

Terms and conditions of supply and installation of viastore SYSTEMS GmbH

1. General

- 1.1 These terms and conditions are applicable for the supply, installation and reconstruction of storage/retrieval machines, conveyor systems and similar machines and data processing systems supplied by **viastore** SYSTEMS GmbH (hereinafter referred to as **viastore**), and for other services provided by **viastore** in connection with the supply, installation and reconstruction of these goods and services, inasmuch as the client is a contractor (the person acting in his or her commercial or independent professional capacity in concluding the contract), a legal person under public law or a special fund governed by public law.
- 1.2 The sole place of jurisdiction for all current and future claims arising from the business relationship with fully qualified merchants, legal persons under public law or special funds governed by public law is the principal place of business of **viastore**. 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 if its domicile or usual place of residence is unknown at the time the action is brought. **viastore**, however, is also entitled to bring an action against the client at its general place of jurisdiction.
- 1.3 German law is applicable in any case for all legal relations between **viastore** and the client. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is explicitly excluded.
- 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 The client's General Standard Terms and Conditions of Business are explicitly excluded.
- 1.6 The claims of the client vis-à-vis **viastore** arising from the contract may not be assigned. The client may only set off the claims of **viastore** 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.
- 1.7 The quotations made by **viastore** are subject to change without notice. The documents which constitute part of the quotation, such as illustrations, drawings, weights and measurements and similar, are only approximate. **viastore** retains the title and copyright pertaining to estimates, drawings and other documents relating to the offer or the contract; the documents may neither be copied nor made accessible to third parties without the agreement of **viastore**. Orders only count as having been accepted once they have been confirmed in writing.

2. Exploitation rights for software

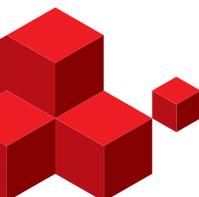
- 2.1 Provided no stipulation to the contrary is made in the contract, all rights to the software within the contractual relationship are the property of **viastore**. Should the rights be the property of a third party, **viastore** is in possession of the corresponding exploitation rights.
- 2.2 The client receives for an unlimited period the non-exclusive and non-transferable authorization powers needed to use the software in his company in the way described in the contract and in the manuals. All other forms of exploitation of the software, in particular translation, revision, arrangement, other forms of restructuring and distribution are only permissible after obtaining the approval of **viastore**.
- 2.3 The client is not entitled to access source programs and the development documentation unless both parties have made a written arrangement to the contrary.

3. Scope of delivery

- 3.1 The performance covers the supply of the system, which must correspond to the description/definition provided, and be made ready for operation and acceptance. The client must ensure that the structural prerequisites to be provided by the client, as stated by **viastore** in the quotation, are fulfilled.
- 3.2 The goods and services are provided in accordance with the factory standards of **viastore** and taking account of the generally accepted rules of engineering practice. It corresponds to the regulations valid at the time the quotation was issued.
- 3.3 At the time that the installation of the system is commenced, the structural preparations by the client must be so far advanced that assembly can be carried out rapidly and without hindrance. If the client is to carry out construction work while the system is being assembled, it must be effected in such a manner that hindrances or interruptions to the assembly process cannot occur. If installation is begun late due to delays in construction, if the installation has to be interrupted or held up due to delays in construction, or if the work is completed late and the official acceptance delayed due to delays in construction beyond the control of **viastore**, the client has to bear the costs of the delay and of any return journeys which the fitters may have to make.
- 3.4 Partial deliveries are permitted provided this is not unreasonable for the client.

4. Prices and terms of payment

- 4.1 The prices are flat rates and cover the supply of goods and services as stipulated in item 3. They are to be understood net excluding sales tax, which is calculated according to the rate valid at the time the tax liability arises, and which is entered separately.
- 4.2 The prices are fixed on the basis of costs incurred for materials and human resources at the time the quotation was submitted. If a limited fixed price agreement is laid down in the contract and the deadline for this agreement then expires through no fault of **viastore**, the contract price is to be adjusted in relation to the work carried out after expiry of the deadline.
- 4.3 Provided no other stipulation is made in the individual contract, payment is to be effected without deductions by transfer or check, free **viastore** point of payment, within two weeks of receipt of invoice. Payment is to be effected as follows:
 - 1 / 3 when the contract is concluded
 - 1 / 3 when the main parts of the system are ready for dispatch and the client has been informed of this
 - 1 / 3 after installation and acceptance



Should an interruption to the execution of the order lasting more than four weeks occur through no fault of **viastore**, **viastore** is entitled to calculate payment in relation to the current status of the order, independently of the above payment plan.

- 4.4 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. The right of **viastore** to exercise a contractual right of retention on account of further goods and services is not affected by this. Such a right of retention exists above all if the client is more than 14 days in arrears with the payment of a due invoice, if proceedings are instituted against the client as a result of an affirmation in lieu of an oath, if judicial insolvency proceedings are filed by the client himself or by one of his creditors or if there are other serious grounds for doubting the client's future capacity to pay.

5. Retention of title

- 5.1 All deliveries are subject to a retention of title. The title to the goods delivered is only passed to the client when the invoice relating to the consignment of goods including all extra charges (packaging costs, interest on arrears etc.) as well as any other current or future claims arising from the current business connection have been settled by payment. The presentation of checks and bills of exchange only then counts as payment as defined by sentence 2 when the check or bill of exchange has been redeemed by the customer.

- 5.2 The client is entitled to handle, to process and to sell the goods delivered by **viastore** in the course of usual business operations – in spite of the stipulated retention of title. This permission can be canceled by **viastore** if

- a) the client is more than 14 days in arrears with the payment of the equivalent value of the delivered goods,
- b) if proceedings are instituted against the client as a result of an affirmation in lieu of an oath
- c) if judicial insolvency proceedings are filed by the client himself or by one of his creditors
- d) if there are any other serious reasons for doubting the client's future capacity to pay

The cancellation of the permission to handle, to process and to sell the goods has to be submitted in writing. From the receipt of the cancellation, the client is obligated to separate the goods that were included in the deliveries by **viastore** – irrespective of whether they are unprocessed, processed or finished – and to store them separately from other goods.

- 5.3 **viastore** also retains the title to the goods delivered if the goods

- a) are sold by the client,
- b) are processed and subsequently sold by the client,
- c) are blended and/or combined by the client,
- d) are blended and/or combined and subsequently sold by the client.

For the avoidance of doubt, any processing, finishing, blending and/or combining of the goods which are still the property of **viastore** are effected for **viastore** and on behalf of **viastore**, but without any payment obligation for **viastore**.

If the client combines or blends the goods subject to retention of title with other goods (§§ 947, 948 BGB (German civil code)), **viastore** is entitled to claim co-ownership of the integrated item, or of the blending/combining respectively, in the proportion of the value of the goods provided by **viastore** compared to the value of the other blended or combined goods at the time of the blending/combining; if the goods provided by **viastore** must be considered as the main item, **viastore** is entitled to claim the sole ownership.

Where goods have already been processed (§ 950 BGB), **viastore** obtains co-ownership of the new item that has been formed through the processing in the proportion of the value of the goods compared to the value of the produced new item.

- 5.4 If the client sells goods delivered by **viastore** to which **viastore** still holds the ownership/co-ownership, the following applies:

- a) The client hereby confirms that he will assign to **viastore** his claims arising from the sale of the goods, corresponding to the value of the goods to which **viastore** holds the title and which have been sold on by the client, regardless of whether they have been processed, finished, mixed, blended or whether they remain unaltered. The value of the goods to which **viastore** holds the title corresponds to the value of the goods charged to the client by **viastore** (including sales tax).
- b) With regard to the client's claims, should other advance assignments from the further sale of the goods exist in favor of other suppliers of goods, all assignments are to be accorded equal ranking.
- c) 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 **viastore** at once. In a case of this type, the client may not assume that **viastore** will permit him to sell on the goods owned or co-owned by **viastore**. He is obliged to refrain from the transaction under such conditions.
- d) The client is obligated to pass on all information about the further sale to **viastore** under the conditions of a cancellation in accordance with 5.2 of these terms in order to ensure that the rights of **viastore** with regard to the further sale are enforced.

- 5.5 Should the value of the security of **viastore** exceed the claims against the client by more than 20%, **viastore** can elect to release the excess security if the client makes an application to this effect. **viastore** is obligated to reassign the security if the claims against the client have expired.

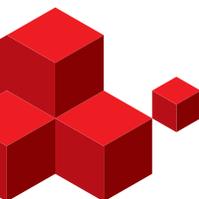
- 5.6 The client is not authorized to assign or pledge such goods as security which are subject to the stipulated retention of title/prolonged retention of title. The client has to inform **viastore** immediately about any levy of execution on the goods subject to retention of title that are owned or co-owned by **viastore**.

- 5.7 An application to begin insolvency proceedings concerning the client's assets or the affirmation in lieu of oath by the client entitle **viastore** to withdraw from the contract and to request the immediate return of the delivery item.

6. Dispatch, transfer of risk, storage

- 6.1 Provided no other agreement has been made, **viastore** is to determine the mode of transportation, the route and the carrier or freight forwarder.

- 6.2 As a rule, i.e. if the order is executed without disruptions, the transfer of risk to the client is effected when he takes delivery of the system or, if an acceptance inspection is required, upon acceptance. Should the execution of the order be disrupted by factors for which **viastore** cannot be held responsible, the risk is transferred to the client at the point when the disruption occurred. This applies



- particularly in the case of delays in delivery arising from the necessity to store the goods, or if installation is interrupted, this also applies to parts which have been delivered but not yet installed.
- 6.3 If the wholly or partly assembled consignment is damaged or destroyed before acceptance by acts of God, war, riots or other unavoidable circumstances for which **viastore** cannot be held responsible, **viastore** is entitled to a proportion of the payment stipulated in the contract corresponding to the parts of the order which had already been carried out. Furthermore, the costs stipulated in the contract which **viastore** had already incurred from the part of the order which was not carried out are also to be paid. Neither party is obligated to provide a replacement in the case of other damages arising.
- 6.4 If delivery is delayed for reasons for which **viastore** cannot be held responsible, **viastore** can store the system. The client has to pay storage fees to **viastore** depending on the costs incurred. In the case of the system being stored on **viastore** premises, storage fees are to be paid at a flat rate of EUR 10.00 plus sales tax per month of storage and per square meter of storage area used. Fees arising from storage facilities used for just part of a month are calculated proportionally. The client is free to provide evidence that lower storage costs would be appropriate. **viastore** reserves the right to charge higher storage costs on presenting evidence that this is justified. **viastore** shall also be entitled to dispose of the object stored elsewhere after expiry of an appropriate deadline, and to supply the client within an appropriately extended deadline.

7. Acceptance

The system is handed over after installation is complete. The client must accept the system within an appropriately fixed period after being informed that the system is ready to be handed over. The client cannot refuse acceptance on the grounds of faults which do not significantly impair the system's ability to function.

8. Deadlines, dates

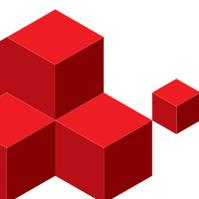
- 8.1 Delivery dates or deadlines, which may be agreed upon bindingly or not bindingly, must be indicated in writing. The client may request **viastore** in writing four (4) weeks after exceeding a non-binding delivery date or a non-binding deadline to deliver within an appropriate period of time.
- 8.2 The deadlines agreed begin from the date on which the contract is signed, but not before all details necessary for the execution of the order have been approved, a drawing of the system has been submitted by the client and the agreed down-payment has been received. The deadlines can be extended by at least the period of time by which the client is in default of his obligations from this contract. The second sentence in item 8.2 and item 8.3 apply analogously, including to delivery dates.
- 8.3 Unforeseen events outside the control of **viastore**, e.g. business interruptions, weather-related events, measures arising from industrial disputes such as strikes and lockouts, extend the agreed deadlines by an appropriate period of time. **viastore** is also not responsible for the aforementioned factors if they occur during an already existing delay. In important situations **viastore** will notify the client of such delays.

9. Rights of the client in the event of faulty delivery

- 9.1 **viastore** is not liable for the consequences of inaccurate information concerning the conditions applying to electrical connections or for any faults which may arise from disturbances of the starting current in the network.
- 9.2 **viastore** is not liable in the case of damages arising from incorrect or inappropriate use, defective assembly work or implementation on the part of the client or any third party not commissioned by **viastore**, normal wear and tear, incorrect or careless handling or operation by the client or by any third party not commissioned by **viastore**, inadequate works executed by the client or other factors affecting the functioning of the system (provided they are not the fault of **viastore**).
- 9.3 In the case of defects, which the client must report to **viastore** in writing, providing evidence in each case, the client has the following rights:
- 9.3.1 All parts, the usability of which is 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 installation, must be either repaired or replaced without charge in accordance with the choice made by **viastore**. In all cases, **viastore** must be permitted to effect a subsequent improvement of the goods without charge; **viastore** is to be granted adequate time and opportunity for the changes and delivery of replacement parts as appears necessary to **viastore**.
- 9.3.2 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.
- 9.3.3 Item 10 of these conditions governs the liability for compensation by **viastore** on warranty and other legal grounds.
- 9.3.4 The client must claim for any defects within 12 months. The statutory time periods apply to cases of deliberate or fraudulent behavior or to claims in accordance with product liability law. These also apply to defects in structures or for goods delivered that have been used for structures in accordance with their normal use and that have caused the fault in the building.

10. Liability

viastore is not liable, on whatever legal basis, for any damages, apart from the exceptional cases listed below. The liability of **viastore** for intent and gross negligence remains unaffected by the above exclusion of liability. The liability of **viastore** for the negligent breach of obligations whose implementation is indispensable for the completion of the contract in due form and on the compliance with which the contracting party may rely at any time also remains unaffected by the exclusion of liability. However, in the case of ordinarily negligent breach of obligations whose implementation is indispensable for the completion of the contract in due form and on the compliance with which the contracting party may rely at any time, the liability of **viastore** is restricted to damage that might typically be expected to occur.



The liability of **viastore** 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 **viastore** 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 **viastore**.

11. Premature termination of the contract

If the contract is prematurely terminated on grounds within the client's area of responsibility, in particular if the client gives notice in accordance with § 649 BGB, **viastore** is entitled to invoice the client for cancellation costs amounting to 15% of the gross total of the order (including sales tax) without the need to provide evidence of the cancellation costs. The client has the right to prove that **viastore** incurred lower or no cancellation costs. **viastore** has the right to present evidence and claim higher cancellation costs.

12. Miscellaneous

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

