounting, particularly the original daily reports, the ticket orders, as well as his books of account, with the exception of those neither directly nor indirectly connected with the receipts from the ticket sale. Furthermore, the Exhibitor undertakes and agrees to provide

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<sup>1</sup> Note of translator: Verband der Filmverleiher/VdF = German Association of film distributors

every requested information concerning this subject. The Exhibitor shall be obliged to bear the costs of control, if by this control an inaccuracy of the statement of account to the detriment of Transit has been asserted.

9. Transit has to deliver in time the marketing material belonging to the ordered film titles to the extent and in the condition customary in this line of business as well as the clearance certificates of the FSK<sup>2</sup>. Advertising slides and opening films will be subject to special agreements. The Exhibitor undertakes and agrees, to carry out customary and proper marketing activities for the film title under observance and use the marketing material. The consideration for the marketing material including the packaging shall be subject to special agreements on the basis of usual prices. This consideration has to be accounted for and paid together with the film rental.

### **III. Delivery**

1. Delivery, return delivery and further delivery of film and marketing material will be at the expenses of the Exhibitor unless otherwise provided.
2. The Exhibitor assumes the risk of delivery, return delivery and further delivery.
3. In the event that the Exhibitor does not receive a film in due time or in a condition in which the film could be presented, he undertakes and agrees to inform Transit immediately by cable or by telephone. The contracting parties may then arrange a new playdate. If the fault is attributable to the Exhibitor, he undertakes and agrees to indemnify Transit for the damage sustained due to the screenings omitted.
4. The Exhibitor undertakes and agrees to return the film and marketing material immediately after the end of the last screening carefully packaged to the **Friedrich-Wilhelm-Murnau-Stiftung, Kreuzberger Ring 56, D – 65205 Wiesbaden**, unless he is explicitly requested by Transit to send the film and advertising material somewhere else. For each day the Exhibitor intentionally or negligently retains the print of the film title beyond the agreed playing period, undertakes and agrees to pay to Transit, without prejudice, an indemnification in the amount of the lost rental fees.

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<sup>2</sup> Note of translator: The FSK (Freiwillige Selbstkontrolle der Filmwirtschaft) is the Voluntary Censorship Board of the Film Industry

5. Regardless of any right of the Exhibitor, he shall not have a right of retention in the film and marketing material. Furthermore, he shall not be allowed to charge the return of the film and marketing material on a C.O.D. basis, either. The advertising material has to be returned in the condition it was delivered, taking into consideration the normal wear and tear. Photo material must not be perforated or be altered in its form in any other way. If the Exhibitor will not or only partially send back the marketing material or if the marketing material will be sent back seriously damaged, the Exhibitor undertakes and agrees to reimburse Transit for the replacement price.
6. The contracting parties will not be liable in so far as the delivery or the screening of the film title will be prevented or delayed due to force majeure or due to other circumstances beyond the control of the parties, in particular due to non-clearance, revocation of a previous clearance (loss of the negative) or prohibition of the film.
7. On the Exhibitor's demand Transit undertakes and agrees to provide the Exhibitor before delivery of the film with all information necessary for the precise designation of the film with regard to its country of origin, its year of production, the extent of its clearance, a possible predication etc..
8. Transit shall be entitled to refuse delivery of further film titles on the grounds of possible outstanding payment or non-payment of the film rental.

#### **IV. Exhibition rights**

1. The exhibition rights only apply to the cinema cited in the office agreement. In the event that the Exhibitor will present the film material in a form contrary to the agreement, he shall be liable for damages. Parallel screening of a print in one or several other cinemas ("bicycling") or the screening of a print in a cinema other than the one cited in the office agreement shall only be allowed with Transit's written approval. The film-to-videotape transfer or the transfer to other storing media shall be prohibited.
2. If the Exhibitor operates a mobile cinema, he undertakes and agrees not to organise screenings within a radius of five kilometres to a stationary cinema showing the same film title.

3. Without Transit's written consent the Exhibitor shall not be entitled to organize or to have organized the screening of films or parts of films via radio or television or via other media regardless their nature. The exhibition right must not be transferred to a third person.
4. If the Exhibitor has to pay music royalties for the screening of sound films in his cinema, he shall not be entitled to a reimbursement of these charges by Transit.

**V. Play date scheduling and playing period**

1. The play dates and/or the playing period shall be stipulated in the office agreement.
2. Up to 14 days before the agreed screening date at the latest the contracting parties will be entitled to demand a one-time postponement under indication of a new play date. [Up to seven days at the latest before the agreed play date, Transit shall have the right to demand a postponement for good cause stating that reason.]
3. A possible prolongation of the playing period can mutually be agreed upon in writing. The Exhibitor however shall not have a right to a prolongation of the playing period.
4. Before the end of the agreed playing period and during a possible period of its prolongation a film title may only be taken off the programme by mutual agreement.
5. On Transit's demand, film titles which are not screened in conformity with the agreement, have to be screened subsequently and on equal accounting conditions within three months. This right has to be exercised within four weeks after notice of the screening contrary to the agreement.

**VI. Risk, notice of defects**

1. The Exhibitor bears the risk of damage and loss of the film material while being in his possession. He undertakes and agrees to acquire sufficient insurance coverage at an insurance company. Transit is entitled to request the evidence as to such insurance.

2. The Exhibitor undertakes and agrees to immediately inform Transit of each damage in writing briefly designating the defects and in the event of damage due to fire or due to any criminal action to inform without delay the competent police authority, to have the reason for and the extent of the damage officially certified and to forward this certification to Transit. Furthermore, the Exhibitor undertakes and agrees to notify his insurance company of the damage and to present them Transit's invoice.
3. If the Exhibitor receives the film material in damaged condition, he undertakes and agrees to immediately inform Transit in writing briefly designating the defects. A damaged print must not be screened by the Exhibitor, unless the replacement print arrives too late. In the event of violation of this obligation it shall be presumed that the damage has occurred in the Exhibitor's business. In case of damage the Exhibitor may have the defects of the print asserted by an expert at his own expenses.

## **VII. Use**

1. The Exhibitor undertakes and agrees to present the film material by means of technically faultless projection equipment and in an unobjectionable manner.
2. In case of suspicion of a mishandling of the film material or of defects of the projection equipment, Transit shall be entitled to inspect the handling of the film material and the condition of the projection equipment. Transit shall for this purpose be allowed to use the services of an expert nominated by the VdF and made known to the Wirtschaftsverband der Filmtheater<sup>3</sup>. Transit or the expert shall be granted the Exhibitor's support necessary for the inspection. In the event that Transit will raise towards the Exhibitor the suspicion of a mishandling of the film material or of defects of the projection equipment, Transit has to support the Exhibitor adequately, if he, at his own expenses, orders an inspection by an expert. If a mishandling of the film material or defects of the projection equipment will be asserted or if access to the screening room will be denied to the person charged with the inspection, Transit will be entitled, without prejudice to any right to damages, to suspend the delivery of further film titles until Transit receives evidence of the defects' removal. To the extent the defects are confirmed by the inspection of the expert and to the extent a fault is

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<sup>3</sup> Note of translator: The Wirtschaftsverband der Filmtheater is a German association of cinemas having an economic purpose

attributable to the Exhibitor, the costs of the examination shall be borne by the Exhibitor.

### **VIII. Sales and leasing**

1. In the event that the Exhibitor sales or leases his cinema, he undertakes and agrees to oblige his assign without prejudice to his ongoing liability, to take over the film material not yet shown and to give Transit immediately written notice of this fact.
2. Transit and its successors or assigns shall have the right to transfer their rights and duties resulting from the office agreement to another company and to let this company in their place enter into the contractual relationship. Transit or as the case may be its successor has to immediately inform the Exhibitor of this transfer to another distribution company..

### **IX. Termination and Suspension of the Cinema Business**

1. If the cinema will be closed during the term of this agreement, the general legal provisions shall apply. If the closing should be the result of force majeure and will not last for a period longer than two (2) months, the play dates scheduled for this period of suspension will be postponed for an adequate period.
2. [On days for which a general government prohibition to screen films exists, the obligation of statement of account and thus the payment of the film rental is cancelled.]

### **X. Voluntary Censorship**

1. With respect to the film titles forming the subject matter of this agreement the contracting parties will submit to the examination results and decisions of the FSK according to the principles, regulations and rules of procedure of the FSK, to the extent these are acknowledged by the Hauptverband Deutscher Filmtheater (HDF)<sup>4</sup>

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<sup>4</sup> Note of translator: The Hauptverband der Deutschen Filmtheater/HDF (formerly named Zentralverband der Deutschen Filmtheater) is the Central Association of German Movie Theatres

and the VdF. If a film title shall not be cleared at the moment of a relevant play date, paragraph 2 of article V hereunder shall apply.

2. The Exhibitor shall – in exceptional cases – be allowed to refuse acceptance of the film material, if Transit sends no clearance certificate of the FSK for the film title or fails to prove in any other way that and to which extent the film title has been approved for public exhibition. [In this respect Transit shall not be entitled to any damages.]
3. The contribution to the examination expenses for cinemas stipulated on a case by case basis by the Spitzenorganisation der Filmwirtschaft (SPIO)<sup>5</sup> in the clearance certificates will be accounted for and paid together with the film rental.

**XI. Place of performance, place of jurisdiction, applicable law**

1. For both of the contracting parties, place of performance and place of jurisdiction shall be Munich.
2. This contract will be governed by German law.

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<sup>5</sup> Note of translator: The Spitzenorganisation der Filmwirtschaft/SPIO is the Central Organization of the German Motion Picture Industry (for Movie Theatres)