

General Terms and Conditions of Business, Delivery, Offer, and Payment of the Viscom AG as of June 2018

Preamble for English Version of Terms and Conditions

The language of the contract is German. The English version of the Terms and Conditions is intended for reference purposes only. In the event of discrepancies between the English translation and the German original version, only the German version is legally binding.

I. Validity and Scope of the Terms and Conditions

1. The deliveries, services, and offers from Viscom services are subject to the Terms and Conditions stated herein, even if they have not been expressly referred to. This applies as well to all future commercial relationships, even if they are not expressly agreed to once more. These Terms and Conditions are in force at the latest at the receipt of goods or services. Conditions to the contrary by the purchaser/ordering party referring to their own business or purchasing Terms and Conditions will not be recognized.
2. Deviation from these Terms and Conditions are only effective with the express written confirmation of Viscom.

II. Offers and Conclusion of Contracts

1. The offers by Viscom shall always be subject to confirmation and are non-binding. Declarations of acceptance and all orders require written confirmation by Viscom to attain legal force. The same applies to any supplements, alterations and additional agreements.
2. These Terms and Conditions are an integral part of every offer from Viscom.
3. Employees of Viscom are not authorized to conclude oral additional agreements that exceed the content of a written contract.

III. Prices/Quoted Prices

1. Insofar as it is not otherwise stated, prices quoted by Viscom remain in effect for 30 days. Unless agreed otherwise, prices are understood in terms of Euros ex works in Hanover, Germany, exclusive of packing costs, plus applicable sales tax and other statutory costs of shipping.
2. Unless agreed otherwise, the prices of the Viscom price list valid at the time of order confirmation apply.

IV. Delivery and Service Times

1. Delivery dates and delivery periods specified by Viscom are fundamentally non-binding, insofar as they are not expressly stated in writing as binding. Delivery periods begin with the receipt of the order confirmation, yet are contingent on clarification of all technical questions and the timely and orderly fulfillment of all customer responsibilities. We reserve the right to invoke the defense of failure on the part of the customer to perform the contract. Partial deliveries are permitted and shall be invoiced separately.
2. Viscom cannot be held accountable for delays of deliveries and services due to forces majeure which impede delivery or render it impossible, especially including strike, lock-out, raw material shortages, traffic disruptions, the influence of weather, directions from regulatory authorities etc., also when they occur on the part of suppliers to Viscom, even with binding dates and respites. These delays enable Viscom to postpone any delivery or service for the duration of the interference plus an appropriate warm-up time or, due to the unfulfilled portion, to abdicate from the contract wholly or in part.
3. If non-compliance with binding delivery periods and dates is attributable to events for which Viscom is responsible or finds itself in arrears, the customer is entitled to claim a penalty payment in the amount of 1/2 % of the delivery value for each complete week of default, in to however up to 5 % of the invoice value of the deliveries and services affected by the delay. Customer claims exceeding these amounts are excluded, unless the delay is attributable to gross negligence on the part of Viscom.

V. Transfer of Risk

Delivery by Viscom is conducted – subject to contractual agreements stating otherwise – according to the stipulations of the valid INCOTERMS (FCA/free carrier). Risk of possible loss or deterioration of the goods is transferred to the customer at the handover of the goods to the transporter.

VI. Payment

1. Unless agreed otherwise, Viscom terms of payment are within 30 days from the date of invoice with no deduction.
2. Viscom is entitled, despite other conditions on the part of the customer, to calculate payments in terms of the oldest debt. The customer shall be informed of the type of calculation effected. Where costs and interest are payable, Viscom is entitled to take payment for first the costs, then the interest and finally on the main invoice.
3. In the case of the customer's payment default, Viscom is entitled to claim default interest of 8 % above the basic interest rate from the moment the payment becomes overdue. Viscom is further entitled to invoice the customer € 10.00 for processing costs for each demand note to the customer.
4. The customer only has the right to offsetting, retention or reduction, even if formal complaints or counter-claims are made, if the counterclaims have been established with legal force or are not in dispute.

VII. Retention of Title to Ownership

1. Viscom retains the title of any and all delivered goods (conditional goods) until all in-voices or claims have been settled, regardless of their legal basis, including future and contingent claims, as well as those from contracts concluded simultaneously or later. This shall also apply in the event payments were made on specially defined claims. This retention of title shall guarantee our balance claims in a current account relationship.
2. Should the delivered goods to which Viscom retains title be impounded or confiscated, the customer is obligated to report this immediately to Viscom. The customer is responsible for all costs associated with release of the goods.
3. The customer is authorized to dispose of the conditional goods during the course of normal business operations as long as the customer is not in arrears. Pledging as collateral or transfer by way of security is not permitted. The claims resulting from resale or another cause in law (insurance, illegal trading etc.) with respect to the conditional goods (including all balance claims from the current account) shall be transferred in to Viscom, who will accept this transfer, by way of security. The customer authorizes Viscom to collect such receivables on account of and behalf of Viscom.
4. In case of conduct contrary to the terms of the contract by the customer, especially in case of default in payment, Viscom is entitled to take back the conditional goods or to require, if necessary, cession of claim for goods release to the authorized third party. The taking back or attachment of conditional goods by Viscom shall not constitute a cancellation of the contract.
5. Viscom is entitled to assign existing trade receivables to a bank for financial purposes.

VIII. Notice of Defects, Limited Warranty

1. Viscom is liable, in accordance with statutory regulations, for defects of material and defects of title, insofar as nothing to the contrary arises from the following provisions. A dependent guarantee exceeding statutory regarding liability for defects of material is not allowed.
2. Defect of material liability claims are entirely terminated by Viscom if the customer removes or alters original technical markings.
3. The customer shall notify Viscom in writing of any defects of material, quantity shortfalls or incorrect deliveries immediately after receipt of goods, within one week beginning with the day the goods arrive at the customer's and of any concealed deficiencies within one week after they are discovered. The customer is required to inspect the goods to ascertain their identity immediately upon delivery. Should the customer not promptly notify Viscom, the delivery is considered as accepted. The inspection obligation pursuant to Sect. 377 of the German Commercial Code remains unaffected.
4. If the delivered goods exhibit any defect of material, Viscom is entitled to provide subsequent performance in the form of eliminating defects or delivery of a defect-free replacement, at its discretion. In case of eliminating defects, Viscom is required to assume all expenses necessary to eliminate the defect, especially transport, logistics, labor and material costs, insofar as these have not been increased by relocation of the purchased goods to another site than its place of delivery. Reimbursement of expenses shall not exceed the amount of the purchase price.
5. Should removal of defects or delivery of a replacement fail, the customer has the right to rescission from the contract or to an abatement of the purchase price. Further claims of any kind, insofar as no compelling statutory regulations state otherwise, are excluded.
6. The customer is only entitled to claims for damages due to breach of duty when breach of duty on the part of Viscom or its vicarious agents is intentional or attributable to gross negligence. Otherwise, liability to claims for damages is limited to foreseeable, typically occurring damages.
7. Should the customer not grant Viscom the opportunity to verify for itself that the goods are defective, or especially if the goods are not made available to Viscom upon request without delay, then Viscom is entitled to refuse any claims for damages asserted by the customer.
8. Viscom is entitled to refuse supplementary performance if the customer has not fulfilled its statutory responsibilities to Viscom.
9. Statements by Viscom in catalogues, prospectuses, advertisements and price lists regarding delivery items comprise only descriptions, identification and standard values; thus they not guaranteed.
10. The period of limitation for any and all claims based on defects is 12 months, calculated from the transfer of risk.

IX. Liability

1. Insofar as they are not expressly permitted in these Terms and Conditions, claims, especially claims for damages due to impossibility, delay and breach of contract in association with claims based on defects by the customer, shall be excluded to the extent legally permissible, unless they involve an intentional breach of contract or are due to gross negligence on the part of Viscom.
2. Liability of statutory agents, vicarious agents and other employees vis-à-vis the customer is excluded excepting cases of malice aforethought or gross negligence.
3. Advice and information are provided according to the best of our knowledge, yet carry no contractual obligation and exclude any and all liability. Insofar as the German Product Liability Act applies, the liability limitations pursuant to Paragraphs 1 and 2 are not applicable to the claims of the customer for exposure to hazards, bodily harm and damage to private property resulting from them, unless the law expressly permits such a limitation of liability.
4. Liability is excluded for indirect damages and consequential damages, especially lost profit or claims on the part of third parties.
5. Any damage claims are limited to the amount of reimbursement for foreseeable, typically occurring damages.
6. Damage claims lapse 12 months after transfer of risk.

X. Restricted Liability for Inspection Plan Creation

1. Creation of inspection plans is performed exclusively as a service. The Viscom AG accepts no liability for completeness or accuracy of the inspection plans. This exclusion of liability does not apply when a detailed written agreement exists between the customer and the Viscom AG (specification requirements), in which all the requirements for the inspection plan are listed.
2. The Viscom AG is not liable for customer component libraries and the application of the inspection algorithms during the course of production after the inspection plans are merged with the relevant inspection library, because those libraries and algorithms are continuously adapted by the customer due to the dynamic change of process conditions.

XI. License and Proprietary Rights

1. Proprietary rights and rights of exploitation of the purchased goods remain with Viscom independent of delivery of the goods to the customer. Reverse engineering of individual delivered parts or systems requires the written agreement of Viscom.
2. Reproduction of Viscom software is only permitted for backup purposes.

XII. Data

The customer agrees to save business-related data and utilize it within the framework of the mutual commercial relationship.

XIII. Export Control

The customer is required to only export goods from Viscom in conformance with all export regulations applicable in Germany or in the domicile of the customer. In case of infringement of these regulations, Viscom is entitled, but not required, to terminate all business relations with the customer without notice and to cancel any previously concluded delivery contracts without notice.

XIV. Governing Law; Jurisdiction

1. The laws of the Federal Republic of Germany apply exclusively to these Terms and Conditions and the entire legal relationship between Viscom and the customer, to the exclusion of the UN Convention on the International Sale of Goods.
2. Insofar as legally permissible, Hanover Germany is agreed to as the exclusive jurisdiction for any and all disputes arising from the contractual relationship between Viscom and the customer. Viscom is nonetheless entitled to bring an action against the customer in the court of jurisdiction of his own company headquarters.

XV. Invalidity of Clauses

Should any of the above conditions in these Terms and Conditions be invalid, regulations which come the closest to accomplishing the desired commercial purpose and correspond to the interests of Viscom and the customer shall take effect in place of the invalid conditions. The remaining Terms and Conditions or agreements shall nevertheless remain in force.

Hanover, June 01, 2018
Viscom AG