

**GENERAL TERMS AND CONDITIONS OF TRADE  
OF M.A.R.K.13™ GMBH & CO. KG ELECTRONIC MEDIA**

Terms valid 04/2011

**§ 1. Area of Application**

- 1.1 The following general terms and conditions of trade (in the following named: „GTCT“) apply exclusively.
- 1.2 Special agreements and side arrangements attain validity only if they are confirmed in writing by M.A.R.K.13™ GmbH & Co. KG. Deviating GTCT of the customer, which are not explicitly recognized, are noncommittal, even if in individual cases one did not contradict to them.
- 1.3 Customers in the sense of the following GTCT are solely entrepreneurs. Entrepreneurs in the sense of the GTCT are natural or legal entities or legally responsible unincorporated firms, who act in practice of a commercial or independent vocational activity.

**§ 2. Offers and Closures, Deadlines, Dates**

- 2.1 Offers from M.A.R.K.13™ GmbH & Co. KG are not-binding and noncommittal, unless written adhesion duration is not assured in writing. A contract is valid only with a written confirmation of order in accordance with §3. The abolition of agreements can take place only in writing. Orders are accepted however then without written confirmation of M.A.R.K.13™ GmbH & Co. KG, if the achievement given by the customer in order were already realized by M.A.R.K.13™ GmbH & Co. KG.
- 2.2 Deadlines and dates are always prospective numerical data. A deadline begins in each case with the sending off of the appropriate confirmation of agreement, at the earliest however with complete clarifying of all agreement terms and technical details as well as delivery via the customer of all procuring rough materials, documents, necessary single transfers and if needed any necessary permissions. Any wished changes coming later from the customer, agrees to postpone the deadline to the extent needed to fulfil changes desired.
- 2.3 Offers and prices of M.A.R.K.13™ GmbH & Co. KG do not include supply and forwarding expenses. Packing and forwarding expenses are to be paid by the customer and are additionally charged to the agreed upon prices.
- 2.4 Set-off rights are entitled to the customer only if its counterclaims are recognized by M.A.R.K.13™ GmbH & Co. KG and are validly determined and/or undisputable.

### § 3. General Achievement References

- 3.1 M.A.R.K.13™ GmbH & Co. KG has no obligatory price list. For each order an individual offer in writing is provided, on the basis of the information given by the customer about the order. The offer is non-binding and noncommittal, if adhesion duration is not assured in writing.
- 3.2 According to the information and materials given by the customer, M.A.R.K.13™ GmbH & Co. KG will provide a written confirmation of order given, which contains a detailed capacity concerning all achievements given in order and the quantities (in the following called: „Work Flow “). The confirmation of order and the Work Flow are then part of the contract.
- 3.3 The price indicated in the written confirmation of order is only to that extent obligatory as no further extensions and changes are made in the original Work Flow, which M.A.R.K.13™ GmbH & Co. KG offered and is not responsible for. In particular if the supplied material (like e.g. mix-formats, data-transfer-formats etc.) or other information given by the customer before (e.g. length of film, number of effects, etc.) is not conform with the terms presupposed first in the confirmation of original order, then a supplement offer is provided, which contains an extended Work Flow with appropriate price adjustment.
- 3.4 For set ordered services, orders and booked dates, which are called off or cancelled within 48 hours before beginning of the agreed upon service, rental time or other parts of the order are called off or cancelled, a indemnification fee at a value of 50% of the entire agreed upon order sum is charged for, so far as there is no possibility of re-rental. Compensational payment of damages according to the laws remains unaffected by this regulation.
- 3.5 M.A.R.K.13™ GmbH & Co. KG is entitled to work with subcontractors to execute order of customer.
- 3.6 The examination and investigation of M.A.R.K.13™ GmbH & Co. KG handed over film, video and tone materials is not part of their execution obligation, as far as nothing else was agreed upon in writing. Information of M.A.R.K.13™ GmbH & Co. KG which concern the photographic condition, are even not obligatory if they are, due to the production and inspection from sample copies, since neither the artistic intentions nor the cutting sequence of the final product is known.
- 3.7 The customer takes over the objective and right guarantee for the supplying documents and exempts M.A.R.K.13™ GmbH & Co. KG from any claims of third parties. The customer expresses by the placing of order that he is authorized to all given orders as well as all legal transactions and orders which are connected with this, that also music rights any in particular (e.g. the GEMA) are protected and that official precautions, legal regulations, etc. do not oppose to the placing of order.

### 3.8 The customer is committed to:

- ensure the full insurance protection (in particular film negative, video tape recording and stock insurance) that M.A.R.K.13™ GmbH & Co. KG is handed over to and/or for material keeping,
- hold a safety or a secondary material suitable for the replacement of the rough material for the order as well as
- inform third right owners about this GTCT and/or get their confirmation.

## § 4. Individual Achievements

### 4.1 Hiring of premises (Studios etc.) and other materials, customs hiring.

- A) The customer has to check immediately the completeness and outside condition of the renting material at the place of origin. Damages or other impairments are to be indicated to M.A.R.K.13™ GmbH & Co. KG immediately. This applies also to transport damages. Later objections concerning any obvious lack are not considered.
- B) The customer is obligated to treat left materials customary and to objective and right guarantee insurance. The right for sublet or third party hiring is not possible. M.A.R.K.13™ GmbH & Co. KG reserves itself the choice of route of transportation and means of transport as far as there is no other written agreement with the customer.
- C) Transport insurance through M.A.R.K.13™ GmbH & Co. KG will happen only on written requirement and only at costs of the customer. Any danger occurring, as soon as the material was handed over to the dispatching company or has left the stock of M.A.R.K.13™ GmbH & Co. KG, is the customers. At the end of the rental period the customer has to send back material free of charge to the address of M.A.R.K.13™ GmbH & Co. KG. The customer carries thereby the risk of transport. This applies also if M.A.R.K.13™ GmbH & Co. KG is to take over any transport for the customer. The customer is obligated to inform M.A.R.K.13™ GmbH & Co. KG immediately about any damages, destruction or extraction of the rental material, for example by theft.
- D) Type, duration and range of the hiring of devices, articles and mechanisms result in principle from the written offer, from the written confirmation of order or the achievement verifications.
- E) Rented rooms are to be returned in same condition after completion of use, as they were handed over to in beginning to the customer. While the duration of dismantling and clearing up work the full daily rent is invoiced. The customer bears the cost of all caused necessary dismantling and clearing up work as well as for any garbage and debris removal.

- F) The customer is obligated to keep the agreed upon dates for beginning and completion of his work. A claim on further hiring of the locations exceeding the date as well as weekends and holidays does not exist, as far as nothing else was agreed upon in writing.
- G) The customer carries the duty to safeguard traffic for the left areas or materials. The customer commits himself to each valid VBG, VDE, VDI and DIN regulations, as well as the generally recognized safety-relevant and rules according to industrial medicine. Fire fighters, medical personnel and order forces - so far officially required – are to be supplied by the customer or will be, according to expenditure, supplied and invoiced to customer by M.A.R.K.13™ GmbH & Co. KG.
- H) M.A.R.K.13™ GmbH & Co. KG takes over no adhesion for any articles, which the customer/user brought into the rented areas, and grants no insurance protection for such materials. As far as operational disturbances or other operationally interruptions, not caused by the customer or auxiliary persons, which make it impossible to continue work longer than 4 (four) hours, the requirement of payment is void until the recovery of any such disturbances is made by M.A.R.K.13™ GmbH & Co. KG. The customer is only entitled to withdraw from the contract if the disturbance reason can not immediately be repaired and the customer is substantially impaired in his economic interests.
- I) If M.A.R.K.13™ GmbH & Co. KG makes available an Internet entrance for the customers own PCs/Notebooks, the usage of such and/or other networks happens on customers own risk. M.A.R.K.13™ GmbH & Co. KG does not take over adhesion for damage any kind, which can develop and/or result (or the software and/or the stored data etc.) from viruses or other damages and grants for this also no insurance protection. M.A.R.K.13™ GmbH & Co. KG points out that the furnished Firewall does not offer sufficient protection against such damage.

#### 4.2 Film, Video and Technical Achievements

- A) M.A.R.K.13™ GmbH & Co. KG is entitled to all markings necessary for the treatment of orders, designations, edge cut-outs, rework such as polishing, matt finishes to attach and/or accomplish punching on any negatives and positives, and/or to remove any existing markings hindering the process of work, designations, to remove inscriptions etc. against invoice.
- B) All M.A.R.K.13™ GmbH & Co. KG necessary manufactured documents such as 3-D of models, scripts, title proposal, title negatives and photo plates as well as all needed for copying (e.g. filter volumes, cut lists, disks, data medium, etc.) remain - independently of the remuneration of their achievement - the property of M.A.R.K.13™ GmbH & Co. KG keeps this material for possible supplementary orders - without assumption of an appropriate adhesion - regularly for one year.

A longer keeping takes place only according to separate written agreement against remuneration. An obligation for keeping beyond the operating time does not exist without written agreement.

- C) As far as no instructions of the customer are present, the tuning of the colours and tones (tone qualities) takes place during the execution of the order after the discretion of the responsible chief technician/toner. For material, process, or system-dependent colour fluctuations applies the commercial tolerances.
- D) If any picture and/or tone photographs are processed on equipments of M.A.R.K.13™ GmbH & Co. KG which were originally not made on equipments of and/or on equipments provided by M.A.R.K.13™ GmbH & Co. KG, then M.A.R.K.13™ GmbH & Co. KG undertakes only the obligation to accomplish the conversion expertly.
- E) Any merging of multi-channel recordings or main mixtures of television or motion picture films are to be made by personnel of M.A.R.K.13™ GmbH & Co. KG without the customer or a responsible person designated by him is present co-worker (in particular director), M.A.R.K.13™ GmbH & Co. KG undertakes only the obligation to accomplish these work technically perfectly.

## **§ 5. Delay of Payment of the Customer**

- 5.1 Invoices of M.A.R.K.13™ GmbH & Co. KG are due within 14 (fourteen) days after receipt of the appropriate invoice or with entrance of the default of acceptance without delay for payment. A guarantee-hold is not possible. After expiration of 14 (fourteen) days since receipt of the invoice the customer goes into delay of payment; it does not require a separate reminder. Delay of payment occurs, if no payment is made within 30 (thirty) days after invoice is due and receipt of the invoice or the delivered material payment takes place.
- 5.2 If the customer goes into delay, M.A.R.K.13™ GmbH & Co. KG is justified to invoice, overall interests at a value of 8% over the basis interest rate of the European Central Bank determining in accordance with § 247 BGB. If M.A.R.K.13™ GmbH & Co. KG can prove a higher damage caused by default then they are justified to make these valid.
- 5.3 If the customer runs into dept with a payment totally or partly longer than 30 (thirty) days or is placed to request for opening of the insolvency procedure over its fortune M.A.R.K.13™ GmbH & Co. KG is justified - without prejudice to further rights - to place all demands immediately against the customer, keep all supplies and achievements and to make all rights from the retention of title valid in accordance with §7.

## **§ 6. Delivery Time and Delivery Obstacles**

- 6.1 Any information from M.A.R.K.13™ GmbH & Co. KG about data of supply or completion date represents only a noncommittal estimation. Firm bargains are not made.

- 6.2 In case of *Force Majeure* or any other circumstances M.A.R.K.13™ GmbH & Co. KG is not responsible for and which extends the delivery date, in that case the time for delivery will be extended for the duration of these events.
- 6.3 During an achievement prevention in the sense of §2 of longer than 3 (three) months both sides are justified to withdraw, regarding the backward supply/completion from the contract.
- 6.4 In case of an unavailability of the promised achievement which was not recognizable at the time the contract conclusion M.A.R.K.13™ GmbH & Co. KG is justified to withdraw from the contract. M.A.R.K.13™ GmbH & Co. KG commits itself to inform the customer immediately about the unavailability and to refund achievements of the customer immediately.
- 6.5 M.A.R.K.13™ GmbH & Co. KG is at any time justified to deliver, as well as undertake partial deliveries. Partial deliveries can be invoiced by M.A.R.K.13™ GmbH & Co. KG immediately.

## **§ 7. Retention of Title / Right Reservation**

- 7.1 M.A.R.K.13™ GmbH & Co. KG reserves itself the right for property worked on, manufactured and/or supplied materials up to the complete payment of all demands from the current business relation.
- 7.2 The customer is entitled to export, mortgage, and transfer by way of security or placing of the reservation commodity abroad only after previous written agreement of M.A.R.K.13™ GmbH & Co. KG. The customer is however entitled to use the supplied materials for his usual and tidy business concern.
- 7.3 The customer steps down from all up to date delivered material demands and claims to third parties already now at the amount which can be stood or which can be expected to be demanded by M.A.R.K.13™ GmbH & Co. KG, which also accepts hereby this transfer.
- 7.4 The customer is authorized to collection, as long as he follows his liabilities duly and does not come into delay of payment.
- 7.5 With accesses of third parties on the reservation ware or the finished new materials, the customer has to refer immediately to the property of M.A.R.K.13™ GmbH & Co. KG.
- 7.6 Any further processing of the material by the customer always takes place in the name and on behalf M.A.R.K.13™ GmbH & Co. KG. If processing takes place with articles or achievements from M.A.R.K.13™ GmbH & Co. KG, which are worked on by property not belonging to M.A.R.K.13™ GmbH & Co. KG, then M.A.R.K.13™ GmbH & Co. KG acquires the co-ownership of the new material in relation to the value from their supplied material. The same applies, if the materials are mixed with others, not in the property of M.A.R.K.13™ GmbH & Co. KG.

7.7 With contrary behaviour to the terms of the agreement of the customer, in particular with delay of payment M.A.R.K.13™ GmbH & Co. KG - also without appropriate period setting for achievement - is justified to withdraw from the contract, to fetch the reservation commodity and to enter, for this purpose, the place of work and/or storage of the commodity. The customer steps down from any rights, which would be entitled to him from forbidden arbitrary action and permits M.A.R.K.13™ GmbH & Co. KG the entrance to the areas, in which the reservation commodity is.

#### 7.8 Utilization of Reservation Commodity

The following applies for the utilization of the reservation commodity:

- A) M.A.R.K.13™ GmbH & Co. KG is entitled, also without cancellation of the contract, to use the reservation commodity after best discretion, in particular also free-handling. Proceeds obtained with the utilization are taken into account, less of M.A.R.K.13™ GmbH & Co. KG costs and interest developed on the open demand. Any surplus is expenditure-turned to the customers.
- B) Any to M.A.R.K.13™ GmbH & Co. KG retired demands, will be drawn directly from any third parties involved. The drawn in demands are charged less that of M.A.R.K.13™ GmbH & Co. KG costs and interest with the purchase price, developed. Any surplus is expenditure-turned to the customers.

7.9 Any developing and/or buying of copyright acquire use of M.A.R.K.13™ GmbH & Co. KG achievement protection or other rights in connection with the achievements furnished by M.A.R.K.13™ GmbH & Co. KG then the right transmission takes place dilatory conditionally up to the complete remuneration with M.A.R.K.13™ GmbH & Co. KG achievements given in order.

### **§ 8. Passage of Risk**

- 8.1 The risk turns over to the customer with delivery of the commodity/materials. It stands for the delivery directly, if the customer comes into the delay of the acceptance.
- 8.2 With the dispatching purchase, the risk goes over to the customers, as soon as M.A.R.K.13™ GmbH & Co. KG delivered the commodity or the materials to the carrier freight company or otherwise the person intended for the execution of dispatching.

### **§ 9. Guarantee**

- 9.1 The data concerning achievement, measurements, weights, prices and such matters, contained in catalogs folders, circulars, announcements, illustrations and comparable public prints, are noncommittal, as far as they do not become expressly subject-matter of the contract.

- 9.2 M.A.R.K.13™ GmbH & Co. KG is justified after own choice to the defect removal or to the replacement. For rework M.A.R.K.13™ GmbH & Co. KG is granted a period of 20 (twenty) days. M.A.R.K.13™ GmbH & Co. KG is justified to repeated rework attempts, as far as this is reasonable to the customer.
- 9.3 As far as M.A.R.K.13™ GmbH & Co. KG does not have to represent the lack M.A.R.K.13™ GmbH & Co. KG can refuse the after fulfilment (rework or replacement) because of disproportion costs, if after fulfil cost is worth the material in the faultless condition exceeding 150%. The same applies, if after fulfil cost due to for lack of existing depreciation exceeds 200%.
- 9.4 If rework fails, the customer can require reduction of the remuneration (decrease) or cancellation of the contract (resignation). With an only slight contrary to the terms of the agreement, in particular with only slight lack, however no resignation of the contract is entitled to the customer.
- 9.5 If the customer selects the cancellation of the contract, due to a flaw, then customer has no claim for indemnification claims.
- 9.6 If the customer accepts an unsatisfactory flaw, although he knows the lack, then he is entitled to it the requirements and rights of lack in accordance with § 437 BGB only if he reserves himself these, because of the lack with acceptance.
- 9.8 If the customer takes up M.A.R.K.13™ GmbH & Co. KG unauthorized on guarantee claim then he has to replace all costs developing in connection with the examination of the material, if the unauthorized demand was thoughtlessly, roughly negligent or deliberate.
- 9.9 The customer does not receive warranties in the sense of right from M.A.R.K.13™ GmbH & Co. KG.

## **§ 10. Investigation and Censure-Obligation**

- 10.1 As far as the customer is tradesman in the sense of the commercial code, he has to examine the supplied material immediately after delivery, as far as this is possible after normal course of business. If a lack shows up, this is to be indicated to M.A.R.K.13™ GmbH & Co. KG immediately and concretely. The censure-obligation period amounts up to 14 (fourteen) days at the most; the entrance of a written (also by fax) censure to M.A.R.K.13™ GmbH & Co. KG is relevant.
- 10.2 The warranty laws of commercial customers is void, if he does not follow the obligations described in §10.1.
- 10.3 The reprimanded material is to be sent in normal packing, free of charge back to M.A.R.K.13™ GmbH & Co. KG.



## **§ 11. Liability and Limitations of Liability**

- 11.1 In relation to enterprises guarantee-conditioned claims for damages are excluded unless
- M.A.R.K.13™ GmbH & Co. KG is entitled for the lack of resolution and rough negligence and/or
  - in the context of the legal liability based on fault the damage to lives, bodies or health of humans occurred.
- 11.2 In relation to enterprises any further claims for damages are impossible, unless,
- M.A.R.K.13™ GmbH & Co. KG is entitled for the lack of resolution and rough negligence and/or
  - in the context of the legal liability based on fault the damage to lives, bodies or health of humans occurred and/or
  - M.A.R.K.13™ GmbH & Co. KG has hurt or neglected an obligation, whose observance for the reaching of the contract purpose is of special importance.
- 11.3 So far as M.A.R.K.13™ GmbH & Co. KG is responsible for obligation injuries, their liability is limited - excluded the case of resolution and rough negligence - according to the kind of commodity/achievement foreseeable, contract-typical, direct average damage.
- 11.4 If customer steps down from the contract, the requirement on payment of damages instead of achievement is excluded.
- 11.5 For delay damage with more easily negligence, M.A.R.K.13™ GmbH & Co. KG is responsible only at a value of up to 5% of the remuneration agreed upon.
- 11.6 If and/or so far the liability of M.A.R.K.13™ GmbH & Co. KG according to §11.1, §11.2, §11.3 or §11.4 are not possible or limited, shares of liability of legal representatives and executing aides are also void.
- 11.7 Beyond that supplementing for the rental of rooms (studios etc.), the regulations of the §4.1 H apply.

## **§ 12. Limitation**

The guarantee period of limitation amounts to one year. With claims for damages out of M.A.R.K.13™ GmbH & Co. KG represented resolution and newly manufactured material and work achievements according to §§ 438 exp. 1 No. 2 BGB and/or § 634 A exp. 1 BGB the legal periods apply. The rights of the customer according to §§ 478, 479 BGB remain permitted.

### **§13. Miscellaneous**

Execution place and exclusive seat of jurisdiction is, as far as legally permissible, after choice of M.A.R.K.13™ GmbH & Co. KG either the city of Stuttgart, Germany or the seat of the deposed party.