

# GENERAL TERMS & CONDITIONS OF DELIVERY AND PAYMENT 2015 OF OPTICON

## APPLICABILITY

These General Terms and conditions of Delivery and Payment are applicable to each quotation of and contract with Opticon Sensors Europe B.V. (Opaalaan 35, 2132 XV Hoofddorp, the Netherlands) and any of its affiliates worldwide (**Opticon**), for the performance of services and/or for the sale of goods, which shall also include software.

Deviations from and amendments to these Terms & Conditions will only be binding insofar as Opticon has explicitly confirmed this in writing, duly signed by an authorised representative of Opticon.

The general terms and conditions of the customer will not be applicable unless and insofar as Opticon has expressly agreed to this in writing, duly signed by an authorised representative of Opticon.

For the purposes of these Terms & Conditions, "customer" will also mean "purchaser" or "distributor" as and when appropriate.

## COMMENCEMENT OF THE CONTRACT

A contract to deliver goods and/or services will be deemed to have commenced between Opticon and the customer when the customer's order has been confirmed in writing by Opticon or when Opticon has commenced delivery of such order.

## PRICES

Unless otherwise agreed in writing, deliveries will be made by Opticon against the prices specified in the price list published by Opticon and in force on the date of acceptance of the order. All prices quoted by Opticon are exclusive of (Dutch) VAT, possible export or import duties, forwarding costs, insurance costs and any necessary installation charges. Opticon reserves the right to adjust the prices for the services and/or goods from time to time.

## OFFERS

All offers and quotations made by or on behalf of Opticon are made without obligation and are valid for a period of thirty (30) days, unless otherwise indicated by Opticon. Opticon shall be entitled to withdraw its offer within five (5) working days after receipt of the acceptance of the offer by the customer. Orders, contracts and agreements will only be binding upon Opticon if and insofar as they have been confirmed by Opticon to the customer in writing, duly signed by an authorised representative of Opticon.

Opticon cannot be held liable for errors or deviations in illustrations, drawings and/or other specifications used in offers, and/or order confirmations, since such illustrations are provided only as a general indication and are not binding. Opticon shall at any time be entitled to amend its services and alter the goods, specifications and instructions for use to improve them or to comply with applicable standards and governmental regulations.

## DELIVERY

The delivery and processing times commence after receipt by Opticon of the data, goods and/or arranged payments necessary for the performance of the contract. The delivery time quoted by Opticon is an estimate which will be observed by Opticon as far as possible. In the event of late delivery of the services and/or the delivery of the goods, Opticon must be formally declared to be in default in writing and must be granted an additional reasonable term to satisfy its obligations. If the extended term is exceeded, the customer shall be entitled to dissolve the contract insofar as no services have been performed or deliveries have taken place. Opticon shall not be liable for any damage resulting from late delivery of the goods or performance of the services. Opticon shall be allowed to deliver the sold goods in partial consignment.

The customer will be obliged to accept the delivered goods and, if it has been agreed that Opticon must also perform services, to offer Opticon every opportunity and co-operation to do so. If the customer acts in violation of this obligation, said goods will be stored at the expense and risk of the customer. The customer shall pay Opticon all additional delivery, storage and insurance costs and any other costs incurred along with any loss arising in connection with such neglect or refusal. Delivery of goods will be effected ex works (Ex Works Incoterms 2010), unless agreed otherwise between the parties in writing. From the moment of delivery, the risk of loss or damage shall pass to the customer even if title to the goods have not yet passed.

## PAYMENT AND SECURITY

The goods and/or services shall be paid by the customer within thirty (30) days after the invoice date in the agreed upon currency to the bank account mentioned on the invoice, unless agreed otherwise in writing. The date of payment shall be the date on which the amount due has been credited to the bank account. The customer shall not be entitled to invoke any set-off. Upon expiration of the term of payment, the customer shall be in default and, as of that date, it shall owe interest at a rate corresponding to the Dutch statutory trade interest ('wettelijke handelsrente'). Opticon shall at any time be entitled to demand adequate security or whole or partial advance payment from the customer before it performs (further).

## RETENTION OF TITLE AND RIGHT OF PLEDGE

Opticon shall retain title to all goods delivered or to be delivered to the customer until Opticon has received payment in full of the purchase price of the goods, the fees for any services performed in relation to any contract concluded with the customer and any other costs, damage or interest resulting from a breach by the customer of any such contract. During such time as Opticon has title to the goods, the customer shall store or otherwise keep Opticon's goods separately from all other goods in such a way as to clearly indicate at all times that the said property remains that of Opticon. All costs incurred by Opticon in repossessing the goods shall be paid by the customer. During such time as Opticon retains title to the goods, the customer in possession of the goods shall have the power to deal with and actually deliver the goods in the normal course of its business. At Opticon's first request, the customer shall establish a silent pledge on behalf of Opticon on the account receivable from the sale of any of such goods. The customer shall insure the goods, title of which remain in Opticon, against any and all risks commonly insured against. The customer shall name Opticon as insured or additional assured.

## COMPLAINTS

Upon receipt of the goods and/or the services, the customer shall be obliged to immediately inspect the goods and the services for defects and deficiencies and shall ensure that the goods delivered are fit for the purpose for which they are to be used and that the result of the services conform to the objective of the relevant contract. In the event the customer installs the goods in whatever manner prior to having conducted the aforementioned tests, the customer shall do so at its own risk. Visible defects must be reported to Opticon in writing within five (5) working days after the date of receipt of the goods at the customer's premises or the date of completion of the services. Defects that are not visible upon receipt, including the defects which are evidenced or reasonably can be evidenced by means of the aforementioned tests to be conducted prior to installation of the goods, must be reported to Opticon within five (5) working days after discovery or within five (5) working days after the customer should reasonably have discovered the defects.

## WARRANTY

Opticon warrants the proper working of the to the customer delivered goods insofar normal used by the customer for a period of twenty-four (24) months as of delivery of such goods. Power supplies, batteries and accessories are excluded from any warranty, except when such item is dead on arrival and when this has been claimed by the customer within five (5) days after receiving such item. In case a good is defective within the warranty period and Opticon is notified thereof in accordance with the previous article ("Complaints"), Opticon shall (at its discretion) only be obliged to repair the defect free of charge, to have the defect repaired, or to make the parts available that are necessary for the

repair, or to replace the good concerned. If Opticon finds that repair or replacement of the goods is not (or no longer) possible or disproportionately troublesome, Opticon shall be entitled to credit the price received for the goods and/or services concerned, without being liable for any further damages. Normal use shall mean the use of the goods for the purpose for which it was intended, including compliance with the instructions for use which accompany the goods and bearing in mind any instructions or guidelines for use given in writing or orally by Opticon during the installation of the goods, as determined at the discretion of Opticon. The costs of the components which prove defective and are replaced during the warranty period are included in the warranty, with the exception of components which are subject to normal wear and tear. Breakdowns which are the result of normal wear and tear, pollution, inappropriate use, negligence, carelessness, abuse or intentional damage, to be judged reasonably by Opticon, are excluded from the warranty. Disruptions caused by external influences, such as - for example - work carried out by third parties, improper use, the use of poor quality non-durable material, changes to the set up, power supplies, earthquake, fire, lightning, flood damage, violence, external software and connections or interfaces with equipment other than that designated by Opticon, are also excluded from the warranty. Products may only be returned by the customer to Opticon subject to Opticon's prior written consent and instructions. This warranty is personal and can only be transferred by the customer to a third party with the prior written consent of Opticon. Parties may agree in writing upon different warranty conditions for certain goods.

## FORCE MAJEURE

Opticon is entitled to invoke force majeure ex article 6:75 of the Dutch civil code, if the implementation of the contract is, in whole or in part, temporarily or not, prevented or impeded by circumstances reasonably out of its control, including site or building blockades, strikes, specific work interruptions or work-to-rule slowdowns and lockout, delay in the provision to Opticon of certain parts, goods or services ordered from third parties other than by circumstances to be imputed to Opticon, sickness of its employees, accidents and interruptions of business operations and transport problems. In case of force majeure on the part of Opticon, its obligations shall be suspended. If the force majeure lasts more than three (3) months, Opticon and the customer are both entitled to terminate the non-feasible parts of the contract.

## LIABILITY

All liability of Opticon is limited to the warranty obligation as set forth under 'Warranty', unless in so far as damage result from an intentional act or gross negligence of Opticon. Opticon shall never be liable for consequential or indirect damage, including but not limited to damage resulting from late delivery, damage to other goods of the customer or any third party, damage resulting from incorrect or improper use of the services or goods by the customer (in the opinion of Opticon), loss of turnover, loss of profit, loss of goodwill or loss caused by the inoperability of equipment, nor for damage resulting from any incorrect and/or incomplete information supplied by the customer. In all cases in which Opticon is nevertheless obligated to pay damages, these shall never be higher than, at its option, either the invoice value of the goods delivered, at least the part thereof whereby or in connection with which the damage was caused, or, if the damage is covered by an insurance policy of Opticon, the amount that is actually paid out by the insurer with respect thereto. In case of continuing contracts the "invoice value" is the amount charged by Opticon for all goods delivered and/or services rendered in the period of three (3) months prior to the damage inflicting event, this with the deduction of credited amounts in connection with that period and for those goods or services.

## INTELLECTUAL PROPERTY RIGHTS

All intellectual property rights, including but not limited to patents, copyrights, model rights and trademark rights with respect to goods and services delivered by Opticon (including but not limited to software developed by Opticon, drawings, calculations, sketches, technical data, know-how and advices) remain with Opticon and are not being transferred to the customer, unless and insofar as parties agree explicitly otherwise in writing. The customer shall refrain from infringements of patents, copyrights, model rights, trademark rights or any other intellectual property rights of Opticon. The customer shall not damage the Opticon brand or reputation in any way. In case intellectual property rights are being created under a contract between Opticon and the customer, all such rights will belong to Opticon and, in as far as necessary the customer will transfer such rights to Opticon and the customer shall in every way co-operate to such transfer. The customer indemnifies Opticon against all third party claims with respect to infringement of intellectual property rights insofar such infringement is related to the development, delivery or use of goods that have been developed by Opticon according to the specifications of the customer. This indemnity also applies in case Opticon amends an existing good according to the instructions of the customer. Opticon indemnifies the customer against third party claims with respect to infringement of intellectual property rights by a good that has been developed by Opticon independently, when Opticon has immediately been informed of such claim by the customer in writing.

## PRIVACY

Insofar the customer processes personal data ('persoonsgegevens') using goods and/or services provided by Opticon, this will be for the full risk and account of the customer only and Opticon will not in any way be responsible or liable for the execution thereof in accordance with applicable (local) privacy laws and regulations.

## CONFIDENTIALITY

The customer shall treat any information and know-how received from Opticon as strictly confidential and this information and know-how shall not be communicated to third parties by the customer without Opticon's prior permission in writing. Nor shall the customer use this information and know-how for any cases other than explicitly provided for in a written contract to which these general terms and conditions apply. Breach of this condition by the customer will result in an immediately payable penalty by the customer to Opticon of EUR 10,000 per event.

## DISSOLUTION

Both parties shall be entitled to dissolve the contract with immediate effect if: (i) the other party is granted a temporarily or definite moratorium of payment ('surséance van betaling'); (ii) the other party is declared bankrupt (iii) the other party acts in breach of the provisions of the contract and after it has not, within a reasonable period, fulfilled its obligations after a notice of default, by written notification; or (iv) the other party has acted in breach of the contract whilst the fulfilment or correction is no longer possible. If one of the events referred to in this article occurs, all claims Opticon may have against the customer on whatever basis will immediately become due.

Choice of law and competent court The relationship between the parties is governed by Dutch law. The United Nations Convention on Contracts for the International Sale of Goods is not applicable. All disputes will exclusively be submitted for judgement to the competent court in Amsterdam or higher courts, unless Opticon chooses to bring a dispute before the competent court of the country where the customer is situated.

This English-language document is a full and faithful translation of the original Dutch text, but differences in law may create ambiguity in other jurisdictions. In the event of any dispute as to the interpretation of any of the conditions contained in these General Terms & Conditions of Delivery and Payment, the official Dutch language version will therefore prevail.

Opticon's factory (OPTO electronics) is ISO9001 certified.

