

GENERAL CONDITIONS FOR THE SUPPLY OF ASSEMBLIES AND SPARE PARTS FROM VIASTORE SYSTEMS GMBH

1. General

- 1.1 These conditions apply to all assemblies and spare parts from **viastore systems GmbH** (hereinafter known as **vs**), inasmuch as the client contractor (the person acting in his or her commercial or independent professional capacity in concluding the contract) is a legal person under public law or a special fund under public law.
- 1.2 The sole place of jurisdiction for all current and future claims from the business relationship with fully qualified merchants, juristic persons under public law or public special funds is the principal place of business of **vs**. The same place of jurisdiction is applicable when the client has no place of jurisdiction within this country, moves its domicile or usual place of residence out of this country after conclusion of contract or its domicile or usual place of residence is unknown at the time the action is brought. **vs**, however, is also entitled to bring an action against the client at its general place of jurisdiction.
- 1.3 German law is in any case applicable for all legal relations between **vs** and the client. UN commercial law is not applicable.
- 1.4 All agreements must be recorded in writing. This also applies to subsidiary agreements and undertakings as well as to subsequent contractual alterations.
- 1.5 Inclusion of the client's General Standard Terms and Conditions is expressly opposed.
- 1.6 The claims of the client vis-à-vis **vs** from the contract may not be assigned. The client can only set off the claims of **vs** with undisputed counterclaims or with such claims that are ascertained in an at least provisionally enforceable legal document. For the client the assertion of a right of retention is suppressed for such rights and claims that are not based on this contractual relationship.

2. Quotations and quotation documentation

- 2.1 The client is bound by placing the order for a period of two weeks. The contract is concluded if **vs** confirm acceptance of the order within this period, or the delivery has been made.
- 2.2 **vs** retain ownership and intellectual property rights in diagrams, drawings, calculations and other documentation. They may not be made accessible to third parties. This applies particularly to any written documentation that is marked as "confidential"; the client requires explicit and written agreement from **vs** before passing them to any third party.

3. Delivery, delivery time, passing of risk

- 3.1 Partial deliveries are permitted provided this is not unreasonable for the client.
- 3.2 The beginning of the stated delivery time assumes that all technical questions have been clarified.
- 3.3 Unforeseen events that are not under the control of **vs** such as operational failures, the effect of weather on construction and measures arising out of industrial disputes such strikes or lock-outs provide grounds for an appropriate extension to the agreed time periods. **vs** is also not answerable for the aforesaid circumstances when they occur during a delay in performance that is already in hand. In important instances **vs** will report such delays to the client immediately.
- 3.4 Unless otherwise stated in the order confirmation, delivery is "ex works". If the client wishes, **vs** will insure the delivery against the hazards of transport; costs arising from this will be borne by the client.
- 3.5 If the client fails to accept the delivery, or if he fails in some other co-operative obligation, **vs** are entitled to claim for the resulting damage, including any additional expenses that may result. In such a case, the risk of accidental destruction or of accidental damage to the object of the sale is transferred to the client at the time when he fails to accept the delivery.

4. Payment conditions

- 4.1 Prices are ex works. Packaging and shipping are charged for separately. The cost of fitting is not included in the price. The prices cover the agreed scope of performance, are net, and exclude VAT. This will be calculated according to the rate applicable at the time when the tax liability arises, and will be separately indicated.
- 4.2 The subtraction of discount requires special written agreement. Payment is to be made without deductions by bank transfer or cheque within two weeks following supply.
- 4.3 The client's payments fall into arrears 14 calendar days after payment is due and an invoice has been received, without a reminder having to be issued. The consequences of being in arrears are in accordance with statutory regulations.

5. Retention of title

- 5.1 **vs** retains the title to all goods supplied. The title to the goods delivered is only passed to the client when the **vs** invoice relating to the consignment including all extra charges (packaging costs, dispatch costs, interest on arrears etc.) has been settled by payment. The presentation of cheques only then counts as payment in the sense of figure 2 when the cheque has been redeemed by the customer.
- 5.2 The client may not pledge the delivery from **vs**, nor offer it as security, nor dispose of it outside the normal course of business. In the event of seizure, confiscation, or any other way in which third parties may obtain right of disposal of the goods, **vs** must be informed immediately.
- 5.3 If the client disposes of **vs** goods to which **vs** still holds the title, the following applies:
 - 5.3.1 The client must immediately cede a proportion of his proceeds from the sale of the goods to **vs**, corresponding to the value of the goods to which **vs** holds the title and which have been sold on by the client - regardless of whether they have been amended, processed, mixed, confounded or whether they remain unaltered. The value of the goods to which **vs** holds the title corresponds to the value calculated by **vs** for the client (including sales tax).
 - 5.3.2 The client is revocably entitled to take over the collection of the assigned accounts in accordance with 5.3.1. **vs** is entitled to withdraw this authority if a statutory declaration is made against the client, if legal bankruptcy proceedings are initiated by the client himself or by one of his creditors, or if there are other serious grounds for fearing the client's future capacity to pay.
 - 5.3.3 With regard to the client's claims, should other advance assignments from the further sale of the goods exist in favour of other suppliers, all assignments are to be accorded equal ranking.
 - 5.3.4 If it is arranged in a contract of further sale that an assignment of the client's claims from the further sale is inadmissible, the client is obliged to inform **vs**. In a case of this type, the client may not assume that **vs** will permit him to sell on the goods supplied to him by **vs**. He is obliged to refrain from concluding a contract under such conditions.
 - 5.3.5 The client is obliged to pass on all information about the further sale to **vs** in order to ensure that the rights of **vs** with regard to the further sale are enforced.
 - 5.3.6 Should the value of the securities of **vs** exceed the claims relating to the client by more than 20 %, **vs** can elect to release the excess securities if the client makes an application to this effect.
- 5.4 If the client acts in a way that conflicts with this contract, in particular if payment is delayed, **vs** is entitled to take back the supplied goods after providing a reminder, and the client is obliged to return them. Neither implementation of the claim to retained ownership nor seizure of the supplied goods by **vs** imply cancellation of the contract.
- 5.5 An application to begin bankruptcy proceedings entitles **vs** to withdraw from the contract and to require immediate return of the goods.

6 Rights of the client in the event of faulty delivery

- 6.1 The contractor is not liable for faults or damage arising as a result of an unsuitable or incorrect use, faulty assembly or commissioning by the client or by third parties, natural wear and tear, incorrect or negligent handling or operation on the part of the client or of third parties.
- 6.2 In the case of faulty performance, which the client must report to **vs** in writing, providing evidence in each case, the client has the following rights:
- 6.2.1 All parts, the usability of which is significantly affected within the warranty period calculated from the day of acceptance as a result of circumstances occurring before the passing of risk as proved by the client, in particular as a consequence of defective construction, poor-quality materials, defective manufacture or defective assembly, must be either repaired or replaced without charge in accordance with the choice made by **vs**. In all cases, **vs** must be permitted to effect a subsequent improvement of the goods without charge; **vs** is to be granted adequate time and opportunity for the amendments and delivery of replacement parts as appears necessary to **vs**.
- 6.2.2 Should efforts at subsequent improvement be unsuccessful or if the client does not consider further efforts at subsequent improvement to be reasonable, the client can insist on a price reduction (allowance) or that the contract be made void.
- 6.2.3 Paragraph 7 of these conditions governs the liability for compensation by **vs** on warranty and other legal grounds.
- 6.2.4 The client must claim for any shortcomings within 12 months. The statutory time periods apply to cases of deliberate or malicious behaviour or to claims in accordance with product liability law. These also apply to shortcomings in building construction or for goods delivered that have been used in the construction of a building in accordance with their normal use and that have caused the fault in the building.

7. Liability

vs are not liable, on whatever legal basis, for any damages, apart from the exceptional cases listed below. The liability of **vs** for intent and gross negligence remains unaffected by the above exclusion of liability. The liability of **vs** for the negligent breach of obligations essential to the contract (cardinal obligations) also remains unaffected by the exclusion of liability. However, in case of ordinarily negligent breach of obligations essential to the contract, the liability of **vs** is restricted to damage that might typically be expected to occur.

The liability of **vs** for guarantees as to the nature of the goods, for the death, injury or damage to the health of any person, for malicious damage or for liabilities under the product liability regulations are also not affected by the rejection of liability. If the liability of **vs** in keeping with the above paragraphs is excluded or restricted, this also applies to personal liability of the salaried employees, wage earners, contributors, representatives and vicarious agents of **vs**.

8. Miscellaneous

Any invalidity of one or another provision of these General Standard Terms and Conditions does not entail the invalidity of the other provisions.