

General Terms & Conditions

Utimaco IS GmbH

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1. Definitions

“**T&C**” means these Utimaco standard terms and conditions consisting of the General Conditions and the Special Conditions.

“**ALA**” are the Additional License Authorizations listed on the Utimaco website at <https://go.utimaco.com/Additional-License-Authorizations>, which describe the rights of use in clause 15 for certain Products.

“**Work Results**” include, but are not limited to all copyrighted works, software, software components, source codes, algorithms, databases, information sheets, software documentation and manuals, manuscripts, documentation, presentations, drawings, images, graphics, marks, processes, reports, instructions, trademarks, designs, utility models, logos, concepts, added value, designs, sketches, drafts, circuit diagrams and know-how.

“**Order**” means the order placed by the Customer in relation to Products and Services.

“**Services**” means the services, which are agreed upon by the parties under the Contract, that are to be performed once, in installments or on a continuing basis.

“**Documentation**” means technical specifications such as product lists, hardware or software specifications, operating instructions, safety instructions, performance descriptions, data sheets and release notes.

“**Hardware**” means the hardware offered for sale by Utimaco under the terms of these T&C.

“**Customer**” is Utimaco’s contractual partner within the meaning of these T&C.

“**Work**” means Services and/or deliverables.

“**Parties**” are Utimaco and Customer.

“**Product(s)**” are Hardware and/or Software.

“**Software**” means any standalone software and/or firmware included in Hardware and licensed by Utimaco.

“**Utimaco**” means Utimaco IS GmbH, Germanusstraße 4, 52080 Aachen, Germany.

“**Contract**” means the contract concluded between Utimaco and the Customer under these T&C.

“**Confidential Information**” includes, but is not limited to trade secrets, products, manufacturing processes, know-how, inventions, business relations, business strategies, business plans, financial planning, personnel matters of the parties and their affiliated companies, the existence and the contents of the contract as well as all content relating to the project and the related discussions and negotiations of the parties. It is irrelevant whether the confidential information is marked “confidential” or “secret”.

General conditions

2. Scope of application

2.1 These T&C in the version valid at the time of the respective conclusion of contract governs the relations between Utimaco and the customer. They will also apply to all future contracts even if not expressly agreed again.

2.2 Any terms and conditions of the customer which conflict with or deviate from these T&C will not apply even if Utimaco fails to object to such terms or conditions in a given case. These T&C will also apply even if Utimaco, without reservation, performs work for the customer despite being aware of the existence of terms and conditions of the customer that conflict with or deviate from its own T&C.

2.3 To the extent that Special Conditions apply to the work that Utimaco performs, such Special Conditions will apply in addition to the General Conditions. In the event of any contradictions between the provisions listed below, they will apply in the following order of priority: (i) Special Conditions of these T&C, (ii) General Conditions of these T&C and (iii) the order.

2.4 These Terms & Conditions will apply only to entrepreneurs within the meaning of § 14 of the German Civil Code (*Bürgerliches Gesetzbuch – BGB*), public law corporations and public special funds.

3. Conclusion of the contract

3.1 All offers by Utimaco are subject to confirmation and are non-binding unless they are expressly marked as binding or contain a specific acceptance period. Utimaco may accept Customer’s Orders within a period of fourteen (14) days from their receipt. However, to be valid, acceptance by Utimaco must be express.

3.2 A legally binding contract will only come into being where both parties sign a contract or Utimaco confirms the Order or Utimaco begins to perform the work after receipt of the Order.

4. Remuneration and payment

4.1 Unless agreed otherwise, the remuneration for products and services, travel costs and per diem expenses as well as for other expenses will be determined by Utimaco’s offer or, in the absence of such offer, on the basis of the Utimaco price list valid at the time of the order/contract. The prices shown are always net prices to which value added tax at the statutory rate will be added.

4.2 All invoices are due and payable within fourteen (14) calendar days from receipt. The relevant date for determining receipt of payment is the date payment is credited to Utimaco’s account. At the end of the payment period, the Customer will be in default even if no payment reminder is issued. All payments must be made in euros unless the parties have agreed on another payment currency.

4.3 Unless agreed otherwise, the invoice will be issued at the time that the product(s) is/are delivered. Maintenance and support services and other Services will be invoiced in advance for the agreed service period. Deliverables will be invoiced after successful acceptance pursuant to clause 17 unless otherwise agreed in the respective Contract.

4.4 Outstanding amounts may be offset only

against claims that are undisputed or legally enforceable. The preceding sentence does not apply if the Customer seeks to set off a claim against Utimaco for defective performance against a claim by Utimaco for remuneration. The Customer is only entitled to set off its counterclaims or to withhold payment due to such claims where its counterclaims are uncontested or non-appealable. If, after the conclusion of the contract, Utimaco becomes aware of circumstances which are likely to substantially reduce the Customer's creditworthiness and which will jeopardize the Customer's payment of Utimaco's outstanding claims under the respective contract (including from other individual contracts to which the same (framework) contract applies), Utimaco may make delivery of outstanding products or services conditional upon payment in advance or provision by the Customer of security.

- 4.5 Utimaco may prohibit the Customer from further use of the products or services for the duration of its payment default. Utimaco may only assert this right for a reasonable period of time. This will not constitute a rescission of the contract.

5. Delivery, delivery time and transfer of risk

- 5.1 Unless the parties agree otherwise in the contract, delivery of the products is ex works (EXW, Incoterms 2020 - Utimaco Aachen, Germanusstraße 4, 52080 Aachen) or, in the case of delivery outside of the EU, FCA (Incoterms 2020). The place of performance and the place for cure (repair or replacement) are also at the address specified above. At the request and expense of the Customer, Utimaco will ship the products to another destination (shipment to a place other than the place of performance). Unless agreed otherwise, Utimaco is entitled to choose the means of shipment (in particular, the shipping company, shipping route and packaging).
- 5.2 The risk of accidental loss or deterioration of the products passes to the Customer, at the latest, when the products are handed over to it. However, if the products are shipped to a place other than the place of performance, the risk of accidental loss or deterioration of the products and of delay will pass to the Customer at the time that the products are handed over to the carrier or freight forwarder or other person or agent appointed to handle the shipping. Where an acceptance procedure has been agreed or is provided for by law, such date is the relevant date for determining when the risk is transferred. If the Customer fails to take delivery, the products will nonetheless be deemed to have been handed over or accepted.
- 5.3 Delivery periods and dates specified by Utimaco are always only approximate unless expressly fixed by Utimaco or agreed between the parties.
- 5.4 Compliance with delivery deadlines may require the issue by the competent authorities of an approval or the grant of an export or a

transfer license or other license under foreign trade law. If Utimaco is prevented from making timely delivery due to the time needed for the due execution of the application or approval procedure under foreign trade law, the delivery time will be extended appropriately by the duration of the delay caused by this official procedure.

- 5.5 Notwithstanding any rights that it may have as a result of the Customer's delay, Utimaco may extend delivery periods or postpone dates for the delivery of products and services by the period of time during which the Customer fails to fulfill its contractual obligations to Utimaco.
- 5.6 If delivery becomes impossible or is delayed due to force majeure, the Customer will have no right to performance by Utimaco. Force majeure or other events that were not foreseeable at the time that the contract was concluded include, but are not limited to the following: to the extent that they arise from events outside Utimaco's sphere of responsibility, disruptions to operations of all kinds, difficulties in obtaining materials or energy supplies, shipping delays, strikes, lawful lockouts, workforce shortages, shortages in energy or commodities, difficulties in obtaining the necessary governmental permits, governmental measures or failure by suppliers to deliver, to deliver on time or to deliver in compliance with their contracts as well as disruptions arising in connection with epidemics or pandemics. Where such events make delivery of the products or services substantially more difficult or impossible and if the impediment is not just of a temporary nature, Utimaco will be entitled to rescind the contract. In the event of a temporary impediment, the delivery dates and delivery periods for products and services will be extended or postponed for the duration of the impediment plus a reasonable start-up period thereafter. If as a result of the delay the Customer cannot reasonably be expected to accept the products or services, it may rescind the contract by giving Utimaco written notice without delay.
- 5.7 If Utimaco is late in delivering its products or services or if it becomes impossible for it to do so for any reason whatsoever, its liability for damages will be limited in accordance with clause 10 of these T&C.
- 5.8 Utimaco will insure the shipment against theft, breakage, transport damage, fire or water damage or other insurable risks only if the Customer expressly requests it to do so and assumes the related costs.

6. Taxes

The Customer will be responsible for any withholding taxes, import duties, levies or customs duties incurred for transactions in connection with these T&C. If the Customer is under a statutory duty to deduct or withhold taxes from the amounts payable under these T&C, the amount payable will be increased such

that, after all necessary deductions and/or withholdings have been made, Utimaco receives an amount equal to the amount that it would have received without such deductions or withholdings.

7. Retention of title (ROT)

In the case of contracts whose purpose is to transfer ownership, Utimaco will retain unqualified title to the products until the respective invoices, plus any additional claims, have been paid in full. To the extent that the Customer is granted any rights of use, these are always granted on a temporary basis and may be revoked by Utimaco until the respective invoices have been paid in full in accordance with sentence 1. Amounts that are justifiably retained for defects will be taken into account. In addition, Utimaco reserves title until such time as all of its rights under the business relationship with the Customer have been satisfied in full. As a result, the Customer may not create a pledge over or assign a security interest in the products. The Customer may neither pledge nor assign a security interest in any products that are subject to a retention of title or reservation of rights. The Customer may only resell the products, as a reseller, in the ordinary course of business where it has effectively assigned to Utimaco, its claims against its own buyer in connection with the resale and if it has made its transfer of ownership of the products to its buyer subject to payment by same. By concluding this contract, the Customer assigns to Utimaco, as security, any future rights against its buyers in connection with such sales, and Utimaco hereby accepts this assignment. Where the Customer is permitted to assign its rights to use products and services to a third party, it must impose on the recipient the contractually agreed restrictions on those rights.

8. Warranty, material defects, reimbursement of expenses

- 8.1 Utimaco warrants that the products have the contractually agreed characteristics. Customer acknowledges and agrees that the current state of the art does not permit the manufacture of software in such a way that it operates in an error-free manner in all applications and combinations.
- 8.2 The warranty period for defects is 12 months as from the commencement of the statutory limitation period. Except in the cases mentioned in the following sentence, damages claims for defects in quality also become time-barred after 12 months. The statutory time limits for recourse pursuant to § 478 of the German Civil Code (*Bürgerliches Gesetzbuch – BGB*) remain unaffected. The same applies, insofar as longer periods are prescribed by statute in § 438(1) No. 2 or § 634a (1) No. 2 of the German Civil Code, in the event of an intentional or grossly negligent breach of duty by Utimaco, in the event of its fraudulent

concealment of a defect as well as in the event of injury to life, body or health and for claims arising from the Product Liability Act (*Produkthaftungsgesetz – ProdukthaftG*).

- 8.3 If Utimaco is unable to remedy the defect or replace the product with a product that is free from defects, Utimaco will provide the Customer with a workaround. If it would be reasonable to expect the Customer to accept the workaround, it will be deemed a cure. Where a defect is cured, the relevant documentation will also be amended as far as is necessary. Where Utimaco provides a newer version of its software as part of its replacement duty, the Customer will be required to accept the newer version unless this would be unreasonably detrimental for the Customer. The Customer will allow Utimaco to install or remove software as part of its cure unless this would be unreasonable for the Customer.
- 8.4 The Customer may only exercise its warranty rights under sale of goods law if it has duly performed its statutory obligations to examine the goods and to give notice of any defects in them (§§ 377 and 381 of the German Commercial Code (*Handelsgesetzbuch – HGB*)). Information about Utimaco's products return process can be found in the current version of the "Global Maintenance Support Service Description", which is available on the Utimaco website at <https://go.utimaco.com/global-support-description>.
- 8.5 The Customer must report defects immediately in writing in a comprehensible and detailed form, stating all information useful for the identification and analysis of the defect. If available, the Customer will use Utimaco's relevant forms and procedures for this purpose.
- 8.6 Where the Customer has a warranty claim, it will initially only have a right to a cure (repair or replacement), which has to be exercised within a reasonable period of time. Utimaco may choose the type of cure that it wishes to provide. In the event that Utimaco fails to cure a defect after a reasonable number of attempts, the Customer may, under the statutory conditions, reduce the purchase price by a reasonable amount, rescind the contract or demand damages and indemnification of expenses. No right to rescission exists where defects are minor. Where the Customer has a right to choose the type of cure, it must choose a cure within a reasonable period of time, which is, as a rule, within 14 calendar days from when it had the opportunity to become aware of its right of choice.
- 8.7 Utimaco may demand indemnification for its expenses if (i) it takes action on the basis of a notification although no defect was in fact present unless the Customer could not have ascertained through reasonable effort that no defect was present, (ii) a notified defect is not

reproducible or otherwise demonstrable by the Customer as a defect, (iii) Utimaco incurs additional expenses due to the Customer's failure to fulfill its duties or (iv) the defect did not relate to a Product, Service or Work provided by Utimaco .

9. Defects in title

- 9.1 Utimaco will only be liable for infringements of third-party rights if the product is used in accordance with the contract and, in particular, in the contractually agreed manner or otherwise in the intended environment without modification.
- 9.2 Utimaco will only be liable for infringements of third-party rights within the European Union and the European Economic Area as well as at the location where the product is used in compliance with the contract. The Customer will not have any claim for a defect in title where the product's characteristics are only slightly different from the agreed characteristics.
- 9.3 If a third party asserts any claims against the Customer for infringement by Utimaco's product of its patents, copyrights or other intellectual property rights, Utimaco will, at its own expense, represent the Customer in any legal dispute brought against the Customer and will indemnify the Customer with respect to any such claims within the limits of clause 10. However, this will only apply if the Customer immediately notifies Utimaco of the third-party claims and provides details of any legal disputes, and if the Customer allows Utimaco to make all decisions regarding the further use of the products challenged by the third party and regarding a defense as well as regarding the conclusion of a settlement agreement, and if it informs Utimaco of such claims before claims for defects in title become time-barred under clause 9.6.
- 9.4 Where one of Utimaco's products infringes third-party rights and if Utimaco is unable to find another remedy without unreasonable effort, it will, at its own discretion and expense, (i) procure for the Customer the right to use the product, or (ii) design the product so that it is free from defects in title, or (iii) take back the product and refund the remuneration paid by the Customer for such product (less appropriate compensation for use).
- 9.5 Claims for defects in title will become time-barred within six months from the date that a third party asserts a claim for a defect in title against the Customer or when the Customer otherwise becomes aware of the defect in title, but no earlier than 12 months from delivery of the product.
- 9.6 Clause 8.7 applies accordingly.

10. Liability

- 10.1 Utimaco will always be liable to the Customer (i) for damage caused intentionally or by gross negligence by Utimaco and Utimaco's legal representatives or vicarious agents, (ii) in accordance with the Product Liability Act and (iii) for damage from injury to life, body or health

for which Utimaco, Utimaco's legal representatives or vicarious agents are responsible and (iv) insofar as Utimaco has given an express warranty as to the characteristics of the product (*Beschaffheitsgarantie*).

- 10.2 Utimaco will not be liable for slight negligence unless it has violated a material contractual obligation, the fulfillment of which is essential for the proper execution of the contract, or the violation of which endangers the achievement of the purpose of the contract, and the Customer may regularly rely on compliance with such obligation. This liability is limited in the case of property damage and financial loss to the damage that typically occurs in contracts of this kind and is foreseeable. The same also applies to lost profits and loss of anticipated savings. Clause 10.1 remains unaffected by the above limitation of liability.
- 10.3 Where it is necessary to restore data or components (such as hardware or software), Utimaco will only be liable for the cost of restoration if the Customer has made proper data backups and has contingency plans in place. The Customer must back up its data regularly. This will not apply if the parties have expressly agreed that Utimaco will perform this service.
- 10.4 The Customer will be fully liable to Utimaco for any damage or expenses incurred by Utimaco due to the Customer's intentional or negligent non-compliance with European and/or German export regulations or embargo provisions (see also clause 13). Any claims for damages by the Customer based on clause 13.10 are - subject to clauses 10.1 and 10.2 - excluded.
- 10.5 Notwithstanding the provisions in clauses 10.1 and 10.2, Utimaco will not, on the basis of a delay of the kind described in clause 5.4, be liable to the Customer for any loss resulting from downtime or damage resulting from delays in approval procedures under clause 5.4 caused by the Customer or for delivery by Utimaco becoming impossible due to failure to obtain an approval.
- 10.6 Clause 8.2 applies accordingly to the statutory limitation period.
- 11. Cooperation and duties to cooperate**
- 11.1 The Customer and Utimaco will each appoint a contact person who is responsible for communications. Unless agreed otherwise, communication between the Customer and Utimaco will be conducted through these contact persons.
- 11.2 The Customer will assist Utimaco to the extent necessary and will ensure that, in its business sphere, the preconditions necessary for properly executing the contract are met. For these purposes, it will in particular provide Utimaco with the necessary information and enable Utimaco unhindered access to the installation site or, if necessary, remote access to its system. Insofar as remote access is not

possible for security or other reasons, the deadlines affected by this will be extended accordingly; the parties will agree on an appropriate arrangement to deal with the further impacts of same. The Customer will also ensure that competent personnel are available to assist Utimaco. Where the Customer supplies documents, information and data that Utimaco needs to perform its work, the Customer will ensure that such items are complete, correct, timely, free of charge and up-to-date unless Utimaco is responsible for this. Utimaco may assume that these documents are complete unless it is evident to Utimaco that they are incomplete or incorrect.

- 11.3 To the extent that it is agreed in the contract that work may be performed on site at the Customer's premises, the Customer will, at Utimaco's request, provide adequate workspace and work equipment free of charge.
- 11.4 Unless agreed otherwise, the Customer will ensure that it backs up data properly and that it has contingency plans in place for data and components (such as hardware, software), which are appropriate for the nature and importance of such data and components.
- 11.5 At Utimaco's request, the Customer will assist it to a reasonable extent in connection with the verification and assertion of claims against other parties involved. The same applies to Utimaco's rights of recourse against its sub suppliers.

12. Confidentiality and data protection

- 12.1 The Customer will treat confidentially all confidential information made available by Utimaco. The Customer may only make confidential information available to third parties under conditions which offer protection that is at least equivalent to the conditions set forth in this clause 12 (Confidentiality) or if it has obtained Utimaco's prior written consent whereby it may only make information available to the extent necessary for the performance of the contract. This obligation will apply for the duration of the contract and for a period of five years after its termination.
- 12.2 This obligation does not include confidential information, (i) which was demonstrably already known to the Customer at the time of the conclusion of the contract or is subsequently made known to the Customer by a third party without a breach of a confidentiality agreement, statutory provisions or official orders, (ii) which is publicly known at the time of the conclusion of the contract or subsequently becomes publicly known insofar as this is not based on a violation of these T&C, (iii) which must be disclosed due to statutory obligations or by order of a court or an authority. The Customer compelled to disclose the information will, insofar as permissible and possible, notify Utimaco beforehand and give it an opportunity to take measures to avoid such disclosure.

- 12.3 The Customer will restrict access to

confidential information to such advisors as are bound by a professional code of confidentiality or have agreed to obligations corresponding to the confidentiality provisions contained in these T&C. Furthermore, the Customer will only disclose confidential information to those employees who need to know such information in order to perform the contract and will, to the extent permitted by employment law, oblige them to maintain confidentiality even after they leave its employment.

- 12.4 Upon termination of the contract, the Customer will immediately hand over all confidential information to Utimaco or, at Utimaco's request, delete it and confirm the deletion in writing to Utimaco.

12.5 To the extent that Utimaco is, pursuant to the General Data Protection Regulation (GDPR), a controller of personal data in relation to its products and services, it will comply with all applicable legal requirements (including applicable data protection laws) relating to Utimaco as controller. This applies in particular to the professional contact data of the Customer's employees with whom Utimaco has dealings during the contractual relationship underlying these T&C, be it (i) for the purposes of contract negotiation, contract management or Customer relationship management, or (ii) for the purposes of fulfilling Utimaco's legal obligations in its role as controller.

12.6 To the extent that Utimaco processes the Customer's personal data during the performance of the work, it will act as a processor and will process and use such data only for the purpose of performing the contract. In this case, the parties will perform their respective obligations under a data processing agreement to be concluded separately.

13. Export controls

13.1 The Customer acknowledges that European and German foreign trade law applies to the performance of a contract for the transfer or export of items (goods, software, technology), including in the form of electronic provision, and to the provision of services (e.g. installation, maintenance, repairs, instructions/training, etc.) with a cross-border connection, and that the individual deliveries, provisions of such items and technical services may be subject to export control restrictions and prohibitions.

13.2 The restrictions under clause 13.1 apply in particular to what are known as "listed items", in particular "dual-use items". The underlying legislation is Regulation (EC) No 428/2009 (EC Dual-Use Regulation) and its annexes. In addition, the Foreign Trade and Payments Act (*Außenwirtschaftsgesetz – AWG*), the Foreign Trade and Payments Regulation (*Außenwirtschaftsverordnung – AWV*) as well as its Annex (Part I Sections A and B of the German Export List), as amended, must also be observed.

- 13.3 The software provided by Utimaco for

download via the portal (<https://support.hsm.utimaco.com/home>)

and the software in Utimaco products is, at times, listed as a dual-use item in Annex I of the EC Dual-Use Regulation (see the listing in the Utimaco Export Compliance Policy, which is available at <https://go.utimaco.com/Export-Compliance-Policy>).

The Customer acknowledges that the export of this listed software (including where it is provided electronically) to a location outside the customs territory of the European Union requires authorization pursuant to Article 3(1) of the EC Dual-Use Regulation. The Customer undertakes to only use or access the software that is classified as a dual-use item in Annex I of the EC Dual-Use Regulation and which Utimaco makes available to it via the portal (<https://support.hsm.utimaco.com/home>), in the following areas: (i) Customs territory of the European Union, (ii) authorized destinations or countries listed in Part 2 of EU General Export Authorisation No. EU001 (currently: Australia, Japan, Canada, New Zealand, Norway, Switzerland, Lichtenstein and the USA, and as from 01.01.2021 also Great Britain), (iii) territories of the states mentioned in point 5 of the national Export Authorisation No. 16.

If the Customer intends to transfer the software to a location outside of the above-mentioned authorized territories and countries or is aware of such a transfer, it will inform Utimaco of all of the details of the intended transfer before accessing or ordering the software. The same applies if the Customer intends to use the product for purposes outside the scope of the prerequisites for authorization in General Export Authorisation No. EU001 and No. 16. Prior to authorization, the Customer is not permitted to access the software without Utimaco's express consent.

13.4 In addition, there are European and national embargo provisions against certain countries and persons, companies and organizations that may prohibit the supply, provision, transfer, export or sale of items and the performance of services or make them subject to authorization. These may lead to even more extensive restrictions for certain third countries and compliance with such provisions may affect the execution of the contract.

13.5 The Customer agrees not to sell, export, re-export, deliver or pass on the products delivered or to otherwise make them available in other countries, either directly or indirectly, to persons, companies, institutions or organizations where such would violate European or German export regulations or embargo regulations. The above provision will apply to products to which US export and re-export regulations apply subject to the proviso that compliance with US export law will be decisive. This applies in particular to making them available to persons, organizations or institutions on the European sanctions list.

13.6 The Customer agrees to not use the products delivered where the end use is either directly or indirectly connected with the development, production, handling, operation, maintenance, storage, location, identification or with dissemination of chemical, biological or nuclear weapons or their carrier technology (e.g. missiles) or is connected with military (e.g. installation in military equipment) or civil nuclear (e.g. use in connection with the operation of a civil nuclear facility) applications. Furthermore, the Customer warrants that the products delivered - including in those cases where they are transferred to third parties - will be used exclusively for civil purposes and not for purposes of internal repression, human rights violations or terrorist acts of any kind.

13.7 If a Customer who is resident in a third country is affected by a re-export requirement under a license issued by the competent export control authority, such Customer agrees that it will recognize and comply with the European and German export control regulations and embargo provisions. At the latest prior to delivery, Utimaco will inform the customer as to whether the nature of the items is such that they are listed items and, where applicable, if any conditions have been imposed on them.

13.8 Upon request, the Customer will provide Utimaco with appropriate and complete information about the end-use of the items or services to be delivered, in particular it is obliged to issue an end-user certificate (EUC) in accordance with Utimaco's specifications and to send the original EUC to Utimaco so that the end-use and the intended use of the items or services to be delivered can be verified and to provide evidence thereof to the competent export control authority.

13.9 The Customer understands that the legal provisions referred to above are constantly subject to changes and adjustments and are to be applied to the contract in their most recent version.

13.10 If any necessary export or transfer licenses or other foreign trade licenses or approvals are not granted by the competent authorities or not granted in a timely manner, or if any other obstacles related to the foreign trade or embargo provisions that Utimaco, as exporter or transferor, or its supplier has to comply with, prevent the performance of the contract or delivery, Utimaco will be entitled to rescind the contract or cancel performance of an individual delivery or service obligation. This will also apply if, in the period between the conclusion of the contract and the delivery of the products or services or if when warranty rights are asserted, obstacles under export control and embargo law - e.g. due to a change in the legal situation - arise and make the delivery of the products or services temporarily or permanently impossible because the necessary export or transfer licenses or other licenses or approvals under foreign trade law

have not been granted or have been revoked by the competent authorities or if the observance of foreign trade and embargo provisions lead to other obstacles preventing the performance of the contract or the delivery of the products or services.

Customer must notify Utimaco before providing any technical data to Utimaco that is controlled under any Trade Control Law.

- 13.11 For products that are subject to US (re) export law the following applies: Customer understands that exports, re-exports, and in-country transfers of any product, software, technical data, service, or technical assistance provided by Utimaco (individually, an "Item" and, collectively, the "Items") are subject to U.S. and other, including European Union and German, export, import, customs, antiboycott and economic sanctions laws, regulations, rules and orders (collectively, "Trade Control Laws"). Purchaser shall not export, re-export, otherwise transfer, provide, or use any Item or any product incorporating an Item, directly or through others, in contravention of any Trade Control Law or any end-user statement provided by Purchaser, including (a) to Iran, Syria, North Korea, Cuba, or Crimea, or to any other embargoed destination or government affiliate of such embargoed destination, wherever located, if that act would be in breach of the applicable Trade Control Laws, (b) to anyone listed on (or owned or controlled by anyone on) any sanctioned persons list issued by the U.S. Departments of Commerce or Treasury, or the European Union (a "Sanctioned Person"), or (c) for a prohibited end-use, including oil or gas exploration or production in Russian deepwater (greater than 500 feet), Arctic offshore locations or shale formations located in Russia or in a maritime area claimed by Russia and extending from its territory, or anywhere in Russia if it involves any Sanctioned Person that has a 33 percent or greater ownership interest, or ownership of a majority of the voting interests in such oil or gas project, or if Purchaser is unable to determine whether the item will be used in such projects, or for any end use related to chemical, biological, or nuclear weapons, unmanned air vehicles, missiles, nuclear explosive activities, unsafeguarded nuclear activities, or nuclear fuel cycle activities. Purchaser shall only use the Items for non-military, peaceful purposes, unless otherwise specifically agreed to in writing by Utimaco. Customer certifies that it is not a sanctioned person and that it is not owned or controlled, directly or indirectly, by one or more sanctioned persons, or located in, under the control of, or a national or resident of any embargoed country. This clause is subject to the condition that its compliance with national and European law - in particular Section 7 AWW and Article 5 of Regulation (EC) No 2271/96 - is in line with national and European law.

14. Miscellaneous

- 14.1 The substantive law of the Federal Republic of Germany, excluding international uniform law, in particular the U.N. Convention on the International Sale of Goods of 11 April 1980 (CISG), governs these T&C and the contracts between Utimaco and the Customer.
- 14.2 If the Customer is a merchant (*Kaufmann*), public law corporation or public special fund, the courts of Cologne have exclusive jurisdiction, including international jurisdiction, over any disputes, including disputes of an international nature, which arise directly or indirectly from or in connection with the contractual relationship. Nonetheless, Utimaco will, in all cases, be entitled to commence legal proceedings at the place of delivery (place of performance). The foregoing is without prejudice to any overriding statutory provisions, in particular in relation to exclusive jurisdiction.

Special conditions

15. Special conditions for the sale of hardware and software

- 15.1 Unless agreed otherwise, the products' characteristics and performance specifications as well as the approved operating environment are specified in the respective product description, which is supplemented by the operating instructions. The details contained therein must be understood as constituting specifications rather than express warranties (*Garantien*). An express warranty (*Garantie*) is only given if it has been expressly designated as such.
- 15.2 Software is only supplied in executable form, including the documentation. Documentation or parts of it may also be made available to the Customer electronically for download. If delivery is to be made by way of download, Utimaco will make the software and documentation available to the Customer for download on its homepage. The Customer must register in order to log into the password protected area of Utimaco's website. After an identity check has been completed, the Customer will be given the access data. Where the software is protected by a license key, the Customer will receive the license key exclusively for the use of the software as specified in this contract and the documentation.
- 15.3 Unless agreed otherwise, the Customer will, itself, install and commission the product. All other services that Utimaco provides at the request of the Customer (in particular, preparation for use, installation and demonstration of successful installation, instruction, training and consulting) will be remunerated on a time and expense basis.
- 15.4 Upon full payment of the agreed remuneration, Utimaco will grant the Customer a non-exclusive, perpetual right to use the products, including the documentation, to the agreed extent (e.g. number of licenses, version/release

of the Software, number of computer systems or network servers) necessary for the proper execution of the contract. Further product-specific license provisions can be found in the ALA, which is available at <https://go.utimaco.com/Additional-License-Authorizations>.

- 15.5 Utimaco grants no further rights in respect of the software, in particular it does not grant the Customer the right to reproduce the software or documentation beyond the scope of what is necessary for the use of same in accordance with the contract. The Customer has no right to modify the software or documentation except where modification is necessary to eliminate defects. The Customer may only modify the software or documentation if Utimaco has previously expressly refused to provide a cure or if no cure was provided in spite of the grace period allowed for this or if the attempted cure failed. Moreover, the Customer is permitted to back up the software and documentation and to reproduce the software to the extent that is customary and recommended by Utimaco in order to ensure the proper operation of the software and the Customer's data processing system. The decompilation of the software within the scope of § 69e of the Copyright Act (*Urhebergesetz – UrhG*) is also permitted. At the Customer's request, Utimaco will, at any time, provide it, at short notice, with the interface information necessary for this. Unless the Customer has, in addition, acquired the relevant rights of use under the ALA, it may under no circumstances rent out or otherwise sublicense the acquired software, reproduce it publicly or make it available to the public by wire or wireless means or make it available to third parties for payment or for free, e.g. through "application service providing" or as "software as a service".
- 15.5 Software may contain components that have been licensed from third parties under open source license agreements. The relevant terms and conditions are listed on the Utimaco website <https://utimaco.com/terms-conditions> under the respective product. These license terms and conditions must also be complied with in connection with the use of the software.
- 15.6 The Customer is prohibited from altering the copyright notices on the products. Utimaco is entitled to take reasonable technical measures to protect the software against any use that is not in conformity with the contract.
- 15.7 Utimaco is entitled to have an examination carried out at the Customer's premises to confirm that the products delivered are actually used in conformity with the contract. The examination may only be carried out by an expert who is also under a duty of confidentiality in relation to Utimaco, who is an independent expert and not bound to follow instructions, and who may only disclose information to Utimaco if, and to the extent that, the license granted has been infringed and to the extent that such information is necessary to enforce a license infringement claim. In particular, the expert is not entitled to disclose any information at all if the license infringement has been admitted and the relevant damages claims have been satisfied. The Customer must be given 2 weeks' written notice of the examination.
- 15.8 During the inspection and examination, care must be taken to ensure that no personal data of third parties are transmitted to or otherwise disclosed to the expert. Where this cannot be ensured, Utimaco will have no right of examination unless the parties conclude a data processing agreement. Furthermore, the Customer must provide the expert with the information necessary for carrying out the inspection.
- 16. Special conditions for the provision of services**
- 16.1 Unless agreed otherwise, the place of performance of services is at Utimaco's headquarters.
- 16.2 Utimaco will determine the nature and manner in which the services are provided. The Customer is not authorized to issue instructions to Utimaco employees involved in the provision of services.
- 16.3 Unless otherwise agreed, Utimaco grants the Customer a non-exclusive, non-transferable and perpetual right to use the results of the services for its own purposes within the scope of the intended use under the contract. Otherwise, Utimaco will retain all other rights.
- 16.4 Where Utimaco has failed to properly perform its services under the contract and this is due to fault on its part (default in performance), Utimaco must, notwithstanding clause 8.6 and within a reasonable period of time, provide the service, in whole or in part, in accordance with the contract and must do so at no additional cost to the Customer unless the expense involved would be unreasonable. Utimaco will only be obliged to do the above if the Customer notifies Utimaco of the default in writing within two weeks of becoming aware of it. Clauses 10.1 to 10.7 will apply accordingly to claims for reimbursement of expenses and other liability claims that the Customer has against Utimaco.
- 16.5 If, for the purposes of performing this contract, the Customer uses, with Utimaco's consent, any work results that already existed and which were not created during or in connection with the work by Utimaco, clause 16.3 will apply accordingly, but subject to the proviso that the Customer grants Utimaco a non-exclusive right of use in respect of such work results.
- 16.6 If the contract is concluded for an indefinite term, either party may terminate it by giving three (3) months' notice to the end of a calendar year. Notice may first be given with effect as from the end of the calendar year following the conclusion of the contract. If the parties have agreed on a minimum contract term, it will remain unaffected by this right of termination. This does not apply if the parties have agreed

otherwise. The right to terminate the contract without notice for cause will remain unaffected. Notice of termination must be in writing in order to be valid.

17. Special conditions for deliverables

- 17.1 Acceptance is necessary for each deliverable. The subject-matter of acceptance will be the delivery of a deliverable that has the capabilities required under the contract, and where applicable, possesses the warranted (*garantiert*) qualities, and is accompanied by proper documentation. Acceptance will be conditional on Utimaco delivering in full all deliverables and notifying the Customer that they are ready for acceptance.
- 17.2 The Customer will accept the deliverable within a period of three (3) weeks after Utimaco has given notice of readiness for acceptance. Acceptance will be successful if, for example, the deliverable does not have any defects or only has minor defects or if all acceptance criteria agreed between the parties prior to acceptance are fulfilled. If the Customer does not notify Utimaco in due time as to whether the deliverable is accepted or rejected, Utimaco may set it a reasonable deadline for notification. The deliverable will be deemed accepted when the deadline expires if the Customer does not notify Utimaco of its acceptance or does not, at least, notify Utimaco in writing or electronically as to which defects must be remedied.
- 17.3 If the Customer rejects the deliverable due to the existence of defects, it must provide Utimaco with a list of all defects preventing acceptance. After the expiry of a reasonable period of time, Utimaco will provide a version of the deliverable that is free from defects and amenable to acceptance. During Utimaco's subsequent testing of the deliverable, it will only test the reported defects insofar as their functionality can be the subject of an isolated test. After successful testing, the Customer must give written notice of acceptance of the deliverable within seven (7) days.
- 17.4 If acceptance has been unsuccessful on at least two occasions, the Customer may assert its statutory rights, in particular it may rescind the contract and, if Utimaco has intentionally or negligently breached a contractual duty, may demand damages. Clauses 10.1 to 10.5 will apply accordingly to the Customer's claims for damages. In all other respects, the statutory provisions governing contracts for work and services will apply accordingly to an agreed acceptance procedure.
- 17.5 If the Customer terminates the contract in accordance with § 648 of the German Civil Code, Utimaco may, at its discretion, assert its right to remuneration pursuant to § 648 sentence 2 of the German Civil Code or, in lieu thereof, demand payment by the Customer of a lump sum amounting to 40% of the remuneration due to Utimaco for the work not yet performed at the time of termination. The

Customer will be entitled to present evidence and prove that the remuneration to which Utimaco is entitled pursuant to § 648 sentence 2 of the German Civil Code is lower.

17.6 Clauses 16.3 and 16.5 apply accordingly.

18. Special conditions for maintenance and support of hardware and software

- 18.1 Utimaco provides maintenance and support services for products against appropriate compensation in accordance with the currently valid version of its "Global Support Service Description", which is available on the Utimaco website at <https://go.utimaco.com/global-support-description>. Unless agreed otherwise, the maintenance and support commences upon delivery of the products. The minimum term of the maintenance and support contract is twelve (12) months. After expiry of the minimum term, the maintenance and support contract shall be renewed automatically by further periods of twelve (12) months unless terminated by one of the parties in writing by giving three (3) months' notice before the expiry of the respective term.
- 18.2 Utimaco is not required to provide any services over and beyond the maintenance and support services contained in the "Global Support Service Description". The provision of any additional services must be agreed separately and will be remunerated separately. This may include, in particular, additional on-site visits at the Customer's premises, advice and support for modified software, checking feasibility of interfaces with third-party systems, installation and configuration support unless same is covered by the "Global Support Service Description". The restrictions described in the respective maintenance and support agreement will apply with regard to third-party software.
- 18.3 The Customer's rights of use in respect of new versions and other corrections to the software will correspond to its rights of use in respect of the previous version. The rights of use in respect of the new versions and other corrections will replace the rights of use in respect of the previous versions and other corrections.
- 18.4 The Customer will immediately inform Utimaco of any changes in the operating environment so that Utimaco is, among other things, able to provide maintenance and support services. The Customer will also store, on its premises, all documents, information and data provided by Utimaco in such a way that same can be reconstructed in the event of the damage or loss of the data carriers.
- 18.5 Programming interfaces are subject to continued technical upgrading. Utimaco reserves the right to make technical modifications to the interfaces where such modifications are required by changes in law and/ or technical progress. In such instances, Customer shall be notified only to the extent that Software already delivered must be



modified to enable Utimaco to perform its contractual obligations. In such instances, the Customer is obligated to install any new required version.