

## TERMS AND CONDITIONS OF SALE

**1. Acceptance.** These 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 or other provision of Seller's products ("Products") and/or services ("Services") to Buyer, 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 within 30 days of the later of Buyer's receipt of invoice or delivery of Products and/or Services unless otherwise agreed 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) Unless otherwise specifically indicated by Seller, prices quoted are exclusive of, and Buyer agrees to pay, shipping and related fees, foreign, federal, state, local excise, sales, use, personal property or any other taxes or duties, except only taxes based on Seller's income. Any certificates or other evidence of applicable exemptions to such taxes or duties must be provided 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 directly to such taxing authority if requested by Seller.

(c) Payments are not subject to setoff or recoupment for any present or future claim Buyer may have.

(d) Pricing is subject to change only by Seller upon any change in information and/or requirements during the course of an Order. Otherwise all pricing is firm. Seller does not represent that its prices will be the lowest charged to any other customer or comparable to prices offered by any third party.

**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 further obligation if it determines it is not commercially practicable to meet the required specifications.

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

(a) Delivery terms are Ex-Works (Incoterms 2000) 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) Buyer shall bear any special expenses, including special handling, packaging and additional freight charges, if Buyer furnishes special transportation instructions.

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

(d) 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.

(e) 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 port of entry.

(e) Products and/or Services are deemed accepted unless Buyer provides Seller with written notice of rejection within 20 days after delivery or a shorter period agreed to in writing by the parties.

**5. Installation; Maintenance.** 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. Buyer assumes responsibility for all Product maintenance. Seller shall make maintenance services available at its then prevailing rates.

**6. Limited Warranties.** Seller warrants the Products and Services in accordance with its standard warranty policies, available on Seller's web site at 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.

**7. Software License.** Seller grants Buyer a non-transferable, non-sublicenseable and non-exclusive license to use software contained or embedded in the Products ("Software") solely in conjunction with operation of Products as permitted by Seller. All other rights, title and interest in the Software shall remain the exclusive property of Seller or its licensors. Buyer is prohibited from (a) reproducing the Software, any component thereof or any documentation related thereto, and (b) decompiling, disassembling, compiling or reverse engineering the Software or otherwise attempting to gain access to the Software source code. Buyer shall not use, duplicate or disclose any technical data or any information regarding the Software for any purposes. These rights are subject to

any underlying license to Seller from a third party of any component or application of the Software.

**8. Limitation of Buyer's Remedies.** IN NO EVENT WILL SELLER BE LIABLE FOR SPECIAL, INDIRECT, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL, THIRD PARTY OR PUNITIVE DAMAGES INCLUDING WITHOUT LIMITATION THOSE BASED ON 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 OF LIABILITY, SELLER'S LIABILITY SHALL BE LIMITED TO ACTUAL DAMAGES TO THE EXTENT DIRECTLY AND SOLELY CAUSED BY SELLER'S MATERIAL BREACH. EXCEPT AS OTHERWISE PROHIBITED BY LAW, SELLER'S MAXIMUM LIABILITY HEREUNDER REGARDLESS OF LEGAL THEORY WILL NOT EXCEED PRICE OF SELLER'S PRODUCTS AND/OR SERVICES GIVING RISE TO THE CLAIM. IN NO EVENT WILL SELLER BE REQUIRED TO INDEMNIFY BUYER OR ANY OTHER PARTY.

**9. Seller's Remedies.** Without waiving any other rights or remedies available to it under applicable law or otherwise, Seller may 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 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 intellectual property rights to designs, drawings, patterns, plans, specifications, technology, technical data and information, technical processes and business methods, whether patentable or not, arising from the sale or other provision of Products and/or Services to Buyer, except as otherwise agreed by Seller by way of a signed writing. 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 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 shall hold Seller harmless against any claims by its agents, employees or customers relating to any such hazards except to the extent such claims arise solely and directly from Seller's failure to meet written specifications or the inaccuracy of specific safety information furnished by Seller.

**12. Products Not for Resale.** Buyer represents and warrants that it is purchasing the Products for its own use and not for resale purposes. If Buyer breaches the foregoing, Seller may: (a) void, eliminate and/or refuse to continue to make available to Buyer any volume or other type of discount, rebate or preferential payment term; (b) cancel the Order; and/or (c) refuse to accept any further Orders from Buyer. This provision does not apply to Seller's authorized third party sellers, including distributors and OEMs.

**13. Delay.**

(a) Delivery dates are approximate and not guaranteed. Seller will not be liable for any damages or costs 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 may terminate a non-custom Order without penalty only for delays in excess of 30 days, and only as to the undelivered portion.

**14. Cancellation.** Except as otherwise provided herein, all sales are final. Buyer may not cancel Orders for custom Products or Products that have left Seller's dock. All other Orders are subject to a 10% cancellation fee. In the event of cancellation, Seller is entitled to all costs incurred plus a reasonable profit. Cancellation must be in the form of a certified letter to Seller.

**15. Governing Law; Venue; Actions; Attorneys Fees.** This Agreement is governed by and construed in accordance with the laws of The Netherlands without regard to conflicts of laws provisions. The parties consent to the sole and exclusive venue and jurisdiction of the courts situated in The Netherlands. Any action by Buyer for loss or damage arising from or related to the Products and/or Services subject to these Terms must be commenced within the earlier of one (1) year from the date of delivery or occurrence of the event, or such claim will be forever barred. In the event of any legal dispute, the substantially prevailing party shall be entitled to all reasonable costs incurred, including but not limited to collection costs, attorneys' fees and costs of suit.

**16. Entire Agreement; Modifications; Waiver.** These Terms are 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 provision of these Terms to any extent is declared invalid or unenforceable, the remainder of these Terms will not be affected thereby and 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. Seller's failure to strictly enforce any of these terms shall not be considered a waiver of any of its rights hereunder. If any term herein is declared invalid or unenforceable to any extent, the remainder of these Terms will not be affected thereby, and each term herein will continue to be valid and enforceable to the fullest extent permitted by law.