

General Terms and Conditions of Sale

1. Applicability

- 1.1. Any order sent to Optotune Switzerland AG, or any parent company or affiliate (the “**Seller**”) by any third party (the “**Purchaser**”) shall be accepted entirely at the discretion of the Seller, and, if so accepted, will only be accepted upon these General Terms and Conditions of Sale (“**General Conditions**”).
- 1.2. Each order which is so accepted shall constitute an individual legally binding contract between the Seller and the Purchaser.
- 1.3. These General Conditions shall override any contrary, different, or additional terms or conditions (if any) contained, or referred to, in any order or other document or correspondence from or on behalf of the Purchaser, and no addition, alteration, or substitution of these terms will bind the Seller or form part of any order, unless it is expressly accepted in writing by a person authorised to sign on the Seller’s behalf.

2. Offers of Seller / Orders of Purchaser

- 2.1. Any offers, quotations, or proposals submitted from or on behalf of Seller to Purchaser for goods or services (each an “**Offer**”) are non-binding and valid for thirty (30) days. Upon acceptance of an Offer by Purchaser, Seller shall be obliged to deliver goods or perform services only upon confirmation by Seller in writing.
- 2.2. Purchaser shall issue orders to Seller authorizing Seller to commence the manufacture of goods or the performance of services (each an “**Order**”). Any such Order shall adequately identify the goods or services that are being ordered by Purchaser, the quantities, delivery or completion dates, and the pricing in accordance with the Offer.
- 2.3. Seller shall confirm whether it will meet an Order promptly after receipt thereof (“**Order Confirmation**”). After submission of an Order Confirmation by Seller, the Order, as it may be amended by the Order Confirmation, shall be non-cancellable by Purchaser (each a “**Contract**”). Purchaser shall be liable and indemnify Seller for all damages, costs, and expenses incurred in connection with an extraordinary termination of a Contract other than for material breach by Seller.

3. Specification

- 3.1. All goods supplied by the Seller shall be in accordance with the specifications or descriptions (if any) expressly listed or set out in the Contract. No other specification, descriptive material, written or oral representation, correspondence, or statement, promotional or sales literature shall form part of or be incorporated by reference into the Contract. The seller may, at its sole discretion, implement changes in materials, design and production processes of the goods as long as such changes do not impact form, fit, function or reliability.
- 3.2. It is the responsibility of the Purchaser to ensure that the intended application is suitable and appropriate before acceptance and use. This also applies to the choice of suitable materials. The Purchaser must ensure that the use of the goods is appropriate and lawful.

4. Prices

- 4.1. Unless otherwise agreed, all prices are in Swiss Francs (CHF), net FCA Optotune’s point of shipment (Incoterms 2020).
- 4.2. Prices of Seller specified in product price sheets and posted on the website, or otherwise presented, are subject to change without notice.

5. Delivery / Delay

- 5.1. Delivery shall be made in accordance with the current version of the Incoterms in force at the time of the formation of the Contract. Unless otherwise agreed upon in writing, delivery shall be made FCA Optotune’s point of shipment (Incoterms 2020).
- 5.2. The estimated ship date as stated in the Order Confirmation can only be provided when and if:
 - 5.2.1 the Contract has been concluded and any letters of credit, advance payments or sureties required in the terms of the Order Confirmation have been put in place by the Purchaser; and
 - 5.2.2 the Seller is in possession of all the details required for the execution of the Order; and
 - 5.2.3 the Purchaser has fulfilled any other contractual obligations incumbent on it.

General Terms and Conditions of Sale

- 5.3. Time is not of the essence in the sale and delivery contemplated by the Contract and the Seller shall be entitled to a reasonable period of grace in the event of any delay in delivery beyond the scheduled shipping date.
- 5.4. A contingency beyond Seller's control shall not constitute cause for cancellation of the Contract but shall extend Seller's time of delivery for a period equal to the duration of such contingency.
- 5.5. The Seller shall in no way be liable (i) for any loss of profit, business, contracts, revenues, or anticipated savings, arising from any delay in delivery or non-delivery, or (ii) for any special indirect or consequential damages of any nature whatsoever, arising from any delay in delivery or non-delivery.
- 5.6. Upon receipt of the goods or the services, Purchaser shall examine the goods or services within thirty (30) days and Purchaser shall notify Seller in writing, if in Purchaser's opinion, the goods delivered are incomplete or do not comply with the specifications or the services performed are defective.

6. Passing of Risk

- 6.1. Benefit and risk of the goods shall pass to the Purchaser when Seller communicates to the Purchaser that the goods are at the disposal of the Purchaser. The foregoing shall also apply in the event that the delivery is carried out free of charge or if transport is organised by the Seller. Subject to Section 5.1 above, benefit and risk of the goods shall pass to the Purchaser no later than when the goods are handed over to the first carrier.

7. Payment

- 7.1. Unless otherwise agreed upon in writing, the Purchaser shall pay to Seller the full invoice price of the goods not later than twenty (20) days after the date of each invoice.
- 7.2. Payments made after twenty (20) days may, at the Seller's option, be subject to interest at the rate of 1.5% per month (18% per year) on the invoiced amount to the extent permitted by law. In addition, Purchaser agrees to pay all costs of collection, including costs of litigation and reasonable attorneys' fees. The Seller shall have the right, without notice, to set off or apply any amounts owed to Purchaser by Seller against monies that may be owed to Seller by the Purchaser.
- 7.3. Whatever means of payment shall be used, payment shall not be deemed to have been effected before the Seller's account has been fully and irrevocably credited.
- 7.4. In case of late payment the Seller may, after having notified the Purchaser in writing, suspend his performance of the Contract until he receives payment.
- 7.5. If the Purchaser has not paid any amount due within three (3) months of the respective due date, the Seller shall be entitled (i) to terminate any Contract or any other business relationship with Purchaser by giving notice in writing to the Purchaser, and (ii) to claim compensation for any losses and expenses incurred.

8. Title of Goods

- 8.1. Title to the goods delivered shall not pass to the Purchaser until the Purchaser has effected payment to the Seller; provided that the Seller shall be entitled to claim payment for such goods once payment has become due even though title has not passed.
- 8.2. The Purchaser shall at the request of the Seller assist in taking any measures necessary to protect the Seller's title to the goods and cover the cost which might arise from this protection.
- 8.3. The retention of title shall not affect the passing of risk under Clause 6.

9. Warranty

- 9.1. The Seller shall only be liable for defects of the goods arising (i) under the conditions of operation provided for in the Contract and (ii) proper, lawful use of the goods. The Purchaser acknowledges that the Seller has no control or knowledge under which conditions the goods are operated or stored by the Purchaser and the Seller explicitly disclaims all warranties, express or implied, for any period during which the goods are operated or stored not in accordance with the technical specifications. In particular, the Seller's liability does not cover defects which are caused by any fault of or on behalf of Purchaser in the maintenance installation, repair, or other handling of the goods, or by alterations carried out without the Seller's consent in writing. Seller's liability does not cover normal wear and tear or deterioration.

General Terms and Conditions of Sale

- 9.2. The Seller warrants solely to the (original) Purchaser of the goods for a period of twelve (12) months from the date of delivery that the goods shall be of the quality, material and workmanship defined in the Seller's published specifications of the goods. Within such period, if proven to be defective, the Seller shall repair and/or replace the goods, in the Seller's sole discretion, free of charge to the Purchaser, provided that:
- 9.2.1 notice in writing describing the defects shall be given to the Seller within fourteen (14) days after their first appearance; and
 - 9.2.2 the return of defective goods is approved in writing (issuance of an RMA document by Seller); and
 - 9.2.3 the defective goods shall be returned to the Seller's factory at the Purchaser's expense in the original or equivalent suitable packaging; and
 - 9.2.4 such defects shall be found, to the Seller's reasonable satisfaction, to have arisen from the Seller's faulty design, material, or workmanship.
- 9.3. Any repaired or replaced goods shall be redelivered by the Seller free of charge to the original point of delivery but otherwise in accordance with and subject to these General Conditions save that the warranty period shall be limited to the unexpired portion of the original period pursuant to Clause 9.2.
- 9.4. In lieu of the remedies in Clause 9.2, the Seller shall be entitled, in its sole discretion, to refund the price of the defective goods in the event that such price shall already have been paid by the Purchaser to the Seller, or, if such price has not been so paid, to relieve the Purchaser of all obligations to pay the same by issuing a credit note in favour of the Purchaser in the amount of such unpaid price.
- 9.5. Seller may provide Purchaser technical, application, or design advice (including reference designs), quality characterization, reliability data, or other services. Purchaser agrees that providing these services does not expand or otherwise alter Seller's warranties as set forth herein and no additional obligations or liabilities arise from Seller providing such services or items.
- 9.6. Save as stipulated in Clauses 9.1 to 9.5, the Seller shall be free of any liability to the Purchaser, whether contractual, tortious or otherwise, for defects in the goods or for any loss or damage to or caused by the goods or otherwise arising in connection with a Contract, in particular, but without limitation of the foregoing, loss of production, loss of profit and other indirect, incidental, or consequential damages. All operating parameters, including without limitation recommended parameters, must be validated for each of Purchaser's applications by Purchaser's technical experts. Recommended parameters can and do vary in different applications.
- 9.7. EXCEPT FOR THE WARRANTIES EXPRESSLY SET FORTH HEREIN, THE SELLER MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE GOODS OR SERVICES PROVIDED. ANY AND ALL WARRANTIES, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR WARRANTIES AGAINST NON-INFRINGEMENT, ARE EXPRESSLY EXCLUDED AND DECLINED.

10. Allocation of Liability for Damage Caused by the Goods

- 10.1. Purchaser is solely responsible for any use of the delivered goods and the design, validation, and testing of its applications as well as for compliance with all legal, regulatory, and safety-related requirements concerning its applications. Industry best practices generally require that Purchaser conducts qualification tests on actual applications considering possible environmental and other conditions that Purchaser's application may encounter. Purchaser represents that, with respect to its applications, it has all the necessary expertise to create and implement safeguards that (i) anticipate dangerous consequences of failures, (ii) monitor failures and their consequences, and (iii) lessen the likelihood of failures that might cause harm, and to take appropriate remedial actions. Purchaser agrees that prior to using or distributing any systems that include goods, Purchaser will thoroughly test such systems and the functionality of such goods as used in such systems.
- 10.2. The Seller shall not be liable for any damage to property caused by the goods after having been delivered and while they are in the possession of the Purchaser, its customers or other third parties. Nor shall the Seller be liable for any damage to products manufactured by or on behalf of the Purchaser, or to goods of which the Purchaser's goods form a part.

General Terms and Conditions of Sale

- 10.3. If the Seller incurs liability towards any third party for damages to property as described in the preceding paragraph, or for personal injury, the Purchaser shall indemnify, defend, and hold harmless the Seller and its officers, employees, subsidiaries, affiliates and distributors against all claims, costs, damages, expenses, and reasonable attorney fees arising out of or resulting therefrom.
- 10.4. If a claim for damages pursuant to this Clause 10 is asserted by a third party against one of the parties, such party shall forthwith inform the other party thereof in writing.

11. Force Majeure

- 11.1. The Seller shall not be liable for any failure to perform any of its obligations under the Contract due to a Force Majeure event. The Seller shall be allowed a reasonable extension of time for the performance of its obligations in case of such a Force Majeure event.
- 11.2. For the purpose of these General Conditions, a Force Majeure event means fire, explosion, flood, lightning, Act of God, outbreak of a pandemic disease, act of terrorism, war, rebellion, riot, sabotage, or official strike or similar labour dispute, or other events or circumstances outside the reasonable control of Supplier or any of its subcontractors.

12. Export Control Regulations

- 12.1. Purchaser acknowledges and agrees that Seller's obligation to fulfil the Contract is subject to the proviso that the fulfilment is not prohibited or impaired by applicable export control regulations (including embargos).

13. Economic Loss

- 13.1. Notwithstanding anything to the contrary and to the extent permitted by applicable law, Seller shall under no circumstances be liable for any reason, whether in contract, tort (including negligence or breach of statutory duty) or otherwise, and whatever the cause thereof (i) for any loss of profit, business, contracts, revenues, or anticipated savings, or (ii) for any special, indirect, incidental or consequential damage of any nature whatsoever.
- 13.2. In jurisdictions that limit the scope of or preclude limitations or exclusions of remedies, damages or of liability, such as liability for gross negligence or willful misconduct, or do not allow implied warranties to be excluded, the limitation or exclusion of warranties, remedies, damages, or liability set forth herein are intended to apply to the maximum extent permitted by applicable law.
- 13.3. With respect to any costs, damages, interest or claims adjudicated by a court or arbitration tribunal located in the United States of America and its possessions (the "US") or applying the laws of the US or any of its states or territories for which the Seller is liable to the Purchaser, the Seller shall in any case only be liable to the Purchaser to the extent it would have been liable pursuant to the internal laws of Switzerland.
- 13.4. Notwithstanding anything to the contrary and to the extent permitted by applicable law, Seller's total aggregate liability arising out of or in connection with these General Conditions and any Contract shall be limited to a maximum of one hundred thousand Swiss Francs (CHF 100'000).

14. Confidentiality

- 14.1. Seller and Purchaser shall each keep confidential and shall not, without the prior consent in writing of the other party, disclose to any third party, any technical or commercial information which it has acquired from the other as a result of discussions, negotiations and other communications relating to the goods and the Contract; except as may be required by law or legal process.

15. Compliance

- 15.1. Purchaser covenants and warrants to comply, at all times, in letter and spirit, and at its own cost and expense, with all applicable laws, ordinances, rules, regulations and orders pertaining to Purchaser's business activities, including but not limited to all applicable laws regarding anti-bribery and anti-corruption, export controls, product promotion, data privacy, trade compliance, and competition. Upon request, Purchaser shall furnish to Seller respective documentation or certificates of such compliance.

General Terms and Conditions of Sale

16. Choice of Law and Jurisdiction

- 16.1. These Terms and Conditions and any Contract are exclusively construed and controlled by the laws of Switzerland without reference to its conflict of laws rules.
- 16.2. Any dispute arising out of or in connection with these Terms and Conditions and any Contract shall be subject to the exclusive jurisdiction of the competent courts of the Canton of Zurich, Switzerland. The Seller reserves the right to initiate court proceedings against the Purchaser in any other court of competent jurisdiction.

17. Miscellaneous

- 17.1. If any provision contained in these Terms and Conditions or in any Contract is held by final judgment of a court of competent jurisdiction to be invalid, illegal, or unenforceable, such invalid, illegal or unenforceable provision shall be severed from the remainder of these General Conditions and the Contract, and the remainder of these General Conditions and the Contract shall be enforced. In addition, the invalid, illegal or unenforceable provision shall be deemed to be automatically modified, and, as so modified, to be included in these General Conditions and the Contract, such modification being made to the minimum extent necessary to render the provision valid, legal, and enforceable. Notwithstanding the foregoing, however, if the severed or modified provision concerns all or a portion of the essential consideration to be delivered under these General Conditions and the Contract by one party to the other, the remaining provisions of these General Conditions and the Contract shall also be modified to the extent necessary to equitably adjust the parties' respective rights and obligations hereunder.
- 17.2. In the event of a violation or threatened violation of the Seller's proprietary rights, the Seller shall have the right, in addition to such other remedies as may be available pursuant to law or these General Conditions and the Contract, to temporary or permanent injunctive relief enjoining such act or threatened act. The parties acknowledge and agree that legal remedies for such violations or threatened violations are inadequate, and that the Seller would suffer irreparable harm.
- 17.3. These Terms and Conditions, any Contract or any portion of the Contract or any duty, right or interest herein or any claim arising hereunder shall not be delegated or assigned by the Purchaser without the prior written consent of Seller. Any unauthorized assignment or attempted assignment by the Purchaser shall constitute a material breach of these Terms and Conditions and any Contract. The Seller may delegate or assign any Contract or any portion of the Contract or any duty, right or interest herein or any claim arising hereunder at any time and in its sole discretion.
- 17.4. The failure of any party hereto to enforce at any time, or for any period of time, any provision of these General Conditions or any Contract shall not be construed as a waiver of either such provision or of the right of such party thereafter to enforce each and every provision of these General Conditions and any Contract.
- 17.5. The parties hereto are independent contractors and nothing in these General Conditions will be construed as creating a joint venture, employment, or agency relationship between the parties.
- 17.6. Paragraph headings are inserted for convenience of reference only and do not form part of these General Conditions.