

# GENERAL TERMS AND CONDITIONS OF SALE

of VISCO JET Schweiz GmbH, Bahnhofstrasse 1, CH-5322 Koblenz relating to International Business Transactions

## I. Scope

1. The following General Terms and Conditions of Sale apply exclusively to all – including future – deliveries of goods and services (hereinafter referred to together as “Deliveries”) by VISCO JET Rührsysteme GmbH (hereinafter “Supplier”) to Customers within the meaning of Clause I.2., unless otherwise expressly agreed in writing. The Customer’s terms and conditions shall not become part of the contract, even where the inclusion of such conditions has not been expressly rejected by the Supplier.

2. These General Terms and Conditions of Sale only apply with respect to businesspersons acting in their professional or commercial capacity with registered office outside Switzerland (hereinafter “Customer”).

## II. Conclusion and Content of the Contract

1. The Supplier’s offers are non-binding. Unless otherwise indicated in the order, the Customer is bound by its order for a period of 14 days as from the date of the order. Contracts come into effect by way of the Supplier’s written order confirmation.

2. Any documentation such as illustrations, drawings, weight specifications and measurements provided by the Supplier on conclusion of the contract are only approximate values insofar as they are not expressly identified as binding. All liability relating to such documents is hereby expressly excluded provided it is lawful to do so.

3. The Supplier reserves all rights of ownership and copyright over cost estimates, drawings and other documentation which the Supplier makes available to the Customer; such documents shall not be disclosed to third parties without the prior written consent of the Supplier.

## III. Price and Payment

1. In the absence of any special agreement, prices apply in euro and ex Supplier’s works as specified in the order confirmation (EXW ex Supplier’s works Incoterms® 2020), exclusive of the cost of packaging and any applicable value added tax.

2. Where, following conclusion of the contract, there are changes in the cost of salaries, materials, energy or raw materials and the Supplier is not responsible for these changes, the Supplier is entitled to increase the agreed prices accordingly.

3. In the absence of any special agreement, payment shall be made within 30 days of receipt of the invoice, without deduction, to the Supplier’s bank account. The Seller shall be entitled to issue an invoice after delivery has taken place pursuant to Clause IV.1. Payments are only deemed to have been made to the extent that the Supplier has free disposal over them at its bank. Cheques will only be accepted on account of payment; bank charges are borne by the Customer. They are due immediately.

4. The Parties can agree that the Customer must open an irrevocable and non-transferable documentary credit via its bank (or another bank which is acceptable to the Supplier). In this particular case it is stipulated that the opening of a documentary credit is carried out in accordance with the ICC Uniform Customs and Practice for Documentary Credits UCP 600.

5. The Customer is only entitled to withhold payments or to a set off against counter-claims insofar as the counter-claims are undisputed or have been upheld by a final court judgement and provided the statutory requirements under Art. 120 et seq. Swiss Code of Obligations have been fulfilled.

6. In the case of delays in payment, the Supplier is entitled - without prejudice to any other rights and claims to which it is entitled - to charge interest at a rate of 10 % p.a. until full and final payment has been made. The Supplier is entitled to prove that it incurred greater loss as a result of the delay in payment. The Customer is entitled to prove that no loss was incurred as a result of the delay in payment or that the loss was lower.

## IV. Delivery, Delivery Time

1. Unless otherwise agreed, delivery shall be ex Supplier’s works pursuant to EXW Supplier’s works (Incoterms® 2020). The Supplier’s works shall be specified in the Supplier’s order confirmation.

2. It is not necessary to notify the Customer of successful delivery.

3. Where the Customer fails to provide notification in good time as to when and by whom shipping is to take place, the Supplier is entitled to conclude the usual shipping contract at the expense and risk of the Customer.

4. Delivery periods or delivery times, specified in the order confirmation or otherwise are approximate and therefore non-binding, unless they have been expressly agreed as binding.

In the event that the Customer must release a drawing, the final delivery date can only be stated after receipt of the Customer’s release declaration.

5. A delivery period commences on receipt of the order confirmation but not before the submission of any documents, permits and clearances necessary for delivery, which must be obtained by the Customer; and not before the receipt of any agreed advance payment or payment security; and not before confirmation of an agreed letter of credit. The delivery period is complied with where the goods are ready for shipping prior to its expiry.

6. Requests made by the Customer for changes shall extend any agreed delivery time until the Supplier has examined their feasibility and, where the Supplier gives its consent, by the period required for incorporating the new requirements into production. Where ongoing production is suspended due to the request for changes, the Supplier may bring forward and finish other orders. The Supplier is not obliged to keep production capacity free during the period of the delay.

7. Where dispatch is delayed at the Customer’s request, or as a result of circumstances for which the Supplier cannot be held responsible, the Customer shall be charged for the costs of storage, and in any case a minimum of 0.5% of the net invoice amount, for each month of storage, as from one month after notification of readiness for shipping. This shall be without prejudice to the Supplier’s additional statutory rights.

8. Compliance with a delivery period requires performance of the Customer’s contractual obligations.

9. Partial deliveries are permitted and must be accepted by the Customer.

10. The Supplier is entitled to comply with its contractual obligations after expiry of a delivery time, provided it has notified the Customer of the overrun and specified a new delivery date. The Customer is entitled, within a reasonable period, to reject delayed performance of the delivery provided it can show that delayed delivery is of no use. The Supplier shall only be liable in accordance with Clause XI. (Damages) for any necessary additional expenditure incurred by the Customer as a result of late delivery.

11. The Supplier shall bear the risk of an export ban at the time of conclusion of the contract. The Supplier shall only bear the risk of subsequent export bans if and to the extent that such a ban was recognisable upon careful examination at the time of the conclusion of the contract. The Customer bears the risk of an import ban.

## V. Right of Retention

1. Without prejudice to its continuing legal rights, the Supplier may suspend performance of its contractual obligations, in whole or in part, if after conclusion of the Contract it becomes evident that the Customer will not fulfil its contractual obligations, whether in whole or in part. This applies in particular where the Customer fails to comply, fails to comply in full or delays in complying with its payment obligations towards the Supplier or a third party.

2. The Supplier is also under no obligation to continue with performance where the Customer provides security, as guarantee for the consideration, which can be contested under the applicable insolvency provisions.

## VI. Passing of Risk, Reservation of Own Supply

1. The risk to price and performance shall pass to the Customer EXW Supplier’s works (Incoterms® 2020) as soon as the goods are made available for shipping. This also applies where partial deliveries take place or where the Supplier agrees to provide other services, e.g. conclusion of the shipping contract, shipping - including by way of its own shipping personnel -, shipping costs or delivery and installation.

2. The Supplier’s delivery obligation is subject to the proviso that it receives on-time and correct delivery from its own suppliers unless incorrect or delayed delivery by its own suppliers has been caused by the Supplier, at least as a result of gross negligence. The Supplier shall not be liable for the consequences of non-performance or defective performance by its own suppliers and, in the absence of any gross negligence or intent on the part of the Supplier, the latter may by declaration release itself from its delivery obligation towards the Customer.

## VII. Reservation of Title

1. The Supplier reserves title to the delivery item until full payment of the purchase price and any ancillary claims.

2. This also applies where individual or all claims by the Supplier have been recorded on a running account and the balance has been drawn and acknowledged.

3. The Customer shall assist the Supplier to the best of its ability in taking any additional measures necessary to protect the Supplier’s property in the country where the delivery items are located. Any additional costs thereby incurred shall be borne by the Customer.

4. The retention of title does not change the transfer of risk in accordance with the agreed Incoterms clause.

## VIII. Conformity of the Goods, Examination and Notice of Lack of Conformity, Consequences of Delivering Non-Conforming Goods

1. The goods do not conform with the contract if at the time the risk passes according to Clause VI.1. they are clearly different to the specifications laid down in the contract, or in the absence of agreed specifications, the goods are fit for the purpose usual in Switzerland.

2. The Supplier is in particular not liable for the goods complying with further reaching expectations of the Customer or for their compliance with the legal requirements existing outside of Switzerland.

3. Irrespective of the legal requirements applicable in Switzerland, the goods conform with the contract to the extent the legal requirements applicable at the place of business of the Customer do not impede the usual use of the goods.

4. Technical improvements to the goods shall not constitute a lack of conformity with the contract.

5. The Customer must examine the goods after delivery pursuant to Clause IV.1. as required by law and in so doing check every delivery in every respect for any lack of conformity with the contract.

6. The Customer shall give notice of any lack of conformity with the contract to the Supplier as required by law, and in any event directly in writing and by the quickest possible means by which transmission is guaranteed (e. g. by e-mail or telefax). In this regard, the Customer must precisely specify the lack of conformity.

7. Statements by the Supplier on the lack of conformity notified by the Customer serve only to clarify the situation and shall not constitute any acknowledgement that there has been a lack of conformity or that there has been a proper notification of it.

8. In the case of a notification of a lack of conformity, which does not comply with these requirements, the Customer may only rely on the remedies to which it is entitled under these provisions if the Supplier positively knew of the facts substantiating the lack of conformity and fraudulently failed to disclose them to the Customer.

9. In the case of a legitimate complaint, the Customer is entitled to demand delivery of substitute goods conforming to the contract or repair as set forth in and in accordance with the terms of the UN Sales Convention. The rights to declare a contract avoided, reduce the purchase price and to claim damages for lack of conformities or failure to remedy those lacks are excluded to the extent permitted by law.

10. Irrespective of the Customer’s remedies, the Supplier is entitled in accordance with the provision in Clause IV.10. to repair non-conforming goods or to supply substitute goods.

11. Insofar as the lack of conformity arises from an essential third-party product, the Supplier is initially entitled to restrict its liability to the assignment of the rights of recourse to which it is entitled as against the supplier of the third-party product, unless satisfaction by way of the assigned right fails or cannot be obtained for some other reason.

12. In the case of improper modifications or repair work to the delivery item, carried out by the Customer or a third party without the prior consent of the Supplier, the Supplier shall not be liable for any resulting consequences.

13. Where a guarantee has been given, the Supplier shall be liable for the existence of the guaranteed characteristics of the goods within the scope of the guarantee. Guaranteed characteristics are only those which are expressly designated as such by the Supplier.

14. Claims by the Customer for the delivery of goods which do not comply with the contract, shall lapse 12 months after passing of risk pursuant to Clause VI.1. unless the Supplier has fraudulently concealed a lack of conformity or has caused it intentionally or by gross negligence, or the Supplier is liable under a guarantee, or for death, personal injury or damage to health caused by a lack of conformity.

## IX. Third Party Claims and Product Liability

1. Without prejudice to further legal requirements, third parties’ rights or claims founded on industrial or other intellectual property only constitute a defect in title to the extent that the industrial or intellectual property is registered and made public in Switzerland.

2. The Customer’s claims for defects in title including those founded on industrial or intellectual property will be time-barred according to the applicable statutory provisions.

3. Without prejudice to the Supplier’s continuing legal rights and waiving any defence of limitation the Customer will indemnify the Supplier without limit against any and all claims of third parties which are brought against the Supplier on the grounds of product liability, to the extent that the claim is based on circumstances which were caused by the Customer after risk passed.

4. In the case of claims by third parties which are brought against the Customer on the grounds of product liability, the Customer can only have recourse to the Supplier where the loss was caused by intentional or grossly negligent conduct on the part of the Supplier. In all other cases, liability on the part of the Supplier is excluded to the extent permitted by law.

## X. Force Majeure

1. Unforeseen and unavoidable events, for which the Supplier cannot be held responsible, e.g. pandemics or epidemics, natural events, acts of state, sabotage, strikes or lockouts, operational breakdown, problems in the procurement of material or energy, transport delays, shortages in staff, energy or raw materials, official measures as well as difficulties in obtaining authorisations particularly import or export licences (“Force Majeure Events”), shall exempt the Supplier from its obligation to perform and shall extend a delivery time by a reasonable period.

2. This shall also apply in the event that a Force Majeure Event affect its own suppliers or arise during a pre-existing delay.

3. Where the Force Majeure Event is not purely temporary, the Supplier is entitled to declare the contract avoided.

## XI. Damages

1. The Supplier shall be liable, irrespective of the legal basis, for loss incurred by the Customer only where such loss is the result of intentional or grossly negligent conduct on the part of the Supplier. In all other cases, liability on the part of the Supplier is excluded.

2. Unless otherwise specified in Clause VIII.14. actions for damages against the Supplier pursuant to Clause XI.1. shall lapse 12 months after statutory commencement of the limitation period.

3. In the event of contractual liability the Supplier will compensate the loss of the Customer to the extent that it was foreseeable to the Supplier at the time of the formation of the contract.

## XII. Liability for Vicarious Agents

Contractual liability for vicarious agents shall be excluded to the extent permitted by law. This applies in particular in connection with guarantees, assured characteristics, other defects, transportation and delay.

## XIII. Written Form, Contract Language, Place of Performance, Jurisdiction, Applicable Law

1. Amendments, additions and any agreement to cancel the contract must be in writing in order to be valid. The same applies to other declarations of the contracting partners which are necessary for the substantiation, safeguarding or exercise of their rights, particularly notifications of defects, setting of deadlines or unilateral declarations to declare the contract avoided. Fax and email are also deemed to constitute the written form. The sender can only invoke notifications which have been received by the recipient. Where a notification, which has been sent by registered post or by way of an international, recognised courier service, is delivered late, it shall be deemed to have been received on the date that it would have been delivered under normal circumstances.

2. Any communication between the Parties and any declaration by the Parties must be in German or English.

3. Unless otherwise agreed, the place of performance for delivery of goods is the location of the factory in which they were produced; with regard to all other obligations arising under the contractual relationship with the Customer, the place of performance is the Supplier’s head office.

4. All disputes, controversy or claims arising out of, or in relation to the contractual relationship with the Customer, including the validity, invalidity, breach, or termination thereof, shall be resolved by arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Arbitration Centre in force on the date on which the Notice of Arbitration is submitted in accordance with these Rules. The seat of the arbitration proceedings shall be Zurich. The arbitral proceedings shall be conducted in English.

5. In addition, the Supplier has a right of recourse to the competent national courts in the country of the Supplier or of the Customer provided the Supplier has not accepted arbitration proceedings pursuant to Clause XIII.4 without raising any objection. In this case, jurisdiction under Clause XIII.4 shall cease to apply.

6. The legal relationship with the Customer is governed by the United Nations Convention of 11 April 1980 on Contracts for the International Sale of Goods (UN Sales Convention/CISG) in the English version.

7. Outside the application of the UN Sales Convention, the contractual relationship between the parties is governed by the non-uniform Swiss law, namely by the OR (Swiss Law of Obligations).