

Distribution Terms (As of 01.05.2011)

1. Ordering Process

- a) A film rental contract is created either when a client places an order in writing (email or fax) or when Arsenal – Institute for Film and Video Art officially confirms an order placed by the client on the telephone or in person by means of a written confirmation notice. Any order made must contain the following information:
 - the full title of the film / video / installation in question and the full name of the filmmaker / artist
 - the screening date(s) and the number of screenings
 - the screening location (cinema, gallery etc.)
 - the delivery address
 - the billing address
 - the contact details of the person responsible for the contract
 - the VAT registration number for cinemas in the EU
- b) Once a film rental contract has been created, the client is entitled to screen the film in question for a limited period of time according to the conditions agreed. The screening rights conferred by the contract are non-transferable and non-exclusive. Both of the above do not include the licensing rights for archive copies (see 1.c).
- c) The film holdings of Arsenal – Institute for Film and Video consist both of distribution copies and copies with archive status. Archive copies can only be rented out if the client has already obtained the necessary screening rights for the copy in question.

2. Film Rental

- a) Film rental fees, whether charged as a fixed price or as percentage of revenue, are agreed in consultation with Arsenal – Institute for Film and Video. Film rental fees are, as a rule, calculated according to the running time of the work in question, the frequency of screenings and the length of the screening period. A processing fee of 15 € plus VAT per invoice is also charged irrespective of the number of films being rented and the total amount owed.
- b) If no fixed price is agreed, film rental is charged as a percentage of the revenue earned from ticket sales for the film during the rental period set out in the contract minus any VAT and / or entertainment tax payable at the appropriate rate and any fees deductible from the net revenue arising from film subsidy legislation. The gross revenue also includes any surcharges levied in addition to the standard price of admission payable by cinemagoers in order to gain admission to screenings of the film, such those levied for films with longer running times.
- c) If a minimum guarantee is agreed as part of the film rental contract, this refers to the minimum amount to be paid to Arsenal – Institute for Film and Video Art by the client per cinemagoer should the percentage of revenue calculated according to 4.2 not exceed this sum.

3. Screening Period

- a) The screening period for the film is agreed as part of the film rental contract.
- b) The film can only be taken from screening programs before the screening period is over if both parties are in mutual agreement.
- c) If the client does not honor their screening obligations, they are obliged to provide suitable compensation for any damages incurred as a result notwithstanding any other rights of Arsenal – Institute for Film and Video Art.
- d) Screening the films ordered for the agreed screening period is obligatory. Cancellations must be made at least 14 days prior to the first screening date in order to avoid the full rental fee being charged.

4. Methods of Payment

Once the order has been received, the client will be sent a written confirmation notice / invoice.

4.1. Fixed Price Invoicing

- a) The payment date is included on the invoice, with payment usually being made by bank transfer. If advance payment has been agreed, Arsenal – Institute for Film and Video Art reserves the right to make delivery dependant on receipt of payment.
- b) Film rental fees as well as any other charges payable to Arsenal – Institute for Film and Video Art by the client are subject to VAT.

4.2. Percentage Invoicing

- a) For every week (Thursday to Wednesday) that a film is screened, the client is obliged to provide Arsenal – Institute for Film and Video Art with a written statement detailing the film rental fees owed listed separately according to film, cinema company and cinema. The statement should be broken down into the days of week and contain the following information:
 - the date
 - the confirmation notice number
 - the screening week
 - the number of cinemagoers per day and film
 - gross revenue per day and film
 - the number of tickets sold per day and film
 - individual ticket price(s) per day and film
 - gross revenue per screening week and film
 - the respective VAT actually incurred
 - the rental fee agreed expressed as a percentage of revenue
 - the percentage deductible in film subsidy fees and amount
 - any fees payable for advertising materials (including proof of any VAT incurred)
 - any additional costs as outlined in the confirmation notice

The statement must be received by Arsenal – Institute for Film and Video Art within 14 days of the end of the screening week in question. Receipt of the statement by Arsenal – Institute for Film and Video Art and / or payment of the fees therein does not constitute acceptance of the accuracy of the information it contains on the part of Arsenal.

- b) If the client does not provide a written statement of the rental fees owed within 14 days of the end of the respective screening week, Arsenal – Institute for Film and Video Art reserves the right to estimate the percentage of revenue earned for the film in question and invoice the client accordingly.
- c) The film rental fees detailed in the statement and any other fees owed to Arsenal – Institute for Film and Video Art by the client are subject to VAT in accordance with the law.
- d) The confirmation notice number should be given when making payments.
- e) Any film rental fees owed to Arsenal – Institute for Film and Video Art are to be paid plus VAT within 28 days of the end of the respective screening week.

4.3. Advance Payment / Security

- a) For first time clients or clients who are behind on film rental payments, Arsenal – Institute for Film and Video Art is entitled to make the delivery of films, including those for which a rental contract has already been created, dependent on advance payment notwithstanding the assertion of any other rights. This also applies in situations in

which Arsenal – Institute for Film and Video Art is made aware of any information that might affect a client's ability to settle his or her account (e.g. seizure of property or goods or any other deterioration in the client's assets). Arsenal – Institute for Film and Video Art is also entitled to charge an appropriate processing fee in such cases.

- b) If the film rental contract includes a clause obliging the client to make payment in advance or provide some sort of security or if the client is obliged to make such payments in keeping with the conditions listed in 4.3.a. above, these must be received by Arsenal – Institute for Film and Video Art on the date agreed or two days before the film in question is due to be dispatched at the latest.
- c) If advance payments are not made or security not provided within the timeframe stated above, Arsenal – Institute for Film and Video Art is entitled to refuse delivery of the film(s) in question notwithstanding any other rights.

5. Taxes and Fees

The client is responsible for covering any fees, charges (such as those charged by royalty collection companies e.g. GEMA), or taxes payable due to the screening of the films and trailers. The client is not entitled to claim reimbursement from Arsenal – Institute for Film and Video Art for these fees.

6. Instructions for Dealing with Our Film Copies / Video Formats

- a) The client must always treat films and trailers with due care and only screen them using fully functional equipment in the correct manner. Arsenal – Institute for Film and Video Art should be informed without delay of any damage caused to films or trailers.
- b) Film and trailers must be stored in such a way that they cannot be damaged or tampered with by third parties.
- c) More detailed instructions for working with our copies can be found in our information sheet (www.arsenal-berlin.de/en/distribution/distribution-terms.html). These instructions form a part of our distribution conditions and are to be respected as such. Please make your projection team aware of the explicit need to follow them.
- d) Please note in particular that **splicing of film copies is strictly forbidden**. We charge a fee of 25 € plus VAT per splice. All film copies are checked by Arsenal – Institute for Film and Video Art before dispatch. The client is liable for any damage that he or she causes or for any damage he / she fails to inform Arsenal about as well as for the loss of any delivered copies. If subsequent screenings cannot be carried out due to the copy being damaged, the party responsible for causing the damage is liable for any compensation claims made by third parties. Invoices to cover damages may also include any costs linked to the production of new materials (transport costs, customs fees etc.). Minor damage is charged at a flat fee.
- e) If any damage is discovered on receipt of a copy, Arsenal – Institute for Film and Video Art should be informed immediately in writing. In particular, copies should be checked immediately upon receipt from a previous client; **please inform us immediately of any damage**.

7. Rights of Use

- a) Films and trailers are not to be altered or edited in any way.
- b) Films, video or installations rented from us may not be copied, filmed or duplicated in any other way.

8. Transport

- a) The transport costs for sending the film copy to the client and returning it to Arsenal and any customs or cash on delivery charges incurred as a result are to be paid by the client.

- b) Films are usually sent via TNT and should be returned the same way. The transport provider stated on the confirmation notice / invoice should be used as a rule unless instructions are given to the contrary. The client is accountable for any additional costs or compensation claims that may arise if transport instructions are ignored. Arsenal – Institute for Film and Video Art charges any damages incurred due to the delayed return or onward delivery of films in full, with a minimum charge of 80 € plus VAT.
- c) The client is obliged to check all materials (films, trailers etc.) belonging to Arsenal – Institute for Film and Video Art upon receipt to ensure that they are in undamaged condition, particularly from a technical point of view and with regards to their ability to be screened. Arsenal is to be notified of any damage without delay.
- d) The client is obliged to return all materials appropriately packaged to Arsenal – Institute for Film and Video Art and or send them on to / return them to a third party immediately following the last agreed screening. The type of transport stated in the confirmation notice should be used. Arsenal – Institute for Film and Video Art's guidelines are to be followed here.
- e) All return deliveries from non-EU countries must be labeled with the following customs declaration:

“NUR FÜR KULTURELLE ZWECKE; KÜNSTLERISCHE FILME;
SENDUNG HAT KEINEN HANDELSWERT / FOR TEMPORARY,
CULTURAL PURPOSES ONLY. NO COMMERCIAL VALUE.”

9. Delayed Delivery, Liability

- a) If a film does not reach the client in due time or in screenable condition, the client must inform Arsenal – Institute for Film and Video Art immediately or 24 hours before the first screening at the latest.
- b) If the client is culpable of not informing Arsenal – Institute for Film and Video Art that the film has been delayed or has arrived in non-screenable condition, meaning that the film can no longer be screened, the client is to provide Arsenal – Institute for Film and Video Art with compensation for any damages incurred due to cancelled screenings.
- c) Should an act of God occur, including fire damage, confiscation and labor disputes (strikes, lockouts etc), which temporarily prevents Arsenal – Institute for Film and Video Art from delivering films, trailers, promotional materials or any other materials within the agreed timeframe through no fault of their own, the delivery time is extended for the length of time that service is disrupted due to the circumstances in question.
- d) Arsenal – Institute and Film and Video Art and the client exclude liability for any such cases described in 9.c.

10. Insurance

- a) The client is liable for all damages as well as for the loss of film copies or other formats received.
- b) The event organizer must insure all types of media (film copies, BlueRay, HDCAM, DVD, Mini-DV, Beta SP, DVcam etc.) as well as any structures and technical equipment needed for installations during screenings. We must be notified immediately of any damage that occurs during screenings, particularly with respect to film copies.

11. Termination

Arsenal – Institute for Film and Video Art reserves the right to terminate the film rental contract in its entirety or with respect to one or more of the films included within it with immediate effect should any important reason to do so arise. Failure to make ad-

vance payments or provide security within the agreed timeframe in accordance with 4.3 in particular constitutes an important reason in this context.

12. Confidentiality

The client is obliged to treat the content of the film rental contract set up between him / her and Arsenal – Institute for Film and Video Art as confidential.

13. Changes in Ownership Status / Head Office / Address

The client is obliged to inform Arsenal – Institute for Film and Video Art immediately of any change in his / her ownership status. This also applies to changes in the location of the client's central office or the client's address.

14. Miscellaneous

- a) In the case of any contradictions arising between the settlements contained in these distribution terms and the settlements contained in the confirmation notice, those contained in the confirmation notice should be given priority.
- b) Berlin is the place of jurisdiction for all disputes. Arsenal – Institute for Film and Video Art also reserves the right to sue the client in their own jurisdiction.
- c) If individual clauses contained within the confirmation notice or the distribution terms become invalid or unfeasible, whether partially or in their entirety, this has no bearing on the ultimate validity of the confirmation notice or the other clauses contained with the distribution terms. Any such invalid or unfeasible clauses are to be replaced with new ones intended to reflect the economic intention and purpose behind the original clauses. The same applies for any gaps in the confirmation notice or distribution terms.