

# General Business Terms for VISCO JET Rührsysteme GmbH

Effective from 01. June 2011

## § 1

### General, area of application

I. All offers, deliveries and other services of VISCO JET Rührsysteme GmbH – including future ones – are based exclusively on these general business terms. Any other conditions by the customer or conditions not contained in our business terms will not be accepted unless Visco Jet GmbH has provided express written agreement concerning their validity. Counter confirmations by the customer with reference to his business terms or terms of purchase will be opposed herewith.

II. The General rental contract terms of VISCO JET Rührsysteme GmbH apply for the renting services rendered by ourselves.

## § 2

### Product descriptions, Technical advice for application, Reservation for modification

I. Machine descriptions in brochures, technical product information etc. do not represent any guarantees for nature. Any written and spoken technical advice and recommendations for application, which VISCO JET Rührsysteme GmbH provides to support the customer or manufacturer are given in accordance with our current level of knowledge. They are non-binding and do not establish either contractual rights or subsidiary obligations from the contract for sale, provided that something different has not been expressly agreed.

II. We reserve the right to carry out design changes and material changes in so far as the foreseen use or the specified use of the subject of delivery according to the contract is not substantially or detrimentally impaired and the change can reasonably be expected of the customer.

## § 3

### Delivery period, Installation period

I. Agreed delivery periods begin upon signing of the contract, but in any case not before the customer has supplied the necessary supporting material, releases and the full clarification of all details of the desired design and all technical questions. Observance of the delivery period always presupposes that the customer has fulfilled contractual obligations.

II. The delivery period shall be extended – also during a delay – as appropriate in the event of acts of God and in the event of all unforeseeable difficulties unknown at the time of signing the contract and for which we cannot be held responsible, in so far as these difficulties can be proved to influence the provision of the obliged performance. This also applies in the event that these circumstances occur with suppliers. We undertake to inform the customer at the earliest possible opportunity of the beginning and end of any such difficulties. If the duration of the delay is longer than three months or it becomes clear that said delay will be longer than three months, both we and the customer have the right to withdraw from the contract.

III. In so far as we have agreed the date and time of a delivery, assembly service or installation service with the customer, the customer is required to take all measurements at the work location in order to be able to carry out the intended work. The customer is required in particular to provide electrical connections, compressed air connections and adequate lighting. If the customer is responsible for us being unable to carry out the intended work or carry it out fully or in a reasonable amount of time, the customer is required to reimburse us for the resultant damages and particularly to reimburse any additional costs which may arise as a result of additional travel and any working hours engendered unnecessarily or required additionally by our employees.

The installation period is considered to be met if the installation has been carried out to the point of acceptance by the customer, in case of a contractually scheduled test towards its realisation, by the time of its completion. In the event of delays due to acts of God or circumstances for which the customer is responsible, the installation period will be extended as appropriate.

IV. In the event that the customer experiences damages which arise demonstrably as a result of delays for which VISCO JET Rührsysteme GmbH as the installing company can be held responsible, he has the right to claim compensation for the delay. In the case of a single fault, this will be paid by VISCO JET Rührsysteme GmbH in the form of a lump sum which, for each full week of delay, will amount to 0.5%, but will not exceed 5% in total of the value of the particular part of the total delivery which could not be used in good time or in accordance with the contract as a result of delayed installation.

## § 4

### Transportation, Transition of risk, Packaging, Part deliveries

I. Unless otherwise agreed, VISCO JET Rührsysteme GmbH delivers to the named destination carriage forward and uninsured at the recipient's own risk. In the event of damage in transit, the damage must be confirmed by the carrier before acceptance of the goods. If carriage paid delivery is due this only applies for dispatch and transportation customary in the trade. Additional costs resulting, for example, from express transportation requested by the customer shall be charged to the customer.

II. Unless otherwise agreed, in case of shipment the customer takes over the risk as soon as the delivery has been handed over to the person carrying out the transportation. In the event that dispatch will be impossible without VISCO JET Rührsysteme GmbH incurring fault, the risk is transferred to the customer upon indication of readiness for transportation. In case of collection by the customer the risk is transferred with the handover.

III. Unless otherwise agreed, VISCO JET Rührsysteme GmbH delivers without packaging.

IV. VISCO JET Rührsysteme GmbH has the right to undertake part delivery and partial service to a reasonable degree.

## § 5

### Prices and Payment, Take back

I. Unless otherwise agreed, prices are valid without packaging, transportation, insurance, unloading, installation, assembly and start-up and also for delivery ex works or supply depot, plus legal turnover tax at the current rate. The prices given are only valid for the particular individual order. Installation shall be calculated on the basis of time involved if a lump sum price has not been expressly agreed.

II. In the case of contracts with an agreed delivery period of more than two months, both contracting parties can ask for a modification of the agreed price to the degree to which, after signing of the contract, reductions or increases in costs which could not be averted by the contracting parties have been incurred, particularly as a consequence of pay settlements or changes of material costs. The change in price must be restricted to the extent required to compensate the reduction or increase in costs.

A party also has a corresponding right to adjust the price if, as a consequence of delays for which the other party is responsible, an actual delivery period of more than two months is produced.

III. Payments are to be made, unless agreed otherwise (e.g. on the occasion of sending the invoice), immediately at handover of the goods. Payment is only regarded as made once VISCO JET Rührsysteme GmbH can access the sum. The single or multiple granting of a payment term is only valid for the respective referred invoice amount and not for other claims (e.g. claims from other or future deliveries).

IV. In the event that the customer is in arrears with the payment VISCO JET Rührsysteme GmbH can claim at least the legal interest on arrears.

V. An offset or retention of payments having an effect equivalent to an offset is only permissible due to legal claims made by the customer which are recognised by VISCO JET Rührsysteme GmbH and which are not disputed, due to be decided upon or determined by final judicial decision.

VI. VISCO JET Rührsysteme GmbH has the right, despite determinations of the customer. To the contrary, to charge payments against his older debts initially and will inform the customer about the type of settlement made. If costs and interest have already been incurred, VISCO JET Rührsysteme GmbH has the right to charge the payment first against costs, then on interest and finally on the main claim.

VII. In the event that the customer delays acceptance of the subjects of delivery or is in arrears with payment, VISCO JET Rührsysteme GmbH may, after fruitless expiry of an appropriate legally required extension determined by VISCO JET Rührsysteme GmbH, withdraw from the contract and / or demand compensation instead of service. In the event of assertion of the claim for compensation, VISCO JET Rührsysteme GmbH may, to compensate for lost profit, demand without the need to furnish proof compensation in the sum of 15% of the price. The contracting parties remain at liberty to prove higher or substantially lower actual damages.

VIII. If we agree to take back goods without legal obligation, the credit note will not be for a sum larger than the value of the goods. We retain the right to deduct the working hours incurred for the resultant expenditure (depreciation, verification, cleaning, freight, packaging, administration effort etc.) at currently applicable cost rates and / or a percentage reduction of the value of the goods from the credit note as well as a rental fee based on currently applicable rental rates upon return of machines.

## § 6

### Reservation of title, extended reservation of title

I. VISCO JET Rührsysteme GmbH reserves the right to ownership of the goods delivered until all claims from the contract entered into inclusive of all subsidiary claims (e.g. bill of exchange expenses, financing expenses, interests). In the event of delivery of several items for a total price, the right to ownership of all items is retained until such a time as full payment has been made. If a current account agreement has been made with the customer, ownership is retained until said current account balance has been fully settled. When a cheque or bill of exchange is received, fulfillment only sets in when the cheque or bill of exchange has been cashed and VISCO JET Rührsysteme GmbH can access the sum without risk of recourse.

II. The customer is committed to treat reserved goods carefully and to inform VISCO JET Rührsysteme GmbH immediately in case of attachment, seizure, damage or loss. Violation of this obligation provides VISCO JET Rührsysteme GmbH with the right to withdraw from the contract. The customer shall bear all costs, particularly those which have to be spent within the context of a third party action against execution to reverse an attachment and if necessary to replace the subjects of supply, in so far as they cannot be collected by third parties.

III. In the event of the customer being in arrears for a substantial part of his obligations, VISCO JET Rührsysteme GmbH has the right to take back temporarily the goods under reservation. Exercising the right for take back does not represent a withdrawal from the contract unless VISCO JET Rührsysteme GmbH has expressly declared the withdrawal. Costs incurred as a result of exercising the right for take back (particularly for transportation and storage) shall be borne by the customer if VISCO JET Rührsysteme GmbH has threatened take back with reasonable notice. VISCO JET Rührsysteme GmbH has the right to realize the taken back goods under reservation and to satisfy itself from the proceeds as long as VISCO JET Rührsysteme GmbH has previously threatened the realization. When threatening take back, VISCO JET Rührsysteme GmbH is required to set the customer a reasonable period of notice within which to fulfil his obligations.

IV. The customer already now assigns the claims for the purchase price, wages or other claims (including the admitted balance from a current account agreement, or in the case of an insolvency of the business partner of the customer the "causal balance" that is in existence at the time) resultant from the resale or further

processing or any other legal argument (insurance, unlawful act, loss of ownership as a result of connection of the subject of delivery with property) concerning the goods under reservation to the amount of the invoice value of the goods under reservation (including turnover tax) to VISCO JET Rührsysteme GmbH; VISCO JET Rührsysteme GmbH accepts the assignment. Until further notice, VISCO JET Rührsysteme GmbH authorises the customer to collect in his own name the claims assigned to VISCO JET Rührsysteme GmbH for account of VISCO JET Rührsysteme GmbH. This collection mandate can only be revoked if the customer does not meet his financial obligations in accordance with the regulations. Upon demand by VISCO JET Rührsysteme GmbH in such a case, the customer must state the information required to collect the assigned claims, produce any relevant supporting material and show the assignment to the debtor. The assignment of a claim consistent with clause 1 serves to secure all claims - including any future claims - from the business connection with the customer.

## § 7

### Notice of defects, Claims in the event of material defects

I. In the case of a contract with a consumer the Swiss Code of Obligations apply.

II. If the purchase is commercial business for both parties, the customer is required to give written notice of all manner of defects without delay, in so far as this corresponds with a regular business process – hidden defects should however be notified upon discovery; otherwise the goods will be regarded as approved.

III. In so far as the subject of delivery and / or the accompanying assembly service displays a defect, the customer can, during a period of 12 months from the transition of risk, demand as later fulfillment either rectification of the defect (reworking) or delivery of a defect free object (replacement delivery), according to our choice. If we are not prepared or not in a position to offer reworking/replacement delivery, and in particular if reworking/replacement delivery delays above and beyond a reasonable period of time occurs for reasons for which we can be held responsible, or in the event that the reworking/replacement delivery should fail in any other manner, the customer, in so far as any further attempts for later fulfillment are unreasonable for him, has the right to choose to withdraw from the contract or depreciate the purchase price. The customer may only withdraw from the contract as the result of an insignificant defect with our approval.

IV. No claims for material defects can be made in the event of unsuitable or improper use or handling of the goods, erroneous installation or start-up by the customer or third parties, natural wear and tear (particularly of wearing parts), unsuitable operating materials or conditions, inadequate maintenance etc.

V. In so far as the defective goods are third party products, we have the right to assign our claims for material defects against our suppliers to the customer and to refer him to these (legal) claims. A claim can only be made against us if the claims against our supplier cannot be enforced despite timely (legal) claim or the claim is unreasonable in the individual case.

## § 8

### Limitation for Liability

I. VISCO JET Rührsysteme GmbH is liable in accordance with the regulations set down in product liability law as well as in cases of inability and impossibility for which it is responsible. In addition, we are liable for damages according to legal provisions in cases of intent, gross negligence as well as in the event of fatal injury, bodily injury or damage to health for which we can be held responsible. In addition, if we violate a cardinal obligation or a fundamental contractual obligation by simple negligence, our obligation for compensation is limited to contractually typical, foreseeable damages. In all other cases of liability, claims for compensation due to violation of an obligation from the contractual obligation as well as due to unlawful act are excluded, such that we are not in this respect liable for lost profit or other pecuniary damage of the customer.

II. In so far as the liability of VISCO JET Rührsysteme GmbH is excluded or limited on the basis of the above provisions, this also applies to the personal liability of employees, personnel, staff, representatives and agents of vicarious liability of VISCO JET Rührsysteme GmbH.

## § 9

### Supporting material, Demonstration devices, Property rights

We reserve the right to ownership and copyright of drawings, drafts, cost estimates and any other supporting materials, particularly models and demonstration devices. Supporting material and objects may not be copied or made accessible to third parties without our expressly specified agreement.

## § 10

### Jurisdiction, applicable law

I. The laws of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG) apply for these general business terms and all legal relations between VISCO JET Rührsysteme GmbH and the customer.

II. If the customer is a businessperson as defined in the German Commercial Code, a legal entity under public law or a special fund under public law jurisdiction for all rights and obligations of the contractual parties for any kind of business - also in case of conflicts referring bills of exchange and checks is Waldshut-Tiengen (Federal Republic of Germany). The same applies if the customer has no general jurisdiction in the inland, moves after conclusion of contract his residence or usual domicile from inland or if his residence or usual domicile is not known at the moment when the action is filed. However we are also authorised to bring an action against the customer at his general court of jurisdiction.