

## TERMS AND CONDITIONS OF SALE

### **1. Acceptance.**

The following terms and conditions of sale ("Terms") are applicable to all quotations, purchase orders and/or requests for service (collectively, "Orders"), and are the only terms and conditions applicable to the sale of Seller's products ("Products") and/or services ("Services"), except those that relate to prices, quantities, delivery schedules and the description and specifications of the Products and/or Services. Seller hereby objects to and rejects any other terms and conditions appearing on, incorporated by reference in, or attached to, Buyer's Orders. Buyer's acceptance of Products and/or Services requested in an Order will constitute its acceptance of these Terms.

### **2. Billing and Payment.**

(a) Payment is due upon the later of Buyer's receipt of invoice or delivery of Products and/or Services unless otherwise agreed to in writing by Seller. Seller reserves the right to assess a monthly service charge of one and one-half percent (1.5%) on overdue accounts. Seller may require payment in advance if in Seller's opinion Buyer's financial condition reasonably appears to call for such action.

(b) Prices quoted are exclusive of, and Buyer agrees to pay, any foreign, federal, state or local excise, sales, use, personal property or any other taxes or duties, excepting only taxes based on Seller's income. Any certificates or other evidence of applicable exemptions to such taxes or duties must be made available to Seller prior to invoicing or such taxes or duties will be charged to Buyer; *provided, however*, if Seller does not collect such items from Buyer and is later requested or required to pay the same to any taxing authority, Buyer shall promptly make payment to Seller or, if requested by Seller, directly to such taxing authority. Pricing is subject to change based on any change in information and/or requirements during course of an Order.

(c) If Buyer fails to pay any invoice when due, Buyer shall pay all Seller's collection costs, including attorneys' fees and costs of suit.

(d) Payments are subject to setoff or recoupment for any present or future claim Buyer may have.

### **3. Changes.**

Orders may be amended by either party by written change order signed by both parties setting forth the particular changes and effect of such changes on price and/or time of delivery. Seller reserves the right to charge Buyer additional fees for changes in drawings and/or designs required after Product installation and/or set-up resulting from: (1) incorrect tolerances furnished by Buyer; (2) deviations from specifications submitted by Buyer; and (3) causes beyond Seller's control, including, but not limited to, misaligned, maladjusted, or malfunctioning existing tie-in equipment, inadequate support systems, improper installation, modification and damage. Seller reserves the right to terminate any Orders without any further obligation if it determines it is not reasonably feasible to meet the required specifications.

### **4. Place of Delivery and Method of Tender.**

(a) Delivery terms are F.O.B. Seller's plant unless otherwise agreed to in writing by Seller. Seller will arrange for an appropriate means of transportation of Products. Buyer agrees to pay all transportation charges incurred after Products are delivered to the carrier unless Seller otherwise agrees in writing.

(b) Where Buyer furnishes special transportation instructions, Buyer shall bear any special expenses, including special handling, packaging and additional freight charges.

(c) When "export packing" is required, Buyer shall be responsible for any extra charges such as export duties, licenses, fees and the like.

(d) Title and risk of loss or damage to the Products or any part of the Products will pass to Buyer upon delivery to carrier at the point of shipment and Buyer shall be responsible for filing any damage claims with the carrier.

(e) Orders for Products to be exported are subject to Seller's ability to obtain export licenses and other necessary papers within a reasonable period. Buyer will furnish all Consular and Customs declarations and will accept and bear all responsibility for penalties resulting from errors or omissions thereon. Buyer will not re-export the Products or any products or items which incorporate the Products if such re-export violates local or U.S. export laws.

### **5. Installation.**

Unless otherwise specified in writing on a quotation provided by an authorized representative of Seller, Buyer assumes responsibility for installation of Products. Seller agrees to make installation and on-site technical support services available at Seller's then-prevailing rates. Buyer is responsible for all additional charges/fees related to delays due to its failure to comply with its defined portion of the installation plan (e.g., not providing agreed upon access to the production/packaging line, not complying with pre-installation checklist). Installation does not include mechanical, electrical, pneumatic, water or ventilating tie-ins to existing systems.

### **6. Maintenance.**

Buyer assumes responsibility for all Product maintenance. Seller shall make maintenance services available at its then prevailing rates.

### **7. Warranties.**

Seller warrants the Products, and its equipment, parts and supplies in accordance with its standard warranty policies. A written copy of these policies is available on Seller's web site at [www.videojet.com](http://www.videojet.com). THESE WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. NO EMPLOYEE OR AGENT OF SELLER, OTHER THAN AN OFFICER OF SELLER BY WAY OF A SIGNED WRITING, IS AUTHORIZED TO MAKE ANY WARRANTY IN ADDITION TO THE FOREGOING.

### **8. Limitation of Buyer's Remedies.**

IN NO CASE IS SELLER LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES BASED UPON BREACH OF

WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, STRICT TORT, OR ANY OTHER LEGAL, EQUITABLE OR STATUTORY CLAIM, CAUSE OF ACTION OR LEGAL THEORY. IN ANY EVENT, SELLER WILL BE LIABLE SOLELY FOR ACTUAL DAMAGES CAUSED BY SELLER'S BREACH. SELLER'S MAXIMUM LIABILITY HEREUNDER REGARDLESS OF LEGAL THEORY, INCLUDING INDEMNIFICATION OBLIGATIONS, WILL NOT EXCEED PRICE OF PRODUCTS AND/OR SERVICES FURNISHED BY SELLER IN THE RESPECTIVE ORDER.

### **9. Seller's Remedies.**

Without waiving any other rights or remedies available to it under applicable law or otherwise, Seller may, at its option, defer shipment or deliveries hereunder, or under or pursuant to any other contract with Buyer, until all past-due accounts of Buyer are fully satisfied. If Buyer fails to make payment when due and Seller determines its obligations hereunder to be insecure, Buyer shall promptly return to Seller, on demand, all Products furnished to Buyer hereunder for which payment in full has not been made. If Buyer fails to return such Products, Seller may, to the extent permitted by law, with or without notice or legal process, enter upon any premises where such Products may be located and take possession of the same. Seller may then sell such Products, with or without notice, at private or public sale at which Seller may purchase, and the proceeds of such sale, less expenses of retaking, repairing, holding and reselling, will be applied to the unpaid purchase price without release of any deficiency, which deficiency (if any) Buyer shall promptly pay. Any surplus above the unpaid balance will be remitted by Seller to Buyer. Seller's rights and remedies in these Terms and Conditions are in addition to, and not in lieu of, any other rights or remedies Seller may have at law or in equity.

### **10. Proprietary Rights.**

Seller will retain all rights to designs, drawings, patterns, plans, specifications, technology, technical data and information, technical processes and business methods, whether patentable or not, arising from Seller's engineering services to Buyer, and Seller's design of systems and Products for Buyer. Buyer agrees not to enforce against Seller or Seller's customers any patent rights that include any system, process or business method utilizing or otherwise relating to Products and/or Services delivered pursuant to an Order. Seller will not furnish any data, other than installation and specification data, unless it is specifically requested in an Order. The parties will separately negotiate rights and price for such data.

### **11. Hazardous Materials.**

Buyer acknowledges that certain materials covered by this Agreement may currently or later be considered hazardous materials under various laws and regulations. Buyer agrees to familiarize itself (without reliance on Seller except as to the accuracy of special safety information actually furnished by Seller), with any hazards of such materials, their applications and the containers in which such materials are shipped, and to inform and train its employees and customers as to such hazards. Buyer agrees to hold Seller harmless against any claims by its agents, employees or customers relating to any such hazards unless such claims are based on Seller's failure to meet written specifications or the inaccuracy of specific safety information furnished by Seller.

### **12. Products Not for Resale.**

Buyer, by placing an Order and accepting these Terms and Conditions, hereby expressly agrees, acknowledges, represents and warrants to Seller that: (a) it is Seller's policy to sell the Products only to end users for their own use; (b) the Products are not intended for resale; and (c) Buyer is purchasing the Products for its own use and not for resale. If Buyer breaches the foregoing acknowledgement, representation and/or warranty by reselling the Products, Seller may: (a) void, eliminate and/or refuse to continue to extend or make available to Buyer any volume or other type of discount, rebate or preferential payment term; and (b) refuse to accept any further Orders from Buyer. This Section 12 does not apply to Seller's third party sellers, including distributors and OEMs.

### **13. Delay.**

(a) Delivery dates are approximate and not guaranteed. Seller will not be liable for damages of any kind resulting from any delays in fulfillment, shipment or delivery of Products and/or Services. Seller will not be liable for any loss, damage, cost or expense due to causes beyond its reasonable control, such as acts of God, acts of Buyer, acts of civil or military authority, fires, strikes, floods, epidemics, war, riot, delays in transportation, government restrictions or embargoes, or difficulties in obtaining necessary labor, materials, manufacturing facilities or transportation due to such causes.

(b) Buyer has the right to terminate an Order without penalty only for delays in excess of ninety (90) days, and only as to the undelivered portion.

### **14. Cancellation.**

Unless otherwise agreed in writing signed by authorized representatives of Buyer and Seller, all canceled Orders will be subject to a 10% cancellation fee. Buyer may not cancel Orders for non-standard Products or Products that have left Seller's dock. In the event of cancellation of an Order, Seller is entitled to collection of all costs incurred (including collections and attorneys fees) plus a reasonable profit. Cancellation must be in the form of a certified letter to Seller.

### **15. Governing Law; Venue; Actions.**

This Agreement is governed by and construed in accordance with the internal laws of The Netherlands without regard to the conflicts of laws provisions. Any action by Buyer for loss or damage to any Products and/or Services subject to these Terms must be commenced by Buyer within one (1) year from the date of delivery of the same or such claim will be forever barred.

### **16. Entire Agreement.**

These Terms constitute the entire agreement between the parties, there being no other promises, terms, conditions, or obligations, referring to the subject matter not contained herein. If any term or provision of these Terms to any extent is declared invalid or unenforceable, the remainder of these Terms will not be affected thereby, and each term and provision of these Terms will continue to be valid and enforceable to the fullest extent permitted by law. Any modifications hereto must be in writing and signed by both parties.