

# GENERAL TERMS AND CONDITIONS OF PURCHASE

DISTRIBUTION			
<b>INTERNAL</b>			
<input type="checkbox"/> Quality	<input type="checkbox"/> Design Department	<input type="checkbox"/> Sales	<input type="checkbox"/> Production
<input type="checkbox"/> Accounts	<input type="checkbox"/> Testing	<input checked="" type="checkbox"/> Procurement	<input type="checkbox"/> Goods Inward
<input type="checkbox"/> R & D	<input type="checkbox"/> After-Sales Service	<input checked="" type="checkbox"/> Other: Managers	<input checked="" type="checkbox"/> Other: Legal/Management
<b>EXTERNAL</b>			
<input type="checkbox"/> Customer: .....		<input type="checkbox"/> Organisation: .....	
<input type="checkbox"/> Other: .....		<input type="checkbox"/> Other: .....	

RECORD OF REVISIONS					
Date	Rev.	Drafted by:	Checked by:	Approved by:	Reason
08/03/17	0	J. CUSINATO/ M. GOULINET	F. HUMBERT	P-M. de MOURGUES	Creation of document

**Article 1 – Description of document and relationship to terms and conditions of sale**

These general terms and conditions of purchase apply to all Optimex orders. As a precondition and prerequisite for all orders, they exclude the application of the Seller's general terms and conditions of sale at all times, even if Optimex has not rejected these. They can be changed only by way of Special Terms and Conditions expressly stipulated in order confirmations. In the event of a contradiction, the Special Terms and Conditions shall take precedence. The contract with the Seller is comprised of the order, its appendices setting out any technical specifications and the acknowledgement of receipt of order. The Seller shall comply with all regulations in force on the date of delivery, relating to the supplies covered by the order.

**Article 2 – Orders**

No changes to the provisions of the contract can be accepted before the relevant amendment has been agreed, signed and become effective. The acknowledgement of receipt or a copy of Optimex's order shall be returned to it unchanged, bearing the Seller's signatures and stamp. This acknowledgement of receipt shall, if appropriate, be accompanied by all of the documentary evidence required by employment legislation and by other regulations.

If no acknowledgement of receipt is sent within seven calendar days, this order will be deemed to have been accepted, and to be firm and final.

Acceptance of an order implies unconditional acceptance of the terms and conditions of purchase and of the price.

It is the Seller's responsibility to check that the drawings and documents supplied to it enable the order to be executed, and to indicate in a timely manner any problems that it encounters and which call for a decision on the part of Optimex.

During the course of execution, Optimex reserves the right to request any changes that it sees fit. Once the cost of the change has been calculated by the Seller and accepted by Optimex, an amendment will be issued.

**Article 3 – Financial terms and conditions**

All orders are placed at a firm and non-revisable price, including the supplies and services provided for in Incoterms appearing in the Special Terms and Conditions.

This price shall be taken to mean excluding VAT.

Unless otherwise stipulated at the time of the order, no downpayment is made with the order.

The Seller shall send the invoices, which must comply with the regulations, to Optimex following delivery. These invoices shall be issued in a single copy.

They shall be made out to Optimex SAS and, unless indicated otherwise, sent to the following address:

**SAS Optimex – Service Achats comptabilité fournisseur  
269 rue de Montepy  
69210 Fleurieux sur L'Arbresle  
France**

Optimex reserves the right to reject the billing and delivery of any goods that have not been the subject of an order issued in due form.

Invoices are paid by credit transfer made at 45 days from the end of the month unless agreement is reached between both parties (due date calculated on the basis of the actual delivery date, with the amount paid taking account of any late delivery penalties calculated in accordance with Article 4 below).

Payment may be made in two ways: by cheque or by credit transfer.

Any claims made by the Seller regarding monies that Optimex may owe it in any connection, must be notified by recorded-delivery letter requesting acknowledgement of receipt, no later than three months after the calendar year in connection with which the money is being claimed. Failing this, the claim will be inadmissible.

#### **Article 4 – Delivery times**

Failure to comply with delivery dates and places of delivery will automatically result, other than in cases of *force majeure* (as defined by case law and by Article 5 – *Force majeure*) proven by the Seller, in a formal notice to comply being issued to the Seller and to the imposition of the penalty charges provided for in the Special Terms and Conditions, without prejudice to any other rights and recourse, including making good any losses and early termination of the contract.

The penalty charges applied will be 5% of the order value excluding VAT, if no delivery is made, or 5% of the value excluding VAT relating to the undelivered part of the order, in the event of partial delivery, for each working day's delay.

#### **Article 5 – Force majeure**

The parties shall not be liable if the non-performance or delay in meeting any of their obligations as described in these general terms and conditions of sale arises from a case of *force majeure*. In this regard, *force majeure* shall be taken to mean any event that is external, unforeseeable and irresistible within the meaning of Article 1148 of the French Civil Code but also by express agreement, the following situations:

total or partial strikes, whether internal or external to the company, lock-outs, extreme weather conditions, epidemics, obstruction of means of transport or procurement, howsoever caused, earthquakes, fire, storms, flooding, water damage, government or legal restrictions, legal or regulatory changes to marketing formats, computer breakdowns, disruption of telecommunications

and any other cases independent of the express will of the parties, and preventing the normal performance of this agreement.

#### **Article 6 – Logistics**

No goods shall be dispatched without the Seller first issuing a certificate evidencing that they comply with the specifications set out in the order. If any particular tests are specified in the order, the relevant test reports shall be attached to the abovementioned certificates or documentary proof provided.

Any dispatches sent to Optimex will be documented in a consignment note issued by the Seller and including all of the information needed to identify the packages concerned (*inter alia* specify the order references, the nature and quantity of the goods, and the carrier's name. This consignment note will accompany the packages and be placed inside the packaging. The certificates and reports evidencing the tests performed by the Seller will also be included inside the packaging.

The transportation and packaging used must be appropriate to meet the regulations in force, and suitable for the product being transported, its loading, transportation and unloading.

#### **Article 7 – Quality control**

The order will not be deemed to have been permanently delivered until such time as the parts and documents have been accepted.

Test certificates, documents and measurements on drawings shall be delivered with the documents inside a plastic wallet if these are requested on the order confirmation or on the drawings.

The term Acceptance implies quantitative and qualitative checking of compliance with the order. Any defects or shortcomings in documentation or parts may result in a non-conformity and Optimex will then set an execution deadline for eliminating non-conformities, without prejudice to invoking the provisions of **Article 4 – Delivery times**, and more generally, any of the other provisions hereof.

Acceptance-testing will be carried out when the goods arrive at Optimex's premises or at the place where the work is being executed, and if applicable on the premises of subcontractors.

Unconditional acceptance (of parts AND documentation) will give rise to payment.

If acceptance cannot be pronounced for whatever reason at the time of delivery of a package, Optimex will then declare "Acceptance subject to compliance checks". If the said reservation is not

confirmed by means of a non-conformity or if it is expressly lifted within 30 days, the delivery will be deemed to be in compliance and acceptance will be pronounced.

This testing cannot alter the obligations of the Seller, who continues to be fully liable for the compliance of the goods it has supplied with the stipulations contained in the order, and for its execution in accordance with industry standards and with current regulations. The Seller therefore undertakes to grant Optimex's representatives unrestricted access to the establishments concerned by the order, so that they can perform any controls, tests or other checking operations. Optimex reserves the right to accept or reject any surplus quantities delivered. If the scope of supply proves to be non-compliant, Optimex may, as it so wishes, without any recourse for the Seller and at the latter's expense, either request a replacement for the non-compliant scope of supply or replace it or arrange for its replacement, or cancel the contract by means of a recorded-delivery letter with acknowledgment of receipt, entirely without prejudice to any damages that we may claim.

In the event of any visible defect or non-conformity in the products or services supplied, Optimex will be entitled to call upon the Seller to repair the products, at the Seller's own costs and risks.

All repairs undertaken by the Seller shall be agreed in writing by Optimex.

Any changes made and/or repairs carried out by Optimex following a non-compliant delivery will be charged back to the Seller at cost price, after the latter has given its agreement.

The Seller shall be similarly liable to pay the costs of returning any non-compliant equipment.

### **Article 8 – Transfer of ownership and risks**

Transfer of ownership will take place at the time the scope of supply is delivered to its destination. Nevertheless, if Optimex has already made one or more advance payments in relation to the scope of supply, transfer of ownership will take place at the time of such payments, and will cover the relevant raw materials and parts of the scope of supply that are currently being executed and are to be charged for individually. Transfer of risks will take place in accordance with the Incoterm reference applicable to the order.

### **Article 9 – Clause of reserve of ownership**

The reserve of ownership clauses appearing in the Seller's documents cannot be used in law against Optimex.

### **Article 10 – Warranty**

Unless a waiver is included in the Special Terms and Conditions governing orders, the warranty period will commence on the date of acceptance, and will last either for a term of 60 months or for 18 months with effect from the time the part concerned enters service, and will end on whichever of these two time periods expires first. During this time, the scope of supply will be under warranty, regardless of the reasons for its non-compliance (quality defect, operating defect, etc.). In the event of a defect, the warranty will be extended for a period equal to that of the non-availability of the scope of supply; if it proves necessary to replace the scope of supply in whole or in part, the warranty period covering the defective item will run, with effect from its replacement, for a period equal to the term of the initial warranty, subject to any other rights and recourse enjoyed by Optimex. The Seller also remains liable, under the rules of ordinary law, beyond the contractual warranty period, for any hidden defects that subsequently become apparent in its scope of supply.

The Seller shall promptly, and entirely at its own expense, repair any defects of any kind in the goods/the service, normally by way of either replacing it or bringing it into compliance immediately. It shall also make good any harmful and proven consequences occasioned by such defects either to ourselves, our Clients and/or our partners. It holds us entirely harmless in respect thereof. If the Seller proves to be incapable of repair these defects, Optimex reserves the right to have the necessary work carried out by a third party, at the Seller's expense, without prejudice either to the application of the cancellation clause or to seeking damages.

The Seller remains liable, under the rules of ordinary law, beyond the contractual warranty period, for any hidden defects that subsequently become apparent in its scope of supply.

**Article 11 – Traceability, health and safety, environmental issues, employment law**

The materials and production methods used must be environmentally-friendly, and must comply with employment legislation and the standards applicable to workers' safety, and with the provisions intended to guarantee the safety of users and consumers. The Seller shall adhere to the French and European regulations in force in these areas, and in particular Decree n° 98-638 of 20 July 1998 (relating to compliance with environmental requirements applicable to the design and manufacture of packaging), for which the Seller must provide a written declaration of compliance.

By the mere fact of accepting the order, the Seller warrants that the scope of supply will be equipped with all of the safety mechanisms required by law or normally used. The Seller will abide by all laws and standards concerning traceability, health and safety, and the environment, which are in force on the date and at the place of delivery.

Whenever the order involves services that are to be delivered at any of Optimex's establishments, the Seller shall take, in due time, any necessary measures to comply with the legal and regulatory provisions applicable in the areas of traceability, health and safety, and the environment. In this regard, the Seller shall in particular — prior to any intervention on the site by its staff — make contact with the Safety Manager of the Establishment concerned, and arrange with him/her to implement the consultation procedure called for by the regulations in question. Compliance with the provisions of this article constitutes an essential and determining precondition for acceptance of the order placed by Optimex.

In particular, all supplies must be compliant and meet the requirements imposed by the legislation and regulations in force on the date and at the place of delivery. The Seller shall provide at first request a certificate evidencing the compliance of its goods with the regulations in force.

The Seller will be solely responsible for checking the compliance of the scope of supply with the abovementioned requirements, taking account, *inter alia*, of the product's characteristics, which will be specified by Optimex.

Any changes in the composition or the preparation procedure of a scope of supply that has already been approved by Optimex must be notified by the Seller and accepted by Optimex in writing before they are implemented.

**Article 12 – Tools and documents**

Where tools and documents belong to us, they must be clearly identified. In such circumstances, the Seller must maintain them in good condition and have them insured. Optimex reserves the right to regain possession of such tools and documents if, despite a formal notice to comply issued by ourselves, the Seller fails to meet its contractual obligations. The Seller shall refrain from using these tools for any purposes other than to fulfil the order and shall not destroy them without our prior agreement in writing.

**Article 13 – Confidentiality**

The Seller shall refrain from disclosing any information, notably of a technical, commercial or financial nature, linked either to its business relationship or to Optimex, without Optimex's prior consent in writing. It shall obtain the same undertaking in writing from its own subcontractors and Sellers.

**Article 14 – Intellectual and Industrial Property Rights**

Any services or orders entrusted by Optimex to the Seller do not grant the latter any rights to the trademarks, logos, distinctive signs or any other industrial and commercial property rights owned by Optimex.

The Seller shall be responsible for the use, in its scope of supply, of any industrial and intellectual property rights and, more generally, any exclusive rights, together with any royalties, costs or claims relating to the use of such rights in the scope of supply or occasioned by measures subsequently taken in order to maintain it in good order. It shall defend Optimex and hold it harmless in the event of any lawsuits brought in connection with infringement of the said industrial property rights, and compensate Optimex in full for any losses suffered by the latter in this connection. Optimex also



reserves all industrial property rights relating to the scope of supply if it has contributed to the financing or execution of the research.

Without prejudice to the foregoing, if the Seller, whether intentionally or otherwise, supplies Optimex with an infringing product, regardless of whether the infringement comes to light before or after acceptance, even if such acceptance is unconditional, it undertakes to compensate Optimex in advance, and more generally, any third party that suffers a loss of any kind and without limitation of amount, which is directly linked to use of the said infringement or to the delay resulting from the discovery of the infringement and from its replacement, such examples of losses being in no way restrictive. In such circumstances, and without prejudice to any compensation paid for the damage caused, the Seller shall pay all legal costs and all of the costs of expert opinions.

The definition of infringement shall be that given in Articles L335-2 *et seq.*, L521-2 *et seq.* and L716-9 *et seq.* of the French Intellectual Property Code. Optimex intends to systematically take legal action against any acts constituting infringement or concealment of infringement - such deeds being provided for and punished by the provisions of Articles 321-1 para. 1 *et seq.* of the French Criminal Code.

### **Article 15 – Subcontracting**

The Seller itself shall execute the supplies and services ordered. It shall not subcontract the execution of the order in whole or in part before receiving agreement in writing from Optimex to do so, but in all circumstances remains jointly and severally liable, together with the subcontractor, for perfect execution of the order, both *vis-à-vis* Optimex and third parties.

### **Article 16 – Damage and insurance**

The Seller shall bear the full cost of any physical injury, damage to property or moral prejudice caused to Optimex, its representatives, employees or third parties, at the time of execution of the order or arising from such execution in any way. It shall take out an insurance policy, with creditworthy insurance companies, covering the consequences of the above obligations, and those of any losses arising until such time as the risks are transferred to Optimex. It shall provide evidence thereof to Optimex and of its validity, on request. The Seller shall refrain from taking any action against Optimex, its representatives or employees, in connection with any losses incurred at the time of execution of the order or arising from such execution, *inter alia* in the event of theft, and it will hold Optimex, its representatives or employees entirely harmless against any recourse sought by a third party in connection therewith, against the latter. The Seller shall obtain an assurance from the insurance companies covering these risks, that they will waive any recourse as subrogated in the Seller's rights against Optimex, its representatives or employees. The policies taken out by the Seller shall in no way be deemed to impose a limitation on its obligations and responsibilities under the order.

### **Article 17 – Cancellation**

Optimex reserves the right to automatically cancel any order if any of the clauses enumerated above are breached, including those concerning building up of a permanent stock if this is required, delivery deadlines and places of delivery, technical and quality specifications, and prices.

Such cancellation will take effect 30 days after a recorded-delivery letter with acknowledgment of receipt has been sent to the Seller, informing it that the contractual relationship has come to an end.

The Seller, for its part, will be entitled to automatically cancel any order in the event of serious and repeated non-performance by Optimex of its main contractual obligation, i.e. payment of the price. Cancellation will take effect 30 days after a formal notice to comply, sent by recorded-delivery letter requesting acknowledgement of receipt, has not been acted upon.

**Article 18 – Penalty clause**

Without prejudice to any of the other provisions of these general terms and conditions of purchase or to any compensation payable for losses or invocation of the provisions of **Article 4 – Delivery times**, non-performance by the Seller of its obligations will automatically give rise, and without the need to refer the matter to the courts, to payment, by way of a penalty clause, of compensation to Optimex amounting to 10% of the total value excluding VAT of the order in question, including in the event of partial non-performance.

**Article 19 – Entirety of the Contract**

If any of these clauses are set aside by the courts, the remaining clauses shall continue to be valid and to be binding on the parties.

**Article 20 – Disputes**

The order and its consequences will be governed by French law. Sole jurisdiction is granted to the competent courts of the place where Optimex's registered office is located, for the purpose of resolving any disputes relating to the sale of supplies or services and to these terms and conditions, even if there are multiple defendants or in the event of the introduction of third parties, regardless of the terms of payment, even if this is by banker's draft or other types of bills of exchange. This assignment of jurisdiction and competence is stipulated in favour of Optimex, which reserves the right to refer the matter to any other competent jurisdictions.