



## General Terms and Conditions of Sale

### 1 Definitions

#### 1.1

'BUYER' – means the person whose order for the Goods and Services is accepted by the Seller;

'CONDITIONS'- means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in Writing between the Seller and the Buyer;

'DELIVERY' – as defined in Conditions 7.1 and 7.2;

'CONTRACT' – any contract between the Buyer and the Seller for the sale of Goods or Services incorporating these Conditions;

'GOODS' – means the goods described in an order or quotation (including any instalment of the goods or any parts for them) which the Seller is to supply in accordance with these Conditions;

'INCOTERMS' – means the International Rules for the Interpretation of Trade Terms of The International Chamber of Commerce as in force at the date the Contract is made;

'PRICE' – means the price of the Goods or Services, being either the Seller's quoted price or if none, the price listed in the Seller's published price list current at the date of Delivery or deemed Delivery and, where appropriate, unit prices being multiplied by the total number of units of the Goods supplied;

'SELLER' – means *OPTIFINER* a company registered in Germany whose registered number is HRB 34418 HB;

'SERVICES' – means the services described in an order or quotation to be performed by the Seller in accordance with these Conditions;

'WRITING' includes e-mail or other electronic means of communication, facsimile transmission and comparable means of communication.

#### 1.2

In these Conditions references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.

#### 1.3

In these Conditions references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires.

#### 1.4

In these Conditions the headings will not affect the construction or interpretation of these Conditions.

### 2 Basis of the Sale

#### 2.1

These Conditions shall govern the Contract to the exclusion of any other terms and conditions and no variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller. No terms and conditions endorsed upon, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document will form part of the Contract.

#### 2.2

The Seller's employees or agents are not authorised to make any representations concerning the Goods or Services unless confirmed by the Seller in Writing. The Buyer acknowledges that it does not rely on any such representations which are not so confirmed.

#### 2.3

Any quotation is given on the basis that no contract will come into existence until the Seller confirms the Buyer's order pursuant to Condition 3.1. Any quotation is valid for a period of 30 days only from its date, provided that the Seller has not previously withdrawn it.

#### 2.4

Any typographical, clerical or other error or omission in an order, any literature, quotation, price list, acceptance of order, invoice or other document shall be subject to corrections without any liability on the part of the Seller.

### 3 Orders and specifications

#### 3.1

No order submitted by the Buyer shall be deemed to be accepted by the Seller until confirmed by the Seller in Writing or (if earlier) by Delivery of the Goods or Services by the Seller to the Buyer.

#### 3.2

The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods and Services within a sufficient time to enable the Seller to perform the Contract in accordance with its terms. The Seller shall not be liable for the consequences of any inaccuracy, will not issue a credit note in respect of an order and will be entitled to charge the Buyer for the costs it incurs by any variations in an order.

#### 3.3

The quantity, quality and description of and any specification for the Goods and Services shall be those set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller).



### 3.4

If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss (including loss of profit), damages, costs, charges and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification for the Goods.

### 3.5

The Seller reserves the right to make any changes in the specification of the Goods or Services which are required to conform to any applicable statutory or EC requirements or to make changes to the Goods or Services and if necessary to the Buyer's specification which do not materially affect their quality or performance. Any specification or formulae provided by the Seller shall remain the property of the Seller and the Buyer shall keep strictly confidential all such information relating to the specification or formula and shall not disclose the same to any third party.

### 3.6

No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.

### 3.7

All formulae, descriptive matter, specifications and advertising issued by the Seller and any descriptions or illustrations contained in the Seller's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and Services described in them. They will not form part of this Contract.

## 4 Special Conditions

If Goods or Services are sold subject to special conditions of sale the Buyer will be notified of the special conditions. In the event that there is any inconsistency between the special conditions and these Conditions the special conditions shall prevail.

## 5 Price of the Goods and Services

### 5.1

The Seller reserves the right, by giving notice to the Buyer at any time before Delivery, to increase the Price of the Goods and Services to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller including, without limitation, increases in the cost of the Goods or Services, of labour, materials or other costs of manufacture; changes in Delivery dates or places, quantities or specifications for the Goods and/or Services which are requested by the Buyer; or any delay

caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

### 5.2

Unless otherwise agreed in Writing the Price is given by the Seller on an ex works basis, and where the Seller agrees to deliver the Goods or perform the Services otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller's charges for travel, transport, packaging and insurance.

### 5.3

The Price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.

### 5.4

The cost of pallets and returnable containers will be charged to the Buyer in addition to the Price, but full credit will be given to the Buyer provided they are returned undamaged to the Seller prior to the due payment date.

### 5.5

The Seller shall be entitled to charge the Buyer a credit administration charge, such sum to be refunded to the Buyer if the Price is paid in accordance with these Conditions.

## 6 Terms of Payment

### 6.1

The Seller shall invoice the Buyer for the Price plus VAT on or at any time after Delivery of the Goods or performance of the Services or if the Buyer fails to take Delivery of the Goods, the Seller shall be entitled to invoice the Buyer for the Price plus VAT at any time after the Seller has notified the Buyer that the Goods are ready for collection or the Seller has tendered Delivery of the Goods.

### 6.2

The Buyer shall pay the Price plus VAT without any deduction whether by way of set-off, counterclaim, abatement or otherwise (unless the Buyer has a valid court order) by the due date stated on the invoice or, if no such date is specified, on the date of presentation of the Seller's invoice and this shall not be affected by Delivery not having taken place and title in the Goods not passing to the Buyer. The time of payment of the Price plus VAT shall be of the essence. Receipts for payment will only be issued upon request.

### 6.3

If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy, the Seller shall be entitled to:

6.3.1 cancel the Contract or suspend any further deliveries to the Buyer;



6.3.2 appropriate any payment made by the Buyer to such of the Goods and or Services (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit;

6.3.3 charge interest on any amounts overdue at the rate of 4% above the base rate of National Westminster Bank Plc as applying from time to time from the due date for payment until receipt by the Seller of the full amount whether or not after judgement. [The Seller reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998]; and

6.3.4 recover any administration charges and costs (including without limitation legal costs) incurred in recovering overdue payments, payments not being honoured at the bank or otherwise on a full indemnity basis.

#### 6.4

The Seller shall be entitled at all times to set off any debt or claim of whatever nature which the Seller may have against the Buyer against any sums due from the Seller to the Buyer.

### 7 Delivery

#### 7.1

Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place. Where the Seller agrees to deliver Goods otherwise than at the Seller's premises, the Seller shall be under no obligation under s32(3) of the Sale of Goods Act 1979.

#### 7.2

The Buyer will take Delivery of the Goods within 14 days of the Seller giving it notice that the Goods are ready for Delivery and will at its expense provide adequate and appropriate equipment and labour for unloading the Goods.

#### 7.3

The quantity of any consignment of Goods as recorded by the Seller upon despatch from the Seller's place of business shall be conclusive evidence of the quantity received by the Buyer on Delivery unless the Buyer can provide conclusive evidence proving the contrary.

#### 7.4

Any dates quoted for Delivery of the Goods and performance of the Services are approximate only. Time for Delivery shall not be of the essence. The Goods and/or Services may be delivered by the Seller in advance of the quoted Delivery date upon giving reasonable notice to the Buyer.

#### 7.5

Save as set out in these Conditions the Seller will not be liable for any direct, indirect, consequential or special

loss (all which terms include, loss of profits, loss of business, loss of contract, loss of production, business interference, loss of operating time, loss of use, and depletion of goodwill) costs, damages, charges, or expenses caused directly or indirectly by any delay in the Delivery of the Goods or Services (even if caused by the Seller's negligence) nor will any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds [180] days from the quoted Delivery date.

#### 7.6

The Seller shall not be liable for non-delivery:

7.6.1 if the reason is any cause beyond the Seller's reasonable control or is Buyer's fault; and

7.6.2 unless written notice is given to the Seller within [7] days of the date when the Goods or Services would in the ordinary course of events have been received.

The Seller's liability for non-delivery shall be limited to the excess (if any), of the cost to the Buyer (in the cheapest available market) of similar goods or services to replace those not delivered, over the Price.

#### 7.7

Where the Goods are to be delivered and/or Services to be performed in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

#### 7.8

If the Buyer fails to take Delivery of the Goods or fails to give the Seller adequate Delivery instructions (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may store the Goods until actual Delivery and charge the Buyer for the reasonable costs (including insurance) of storage or sell the Goods at the best price readily obtainable and account to the Buyer for the excess over the Price or charge the Buyer for any shortfall below the Price.

### 8 Risk and Title to Goods

#### 8.1

The Goods are at the risk of the Buyer from the time of Delivery.

#### 8.2

Ownership of the Goods shall not pass to the Buyer until the Seller has received in full (in cash or cleared funds) all sums due to it in respect of:

8.2.1 the Goods and the Services; and

8.2.2 all other sums which are or which become due to the Seller from the Buyer on any account.



## 8.3

Until ownership of the Goods has passed to the Buyer, the Buyer must:

8.3.1 hold the Goods on a fiduciary basis as the Seller's bailee;

8.3.2 store the Goods (at no cost to the Seller) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Seller's property;

8.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;

8.3.4 maintain the Goods in satisfactory condition and keep them insured on the Seller's behalf for their full price against all risks to the reasonable satisfaction of the Seller. On request the Buyer shall produce the policy of insurance to the Seller; and

8.3.5 hold the proceeds of the insurance referred to in condition 8.3.4 on trust for the Seller and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.

## 8.4

The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:

8.4.1 any sale shall be effected in the ordinary course of the Buyer's business at full market value; and

8.4.2 any such sale shall be a sale of the Seller's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.

## 8.5

The Buyer's right to possession of the Goods shall terminate immediately if:

8.5.1 the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or

8.5.2 the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe/performance any of his/its obligations under the Contract or any other contract between the Seller and the Buyer, or is unable to pay his/its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or

8.5.3 the Buyer encumbers or in any way charges any of the Goods.

## 8.6

The Seller shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Seller.

## 8.7

The Buyer grants the Seller, its agents and employees an irrevocable license at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them. In the event that the Goods are stored in the premises of a third party the Buyer will use his/its best endeavors to procure entry for the Seller to inspect or recover the Goods pursuant to this Condition.

## 9 Warranties and Liability

### 9.1

Save as set out in these Conditions, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

### 9.2

The Seller does not exclude liability:

9.2.1 for fraudulent misrepresentation or death or personal injury resulting from his/its negligence or that of his/its employees;

9.2.2 for direct physical damage to or physical loss of the property of the Buyer resulting from the Seller's or its employees negligent acts or omissions provided that the Seller's liability under this sub-condition

9.2.2 shall not exceed in aggregate a sum equal to the total aggregate sums payable by the Buyer to the Seller under the Contract;

9.2.3 which cannot be excluded or restricted at law.

### 9.3

Subject to Conditions 9.2 the Seller will not be liable to the Buyer for any:

9.3.1 direct loss, damage or injury; and/or

9.3.2 indirect, consequential or special loss, damage or injury including financial loss, loss of profits, loss of business, loss of contract, loss of production, business



interference, loss of operating time or loss of use and depletion of goodwill;

to the Buyer or to the Buyer's property, whether foreseeable or not and howsoever, whensoever or wheresoever arising whether by reason of any representation or any implied warranty, condition or other term or duty at common law or under statute or under the express terms of the Contract (and whether caused by the negligence of the Seller or otherwise) or otherwise in respect of or in connection with the provision of the Goods or the Services.

#### 9.4

Subject to sub-conditions 9.2, 9.3, 9.5 – 9.9, the Seller warrants upon Delivery and for a period of 3 months after Delivery or such shorter time as may be specified on Goods packaging or labelling, delivery notes or any other form of Writing, that:

9.4.1 the Goods will correspond as far as reasonably possible with their specification and will be of merchantable quality and free from defects in material and workmanship, and

9.4.2 the Services will be provided as far as reasonably possible in accordance with the specification and using reasonable skill and care.

#### 9.5

The Seller shall be under no liability:

9.5.1 in respect of any defect in the Goods or Services arising from any design or specification supplied by the Buyer;

9.5.2 in respect of any defect arising from fair wear and tear, deterioration, wilful damage, negligence, abnormal conditions, failure to follow the Seller's instructions (as to use, storage or otherwise)(whether oral or in writing), misuse or alteration of the Goods without the Seller's approval; and

9.5.3 under the above warranty or any other warranty, condition or guarantee if the total Price has not been paid by the due date for payment.

#### 9.6

The above warranty does not extend to goods, materials or equipment not manufactured or produced by the Seller in respect of which the Seller will endeavour to transfer to the Buyer the benefit of any such warranty or guarantee as is given to the Seller by the manufacturer or supplier.

#### 9.7

Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or Services or their failure to correspond with specification shall (whether or not Delivery is refused by the Buyer) be notified to the Seller within 3 days and confirmed in writing within 7 days from the date of Delivery or where the defect or

failure was not apparent on reasonable inspection within 3 days and confirmed in writing within 7 days from the time when the Buyer discovers or ought to have discovered the defect or failure. If the Buyer fails to comply with the provisions of this Condition 9.7 the Buyer shall not be entitled to reject the Goods or Service and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the Price as if the Goods or Services had been delivered in accordance with the Contract.

#### 9.8

Where any Goods or Services are found to the reasonable satisfaction of the Seller to be defective in accordance with these Conditions, the Seller shall, subject to the preceding sub-conditions be entitled to replace the Goods (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the Price for the Goods or Services (or a proportionate part of the Price), but the Seller shall have no further liability to the Buyer.

#### 9.9

Any Goods replaced by the Seller will belong to the Seller and any replacement Goods will be subject to the benefit of the unexpired portion of any warranty given.

### 10 Force Majeure

The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods or Services, if the delay or failure was due to any cause beyond the Seller's reasonable control, examples of which include, but shall not be limited to, an act of God, flood, fire, tempest, accident, war, terrorism, civil disturbance, restrictions, regulations, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority, strikes, difficulties in obtaining raw materials, labor, fuel, parts or machinery or power failure or breakdown in machinery.

### 11 Export Terms

#### 11.1

Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.

#### 11.2

Where the Goods or Services are supplied for export from Germany, the provisions of this condition 11 shall (subject to any special terms agreed in Writing between the Buyer and the Seller and signed by a director of the Seller) apply notwithstanding any other provision of these Conditions.

#### 11.3

The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the



Goods into, or the provision of the Services, within the country of destination and for the payment of any duties on them.

#### 11.4

Unless otherwise agreed in Writing between the Seller and the Buyer, the Goods shall be delivered "FOB" the sea port of shipment and the Seller shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979 (as amended).

#### 11.5

Unless otherwise agreed in Writing payment of all amounts due to the Seller shall be made by irrevocable letter of credit in a form acceptable to the Seller opened by the Buyer in favor of the Seller and confirmed by a clearing-house bank acceptable to the Seller.

#### 12 Notices

Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

#### 13 Waiver

No failure or delay by the Seller in enforcing or partially enforcing any provision of the Contract will be construed as a waiver of any of its rights under the Contract and no waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

#### 14 Severability

If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.

#### 15 Contracts (Rights of Third Parties) Act 1999

The parties do not intend that anything contained within these Conditions will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to them.

#### 16 Assignability

The Buyer shall not be entitled to assign the Contract or any part of it without the prior consent in Writing of the Seller. The Seller may assign the Contract or any part of it at any time to any person firm or company.

#### 17 Remedies

Each right or remedy of the Seller under the Contract is without prejudice to any other right or remedy of the Seller.

#### 18 Consumers

In the event the Buyer deals as a consumer, nothing in these Conditions excludes or purports to exclude a consumer's statutory rights.

#### 19 Tools

The tool costs indicated in our offer or our confirmation, if applicable, are only a part of the material and labor costs incurred for tools and mountings and are considered as benchmark prices. By remunerating this tool cost part, the purchaser does not acquire any ownership or claim for ownership of the tools and mountings. They remain our property and in our ownership.

#### 20 Industrial property rights

In case a third party enforces legitimate claims from a patent or other industrial property right against our supplies and services, we are free to choose either obtaining a license for the objects concerned or replacing these by objects which are not subject to industrial property rights. If, however, this is not possible due to legal or technical reasons or unacceptable for rational economic reasons, we take the objects concerned back against refunding of the purchase price. Insofar, there are no further claims of the purchaser. We are not liable for infringements of supplies and services effected on the basis of construction documents or other precepts of the purchaser.

#### 21 Final provisions

Our registered office is the place of fulfilment for all obligations resulting from this contractual relationship. Exclusively the laws of the Federal Republic of Germany shall apply between the parties. The application of the United Nations Convention on Contracts for the International Sale of Goods is excluded.

Our registered office is the exclusive – also international – place of jurisdiction for all current and future claims from this contractual relationship.

In the event that any of the terms of contract with the customer, including these General Terms and Conditions of Sale, should be or become invalid either in full or in part, this shall not affect the validity of the other terms. The term that is invalid either in full or in part shall be replaced by a term that corresponds to the meaning of the invalid term as closely as possible.

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