

General Terms and Conditions of Purchase

1. Applicability

Unless otherwise agreed upon in writing with Optotune Switzerland AG or any parent company or affiliate (“Optotune”), these General Terms and Conditions of Purchase shall apply to all purchase orders (“Order”), blanket orders and supply agreements which incorporates by reference these General Terms and Conditions as well as to and any attachments, specifications, schedules, exhibits, drawings, samples, data or designs referenced in the Order made by any Optotune affiliate whether be for tools, machines or equipment, goods, products, parts, raw materials, other materials, work or services (collectively, the “Goods and Services”). These General Terms and Conditions of Purchase shall override any contrary different or additional terms and conditions (if any) contained, or referred to, in any offer, order acceptance or other document or correspondence from or by the supplier (hereinafter referred to as “Supplier”), and no addition, alteration or substitution of these terms will bind Optotune or form part of any contract unless it is expressly accepted in writing and signed by a person authorized to sign on Optotune’s behalf. Optotune’s acceptance or payment of Goods and Services does not constitute agreement. By accepting Optotune’s Order, Supplier agrees to be bound by Optotune’s General Terms and Conditions of Purchase.

2. Acceptance of the Order

The Order constitutes Optotune’s offer to Supplier upon the terms and conditions stated herein. Commencement of performance, Supplier’s signature, or Supplier’s failure to provide written notice of objection shall constitute acceptance of the Order by Supplier. Upon acceptance, the Order shall constitute the entire agreement between Optotune and Supplier with respect to the Goods and Services. Except as provided in Section 3 below, the Order may not be modified except in writing, duly executed by an authorized representative of each party. The Order expressly limits acceptance to the terms and conditions stated herein. Optotune hereby expressly rejects and refuses any general or specific conditions or any additional, different or inconsistent terms or conditions offered by Supplier at any time and irrespective of Optotune’s payment, acceptance of delivery of Goods or Services or performance hereunder, or Optotune’s receipt or acknowledgment of receipt of any such terms or conditions.

3. Changes

Optotune may, by written notice, make changes to all or any part of the Order. The quantities, prices, specifications, conditions or other terms of the Order, shall not be otherwise changed except by Optotune’s written authorization. Where the Goods are to be manufactured in accordance with drawings, data, designs and/or specifications, Optotune may, at any time, by written notice make changes to such drawings, data, designs and specifications. If any change causes an increase or decrease in the cost of, or time required for, performance under the Order, an equitable adjustment shall be made in the price or delivery schedule or both. Supplier shall submit any claim for such an adjustment within ten (10) days from the date of receipt of notification of change.

4. Inspection and Acceptance

Optotune shall have a reasonable time (but not less than 90 days) after receipt to inspect the Goods and Services provided by Supplier. If any Goods or Services delivered do not meet the requirements of the Order, Optotune shall have the right to reject any such Goods or Services. Rejected Goods shall be returned at the expense of Supplier and Supplier shall bear all risk of loss as to rejected Goods. Supplier shall also reimburse Optotune for the purchase price of any Goods or Services found to be defective and not conforming to warranties, specifications, drawings or samples or not shipped in accordance with Optotune’s delivery schedule and returned to Supplier. Optotune may elect to reject the entire Goods and Services provided even if only a portion thereof is non-conforming. Optotune may also elect to retain rejected Goods and remedy any defect or non-conformity to warranties, specifications, drawings or samples. If Optotune elects to accept nonconforming Goods or Services, Optotune in addition to its other remedies, shall be entitled to deduct a reasonable amount from the price thereof to compensate Optotune for the nonconformity. Payment for any Goods or Services shall not be deemed an acceptance thereof. Acceptance of any Goods or Services after inspection shall not constitute a waiver of any warranty made by Supplier hereunder or implied by law, nor shall it preclude Optotune from revoking its acceptance thereafter for any latent defects or fraud.

5. Delivery

5.1 Timely delivery

TIME IS OF THE ESSENCE OF THE ORDER and deliveries must be made strictly in accordance with the terms of the Order. Any lead times included in the Order are binding and deemed firm commitments by Supplier.

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5.2 Delayed delivery

If timely delivery is endangered by Supplier, Supplier shall immediately notify Optotune in writing and give the reasons for and the anticipated length of the delay. Such notice shall be for informational purposes only and shall not relieve Supplier of Supplier's obligations to comply with Supplier's requirements under the Order. Optotune shall have the right to direct Supplier to make shipment by the most expeditious means and the total cost of such expedited shipment and handling shall be borne by Supplier. Should delivery be delayed and should the delay be attributable to the Supplier, Optotune may charge a contractual penalty of 1% of the price of the total Order for every day of delay up to a maximum discount of 10% of the price of the Order. This contractual penalty may be claimed until the final payment of the Order has been made. Further statutory rights are not affected.

5.3 Uncomplete or partial delivery

If delivery is not completed in the exact quantities and within the time(s) specified, Optotune shall have the right, without liability and in addition to its other rights and remedies, to cancel the entire Order or that part of the Order not delivered, or to extend the time for payment, correspondingly. Partial deliveries or excess quantities shall not be made without Optotune's prior written approval.

5.4 Shipment

Unless more specific requirements are included in the Order, all Goods shall be prepared for shipment and packaged in a commercially reasonable manner suitable for the Goods shipped and in order to secure the lowest transportation rates.

6. Price and Payment

6.1 Prices

Supplier agrees that all prices set forth in the Order are firm and not subject to increase. Unless otherwise provided in the Order, the price as herein stated shall include all package and packing costs. Optotune shall not be liable for any taxes with respect to the Order other than municipal, state or federal sales taxes levied on the Optotune which Supplier is required by law to collect from Optotune. All such taxes and other charges shall be stated separately on Supplier's invoice.

6.2 Lowest prices warranty

Supplier warrants that the prices charged for the Goods and Services are the lowest prices charged and on terms no less favorable than accorded by Supplier to any other customer for the same or like goods and services in equal or less quantities under similar circumstances. If Optotune is able to purchase Goods or Services of comparable quality at a lower cost than the delivered cost of the Goods or Services then in effect hereunder and Optotune gives Supplier written notice thereof, Optotune may purchase such Goods or Services, unless within ten (10) days of receipt by Supplier of such notice, Supplier meets such lower delivered cost for any equal quantity of the Goods or Services thereafter sold hereunder. Any quantity so purchased from another source shall be deducted from any obligation that Optotune may have hereunder. If Supplier shall sell goods or services of like kind and quantity during the term of the Order to any other customer, at a price which is lower for the same or a less quantity than the purchase price then in effect hereunder, the purchase price hereunder shall be reduced to such lower price for all shipments made while such lower price remains in effect.

6.3 Invoice and payment

Invoices must be sent in duplicate, to the addressee as designated in the "Bill To" portion of the Order. Any charges prepaid by Supplier on behalf of Optotune pursuant to the Order for which reimbursement is sought must be separately stated on the invoice and appropriate receipts must be furnished to Optotune. Payment due dates, including discount periods, will be computed from the date of receipt of all Goods and Services or the date of receipt of a correct invoice, whichever is later. Unless otherwise stated in the Order, invoices will be paid net 60 days from the invoice date.

7. Confidential Information and Optotune's Property

7.1 Confidential Information

All information furnished or disclosed to Supplier by Optotune in connection with the Order which is identified as confidential shall be received in confidence, shall remain the property of Optotune and shall not be disclosed to any third party without Optotune's written consent. Supplier shall not use any such information for any purpose other than to perform the Order. If requested, Supplier shall execute Optotune's non-disclosure agreement before receipt of any such confidential information. Supplier shall return all such confidential information to

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Optotune upon completion by Supplier of its obligations hereunder or upon demand. All specifications, drawings, samples, designs or data furnished to Supplier by Optotune shall be deemed to be confidential information covered by this provision whether or not expressly identified as such. The obligations of this provision shall survive any expiration, cancellation or termination of the Order.

Supplier shall not in any manner advertise, publish or disclose the fact that it has furnished or contracted to furnish to Optotune the Goods or Services without the prior written consent of Optotune.

7.3 Optotune's Property

Optotune shall at all times retain title to all drawings, specifications, samples, designs and data furnished by Optotune to Supplier. All tooling, equipment and material furnished to Supplier by Optotune or specifically paid for by Optotune shall be and shall remain the sole and exclusive property of Optotune. Such property, while in Supplier's custody or control, shall be: (i) clearly and conspicuously identified as Optotune's property; (ii) used solely for Supplier's performance hereunder; (iii) kept in good condition; (iv) kept free from liens or encumbrances; (v) held at Supplier's sole risk; and (vi) kept insured by Supplier at Supplier's expense in an amount equal to the replacement cost with loss payable to Optotune. Such property shall be delivered in good condition, normal wear and tear excepted, to Optotune immediately upon request by Optotune. Supplier hereby waives any right in law or in equity to withhold any property of Optotune under any circumstances whatsoever.

8. Assignment

The Order or any portion of the Order or any duty, right or interest herein or any claim arising hereunder shall not be delegated or assigned by Supplier without the prior written consent of Optotune. The Order shall not be assigned by operation of law or merger or judicial sale or otherwise, without the prior written consent of Optotune. Any unauthorized assignment or attempted assignment by Supplier shall constitute a material breach of the Order. The Order may be assigned by Optotune.

9. Waiver

Failure of Optotune or Supplier to insist on performance of any of the terms, conditions or requirements of the Order shall not be construed as a waiver of such terms, conditions or requirements and shall not affect the right of either party to thereafter enforce each and every term, condition or requirement of the Order.

10. Setoff

All claims for money due or to become due from Optotune shall be subject to deduction or setoff by Optotune by reason of any counterclaim arising out of this or any other transaction with Supplier.

11. Compliance with Laws and Optotune's Policies

In the performance of the Order, Supplier shall fully comply with all applicable laws, ordinances, rules, regulations and orders of all foreign nations (or governmental subdivisions thereof) and all applicable domestic (Switzerland) federal, state, and local laws, ordinances, rules, regulations and orders pertaining to the production, performance or sale of the Goods or Services, and, upon request, Supplier shall furnish Optotune certificates of such compliance. Without limiting the generality of the foregoing, (i) Supplier expressly agrees to comply with the requirements of the Restriction of Hazardous Substances ("RoHS") as issued and amended by the European Economic Union (EEU); and (ii) Supplier specifically warrants that all materials used in the performance of the Order meet or exceed the requirements of RoHS.

12. Obligation to inform, Long-term Supply and Last Time Buy

12.1 Obligation to inform

The Supplier must inform Optotune far enough in advance of changes in the manufacturing processes, components, materials, quality testing methods and equipment for the Goods and Services supplied to date; of relocations of the places of manufacture; as well as of changes in procedures and equipment for testing the Goods and Services or in other quality assurance measures that Optotune can determine whether the changes might have adverse effects. The Supplier must also require third parties with which he has contracted to fulfil his obligations to Optotune to do the same. While Supplier is supplying Goods and Services to Optotune, Supplier must also notify Optotune of changes in his suppliers and service providers. If adverse effects cannot be excluded, the Supplier must ensure that Optotune receives unmodified parts until an alternative solution, to be approved by Optotune, has been found.

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12.2 Long-term Supply

Supplier will provide the Goods and Services, replacement parts, repair services and technical support at reasonable and competitive pricing for at least 10 years after the last Order. Supplier will keep all major spare parts on stock, ready for immediate dispatch to the site.

12.3 Last Time Buy

In case of discontinuing Goods and Services, the Supplier has to inform Optotune with a written timely announcement, but at least 18 (eighteen) months before discontinuation of Goods or Services. In that event, Optotune has the opportunity to place a last purchase order (Last time Buy). Furthermore, Supplier shall provide all drawings, procedures, instructions etc. available to Optotune free of charge in order to enable Optotune or a third party to manufacture or products the Goods and Services. Optotune has the rights to acquire any tools and equipment owned by the Supplier for a reasonable fee if production, for any reasons, of the relevant Goods and Services shall cease. In case that a Supplier does not meet this deadline of preannouncement, Optotune can impose the obligation on him/her to bear the consequential costs incurred because of this disregard in order to develop a replacement product.

13. Warranties

13.1 General Terms for warranties

Except for cases of product liability, where there is no limit, the warranty period for the Goods and Services is in general 24 (twenty-four) months from the date of transfer of risk. The warranty period for deficiencies, non-conformance and defects which cannot be detected by Optotune during the 24 month warranty period through ordinary examination methods, or where defects in Goods and Services that has been incorporated in an immovable work (e.g. production line, machinery) in a manner consistent with its nature and purpose have caused the work to be defective, or defects in an immovable work, shall be 5 years. Optotune is entitled to notify the Supplier of any deficiency, non-conformance or defect at any time during the warranty period, without being bound to a time limit therefore. If a defect becomes evident within 6 months of the transfer of risk, it shall be assumed that the defect already existed at the time of the transfer of the risk.

Should the Supplier in the course of subsequent performance replace or repair Goods and Services, the warranty period for these Supplies shall begin afresh.

13.2 Epidemic failure

In the event that an epidemic failure occurs during the warranty period, all Goods and Services delivered by Supplier, whether the defect already occurred or not, shall be deemed to be defective and Optotune may claim its rights under this article for all delivered Goods and Services. An epidemic failure shall exist if the same or similar defect occurs within three (3) subsequent deliveries, if nothing to the contrary has been agreed with regard to quality levels. As soon as a party knows or suspects that an epidemic failure exists it shall notify the other party of such. Additional duties and rights shall not be affected.

13.3 Condition of goods

Supplier represents and warrants that Goods and Services are new, state of the art, merchantable, conform to specifications, samples, drawings, descriptions and documentations, and free from defects in title, design, material and workmanship. Supplier shall be liable for any deficiency, non-conformance and defect, irrespective of its fault. The Supplier, an expert in its field, assumes full responsibility and liability for the Goods and Services. If Supplier has been informed of the use of the Goods and Services, or if such use can be reasonably foreseen or is mentioned in a documentation, Supplier warrants that the Goods and Services are suited and appropriate for such use.

Excessive wear and tear, excessive corrosion, excessive erosion or other excessive deterioration which may occur in particular during storage, standby operation or operation shall be deemed to be a deficiency.

13.4 Custom made Goods and Services

For custom made Goods and Services, Supplier warrants that it has punctually and completely gathered all information, data, circumstances and facts necessary for its performance. The Supplier undertakes to test all drawings, calculations, specifications and other requirements provided by Optotune independently within the scope of its general and technical knowledge for errors and inconsistencies and, if necessary, to promptly notify Optotune in writing of any objections in order to resolve them.

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Supplier undertakes to inspect the Goods and Services for defects prior to delivery or handover to Optotune. Supplier shall notify Optotune immediately about any defects.

13.5 Ownership

Supplier warrants that the Goods and Services and all rights thereto are owned by Supplier and do not violate any copyright, patent, trade secret or any other proprietary right of any third party. Supplier warrants that it has and will convey to Optotune good title to the Goods and Services, free and clear of all liens and encumbrances and that the manufacture, production, installation and sale or license to, and use by, Optotune of the Goods and Services are in compliance with any and all applicable laws, rules and regulations.

13.6 Costs

If Supplier breaches any warranty, or Goods and Services are otherwise defective or non-conforming, Supplier shall, at Optotune's option, promptly repair, replace or refund the amount paid for the Goods and Services, and shall pay to Optotune all incidental and consequential damages and additional expenses arising from breach of a warranty, defective or non-conforming Supplies, including cost due to exceptional shipping, line stoppage at Optotune or its customers' facilities, loss of earnings, penalties, costs of ordering Goods and Services from a third party, etc. Supplier shall bear the risk of loss of all defective or non-conforming Supplies while in transit.

The Supplier shall bear the cost of subsequent performance, as well as the costs incurred by Optotune for inspection, sorting, remediation of defects (including recall, dismantling, installation and re-assembly costs) and other expenses (including the cost of increased inspection of incoming goods due to defective delivery) and losses. The Supplier shall bear all costs, losses and expenditures Optotune has to bear in relation to its customers, e.g. due to replacement or repair caused by the Goods and Services (including the cost of a recall or service action).

Should the Supplier fail to fulfil his obligation for subsequent performance within a reasonable time limit set by Optotune, then Optotune is also entitled to remedy the deficiency or to have the deficiency remedied by a third party at the Supplier's risk and expenses, to cancel the contract in whole or in part without being subject to any liability for damages, or to demand a reduction in price, and to claim damages (including indirect and consequential damages) in lieu of performance. Optotune can demand an advance payment from the Supplier for the necessary relevant expenses. Further rights remain unaffected.

13.7 Maintain, repair or troubleshoot

The Supplier warrants to maintain or repair or troubleshoot any part of the Goods and Services, or assist Optotune in the operation, maintenance and repair of the Goods and Services or in troubleshooting. Provided that such services shall not affect the Supplier's liability to remedy deficiencies, non-conformities or defects, Optotune shall pay for such services subject to them being furnished at reasonable and competitive conditions. The Supplier warrants a reaction time of 48 hours.

These warranties shall be in addition to any other warranties, express, implied, or statutory. The warranties expressed herein shall be construed as consistent and cumulative with each other and with all warranties implied by law. If any warranties held to be inconsistent, Optotune may, at any time, including in the course of a suit for breach, select which of them shall be excluded. All warranties shall be construed liberally in favor of Optotune. All warranties shall run to Optotune, its customers and subsequent owners or users of the Goods and Services to which they relate.

14. Intellectual Property rights and indemnification

14.1 Intellectual Property rights

The Supplier guarantees the validity of the intellectual and industrial property rights related to the Goods and Services, as well as the unrestrained usability of the Goods and Services as regards the intellectual and industrial property rights of any third party. It is essential that the Goods and Services are delivered free of any third party rights. The Supplier shall defend and hold Optotune and Optotune's customer harmless from any complaint and/or claim made by a third party.

All rights to the Goods and Services including all patents, copyright, trademarks, trade secrets or any other form of intellectual property, except those previously owned by Supplier belong exclusively to Optotune. As far as development – including software development, inventions, improvements - or construction results emerge from the performance of a service, in case of a research, development, engineering, construction order or another order which includes the development of a technical problem solution, Optotune shall hold all rights, title and interest, and exclusive use of all development and construction results deriving there from. Supplier agrees to

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assign and hereby does assign all rights, title and interest in such intellectual property to Optotune and Optotune hereby accepts such assignment. As far as Supplier's results are subject to intellectual property rights which can be registered, Optotune shall be entitled exclusively to register such rights worldwide in Optotune's own name. The Supplier shall claim all inventions accruing from its employees and transfer all rights in these inventions to Optotune. For this purpose Supplier shall make all information necessary available to Optotune and shall refrain from doing anything that could endanger the granting of the applied intellectual property right. The Supplier shall pay for any resulting remuneration of employees and shall ensure that the employees entrusted with the developments submit the necessary statements so Optotune can execute its rights unrestrictedly. Without Optotune's written consent the developments and constructions shall neither be made available to third parties in whole or in part nor used for Supplier's own or other purposes.

14.2 Indemnification

Supplier shall defend, indemnify and hold harmless Optotune, its customers, directors, officers, employees, agents, assignees, and authorized representatives, from and against any and all claims, suits, actions, proceedings demands, damage, loss and cost (including reasonable lawyer's fee) and expenses of any nature which are based on a claim that the Goods and Services or any part thereof, constitutes or may constitute an infringement of any patent, copyright, trademark, trade secret or any other industrial property rights. The duty to indemnify shall also come into existence if Optotune and its contracting parties, without decision of the court approve the right of the third parties on trust.

If the use, reproduction, distribution, licensing and/or sale of any Goods and Services or any part thereof is enjoined by a court, a settlement or on trust, the Supplier shall, at its own expense, either procure for Optotune an irrevocable, royalty-free and transferable license to continue using the Goods and Services, or at Optotune's sole option, replace same with substantially equal but non-infringing Goods and Services or modify the Goods and Services so that it becomes non-infringing, provided that no such replacement or modification shall release Supplier from its obligations under this contract.

Supplier shall give Optotune prompt written notice of any infringement claim

15. Rights and Remedies

All rights and remedies of Optotune set forth in the Order shall be cumulative and in addition to any other or further rights and remedies provided at law or in equity.

16. Choice of Law and Jurisdiction

The parties acknowledge that the Order shall be deemed made and entered into in Switzerland. The parties therefore stipulate and agree that (i) except as otherwise expressly provided herein, the Order shall be governed by and construed according to the laws of Switzerland; and (ii) any action related to or arising from the Order may be brought only in a local, state or federal court located within the canton of Zurich, Switzerland, and the parties each consent to the jurisdiction of any local, state or federal court located within the canton of Zurich, Switzerland and waive an objection to such jurisdiction over any action related to or arising from the Order. Supplier shall pay all costs, expenses and attorney's fees incurred by Optotune in enforcing or defending Optotune's rights under the Order.

17. Severability

The parties agree that if a legal authority of competent jurisdiction should determine that any portion of the Order is unenforceable as written, the remaining portions shall nonetheless be enforced to the maximum extent allowed by law provided such enforcement does not frustrate the intent of the parties.

18. Entire Agreement

The Order, together with any Attachments, sets forth the complete and final agreement between the parties, and supersedes any and all prior or contemporaneous oral or written communications relating to its subject matter. No amendments to or modifications of the Order will be valid and binding upon Optotune unless in writing and signed by an authorized representative of Optotune.