

# General Terms and Conditions (GTC)

## Conditions of Sale, Delivery and Services: Version dated 1 January 2015

### 1. General

- a. These General Terms and Conditions ("GTC") are a component of all delivery and service contracts between **uviterno** ag and Customers. The relevant version of the GTC can be found at [www.uviterno.com](http://www.uviterno.com). Terms and conditions that differ from this are only applicable when they have been expressly accepted by **uviterno** ag in writing. Our customers' sales conditions shall in general not be applicable, even when we have not expressly contradicted these.
- b. The contract between the orderer and **uviterno** ag shall be deemed to have been concluded with the written confirmation of the contract.
- c. Legally binding changes to a contract that has already been granted or is already in force must be made in writing.
- d. If one Party makes drawings and technical documents about the delivered object or its manufacture available to the other Party, before or after the conclusion of the contract, then these shall remain the property of the Party who provided them.  
If one Party receives drawings, technical documents or other technical information, then these may not be used for any purpose other than that for which they were delivered, without the agreement of the other Party. They may not be used for other purposes, copied, reproduced or passed on to third parties without the permission of the Party who provided them.

### 2. Scope of deliveries and services

**uviterno** ag's deliveries and services are listed subsequently in the confirmation of the contract, including any supplements to this. **uviterno** ag has the authority to make changes that lead to improvements, insofar as this does not result in a price increase. Any price adjustments that there may be must be communicated to the Customer in advance and confirmed in writing.

### 3. Prices

- a. All prices shall be understood to be net, ex works, excluding packaging, in freely available Swiss Francs, insofar as no other agreement to the contrary was previously made concerning this.
- b. All additional expenses, such as e.g. for shipping, insurance, export, transit, import and other permits as well as certifications shall be at the Orderer's expense. The Orderer must also reimburse **uviterno** ag for all kinds of taxes, charges, fees, tolls and similar, that become due in connection with the contract or to reimburse **uviterno** ag for these, if it has become liable for them, upon the production of appropriate proof of this.
- c. **uviterno** ag reserves the right to make a price adjustment if salary rates or material costs change between the time of the offer and fulfilment of the contract. An appropriate price adjustment shall also take place, when
  - i. The delivery deadline is extended by a reason named in clause 6.c, or
  - ii. The type or scope of the services that were agreed upon have undergone a change, or
  - iii. The material or the implementation undergo changes because the documents supplied by the Orderer did not correspond to reality or were incomplete.

### 4. Payment terms

- a. The payments must be made at **uviterno** ag's business address in accordance with the agreed payment terms without further deduction of discount, expenses, taxes, charges, fees, tolls and similar.  
The contractually agreed purchase price must be paid in the following instalments, insofar as not agreements to the contrary were made beforehand in writing:
  - 40% at the conclusion of the contract (at the confirmation of the order)
  - 30%, after **uviterno** ag has declared to the Orderer that it is ready to ship the object of delivery or significant parts of the object of delivery (before delivery)
  - 30% within 30 days from the invoice dateThe obligation to pay shall be deemed to have been fulfilled when the corresponding sum of Swiss Francs is made freely available at of **uviterno** ag's business address. If a payment is linked with currency exchange then the Orderer shall be liable for bill discount, commission and collection charges.
- b. If partial payments or the security to be provided upon the conclusion of the contract are not made according to the contract, then **uviterno** ag is entitled to adhere to the contract or to withdraw from the contract and in both cases to demand damages.  
If the Orderer is behind with a payment for any reason, or if **uviterno** ag must seriously suspect that due to a circumstance that has arisen after the conclusion of the contract it shall not receive the Orderer's payments in full or on time, then **uviterno** ag shall be authorised, without limitation of its legal rights, to suspend the further implementation of the contract and hold back deliveries that are ready for shipping, until all outstanding payments have been made by the Orderer, new Terms and Conditions of Payment and Delivery have been agreed upon or **uviterno** ag has received sufficient securities. If such an agreement cannot be reached within an appropriate deadline determined by **uviterno** or if **uviterno** ag does not receive sufficient securities, then it shall be entitled to withdraw from the contract and demand damages.
- c. If the Orderer does not adhere to the agreed payment deadlines, then the proper warning procedure shall take place until enforcement. While there are current warnings or enforcements in place, **uviterno** ag shall be entitled to hold back deliveries and require appropriate prepayment.
- d. If the Orderer is behind with its payments then **uviterno** ag can demand default interest as well as reimbursement of operating costs from the due date onwards. If the Parties do not have any agreements to the contrary, then in agreement with the Swiss Code of Obligations [OR] 104 Paragraph 1 an interest rate of 5% of the amount for which default interest is due shall be deemed to have been agreed upon.  
If the Orderer is more than three months behind with its due payments then **uviterno** ag can withdraw from the contract through written notice to the Orderer and demand reimbursement of the damages that it has incurred, in addition to the in-

terest and operating costs according to this clause.

## 5. Title retention

- a. uviterno ag remains the owner of all its deliveries until it has made payment in full in accordance with the contract. The Orderer is obliged to take all measures that are necessary for protecting uviterno ag's property, as soon as it is in possession of the delivery or parts of the delivery.
- b. The Orderer shall maintain the delivered objects at its own costs for the duration of the title retention and insure it against theft, breakage, fire, flood and other risks for the benefit of uviterno ag.

## 6. Lead times

- a. The lead time starts as soon as the contract has been concluded and all prepayments and securities that may have been agreed upon have been paid. The lead time shall be deemed to have been adhered to when the notification of readiness for shipment has been sent to the Orderer by the time it expires.
- b. Adherence to lead times shall require performance of contractual duties by the customer.
- c. The lead time shall be extended appropriately,
  - i. if uviterno ag does not receive the information it requires for fulfilment of the contract in good time, or if the Orderer changes these afterwards and thereby causes a delay to the deliveries or services. uviterno ag also reserves the right, in the event of subsequent changes to information by the Orderer, to check its price calculations and adapt these when necessary. uviterno ag shall inform the Orderer of price increases as soon as it has knowledge of these;
  - ii. if the Orderer or third parties are late with the work to be carried out by it or with the fulfilment of its contractual duties, especially when then Orderer does not adhere to the payment terms.
  - iii. If the delivery is delayed due to a circumstance listed in clause 15 or due to an action or failure to act of the Orderer, which also includes stopping the services in accordance with point 4 and clause 16 or other circumstances that can be traced back to the Orderer, then uviterno ag shall be entitled to extend the delivery deadline by an appropriate extent under consideration of all circumstances that are present in the individual case. This Provision shall apply regardless of whether the reason for the delay occurs before or after the agreed delivery deadline.
- d. If a specific deadline is agreed instead of a delivery deadline, then this shall be equivalent to the last day of a delivery deadline.

## 7. Packaging

uviterno ag shall invoice the packaging as a separate item and this shall not be accepted back. If, however, it has been designated as property of uviterno ag then the Orderer must send it back free of charge to the place of dispatch.

## 8. Transfer of benefits and risk

- a. Benefits and risk are transferred to the Orderer at the latest with the dispatch of the deliveries ex works.
- b. If the shipping is delayed on the request of the Orderer or for other reasons for which uviterno ag is not responsible then the risk shall be transferred to the Orderer at the time that was initially intended for the delivery ex works. From this

point in time onwards, the deliveries shall be stored and insured at the costs and risk of the Orderer.

## 9. Shipping, transport and insurance

- a. uviterno ag must be notified of special requests relating to shipping, transport and insurance in good time. The transport shall be at the cost and risk of the Orderer, insofar as not other written regulation that has been accepted by uviterno ag is present.
- b. Objections in connection with the shipping or transport must be sent without delay by the recipient of the goods to the last freight carrier upon receipt of the deliveries or the freight documents.
- c. The insurance against damages of any kind is the responsibility of the Orderer.

## 10. Checking and acceptance of deliveries and services

- a. uviterno ag shall check the deliveries and services before shipping as far as is usual. If the Orderer demands checks that go further, then these shall be agreed specially and the increased expense shall be paid by the Orderer.
- b. The Orderer must check the deliveries and services within a reasonable deadline upon received and inform uviterno ag of any defects that there may be, in writing without delay. If it does not do this, the deliveries and services shall be deemed to have been approved.  
The notification must be made in writing and describe the defect.
- c. If a defect could cause damages, then the Orderer must make uviterno ag aware of this immediately in writing. The Orderer bears the risk for damages to the delivered object that result from neglecting to provide information. The Orderer must take appropriate measure for the limitation of damages and must insofar adhere to the instructions of uviterno ag.
- d. Defects that have been notified must be eliminated as soon as possible and the Orderer must provide opportunity for this. After the elimination of the defects an acceptance check shall take place on the request of the Orderer or of uviterno ag.
- e. The completion of an acceptance check as well as the determination of the conditions that shall apply to it require a special written agreement subject to clause 10.d. If such an acceptance check takes place then a written report must be compiled about it that must be signed by the Orderer and by uviterno ag or by its representatives.  
The Orderer must not refuse the acceptance and/or to sign the acceptance report due to minor defects, especially those that do not considerably impair the functioning of the deliveries or services. Such defects must be eliminated by uviterno ag without delay.
- f. The acceptance shall be deemed to have taken place,
  - if the acceptance check cannot be carried out on the intended date for reasons for which uviterno ag is not responsible;
  - if the Orderer refuses the acceptance without being entitled to do so;
  - if the Orderer refuses to sign an acceptance report compiled according to clause 10.e;
  - as soon as the Orderer uses deliveries or services of uviterno.

- g. In relation to defects of any kind in deliveries or services, the Orderer has no rights or claims except for those expressly named in clause 11.

## 11. Warranty, liability for defects

### a. Warranty period (guarantee period)

- i. The obligatory warranty period is 12 months. It starts at the dispatch of the deliveries ex works or at any agreed acceptance of the deliveries and services or, insofar as **uviterno ag** has taken on the assembly, when this ends. If shipping, acceptance or assembly are delayed for reasons for which **uviterno ag** is not responsible, then the warranty period ends at latest 18 months after notification of readiness to ship.
- ii. Within the obligatory warranty period, the obligatory warranty period shall start again for replaced or repaired parts and shall last six months from replacement or completion of the repair; at most, however, until expiry of the period that is twice the warranty period in accordance with clause 11.a.i. For all other parts of the delivered object, the period specified under clause 11.a.i shall be extended only as far and for as long as the interruption to use of the delivered object, which was caused by the defect, lasts.
- iii. The guarantee shall end early if the Orderer or third parties carry out improper changes or repairs or if, when a defect has arisen, the Orderer does not immediately take all appropriate measures for reduction of damages and give **uviterno ag** the opportunity to eliminate the defect.
- iv. The breaking of a guarantee seal leads to the immediate cancellation of all guarantee claims against **uviterno ag**.

Every breaking of a guarantee seal requires the written permission of **uviterno ag**. If the breaking of the guarantee seal has been approved then the Orderer is obliged to prove that the broken guarantee seal was replaced by a new unbroken guarantee seal that was only issued by **uviterno ag**. If the Orderer cannot provide the proof, then every guarantee claim against **uviterno ag** shall be cancelled.

### b. Liability for defects in material, design and implementation

- i. Upon written request from the Orderer, **uviterno ag** commits to improve or replace - according to the Orderer's choice - all parts of its deliveries that have become damaged or unusable by the end of the obligatory warranty period as a proven result of poor material, erroneous design or defective implementation as soon as possible. Replaced parts shall become the property of **uviterno ag**, insofar as it does not expressly reject these.
- ii. **uviterno ag** shall not be liable for defects that are due to the materials provided by the Orderer or a design prescribed or determined by the Orderer.
- iii. **uviterno ag** shall only be responsible for those defects that occur under the contractually provided operating conditions and with proper use of the delivered object.
- iv. **uviterno ag** shall not be responsible for defects that can be traced back to circumstances arising after the transfer of risk, such as e.g. defects due to poor maintenance, improper installation or operation, erroneous repair by the Orderer or changes without the written agreement of **uviterno ag**. **uviterno ag** shall not be responsible for normal wear and tear or for deterioration.
- v. In the absence of an agreement to the contrary, the necessary transport of the delivered object or

the parts of the delivered object to and from **uviterno ag** in connection with the elimination of defects for which **uviterno ag** is responsible shall take place at the risk and costs of **uviterno ag**. In the event of such a transport, the Orderer must follow the instructions of **uviterno ag**. If the Orderer acts in its own authority and organises the transport of the delivered object to **uviterno ag** without receiving or following corresponding instructions from **uviterno ag**, then the Orderer bears the risks and costs caused by it in their full amount.

- vi. **uviterno ag** bears the costs of subsequent improvement that become due in its factory. If the subsequent improvement is not possible in **uviterno ag**'s factory, then the Orderer shall bear the costs linked with it, insofar as they exceed the usual material, transport, personnel, travel and overnight costs as well as the costs for the installation and removal of the defective parts.
- vii. If the elimination of the defect does not take place in **uviterno ag**'s factory, then the Orderer must give **uviterno ag** access to the delivered object at its own costs and be responsible for any procedures in relation to equipment that is not part of the delivered object, insofar as this is necessary for eliminating the defect.
- viii. In the absence of any agreement to the contrary, the Orderer must bear all additional costs that **uviterno ag** incurs during the elimination of the defect due to the fact that the location of the delivery object differs from the destination specified for delivery by **uviterno ag** to the Orderer at the conclusion of the contract or - if no destination was specified - from the place of delivery.

### c. Secondment of staff

- i. By written request, the Orderer can request **uviterno ag** staff for assembly, repair and commissioning work.
- ii. The secondment of **uviterno ag** staff for the monitoring of assembly, repair and commissioning work must be contractually agreed. The number and the qualification of the seconded staff from **uviterno ag** as well as the estimated duration of the secondment are part of the contractual agreement. **uviterno ag** commits to make specialist personnel available, in order to
- give the Orderer and its representatives the necessary instructions for assembly, repair and commissioning work;
  - to monitor how the instructions of **uviterno ag** are implemented.
- iii. The Orderer must inform **uviterno ag** of the date at which the place for the assembly, repair or commissioning works and the start of the monitoring shall be ready, with a lead time of at least one month.
- iv. The Orderer must supply **uviterno ag** with all information related to regional regulations, which **uviterno ag** requires for the proper fulfilment of its duties, in good time. **uviterno ag** must ensure that its staff adheres to these regulations.
- v. Before the start of the work, the Orderer shall make **uviterno ag** aware of all applicable safety provisions that apply at the place of assembly, repair or commissioning and **uviterno ag** must ensure that its staff adhere to these safety provisions.
- vi. **uviterno ag** must make the Orderer aware of special risks that could result from the completion of the assembly, repair or commissioning work.

**vii.** The Orderer commits to fulfil the following conditions:

- The monitoring shall not be carried out in an unhealthy or dangerous environment. All required safety and precautionary measures must be taken before the start of the monitoring and maintained throughout the entire duration of the monitoring.
- The **uviterno ag** has the opportunity to receive board and lodging that is appropriate and suitable for purpose, near to the place of assembly, repair or commissioning; additionally it has access to a canteen, sanitary facilities which correspond to international Standards, as well as medical treatment.
- The Orderer must make the necessary storage options available to the seconded staff of **uviterno ag** immediately, in order to protect the personal possessions of the **uviterno ag** staff from theft and deterioration.
- The Orderer must make appropriate office rooms available to the seconded staff at the place of assembly, repair or commissioning. These must be equipped with telephone, fax and internet connections.

**d. Liability for warranted properties**

- i.** Warranted properties are only those that have been described as such in the confirmation of the contract or in the Specifications. The warranty shall last, at the longest, until the warranty deadline.
- ii.** If the warranted properties are not, or are only partially fulfilled, the Orderer firstly has a claim to the immediate subsequent improvement by **uviterno ag**. For this purpose, the Orderer must grant **uviterno ag** the required time and opportunity.
- iii.** If a repair or a subsequent improvement is not successful, or is only partially so, then the Orderer has a claim to the damages agreed for this case, or, insofar as such an agreement was not made, to an appropriated reduction of the purchase price, whereby the reduction may be at most 15% of the purchase price.

If the defect is so serious that it cannot be eliminated within an appropriate deadline and if the deliveries or services are not usable for the stated purpose or are only so to a considerably reduced extent, then the Orderer has the right to refuse the acceptance of the defective part, or if a partial acceptance is economically infeasible to it, then to withdraw from the contract. **uviterno ag** can only be obliged to reimburse those amounts that have been paid to it for the parts affected by the withdrawal.

**e. Exclusions from the liability for defects**

Damages that cannot be proven to be a consequence of poor material, erroneous design or defective implementation shall be excluded from the guarantee and liability, i.e. those that are as a consequence of natural wear and tear, defective maintenance, failure to adhere to operating regulations, excessive use, unsuitable operating materials, chemical or electrolytic influences, construction or assembly works that were not carried out by **uviterno ag**, and as a consequence of other reasons for which **uviterno ag** is not responsible.

**f. Deliveries and services of Subcontractors**

For deliveries and services of Subcontractors that were prescribed by the Orderer, **uviterno** shall

only take on the guarantee within the scope of the guarantee obligations of the Subcontractors concerned.

**g. Exclusivity of the warranty claims**

In relation to defects of any kind in deliveries or services, as well as due to the absence of warranted properties, the Orderer has no rights or claims except for those expressly named in clause 11.

**h. Liability for secondary obligations**

**uviterno ag** shall only be liable for the Orderer's claims due to poor advice and the like or due to infringement of any secondary obligations in the case of unlawful intent or gross negligence.

**12. Splitting of liability for damages caused by the delivered object**

**a.** **uviterno ag** shall not be liable for damages that were caused by the delivered object after delivery has been completed, if the delivered object is in the possession of the Orderer. Furthermore, **uviterno ag** does not take on any liability for damages to the products manufactured by the Orderer or to goods that include a product manufactured by the Orderer.

If a third party claims liability against **uviterno ag** within the meaning of the previous paragraph, then the Orderer must reimburse **uviterno ag**, defend it and indemnify it.

If a third party makes a claim described in this clause against one of the Parties then the Party concerned must inform the other in writing without delay.

**uviterno ag** and the Orderer are obliged to present themselves to a Court or Court of Arbitration, that shall check the claims for damages brought against one of the Parties due to the damage allegedly caused by the delivered object.

**13. Contract termination by uviterno ag**

**a.** Insofar as unforeseen events considerably change the economic significance or the content of the deliveries and services or have a considerable effect on the work of **uviterno ag** as well as in the case of subsequent impossibility of fulfilment, the contract shall be adapted appropriately. Insofar as this is economically not reasonable, **uviterno ag** has the right to terminate the contract or the parts of the contract concerned.

**b.** If **uviterno ag** would like to make use of the contract termination, it must inform the Orderer of this immediately after recognition of the consequences of the event and even then, when an extension of the delivery deadline has firstly been agreed. In the case of contract termination, **uviterno ag** has a claim to reimbursement of the deliveries and services that have already been provided. The Orderer's claims for reimbursement of damages due to such a contract termination are excluded.

**14. Exclusion of further liabilities of uviterno ag**

All cases of contractual infringement and their legal consequences as well as all of the Orderer's claims, regardless of which legal ground they are made on, are conclusively regulated in these GTCs. In particular, all claims for damages, reduction, cancellation of the contract or withdrawal from the contract that are not expressly named are excluded. In no case does the the Orderer have valid claims for reimbursement for damages that have not occurred on the delivered object itself, such as namely production failure, loss due to wear, loss of contracts, lost profits as well as

from other indirect or direct damages. This exclusion of liability does not apply to unlawful intent or gross negligence of **uviterno ag**; however, it does apply to unlawful intent or gross negligence of assistants. Furthermore, this exclusion of liability is not valid insofar as mandatory law is in conflict with it.

#### **15. Force majeure**

Each Party shall be entitled to stop its contractual duties insofar as their fulfilment is made impossible or unreasonably more difficult through force majeure. This includes the following: Work conflicts and all circumstances beyond the control of the Parties such as fire, war, general mobilisation, uprising, requisition, confiscation, embargo, limitation of energy consumption, restrictions to exchange and exports, epidemics, natural catastrophes, extreme natural events, terrorist acts as well as defective or delayed deliveries by Subcontractors due to circumstances listed in this clause.

A circumstance occurring in accordance with this clause before or after the conclusion of the contract shall only entitle stopping insofar as its effects on the fulfilment of the contract were not yet foreseeable at the conclusion of the contract.

The Party claiming an occurrence of force majeure must inform the other Party immediately and in writing of the start and the end of such a circumstance. If a Party neglects to provide such information, then the other Party is entitled to demand replacement of all additional costs that it has incurred due to the circumstance about which it has not been informed.

If force majeure prevents the Orderer from fulfilling its obligations then it must reimburse **uviterno ag**'s damages for costs incurred for security and for protecting the delivered object.

#### **16. Foreseeable non-fulfilment**

Regardless of regulations to the contrary in these GTCs concerning stop the fulfilment, each Party has the right to stop the fulfilment of its contractual obligations if the circumstances show beyond doubt that the other Party shall not fulfil obligations. A Party that is stopping to fulfil its contractual Obligations must inform the other Party of this immediately and in writing.

#### **17. uviterno ag's right of recourse**

If injuries or damage to the possessions of third parties takes place due to actions or failure to act by the Orderer or its assistants and if for this reason there is a claim against **uviterno ag**, then it has a right of recourse to the Orderer.

#### **18. Binding nature of the contract**

The contract shall remain binding in all other parts even if individual Provisions are legally ineffectual or unenforceable.

If such a Provision of these GTCs shall prove to be completely or partially ineffectual or unenforceable, then the Contracting Parties shall replace these Provisions with a new, enforceable Provision that is as close as possible to the legal and economic result of the original Provision.

#### **19. Jurisdiction and choice of law**

These General Terms and Conditions of Sale, Delivery and Guarantee (GTC) are subject to Swiss Law. The place of jurisdiction is CH-9442 Berneck, Switzerland. Only the ordinary courts at the headquarters of **uviterno ag** shall apply to all disputes resulting from or in connection with contracts between Orderers and **uviterno ag**.