

**NRK Folie 2017**  
**General Terms and Conditions of Sale, Delivery and Payment**

**1) Definitions.**

In these terms and conditions, "buyer" also means "client".

In these terms and conditions, "seller" means a member of NRK Folie who acts as the (selling) party of the one part.

In these terms and conditions, "written" and "in writing" also mean any messages sent by fax and email, even if they are not signed on account of their method of (automatic) transmission, or any other form of communication that, with a view to the state of the art and generally accepted practice, can be equated thereto.

In these terms and conditions, "products" means any and all products supplied or to be supplied by the seller under the agreement.

In these terms and conditions, "agreement" means every arrangement made between the seller and the buyer pursuant to which the seller and/or buyer is/are obliged to supply one or more deliverables.

**2) Applicability.**

- a. These terms and conditions apply to every offer, quotation, order confirmation and trade agreement between the seller and the buyer.
- b. The Dutch-language version of these terms and conditions is binding. Any additions to or deviations from these terms and conditions will only be valid if they are confirmed by the seller in writing.
- c. The applicability of any purchase or other general terms and conditions on the part of the buyer is expressly rejected.
- d. The buyer accepts the applicability of these general terms and conditions also and unconditionally for any and all future agreements and offers.
- e. These terms and conditions also apply to all agreements with the seller for the performance of which third parties are engaged.
- f. If any of the provisions of these terms and conditions prove null and void or voidable or are successfully declared void, all other terms and conditions will remain applicable.

**3) Offers, Formation of Agreements, Delivery and Delivery Times on Call.**

- a. All offers and verbal promises made by the seller will be entirely without obligation, even if they state a period of time, unless expressly stated otherwise. An agreement with the seller will not be formed until the seller has confirmed the order issued or has actually started carrying out the order issued.
- b. The agreement is an agreement between the seller and the buyer. If a different delivery address is agreed upon in the order confirmation or if this is agreed upon at a later stage, the buyer will remain responsible for all obligations towards the seller under this agreement.
- c. Unless agreed otherwise, delivery will be made ex works, which is understood to mean the seller's production site. If delivery under the 'Incoterms' is agreed upon, the Incoterms valid at the time the agreement is concluded will apply.



- d. In the event of delivery ex works, the purchased products will be transported at the buyer's expense and risk and the buyer will have to arrange for sufficient insurance.
- e. In the event of delivery ex works, the buyer will bear the risk of any direct or indirect damage caused to or by these products for the buyer or third parties from the moment the sold products or a part thereof are loaded for delivery purposes.
- f. In the event of delivery ex works, the buyer will be obliged to take delivery of the products the moment they are made available under the agreement. If any other kind of delivery is agreed upon, the buyer will be obliged to take delivery of the products the moment the seller has supplied the same to the buyer. If the buyer refuses to take delivery or is negligent in the provision of information or instructions that are required for the delivery, the seller will be entitled to store the products at the buyer's expense and risk.
- g. The delivery time will commence if and after the seller has accepted an order in writing and has received from the buyer all the information and materials needed for the performance. The delivery times specified by the seller are always approximate and will under no circumstances constitute deadlines. The delivery time is extended by the time that the seller is temporarily unable to deliver as a result of force majeure or exceptional circumstances, even if the seller is liable therefor according to generally accepted practice, even if these circumstances could have been foreseen at the time the agreement was concluded or the order was awarded. In the event of overdue delivery, the buyer must give the seller written notice of default and allow the seller a reasonable period within which to meet its obligations.
- h. If no different delivery time is agreed upon in the event of delivery on call, the maximum period within which delivery must be called will be three weeks or any shorter period that is to be considered reasonable under the given circumstances. In the event of delivery on call, the buyer will be deemed to have agreed to the delivery having been made at the time agreed upon for calling. If the factual delivery has not been made at that time, the seller will from that moment on act as custodian for the buyer. In that event, the seller will be entitled to charge storage costs.
- i. In the event of delivery on call, the costs and risk associated with the products will be borne by the buyer from the moment the products are in the seller's warehouse.

#### **4) Cancellation of and Amendment to the Agreement.**

- a. The buyer cannot cancel or amend the agreement without the seller's explicit consent in writing. The request for cancellation or amendment must be submitted to the seller in writing.
- b. If the seller accepts the request for cancellation or amendment, the seller will be entitled to attach conditions to its consent.
- c. As a result of an amendment to the agreement, both the agreed price and the originally specified delivery period may be changed. The buyer accepts the possibility of the agreement being amended, including the change in price and delivery period.



## **5) Termination.**

- a. An agreement between the seller and the buyer may be terminated immediately in the following cases (the list is not exhaustive):
- The buyer files for bankruptcy or is declared bankrupt, applies for or is granted a moratorium, the debt rescheduling procedure is declared applicable to the buyer pursuant to the Debt Rescheduling (Natural Persons) Act [Wet Schuldsanering Natuurlijke Personen] or the buyer's property and/or assets are seized in whole or in part.
  - The seller dies, its company is dissolved or is placed under administration.
  - After concluding the agreement, other circumstances come to the seller's attention that give the seller reason to fear that the buyer will not meet its obligations.

In those cases, the seller will be authorised to suspend the further performance of the agreement or to terminate the agreement, without prejudice to the seller's right to demand compensation from the buyer.

## **6) Payment.**

- a. All payments must be made into the seller's bank account without any deduction, discount or offset. Payments to a representative or (any other) members of staff will only be valid if a receipt signed by a director or attorney-in-fact of the seller is issued. The seller is entitled to charge a 2% credit restriction supplement on its invoices.
- b. Unless expressly agreed otherwise, payment must be made within 14 days of the invoice date. If payment is made in good time, the credit restriction supplement charged may be deducted from the invoice amount.
- c. If payment is overdue, the buyer will be in default by operation of law without prior notice of default being required. From that moment, the so-called statutory trade interest will be due as referred to in Sections 6:119a and 6:120(2) of the Netherlands Civil Code, and any judicial and extrajudicial costs incurred in order to demand fulfilment, termination and/or compensation will be payable by the buyer, unless a court irrevocably rules against the seller in that matter.
- d. The seller will always be entitled to demand (partial) prepayment or any other security for payment from the buyer.
- e. If, in the event of overdue payment, the seller is forced to pass on a claim for collection to third parties, the buyer will owe the seller all the associated costs, and the extrajudicial collection costs – not including the costs associated with the enforcement of an executory title that are not included in an order for costs – will be set at 15% of the invoice amount subject to a minimum of €250. All payments by or on behalf of the buyer will first be used to settle all interest and costs due and, after that, to settle the principal.
- f. If the due date is exceeded, the seller will be entitled to suspend all ongoing orders until payment has been made within the period specified by the buyer. If payment is not made within this period, the seller will be entitled to determinate all current agreements, without prejudice to the seller's rights to compensation.



**7) Retention of Title and Use.**

- a. The products supplied by the seller, as well as any products previously supplied, will remain the (inalienable) property of the seller until the buyer has fully settled any and all amounts it owes or will owe the seller, including interests and costs, which in turn may include any compensation (for damage) due to a breach of contract. The buyer will not be entitled to sell the products supplied by the seller in any way other than within the course of its regular business operations and/or occupation.
- b. The buyer will not be entitled to pledge or otherwise encumber the products supplied by the seller. The buyer hereby grants the seller the right to access those locations where the seller's products are stored in order to exercise its property rights as necessary.
- c. If third parties intend to seize any products supplied subject to retention of title or to encumber them with any rights or assert any rights thereto, the buyer will be obliged to notify the seller immediately.
- d. Insofar as not agreed otherwise, the objects, moulds, clichés, image media and lithographs, tools and suchlike, as well as the associated copyrights will remain the property of the seller and the seller will not be obliged to transfer the same.
- e. Any transit packaging materials of the seller that are intended for reuse will remain the seller's property. The buyer will keep these transit packaging materials in its custody for the seller and will be liable for any loss of or damage thereto.
- f. The buyer will be deemed to have transferred to the seller the title to any surplus (refuse, waste) of materials or semimanufactures supplied by the buyer for production purposes.
- g. If the laws of the country of destination of the purchased products offers more options for retention of title than provided above under a, these further options will be deemed to have been stipulated for the benefit of the seller, provided that if it cannot be objectively established to which further rules this provision applies, the provision above under a will continue to apply.

**8) Warranty.**

- a. The seller warrants that the products to be supplied meet the normal requirements and standards that may reasonably be set therefor at the time of delivery and for which they are designed in case of normal use in the Netherlands.
- b. The warranty referred to in paragraph a of this article will also apply if the products to be supplied are intended for use abroad and the buyer has expressly informed the seller thereof in writing prior to commencement of the agreement.
- c. The warranty referred to in paragraph a of this article applies for a period of 1 month from delivery to the customer.
- d. The warranty issued under this article will only apply if the buyer has met all its obligations to the seller.
- e. If the products supplied by the seller are manufactured by third parties, the warranty previously referred to in this article will be limited to the factory warranty given by the suppliers and manufacturers of the products.
- f. The seller will have the right, at its discretion, to replace any products returned in their original condition, to repair the products or to refund the amount paid for the products to the buyer.

**9) Transit Packaging and Used Packaging Materials.**

- a. Unless expressly stated otherwise by the seller, transit packaging is included in the price of the products supplied. The commercial packaging does not qualify as transit packaging. The seller



- will not charge any deposit for the transit packaging, unless the seller is obliged to do so by the authorities or the seller has expressly stated such.
- b. If the seller's products are supplied on so-called euro pallets or on pallets that are part of a pallet pool, the seller will charge for these pallets as transit packaging, unless the seller is given identical, undamaged pallets in return upon delivery.
  - c. If, upon delivery, the seller is required by the buyer and/or the authorities to take back any transit packaging or packaging materials supplied and used by the buyer, the associated costs, including the costs of destruction, will be payable by the buyer.
  - d. Insofar as not intended for one-off use, transit packaging such as roll containers, crates, boxes, pallets and suchlike will remain the property of the seller. The buyer will remain liable for the transit packaging sent to it, even if no deposit is charged therefor. The buyer is obliged to return the empty transit packaging it has in its possession to the seller at its own expense as soon as possible, unless expressly agreed otherwise.
  - e. The seller will credit any transit packaging charges (deposit) as soon as it is returned undamaged. In the event of minor damage, the seller reserves the right to deduct the associated costs from the deposit to be credited. In the event of major damage, no amount will be credited and the transit packaging will be at the disposal of the buyer, of which the buyer will be notified.

#### **10) Intellectual Property Rights and Copyrights.**

- a. Any and all data, drawings and illustrations provided by the seller are copyrighted. The buyer is not allowed to copy these documents or give them to third parties for inspection without the seller's express permission.
- b. The copyright to designs, drawings, sketches, lithographs, photographs, software, models, stamps, dies, clichés, patterns, formes, etc. produced by or at the behest of the seller will remain vested in the seller at all times. They may under no circumstances be reproduced or made available to third parties. For each day that the buyer violates the copyright, the seller will be entitled to claim a penalty of at least €25,000.
- c. The buyer will indemnify the seller against all consequences of any infringement of any rights of third parties if the seller has used a certain image, drawing, model, form or design at the buyer's request.
- d. If the buyer supplies the seller with any auxiliary materials or printed matter to be incorporated into products purchased by the buyer from the seller, the buyer will indemnify the seller expressly against any claims from third parties on account of violation of copyrights and rights under patents, trademarks or models.



## **11) Prices.**

- a. The seller will be entitled to increase the price agreed upon on acceptance of the order subject to any relevant statutory regulations, if, after the date of formation of the agreement, the prices of raw materials, auxiliary means, parts purchased by the seller from third parties, wages, salaries, national insurance contributions, taxes, rights or dues, transport, etc. are increased, even if this is the consequence of currency fluctuations, as well as if new government levies and taxes are introduced or existing ones increased. In that event, the buyer will be entitled to terminate the agreement or the part not yet fulfilled in writing within 5 days of receipt of the notice of the price increase without being entitled to compensation.
- b. The prices charged by the seller are in euros, exclusive of VAT and other levies and any other costs to be incurred under the agreement, including shipping and administration costs, unless stated otherwise.

## **12) Complaints, Tolerances, Limitation of Liability.**

- a. The buyer is obliged to check the products upon delivery.
- b. In order to be valid, complaints must be submitted in writing to the seller as soon as possible after the buyer has detected them, in any event within 8 days of receipt of the products. In order to be valid, complaints on account of shortages, deviations from the given specifications or visible damage must be noted on the receipt by the buyer.
- c. Non-visible defects or shortages must be reported to the seller in writing within the warranty period. The buyer will be liable for all consequences of any failure to report immediately.
- d. The seller is at all times entitled to determine the nature and magnitude of any complaints on site.
- e. If a complaint has not been reported to the seller within the periods stated in the previous paragraphs, the warranty cannot be invoked.
- f. The seller will do its utmost to deliver in accordance with the agreed order. Deviations in respect of any agreed weights, quantities, dimensions, colours, compositions, formulations, prints and/or other design details do not entitle the buyer not to accept the delivery, unless the deviation is of unacceptable proportions.
- g. Deviations from the agreed thickness, length or width of the goods supplied must be assessed on the basis of an average item of the products supplied and not on the basis of a few individual items.
- h. The maximum permissible deviation from the agreed size (length and/or width) for plastic film on rolls and for bags of plastic film is 5%.
- i. The maximum deviations of a single measurement from the agreed thickness are the following:

- plastic film to 20 mu:	20%
- plastic film from 20 mu to 50 mu:	15%
- plastic film in excess of 50 mu:	13%



- j. Any larger or smaller quantities supplied will be deemed to correspond to the agreed quantities and/or number, if the deviation in quantity or number does not exceed:
- 30% above or below the specified quantity for orders with a net weight to 500 kg.
  - 20% above or below the specified quantity for orders with a net weight between 500 and 1000 kg.
  - 15% above or below the specified quantity for orders with a net weight between 1000 and 5000 kg.
  - 10% above or below the specified quantity for orders with a net weight in excess of 5000 kg.
- k. The seller uses normal ink for prints. If the buyer sets special requirements for printing, for example in terms of light-fastness, alkali-proofness, rub-proofness, etc., the buyer will have to state these in writing in advance. Even if the seller accepts these requirements, minor deviations therefrom will not constitute grounds for rejection of the products or liability on the part of the seller.
- l. The seller will only make proofs available if the buyer expressly requests the same in writing or if the seller deems such advisable.
- m. Proofs which the buyer has approved and signed are binding for the performance of the agreement and can therefore not constitute grounds for complaints.
- n. When applying any codes to the packaging, including the EAN code, the seller accepts no liability whatsoever for usability or the consequences of not being able to read or the incorrect reading of such codes by equipment designed for the purpose.
- o. Complaints do not entitle the buyer to suspend any amounts owed by it. If the complaint is justified, the seller will either pay reasonable compensation up to the amount invoiced for the products supplied or replace them free of charge, in return for the products initially supplied. The seller will not be obliged to pay any further compensation or any fees for indirect items.
- p. Legal claims against and defences on the part of the seller based on facts that supposedly justify the statement that the product supplied does not meet the agreement will become prescribed after 1 year.
- q. Every partial delivery will be regarded as a separate delivery that must be paid for by the buyer.

### **13) Liability.**

- a. The seller will not be liable if the buyer has not strictly observed the seller's instructions for the manner of storage, treatment and application of the products supplied.
- b. The seller will not be liable for any costs and damage arising as a direct or indirect consequence of:
- Force majeure as referred to in Article 14 of these terms and conditions;
  - Negligence on the part of the buyer in the maintenance of the products supplied;
  - Any damage to the products supplied as a result of external mechanical, chemical or biological influences;
  - Normal wear and tear of the products supplied;
  - Extraordinary humidity conditions in the area where the products supplied are applied and/or delivered;
  - Discolouration of the products supplied under the influence of light;
  - Any other external cause that is not reasonably attributable to the seller;
- c. The seller will not be liable for any damage caused by incompetent use, the use of products for purposes for which they are not designed or any use of products that could not reasonably be expected.



- d. The seller is not liable for any loss or damage and/or defects other than expressly provided for in writing in the relevant agreement or in these terms and conditions. If the seller has been found liable, the seller will not be liable for paying more than the price of the products in question.
- e. The seller will not be liable for any indirect loss, including consequential loss, loss of profits, missed savings, loss due to business interruption, loss as a result of liability towards third parties and any and all damage or losses that do not qualify as indirect loss for the buyer as referred to in these general terms and conditions, caused by products supplied by the seller.

#### **14) Force Majeure.**

- a. In addition to how it is defined by law and case law, in these general terms and conditions force majeure is understood to mean all foreseen or unforeseen external causes beyond the seller's control that prevent the seller from meeting its obligations, both in the seller's business and during storage or transport (whether provided in-house or otherwise), as well as third parties from whom the seller procures some or all of the goods required. Force majeure includes but is not limited to:
  - Force majeure on the part of suppliers of the seller;
  - Failure on the part of suppliers of the seller to fulfil their obligations duly;
  - Deficiency of products, equipment, software or materials of third parties which the buyer has required the seller to use;
  - Government measures;
  - Failures in power, internet, computer network or telecommunication facilities;
  - General transport problems;
  - The unavailability of one or more members of staff;
  - Work strikes;
  - Fire;
  - Water damage;
  - Defects in machines, including computer hardware;
  - import, export and/or transit bans;
  - as well as any circumstances that impede normal business operations as a result of which the buyer cannot reasonably expect the seller to fulfil the agreement.
- b. In the event of force majeure, the seller will be entitled to extend the delivery time of the products by the duration of the force majeure.
- c. If the seller is unable to fulfil its obligations under the relevant agreement in whole or in part as a result of facts or circumstances that are beyond the seller's reasonable control, the seller will be entitled to temporarily suspend the fulfilment of its obligations to the buyer under the relevant agreement until those circumstance or facts have come to an end. If these circumstances or facts last or are likely to last for more than sixty (60) days, the seller will be entitled to terminate the relevant agreement in whole or in part without being liable to pay the buyer any compensation.

#### **15) Applicable Law and Disputes.**

- a. All concluded agreements and any disputes ensuing therefrom between the seller and the buyer will solely be governed by Netherlands law.
- b. All disputes ensuing from the agreement, including claims on the part of the seller, will solely be brought before the competent court in the jurisdiction where the seller has its registered office
- c. The applicability of the Vienna Sales Convention is expressly excluded.





**NRK Folie**

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**16) Filing and Effective Date**

- a. These terms and conditions have been filed with the registry of the Court of The Hague under number 40/2017 and will come into effect on 1 June 2017.
- b. The seller is authorised to amend these terms and conditions. Any amendment or addition to these terms and conditions will only be valid if the seller sends the amended terms and conditions to the buyer in good time.
- c. The nullity or nullification of part of these terms of conditions will not result in the nullity or nullification of all parts of these terms and conditions.