

**Commercial Terms and Conditions of OPTICONTROL s.r.o.,  
with its registered office at Zahumení 103/19, 664 31 Lelekovice, Company Identification No.:  
46342494, Tax Identification No.: CZ 46342494**

**CONTENTS**

1. General Provisions
2. Protection of Information and Rights of Third Parties
3. Subject of Performance and Price
4. Delivery Terms
5. Pre-contractual Liability, Cancellation of Orders and Purchase Contracts
6. Payment Terms and Passage of the Risk of Damage
7. Passage of Title
8. Liability for Defects
9. Final Provisions

**1. General Provisions**

1.1. The Commercial Terms regulate the rights and obligations between the company OPTICONTROL s.r.o. (hereinafter the "Contractor") and the customer (hereinafter the "Customer") when delivering goods and services.

1.2. The Commercial Terms form an integral part of the order or the contract to deliver goods or services (where appropriate) entered into between the Contractor and the Customer. The contract or the order is a document or a set of documents defining contractual relationships between the Contractor and the Customer in accordance with the Contractor's Commercial Terms.

1.3. Any other commercial terms and conditions are not binding for the Contractor even when they form a part of the Customer's order. They may not be applied even when the Contractor did not expressly exclude them.

1.4. The business relationships not covered by these Commercial Terms are governed by Act No. 89/2012 Coll., the Civil Code as amended (hereinafter the "NCC") and the legal rules of the Czech Republic.

**2. Protection of Information and Rights of Third Parties**

2.1. The Contractor declares that all personal data is confidential and will be exclusively used for realisation and distribution of the contractual performance in accordance with Act No. 101/2000 Coll. on personal data protection as amended.

2.2. In the case of realisation on the basis of the Customer's documents, models and documentation, the Customer assumes responsibility for non-violation of third party rights.

2.3. The Contractor reserves all ownership rights and copyrights to any technical documentation provided to the Customer by the Contractor.

### **3. Subject of Performance and Price**

3.1. The subject of performance is delivery of goods and realisation of a service (hereinafter the "performance") on the basis of the Contractor's offer and complete orders sent by mail or fax or orders sent in electronic form as an e-mail, in exceptional cases also orally and/or by phone. The Contractor's offers are always non-binding.

3.2. Delivery of an item including the one that must be compiled or created is governed by legal regulation applicable to purchase contracts particularly regulated in Section 2079 of the NCC and Section 2085 of the NCC.

3.3. Performance is realised on the basis of orders sent by mail or fax or orders sent in electronic form as e-mails, in exceptional cases also orally and/or by phone. The Customer's order must include precise identification of the Customer, namely: Customer business name or name, address of its registered office or plant, where appropriate, the responsible person including contact information, Customer's Company Identification No. and Tax Identification No., precise address of the place of delivery (if different from the Customer's registered office address) and contact person. Furthermore, it shall include precise identification of performance, the required quantity and the required delivery terms, such as delivery date or other specific requirements – see point 4.2. of the Commercial Terms and Conditions. If the Customer wishes partial performance of delivery, such fact must be specified in the order. Such partial deliveries may then be invoiced separately. If the Contractor performs delivery of the goods or services without previous delivery of the confirmed order to the Contractor, the contract will be established on the date the service was rendered or the goods were delivered.

3.4. The Contractor shall confirm receiving any order in writing or by e-mail, in exceptional cases also verbally. The confirmed order shall provide precise specification of the ordered performance, price of performance, the expected delivery date and number of the business transaction assigned to the respective order. An order may also be approved by making a reference to the Contractor's offer, which will then become a part of the order and the customer is then obliged to properly check the confirmation, in particular the specification of the goods and their price, to confirm their consent in writing and to send the confirmation back to the Contractor. The order will thereby become binding and any changes therein are only possible on the basis of mutual agreement. Unless the Customer expresses its disagreement with the data specified in the order confirmation in writing within 2 days after sending the confirmed order by the Contractor, such order confirmation will be considered as approved. The prices and conditions of delivery and services specified in the confirmed order are binding.

3.5. The Contractor reserves the right to confirm the order in the form of a purchase contract; the order is then considered valid upon confirming the purchase contract by both parties.

3.6. The price of goods and services is a contractual one. Unless agreed otherwise in the individual business transactions, it is understood that the prices are net and ex works (from the agreed place). The price of the goods does not include packing fees and freight unless specified otherwise. The prices of goods and services are specified without the applicable VAT rate. The prices individually quoted for the respective buyer are valid for the period of the offer validity. The prices specified in official confirmations of orders are binding and valid for the respective confirmed order. The Contractor reserves the right to a reasonable increase in prices in the case of increased costs after the contract is concluded. The Contractor shall document such increase upon request.

3.7. If the Customer additionally changes the performance criteria, i.e. after a binding order has been accepted and approved by the Contractor and performance realisation was started, the Customer will be charged with the costs relating to such additional changes and they become a part of the final performance price. Otherwise OPTICONTROL, s.r.o. reserves the right to refuse any requirement for a change in the order. The refusal may be reasoned by an advanced production stage of the originally ordered products, the single purpose of the originally ordered products or costs the company would be forced to invest in the respective business transaction.

## **4. Delivery Terms**

4.1. The content, character and extent of deliveries and services to be provided by the Contractor are according to the agreed or (where appropriate) confirmed orders and contracts, otherwise according to the availability of products and the Contractor's operating capacities. The expected delivery date shall be confirmed to the Customer in an adequate form (in writing, electronically or verbally). The delivery dates and terms are only binding if agreed between the Contractor and the Customer in the particular case in writing. The delivery term will then start from sending the confirmed order, however not before all documents, which the Customer is obliged to deliver for the purpose of processing the order according to Article 3 (3.3.), are accepted and the payment of the agreed price in advance according to point 6.2. is made. Payment means crediting the respective amount into the Contractor's account. The agreement on the fixed date is valid on the condition that the subcontractors delivered their services and goods in a proper and timely manner. Otherwise the Contractor is entitled to extend the performance term, however the Contractor must immediately notify the Customer of such change.

4.2. If so agreed between the contracting parties, the Contractor shall ensure sending the item to the Customer. In such case the performance will be considered as handed over to the Customer by handing it over to the first carrier for transport in accordance with the provisions of Section 2090 (1) of the NCC and at the same time the risk of damage to the item shall pass over. If the place to where the performance is to be sent is not specified, the seat of the buyer's plant will be considered as such place, and if no plant seat is specified, the Customer's registered office address will be considered as such place. If the place of delivery of the goods is not reachable by normal means of transport, the Customer will be obliged to point out such fact in the order.

4.3. If the Contractor is not contractually obliged to send the performance, the performance will be handed over to the Customer by allowing the Customer to dispose of the item in the place of performance and such fact shall be notified to the Customer in a timely manner.

4.4. The Customer is obliged to take over the subject of performance and to immediately check the compliance of the quantity and type of the subject of performance with the delivery note or invoice. If the Customer fails to take over the subject of performance for reasons on its side, the Customer shall bear the costs relating to storage and redelivery in full amount.

4.5. If the Customer identifies any apparent damage to packaging or subject of delivery upon take-over of the item, the Customer will be obliged to immediately notify the Contractor or the shipment deliverer of such fact and to specify the damage in writing in the Contractor's delivery note or in the transport bill of the forwarding company in the case of third-party transport. Any later complaints of this type cannot be acknowledged by the Contractor as justified.

4.6. Where required by the nature of performance, the delivery shall include an operator's manual in Czech.

## **5. Pre-contractual Liability; Cancellation of Orders and Purchase Contracts**

5.1. The Customer's acts before entering into the purchase contract, including in the form of an order, must be in accordance with the rules of fair business relationships. This in particular applies to the obligation to disclose (during the process of entering into the contract) all factual and legal circumstances that are or must be known to the Customer so that a valid contract can be entered into. Otherwise the Contractor will have the right to compensation of any incurred damage in accordance with the provisions of Section 1729 (2) of the NCC.

5.2. The agreed orders and purchase contracts may only be cancelled in writing on the basis of mutual agreement between the contracting parties.

5.3. The Contractor is entitled to charge the Customer a cancellation fee up to 50% of the performance price to cover the purposefully spent costs to secure the subject of performance.

5.4. The Contractor is also entitled to withdraw from contractual performance in cases specified by law when the Customer does not pay the purchase price agreed in advance pursuant to point 6.2. in

a proper and timely manner or is in delay with take-over of the goods for more than ten days after the agreed date of performance, and if the goods are subject to damage or destruction during existence of the Contractor's title.

## **6. Payment Terms and Passage of the Risk of Damage**

6.1. Payment of the performance price shall be made on the basis of an invoice – tax document issued by the Contractor with the maturity of 14 days, unless pre-agreed otherwise, by a wire transfer or in cash upon take-over of the performance.

6.2. The Contractor reserves the right to require payment of the full agreed price or any part of it in advance.

6.3. If the Customer does not make the payment within the maturity period specified in the invoice issued by the Contractor, the Contractor will be entitled to charge the Customer with a contractual penalty according to the provisions of Section 2048 of the NCC in the section concerning payment of debts in the amount of 0.05% of the due amount inclusive of VAT for each day of the delay from the original maturity date to the date of full payment.

6.4. If the Customer fails to fully or partially reimburse the payable by the agreed maturity date, the Contractor will be entitled to cancel the agreements concerning provision of discounts and maturity terms for all other existing outstanding receivables and to make them immediately payable; moreover, the Contractor will be entitled to make use of its reservation of title. Furthermore the Contractor is entitled to only perform the subsequent deliveries after payment in advance or after providing a surety in the form of a performance guarantee granted by a financial institution or a credit insurer registered in the EU.

6.5. The Contractor is only entitled to set off receivables or retain payments in the case of receivables, which are indisputable or which have been confirmed by a lawful judicial decision.

6.6. The risk of damage to performance shall pass over to the Customer at the moment the delivery is taken over, otherwise at the moment the buyer was allowed to dispose of the item. Failure to take over the performance pursuant to point 4.2. of the Commercial Terms will not have any effect on the moment of passage of the risk of damage.

## **7. Passage of Title**

7.1. The title to the subject of performance shall pass over to the Customer at the moment the price of performance is paid according to the provisions of Sections 2132 to 2134 of the NCC including other receivables that may result from business, or accessions to receivables and compensation of damage. Payment means crediting the entire amount into the Contractor's account. This applies accordingly if a co-ownership right to the item was established pursuant to point 7.2. of the Commercial Terms.

7.2. If the Customer modifies, processes or incorporates an item and thereby creates a new item in legal sense, OPTICONTROL s.r.o. shall acquire the co-ownership right to the new item in the value the item had at the moment of processing. The Customer is entitled to sell or process the item under the condition that the receivables according to point 7.3. of the Commercial Terms will actually pass over to OPTICONTROL, s.r.o. The Customer's right to sell, process or install an item within the proper business procedure shall become extinct upon recall by OPTICONTROL, s.r.o. due to the lasting deterioration of the Customer's financial standing, however upon termination of its payments or filing a petition requiring bankruptcy proceedings against its property or starting such proceedings at the latest.

7.3. The Customer hereby assigns its receivables to OPTICONTROL, s.r.o along with all the related receivables from the sale of an item, and OPTICONTROL, s.r.o. accepts such assignment. If the item was processed, combined or added and the Contractor acquired a co-ownership share in such new item in the value equalling the item price at the moment of its incorporation or in the invoiced value, where appropriate, the Contractor will be entitled to a part of the selling price corresponding to the value of the rights or the value of the item.

7.4. If the Contractor takes back the subject of delivery on the basis of reservation of title, such act will only be considered as a withdrawal from the contract if OPTICONTROL, s.r.o. expressly declares so. OPTICONTROL, s.r.o. has the right to satisfy its receivables by direct sale of the retracted item.

7.5. The Customer is obliged to care for the reserved item as a proper manager and to insure it to the usual extent against normal risks such as fire, flood or theft. The Customer hereby assigns to OPTICONTROL, s.r.o. its possible claims against the insurance companies or other entities/persons obliged to pay damages as insurance benefits to compensate the aforementioned damage, and OPTICONTROL, s.r.o. accepts such assignment.

7.6. The Customer is not entitled to transfer its payables towards the Contractor to any third party without the Contractor's prior approval.

## **8. Liability for Defects**

8.1. The Contractor is responsible for the delivery completeness and correctness according to the delivery note or hand-over report.

8.2. Upon take-over of the performance, the Customer is obliged to check the quantity, completeness, correctness and, where appropriate, integrity of the delivery and to confirm the delivery correctness in the delivery note or hand-over report.

8.3. The Contractor is obliged to perform without any defect and with the required or usual qualities so that the performance can be used according to the subject and purpose of the contract or order.

8.4. If the Customer discovers any defect, the Customer shall notify the Contractor thereof and shall dispose of the subject of performance so that the defect can be subsequently examined. If the Customer justly claimed the defect, the period for exercising the rights based on defective performance will not run for the time during which the Customer cannot use the defective performance. Hidden defects are defects other than apparent ones, i.e. defects which indisputably existed at the moment of take-over, however the Customer could not discover them even when every effort was exerted. Claims based on material defect are excluded if the deviation from contractual quality was caused by excessive or improper use or by natural wear and tear. The same applies to deviations caused by a special external effect not presumed by the contract.

8.5. The Contractor's liability for defect also does not apply to defects and damage caused by failure to respect the user manual for the item, by failure to perform regular user maintenance of the item, making a change in the item without the Contractor's authorisation, improper transport or improper storage.

8.6. The defect notification must always be made in writing with specification of the defective performance, defect description, number and date of order, delivery note or invoice, and names of contact persons responsible on the Customer's side for settlement of the defective performance. The rights from defective performance shall be claimed by the Buyer with the Seller at the address of its plant or, as the case may be, in its registered office or point of business.

8.7. A defect may be claimed within the term pursuant to Section 2112 of the NCC, unless agreed otherwise in writing.

8.8. The rights resulting from defective performance are governed by the provisions of Sections 2099 to 2177 of the NCC; the risk of damage to the item shall pass at the moment of its take-over. Damage to the item incurred after passing the risk of damage to the item over to the Customer's will not have any effect on the Customer's obligation to pay the purchase price, unless the Customer caused the damage as a result of violation of its obligation.

8.9. If the Customer finds out that the defective performance means a substantial violation of the contract, the Customer will be obliged to inform the Contractor upon notifying the defect or without undue delay, i.e. within 5 business days, which right pursuant to Section 2106 the Customer has chosen. Otherwise the Contractor will have the rights pursuant to Section 2107 of the NCC. In the case of substitution performance, the title to the item, which was replaced as a result of substitution performance, shall pass back to OPTICONTROL, s.r.o. at the moment of replacement.

8.10. If the Contractor finds out that the defect was unjustly claimed, the costs relating to identification of the defect extent and repair of the item, where appropriate, shall be charged to the Customer in the full amount.

8.11. The Contractor shall ensure maintenance service for the delivered performance also after the period the Contractor is responsible for defects. Defect diagnostics will first be performed when providing the service and the Customer will be informed about the expected extent and price of the repair. The Contractor shall only start the maintenance service works on the basis of the Customer's consent to the offered conditions.

## **9. Final Provisions**

9.1. Unless specified otherwise in the order, contract or other written covenant between the Contractor and the Customer, the Customer expresses its consent to these General Commercial Terms and Conditions by sending the order.

9.2. The rights and obligations resulting from the relationships between the Contractor and the Customer are governed by the Czech legal rules. Any disputes that may result from the contract (order) shall be resolved by the competent courts of the Czech Republic.

9.3. The applicable Commercial Terms are available in the registered office of OPTICONTROL, s.r.o. and on its website. Each customer has the possibility to make themselves familiar with them and is made aware of them. The Contractor is entitled to amend and modify the Commercial Terms on the basis of changes in legal regulations and in relation to changes in the market of the goods and service the Contractor offers.

9.4. The Commercial Terms come into force on 1 September 2014.

In Lelekovice, dated 1 September 2014

Ing. et ing. Pavel Závěrka  
Executive