

# STANDARD TERMS AND CONDITIONS OF Vitux AS ("VITUX")

## 1. Orders and payment

1.1 No Order submitted by the Buyer shall be deemed to be accepted by Vitux unless and until confirmed in writing by Vitux's authorized representative (Confirmation).

1.2 If any inconsistency should appear or exist between the Order and the Confirmation, the Confirmation shall prevail.

1.3 Vitux shall confirm all Orders within 5 working days. If the Confirmation of an Order has not reached Buyer within 7 days after the date of the Order, the Buyer may annul the Order without being liable to Vitux.

1.4 Confirmations may not be cancelled by the Buyer except with the written consent of Vitux and on terms that the Buyer shall indemnify Vitux in full against all loss (including loss of profit), costs (including the cost of all labor and materials used), damages, charges and expenses incurred by Vitux as a result of cancellation.

## 2. Documents of the Agreement

This document describes the standard terms and conditions of Vitux AS and will prevail over other agreements. Buyer and Vitux might enter into a specific Framework Agreement in addition to standard terms and conditions set forth here.

## 3. Invoicing and terms of payment

3.1 Vitux may invoice the Buyer according to Confirmation or at any time after the Delivery, unless the Delivery are to be collected by the Buyer as set out in the Confirmation or the Buyer wrongfully fails to take the Delivery, in which event Vitux shall be entitled to invoice the Buyer according to the Confirmation at any time after Vitux has notified the Buyer that the Products are ready for collection.

3.2 The terms of payment are 30 days after the date of the invoice.

3.3 In case Vitux has reason to question the Buyer's ability or will to pay any Delivery in due time, Vitux may postpone or terminate any future Delivery unless the Buyer makes advanced payment or otherwise provide sufficient security for the Delivery.

3.4 All invoices shall be marked with the Confirmation number and shall clearly indicate what the amount refers to and the payment address.

3.5 Vitux may charge interest on overdue payments pursuant to the Norwegian Interests Act (Lov om forsinkelsesrenter).

## 4. Delivery and transfer of risk

4.1 The delivery term specified in the Confirmation refers to Incoterms® 2010. The title of ownership shall pass to the Buyer upon passing of risk according to the agreed Incoterm.

4.2 Certificates and documentation specified in the Order and as confirmed in the Confirmation (or on the Product Specification) shall be delivered simultaneously with the Product.

4.3 The Delivery shall contain a packing list. Any other documents required for customs clearance of the Product must be specified by the Buyer. If the Buyer fails to take the Delivery or the Buyer fails to collect the Delivery on the agreed date (otherwise than by reason of Vitux's fault) then, without limiting any other right or remedy available to Vitux, Vitux may:

- store the Delivery until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or

- sell the Delivery at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Confirmation or charge the Buyer for any shortfall below the price under the Confirmation, or

- if Vitux does not succeed in selling the Delivery within reasonable time, the Delivery will be destructed at the risk and expense of the Buyer.

4.4 If Vitux delivers a volume of +/- 10% compared to the volume specified in the order confirmation, the Delivery will be deemed to be in accordance with the Agreement.

## 5. Quality assurance and control

5.1 Vitux has a quality assurance system appropriate for the Product in question, and all applicable legal requirements and recommendations in Norway and EU are complied with at the time of Delivery. Vitux further ensures that the Products are manufactured in accordance with the specifications.

5.2 The Buyer may require Vitux to provide test records, certificates and calculations, as well as inspections of the production plant by independent acknowledged specialists, for the expense of the Buyer. Such independent specialists shall undertake a strict end extensive obligation of confidentiality before entering Vitux's premises.

5.3 If at any time found that the Products or Vitux's performance of its obligations are deficient, not in compliance with legal requirements or recommendations, Vitux shall take all measures necessary to remedy this situation. The costs for such remedy shall be carried solely by Vitux.

5.4 Vitux shall immediately notify the Buyer of any changes that may be of importance for the use of the Product.

5.5 Vitux shall give the Buyer all information contained by Vitux related to the Products which may be of interest i.e. from a medical, environmental and industrial hygienic point of view. Should Vitux get information that the delivered Products may be harmful to health or environment, it shall as soon as practically possible inform the Buyer in writing. In addition to informing the Buyer, Vitux may, at its sole discretion, choose to instruct the Buyer to withdraw delivered Products from the market, and/or, independently of the Buyer, make public statement(s) regarding the fact that the Product is or suspected to be, harmful to health or environment.

## 6. Warranty

6.1 Vitux warrants at the time of Delivery of the Product that the Product is in compliance with the specifications.

6.2 Vitux's warranty in this Article 6 applies similarly to the re-delivered and replaced Products.

6.3 The foregoing warranties provided in this clause (Warranty), are given by Vitux: (1) In lieu of all indemnities arisen in law or otherwise and (2) are in substitution for and exclude all warranties and rights of claims, expressed, implied or statutory, and Vitux expressly disclaims any warranties (including without limitation merchantability and fitness for particular purpose) other than the warranties specifically set out in this Article 6 (Warranty).

## 7. Examination and notice of defects

7.1 The Buyer shall examine the Products after delivery as soon as reasonably possible under the circumstances, and no later than 5 working days after Delivery of the Products.

7.2 If analyses are required, they must be carried out and the written results must be presented to Vitux no later than 28 days after delivery has taken place. The Buyer's duty to examine the Products applies similarly when Vitux has made re-deliveries or replacements.

7.3 The Buyer shall submit a written notice to Vitux, without unreasonable delay and no later than 5 working days after having discovered a Product defect.

## 8. Exclusion of responsibility

8.1 Vitux can not and will not be held responsible for any claims for any products or services rendered by Vitux based on any decision by any kind of court or authority located outside EU, nor any claims based on any law or regulations other than Norwegian or EU law and regulations.

8.2 Vitux holds no risk whatsoever for any faults or defects in any products or services rendered by Vitux due to or related to any direct or indirect faults or defects in any Buyer Supplied Material.

## 9. Delay

9.1 If there is reason to believe that the Delivery will be delayed, Vitux shall immediately notify the Buyer in writing of the delay, and at the same time specify a new delivery date. If the Buyer does not object to the new delivery date within 2 days after being informed in writing of the new delivery date, or it shall be deemed to have accepted the new delivery date ("New Delivery Date")

9.2 Where the Delivery are to be delivered in instalments, each delivery shall constitute a separate delivery and failure by Vitux to deliver any one or more of the instalments in accordance with the Confirmation shall not entitle the Buyer to treat the Delivery or the Agreement as a whole as breached.

9.3 Vitux shall take any reasonable steps to reduce the delay and the possible harmful effects of a delay.

## 10. Consequences of delay

10.1 In the event of a delay of more than 30 working days, the Buyer is entitled to cancel the Confirmation. The Buyer may not cancel prior to any New Delivery Date. However, in case of Deliveries of Products custom made for the Buyer which Vitux is not able to sell to others without major losses, the Buyer may only cancel the Confirmation if the delay is deemed to be a material breach of the Agreement. Products with defects which prevent them from being used for their intended purpose will be treated as delayed Products.

Buyer's rights and remedies set forth in this Article 10 are agreed as final and exclusive and in lieu of any other rights and remedies in case of delay.

## 11. Liability and consequences of breach (other than delay)

11.1 Where a valid claim in respect of a Delivery which is based on a defect in the quality or condition of the Products or their failure to meet the specification is notified to Vitux in accordance with Article 7, Vitux may replace the Delivery (or the part in question) free of charge or, at Vitux's sole discretion, refund to the Buyer the purchase price of the Delivery (or a proportionate part of it), in which case Vitux shall have no further liability to the Buyer, in specific, Vitux will not bear any indirect costs.

11.2 Except in respect of death or personal injury caused by a Party's negligence, or liability for defective products under the Product Liability Act (Produktansvarsløven), a Party shall not be liable to the other Party by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at law or practice, or under the express terms of the Agreement, for loss of profit or for any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Party, its employees or agents or otherwise) which arise out of or in connection with the purchase or supply of the Products or their use or resale by the Buyer, and the entire liability of a Party under or in connection with the Agreement shall not exceed the purchase price of the delivered Product in question, except as expressly provided in these Terms.

## 12. Force Majeure

12.1 An extraordinary situation outside the control of the Parties shall be considered a force majeure-situation if it prevents the fulfilment of the Agreement in full or in time, and the Parties could not reasonably have taken it into consideration at the time of entering into the Agreement or if the consequences of it were not foreseeable ("Force Majeure").

12.2 In cases of Force Majeure, the Parties' rights and obligations are suspended until the Force Majeure-situation ceases to exist. If the Force Majeure-situation lasts for more than 60 calendar days, the Party who is not in a Force Majeure-situation may terminate the Agreement with immediate effect. The Party hindered by Force Majeure must document that such situation exists.

12.3. Among others, but not limited to, the following events shall be considered events of Force Majeure:

- Act of God, explosion, flood, tempest, fire or accident;
- war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- import or export regulations or embargoes;
- strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Party or of a third party);
- difficulties in obtaining raw materials, labor, fuel, parts or machinery
- power failure or breakdown in machinery

## 13. Insurance

Vitux shall buy and maintain at own expense liability insurance adapted to Vitux's operations.

## 14. Intellectual property

The Buyer recognizes and agrees that no Intellectual Property rights whatsoever is transferred from Vitux or its licensors to the Buyer. The Buyer recognizes the exclusive ownership of Vitux and its licensors of all Intellectual Property made available by Vitux and/or its licensors before or during the term of the Agreement (including but not limited to the specifications and other product documentation), and the Buyer will not, without the prior written consent of Vitux, use and/or file any application to register or make any other attempt to obtain any rights in or use any such Intellectual Property or any variation on such Intellectual Property or, to the extent it concerns trademarks and trade dress, use any confusingly similar trademark or trade dress.

The Buyer further agrees that, should any such application have been or hereafter be filed, it will either assign same to Vitux or its designee or withdraw or cancel same, as requested by Vitux. The Buyer also recognizes the title of Vitux and/or its licensor in and to all Intellectual Property affecting the Products which Vitux and/or such licensor owns and/or has registered in any country.

## 15. Confidentiality

15.1 The Parties undertake to treat in the strictest confidence and to use only in relation to the purpose of this Agreement all technical, scientific and financial information and other information which reasonably is assumed confidential, including but not limited to all descriptions, recipes, manufacturing instructions and models which such Party has received and will receive, be it in writing, orally, electronically or in any other form, from the other Party or on behalf of the other Party ("Confidential Information"). The Parties shall ensure that employees,

consultants and any other third parties which may receive such Confidential Information are bound by terms equivalent to those of this Agreement, and shall ensure to the best possible extent that such terms are complied with. Notwithstanding this, the Parties may disclose Confidential Information to the extent this is necessary to obtain required approvals from applicable governmental authorities.

15.2 Notwithstanding anything in this Agreement to the contrary, the provisions of article 21 and 22 and other provisions that by their nature must be deemed to survive termination, shall survive the expiration and/or termination of the Agreement for any reason and remain in effect for a period of ten (10) years after the expiration and/or termination of the Agreement.

## 16. Assignment

Neither Party may assign its rights and/or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

## 17. Marketing and publicity Release

17.1 Vitux holds no risk what so ever for any advertisement, marketing, marketing activities, campaigns, practice, here in under design and/or content of any labels, leaflets, boxes, other sales materials, brochures, etc., other than does carried out by Vitux or by written approval of Vitux, unless otherwise agreed in writing.

17.2 The Buyer shall not use the name of Vitux, or any trademarks belonging to Vitux in advertising or promotion of Products, material or any goods or services provided by Vitux in publicity releases without the prior consent of Vitux.

## 18. Waiver

Neither parties' failure to exercise any of its rights hereunder shall constitute a waiver of such rights or prejudice such rights in any other manner.

## 19. Headings

Headings used in the Agreement are for convenience only and shall not control or affect the meaning or construction of any of the provisions of the Agreement.

## 20. Partial invalidity

If any provision of the Agreement shall be declared, void or unenforceable by any court or tribunal of competent jurisdiction, the other provisions of the Agreement shall remain in effect, unless such provisions are deemed to be connected with the void or unenforceable provision. Should the other provisions remain valid, both parties shall endeavor to substitute for the void or unenforceable provision a valid provision that reflects the parties' original intent to the greatest possible extent.

## 21. Consequences of termination

21.1 Upon expiration or termination of the Agreement for any reason, the Buyer shall, at the request of Vitux, promptly return to Vitux or otherwise dispose of as Vitux may instruct all materials that contain Confidential Information in writing, recorded or other tangible form.

21.2 The expiration or termination of the Agreement shall not release the Buyer from its obligation to pay any sums owed to Vitux or from the obligation to perform any other duty or to discharge any other liability that has been incurred prior thereto.

## 22. Governing law and dispute resolution

22.1 This Agreement and all amendments and Confirmations hereunder shall be governed by the laws of Norway, except its choice of law laws and regulations.

22.2 Should the Parties not reach an out-of-court settlement within two (2) weeks of the dispute arising, either Party may demand that the dispute shall finally be resolved through arbitration in accordance with the Norwegian Act of Arbitration (lov om voldgift), the Venue to be in Oslo. The proceedings and ruling shall be subject to confidentiality, cf. § 5 of the Act of Arbitration.

The arbitration proceedings shall be in Norwegian.

22.3 Should the object of the dispute be the Buyers refusal of paying according to Vitux's invoice, Vitux may choose in their sole discretion to bring the dispute to the ordinary court in the Capital city in the domicile of the Buyer, the dispute to be tried in full by the applicable national law.