

Company name	UTG UNIVERSALTECHNIK GMBH
Address	8051 Graz – Thalstrasse 14 / Austria
Document	utg vkb 190101 rev 02 final-EN.docx

<b>Subject</b>	<b>„GENERAL TERMS AND CONDITIONS OF SALE“</b>
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## 1 Definitions

"CUSTOMER"	means the person, firm or company named in the Purchase Order placed with UTG.
"CONTRACTOR" or "UTG"	means UTG UNIVERSALTECHNIK GMBH
"TCS"	means these General Terms and Conditions of Sale
"PURCHASE ORDER"	means a written agreement (contract, order) between the Customer and the Contractor.

## 2 Validity of General Terms and Conditions of Sale (TCS)

These TCS shall generally be valid for all our quotations, supplies and services as well as for any possible subsequent delivery or spare parts delivery and other additional supplies or services unless the contracting parties have expressly agreed otherwise in writing.

The Customer agrees that in case of doubt UTG's TCS shall take priority over the Customer's Terms of Business even if UTG has not objected to the latter. Performance of contract actions by UTG shall not be considered as consent to any terms and conditions deviating from UTG's TCS. In case of any doubt as to how the contract is to interpret such doubt is to clear out by making agreements which would generally apply to similar cases.

## 3 Validity of Quotations, Acknowledgement of Orders

Our quotations are subject to change. Purchase Orders/Contracts/Orders by the Customer shall only be deemed concluded or valid on the dispatch of our written Order Acknowledgement.

It is the responsibility of the Customer to verify our Order Acknowledgement immediately on receipt. This verification is needed to ascertain that we have correctly and completely comprehended the terms and data contained in the Customer's Purchase Order. Our Order Acknowledgement, any attachments included, shall be considered fully accepted by the Customer if the Customer does not notify UTG in writing of any objections to our Order Acknowledgement within 10 working days from the issuing date of our Order Acknowledgement.

## 4 Intellectual Property Rights in Information and Documents/Non-Disclosure

Any drawings, sketches, cost estimates, quotations and other documents such as brochures, catalogues, samples, specimen, presentations and the like remain the sole property of UTG. Any use of such documents, in particular processing, execution, reproduction including reproduction in extracts, distribution, public presentation, provision to others, shall only be permissible with the explicit consent of UTG. All documents stated above may be claimed back by us at any time.

In case no contract is concluded, all documents and information provided by UTG must be unrequested and immediately returned to UTG. The Customer undertakes to non-disclose any information or knowledge obtained in connection with the business relation with UTG to any third party.

## 5 Prices (Purchase Price, Wages), Indexation

Unless otherwise noted, all prices indicated by UTG are Value Added Tax (VAT) excluded prices. For domestic Customers, the legal VAT shall be added to the indicated prices on invoicing. All prices indicated by UTG are valid ex works Graz, without packing, without shipment and without transport insurance.

Unless otherwise agreed, UTG shall have the right to invoice supplies and services to be delivered by UTG as they actually accrue and in accordance with the resulting time, effort and costs.

Where applicable, the hourly rates agreed shall be invoiced for every working hour, travel time included. Commenced hours, whether working hours or travel time, shall be invoiced as full hours.


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In case of delivery free Customer's address, dispatch route and type shall be determined by UTG. The Customer shall ensure reasonable access conditions for a proper delivery.

An indexation clause assuring the stable value of principal and subsidiary claims shall expressly be considered agreed. The indexation shall be calculated on the consumer price index monthly announced by the Austrian Central Bureau of Statistics or on the basis of another index superseding this index.

## 6 Terms of Delivery, Delivery Date, Complaint, Passing of Risk, Packing

Terms of Delivery such as FCA, FOB, CIF indicated in the quotation or contract refer to and are meant as stated in the most recent issue of the INCOTERMS.

The indication of delivery times/delivery dates is made in our best discretion and shall be considered non-binding. Delivery dates agreed binding by UTG shall lose their validity in cases of force majeure which also include significant production failures, transport difficulties and strikes in the works of our Contractors. In the case of a delay in the delivery by UTG, the Customer shall be obliged to extend the original date by eight weeks calculated from the receipt of the delivery time extension by UTG before the Customer may assert further rights. The Customer shall accept minor delays in delivery without obtaining the right for claims for damages or rescission of contract.

The Customer shall be entitled to claims for damage for delays in delivery and/or non-performance only if we or persons employed by us in performing an obligation have caused the damage deliberately and grossly negligent. Complaints/damages shall only be admitted by us if we are notified of them in writing within ten days from acceptance of the goods!

In any case, passage of risk to the Customer shall be effective on dispatch of the goods from our works/warehouse in Graz. In the event that dispatch is impossible without UTG's fault, passage of risk to the Customer shall be effective as soon as we notify the Customer of our readiness for dispatch.

Packing, if expressly demanded by the Customer or required for safety reasons, shall be charged to the Customer. Packing material shall not be taken back by UTG and must be disposed of by the Customer in accordance with the valid laws and directives.

## 7 Terms of Payment, Due Date, Interest for Delay, Partial Performance, Partial Payment, Cash Discount

Our invoices shall be paid net and exempt from charges. Payments are due within 20 days. For payments within 10 days a 2% discount is given. Payments with full discharge of debtor may only be made directly to the account of UTG. If our invoice is not reasonably objected to in writing within two weeks, it shall be considered as approved. UTG shall expressly hold the right to invoice on a monthly basis if the period of performance extends three months.

Partial performance and partial deliveries as well as partial invoices must be accepted by the Customer and be paid in accordance with the payment terms agreed.

The Customer shall not have the right to hold back or offset payments against guarantee claims or other claims by the Customer which are not admitted by UTG.

Even in the event of excusable delays in payment, UTG shall have the right to charge interest on defaulted payment pursuant to the "Zinsenrechts-Änderungsgesetz" (Late Payment of Commercial Debts (Interest) Regulations) in the amount of 10% above the valid basis rate of the Austrian central bank (OeNB). This shall not affect the right to claim reimbursement for verified higher interest rates.

In addition, the Customer shall reimburse UTG for reminder fees or collection charges.

We will accept bills of exchange only from case to case and only if special agreements were made. Any collection, discount or other charges shall be at the expense of the Customer. The day of payment shall be the day where we are notified of the payment and have the amount at our disposal. UTG reserves the right to refuse offers for payment with bills of exchange or cheques without stating a reason.


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Breach of the terms and conditions of payment or declining creditworthiness of the Customer shall entitle UTG after delivery to suspend other not fulfilled business contracts until the Customer has met his obligations. Such suspension shall not entitle anyone to claim damages from UTG. Breach of payment terms or declining creditworthiness shall also entitle UTG to demand advance payment for any outstanding deliveries or, after a reasonable period of time, to withdraw from the contract or claim damages for failure of performance.

Unless otherwise agreed in writing, payment of our claims shall be concurrent with the provision of goods or services by us.

A cash discount deduction shall only be accepted in the event of a corresponding explicit agreement and only within the scope thereof. A payment shall only be considered effected if the amount has been credited to our bank account by the due date. If the Customer fails to effect just one partial payment within the period agreed for a cash discount he shall lose his right to a cash discount not only for this partial payment but also for all other past or future partial payments.

## 8 Reminder Fees and Collection Charges

The Customer shall be obliged to reimburse UTG for any reminder fees or collection charges, as far as they are required for the assertion of our legal rights and adequate in relation to our claim, arising from the Customer's default of payment even in case of excusable delays. In the event that UTG has to commission a debt collection agency, the Customer shall in particular undertake to bear all related costs up to the maximum rate debt collection agencies may charge pursuant to the valid regulation by the Austrian Federal Ministry of Economic Affairs and Employment. In addition, the Customer shall have to indemnify UTG for all further damages, especially for any additional interest accruing on possible credit accounts of UTG due to default of payment even in case of excusable delays.

## 9 Reservation of Ownership

The goods and/or services shall remain our property until all our accounts receivable, including all expenses and charges, have been settled. As long as the accounts receivable have not been fully settled, a resale of these goods and/or services shall only be permissible if we have explicitly given our prior consent in writing. The Customer shall be obliged to inform UTG prior to the resale in full detail of the party the goods/services are resold to including the name of the Customer and the full address. Should we approve of the resale, the Customer shall be obliged to assign the purchase money claim to us and we shall have the right to inform the third-party debtor of this assignment. In case of several claims, the payments of the debtor shall primarily be assigned to those of our claims which are not secured by a reservation of ownership or other security provisions (any more).

In the event of a delay of payment, the Customer shall a priori agree that UTG shall have the right to collect the goods at any time and at the expense of the Customer. The assertion of the reservation of ownership and/or the collection of the goods shall only be considered a withdrawal from the contract if such a withdrawal has explicitly been declared.

Any specimen, drawings or other documents provided to UTG by the Customer, including documents which have not led to a contract, shall be at the disposal of the Customer. Should such documents not be collected within six weeks from tendering or order execution UTG shall be entitled to destroy these documents.

## 10 Default of Acceptance, Non-Acceptance by the Customer

In case of default of acceptance by the Customer, we shall be entitled to store the goods at our premises and invoice an appropriate storage charge for every commenced calendar day while insisting on the fulfillment of the contract or, after having reasonably extended the original period, to withdraw from the contract and utilize the goods otherwise. In the event of such withdrawal, a contract penalty of 20% of the invoice value shall be deemed agreed.

Should the Customer not accept the goods/services, UTG, after having extended the original term by fourteen days, shall have the right to withdraw from the contract and/or claim damages for non-performance of the contract. In this case, we shall be entitled to claim 30% of the agreed total order value without having to provide evidence or demand the reimbursement of the actual damage.


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## 11 Unilateral Change of Performance / Rescission of Contract

Any alterations or amendments to the contract desired by the Customer shall be made in writing. UTG shall have the right to refuse such alterations and/or amendments to an existing contract. Unless agreed otherwise, alterations and/or amendments shall be charged separately on the actual time and material basis and delivery dates shall be agreed anew.

Justifiable and appropriate alterations to our contractual obligations, especially minor delays in delivery and payment from our side, shall a priori be considered as approved. UTG shall be entitled to make justifiable and minor alterations which do not change the price. This shall especially be valid for minor delays in delivery. In case of delays in delivery, we shall inform the Customer of the period of delay to be expected as soon as we will be able to estimate the actual delay in delivery but no later than one week before the originally agreed delivery date.

The Customer shall have no right to withdraw from the contract unless the Customer reimburses UTG for the actual work already done and any possible damages including loss of profit.

UTG shall be entitled to withdraw from the contract if the provision of the contract goods becomes impossible due to delays in delivery or non-delivery by UTG's own Contractors provided that UTG has made all reasonable efforts to procure the required goods/services elsewhere. For the above mentioned causes for a rescission of contract by UTG, the Customer shall have no right to claim damages.

## 12 Warranty / Liability / Limitation of Liability

UTG reserves the right, with the exception of those cases where the right of conversion is entitled to the Customer by law, to meet a warranty claim at our discretion by improvement, replacement or price reduction.

The Customer shall be obliged to prove that the defect has already existed at the moment of delivery. The Customer shall check all goods supplied for defects immediately at delivery and inform UTG as soon as possible, at the latest within 14 days after delivery, of the nature and scope of the detected defects. In case of latent defects, UTG shall be notified immediately at the detection of such defect. Should the Customer lodge no complaint or fail to lodge the complaint within the stipulated time the delivery shall be considered accepted and, as a consequence, the assertion of warranty claims or claims for damages or the right of avoidance on account of mistake shall be excluded.

UTG shall be liable to the extent of duty of care of a proper engineer. If technical deficiencies of a plant are the result of faulty engineering services by UTG, we shall be obliged to remedy such deficiencies at our own expense.

Unless otherwise agreed and stipulated in the contract between the Customer and UTG, UTG shall assume no liability for the materials selected for the manufacture of a plant, in particular as to their stability, strength and fire-retarding properties, or for the structural design and stability of a plant.

**Our liability for contracted services/supplies shall be limited to the assignment of the liability claims which we have against the original Contractor of the contracted services/supplies.**

**Wear and tear parts are explicitly excluded from warranty and liability.**

**Any liability for consequential loss, in particular consequential harm to property or persons caused by a defect, pure property damages, loss of profit, loss of production, downtime, third party damages, shall be excluded. In addition, the Customer shall not be entitled to take recourse according to the Product Liability Act.**

**The liability of the Contractor shall be limited in its amount and scope to those damages which the liability insurance of UTG is obliged to cover according to the AHTB (General Terms for Liability Insurance of Authorized Engineering Offices).**


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### 13 Compensation for Damages

In cases of slight negligence, claims for damages shall be excluded; this shall not apply to injuries to persons. Claims for compensation shall become time-barred after three months from having notice of the damage and the injuring party, in any case after three years from provision of the services/supplies.

**In all possible cases, UTG shall only be obliged to compensation for damages if evidence for gross negligence or intention can be provided by the Customer.**

### 14 Product Liability

Any recourse claims against UTG taken by contract partners or third parties on grounds of "Product Liability" in the legal sense of the PHG (Product Liability Act) shall be excluded unless the party entitled to claim recourse can provide evidence that the defect was caused within the sphere of responsibility of UTG and under at minimum grossly negligent conditions.

### 15 Prohibition to Suspension or Withholding of Performance

Justified complaints shall not entitle to withhold the total invoice amount but merely an adequate portion of the amount invoiced.

### 16 Form Requirements

All agreements, additional amendments, supplements, subsidiary agreements and the like must be in written form to be valid and require an original signature or a qualified electronic signature. Declarations, notifications (with the exception of notices of defects) and the like addressed to UTG must be in writing to be legally effective and also require an original signature or a qualified electronic signature.

### 17 Choice of Law

Austrian substantive law shall apply to this contract; the applicability of the United Nations Convention on Contracts for the International Sale of Goods shall be excluded.

### 18 Jurisdiction Agreement

Jurisdiction for any and all disputes arising out of this contract shall rest with the competent court for such matters in the city in which our registered office is located. We shall also be entitled to take any and all of our claims arising out of this contract to the Place of Jurisdiction of the contracting party.

### 19 Agreement to Arbitrate - Arbitration

The contracting parties (Contractor and Customer) may agree upon a competent Court of Arbitration.

#### 19.1 Domestic Arbitration

Jurisdiction for any and all disputes arising out of this contract shall be finally settled by the competent Court of Arbitration of the Austrian Federal Economic Chamber, in accordance with the related Rules of Arbitration and Conciliation, by an arbitration panel.


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## 19.2 International Arbitration in the Austrian Federal Economic Chamber

All disputes arising out of this contract or related to its violation, termination or nullity shall be finally settled under the Rules of Arbitration and Conciliation of the International Arbitral Centre of the Austrian Federal Economic Chamber in Vienna (Vienna Rules) by more arbitrators appointed in accordance with these rules.

Appropriate supplementary provisions:

- The number of arbitrators shall be three;
- The substantive law of Austria shall be applicable;
- The language to be used in the Arbitral proceedings shall be English.

## 20 Property Rights to Documents provided by the Contractor

All and any data, documents, objects, certificates, records, and correspondence provided by the Customer to the Contractor in connection with the fulfilment of his order shall be provided free of any legal claims, i.e. unencumbered by third party rights (such as property rights, patent rights and the like).

### 20.1 Intellectual Property Rights

The Customer shall be obliged to take the appropriate judicial measures to make sure that all data, project documentation and results of labour – irrespective of their nature (tangible or intangible) – provided by the Customer to the Contractor for his use are the sole property of the Customer and may be used by the Contractor unencumbered by third party rights and without any limitations regarding time or place.

### 20.2 Support with the Defence of Claims

Upon request, the Customer is obliged to support the Contractor without any additional compensation in defending any claim, enforcement and lawsuit resulting or ensuing from actions and/or omissions by the Customer. Such support shall include - but not be limited to – the analyses and investigation of such claims, enforcements and lawsuits, the related consultation with the Contractor, and giving testimony in favour of the Customer in any related lawsuit or dispute resolution.

The Customer is also obliged to provide the Contractor with the assistance of all persons and legal entities employed by the Customer. The obligations and responsibilities stipulated in this article shall apply in addition to the other obligations and responsibilities set forth in this contract and shall neither limit nor weaken said obligations and responsibilities.

All rights in and to the documents, drawings, materials or any other information, concepts, copyrights, patents and the like, provided by the Contractor to the Customer, as well as the right to register any related industrial property rights thereof or of any specific work results produced in connection with the order fulfilment shall remain the sole property of the Contractor.

The Customer undertakes to transfer gratuitously all property rights and/or intellectual property rights in work results and to provide all necessary documents and assistance required for acquiring the property rights.

### 20.3 Indemnification

The Customer shall completely indemnify and hold harmless the Contractor from and against any and all claims, demands, costs, expenses, liabilities, causes of action and damages of every kind and character (including lawyers' fees) which may be asserted against him by any third party in relation to circumstances which the Customer is responsible for.

In case of a lawsuit or an imminent lawsuit against the Contractor, the Customer shall, upon Contractor's request, take any measures necessary (at his own cost and expense) to indemnify and hold harmless the Contractor from and against all claims or to achieve an amicable settlement. The Customer shall align himself with the Contractor in case of a possible lawsuit.

In addition, contract item "Support with the Defence of Claims" shall apply.




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## 21 Final Provisions

### 21.1 Place of Performance

Place of performance for our services/supplies as well as the counter-performance shall be where our registered office is located – in 8051 Graz/Austria.

### 21.2 Cost Estimate

Cost estimates will be prepared to the best of our professional knowledge. However, we are unable to give a warranty for its correctness.

In case of a cost increase of more than 15% after contract award, the Contractor shall immediately notify the Customer thereof.

In case of an inevitable cost increase up to 15%, a separate notification of the Customer shall not be required and the additional costs may be invoiced without any further action.

Unless agreed otherwise, order modifications or additional orders may be invoiced at adequate prices.

Cost estimates shall only be provided for money. The amount paid for a cost estimate shall be credited to the Customer if an order is placed with UTG on grounds of this cost estimate.

### 21.3 Electronic Data Communication

The Customer agrees to the electronic preparation and transmission of invoices by UTG.

Data of the Customer, required for the order execution and financial accounting purposes, will be stored in our electronic data processing system. UTG shall solely use these data in line with the applicable legal provisions.

### 21.4 Right of Recourse according to §933b ABGB (Austrian Civil Code)

The right of recourse according to § 933b ABGB (Austrian Civil Code) shall be excluded.

### 21.5 Setoff

The Customer shall not be entitled to set off our claims against his counterclaims, whatever they may be.

### 21.6 Non-Assignment

Claims of the Customer against us may not be assigned to a third party in the absence of our explicit consent in writing.

### 21.7 Terminverlust (Acceleration of Debt Maturity)

Should part payment be agreed with the Customer, the Contractor shall have the right of acceleration of debt maturity as soon as the Customer fails to effect one part payment at the due date. Acceleration of debt maturity means that the Customer shall have to immediately pay all outstanding part payments without any grace period.

In case of consumer business, the above regulation shall apply analogously provided the following:

- UTG has fully met its contractual obligations;
- a part payment by the Customer is at least six weeks past due;

UTG has communicated a reminder to the Customer informing him that acceleration of debt maturity will become effective after a period of grace of two weeks.




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**21.8 Validity**

In the event that individual conditions and clauses of these TCS are altered or partially or completely annulled, for whatever reason, all other terms and clauses of these TCS shall maintain their unrestricted validity.

**21.9 Force Majeure**

The Contractor shall not be liable for violations of contract caused by events of force majeure.

Force majeure refers to extraordinary events or circumstances which were not known at the time of contract conclusion, which could not be foreseen and which are beyond the control of the Contractor and his partners in performing this contract such as acts of nature or war, terrorist attacks, strikes and boycotts as well as official decrees which bar the Contractor from fulfilling his contract or unduly complicate performance of the contract.

**21.10 Cooperation with Third Parties**

The Contractor reserves the right to have third parties perform supplies/services.

The Contractor shall only select partners for supplies/services who apply standards which are comparable to his own standards and who observe the same secrecy obligations as UTG.
