

# GENERAL TERMS AND CONDITIONS OF SALE AND SERVICES

## 1. APPLICATION AND INTERPRETATION

These terms and conditions exclusively cover all contractual relations between OPRION SA (BCE No 0474.849.444) with its registered office at Avenue Pré-Aily 25 à 4031 Liège, in Belgium, hereinafter referred to as “**SUPPLIER**” and the client. The client’s general or special terms and conditions are not enforceable against SUPPLIER. Any contract signed by the parties automatically implies the acceptance of these terms and conditions by the client. Only special conditions indicated in the Contract or purchase order, or agreed in writing by the parties, can override them. Depending on the context, and unless otherwise stipulated, (i) the word “**Client**” in these terms and conditions must be understood to refer to any buyer, customer, prospect, distributor, partner or contracting party; (ii) the word “**Contract**” to any proposal, quote, purchase order, sales contract, rental agreement, service agreement, license agreement, distribution agreement or any other contract between the parties; (iii) the word “**Product**” to any high resolution camera combining the principles of holographic interferometry and photorefractive crystals, device, equipment, item, spare parts, consumable, manual, training material and accessory designed, manufactured, supplied and/or marketed by SUPPLIER; (iv) the word “**Services**” to any task, consultancy, development, installation, training, maintenance, upgrade or service offered and/or provided by SUPPLIER; and (v) the word “**Product Software**” any Product Software or program provided by SUPPLIER under a non-transferable license granted to the Client for the use of the Product. These terms shall be construed as either plural or singular.

## 2. PROPOSAL, ORDER AND CONFIRMATION

Any quotes or proposals produced by SUPPLIER are without obligation and are valid for a maximum of 90 days following the document date.

Any order or request made by the Client, in writing or orally, makes it immediately and irrevocably binding for the Client. It must then be confirmed in writing by SUPPLIER and will only be deemed effective from the date given by this confirmation.

## 3. PRICES AND PAYMENT

Sales and/or Rental Contracts with a delivery deadline of more than one month are accepted subject to price increases which might be applied by SUPPLIER’s partners, suppliers or subcontractors, or caused by circumstances outside SUPPLIER’s control which would make the execution of the Contract more costly for SUPPLIER.

Unless otherwise agreed in the Contract, prices for Product are EXW (Ex Works – from SUPPLIER’s address in Belgium).

All prices exclude VAT and any other taxes, duties, fees, transport and costs in general which are not specifically detailed in the Contract.

Any bank charges, costs and fees are to be borne solely by the Client.

For services provided on a time and materials basis, SUPPLIER shall submit monthly invoices to the Client for services rendered and reimbursable expenses incurred during the prior month based on the time and materials rates set out in contract.

Unless otherwise agreed in the Contracts, all payments must be made into SUPPLIER’s account within 30 days following the invoice’s date. They must be made in Euros by bank transfer into the account number indicated on the invoice.

The Client shall reimburse SUPPLIER for reasonable travel and related out-of-pocket expenses incurred by SUPPLIER in the course of performing services under the Contract.

Any queries relating to invoices must be sent, with justification, by registered post within 8 calendar days of the relevant invoice date. After this time, queries will not be accepted and the invoice will be deemed to have been accepted.

If SUPPLIER consents to a delay in delivery requested by the Client, any amounts to be paid upon shipment shall become due on the date when SUPPLIER is prepared to make shipment, and goods held for the Client after such date shall be held at the risk and expense of Client.

In the event that the Client refuses or delays accepting or receiving the Products, the Product Software or the Services, it shall make the payment(s) in accordance with the terms and conditions initially agreed by the parties and reimburse to SUPPLIER all costs caused by the refusal or delay caused by the Client.

If the Contract is for more than one unit of Products, the Products may be shipped in a single lot, or in several lots, with the agreement of the Client and each such shipment shall be invoiced separately.

If the Client does not settle received invoices within the given deadline, a standard late payment interest will be applied as of right and without formal notice at a rate of 1.5% per month, with a supplement of €200 to cover management costs. For the purposes of interest, any month begun will be considered a full month.

Administrative and legal charges incurred for collection will be borne in full by the Client.

If a single payment is not made by its due date, SUPPLIER reserves the right to suspend its own obligations and even to terminate the Contract, keeping any part-payments already made by the Client to SUPPLIER.

## 4. RETENTION OF TITLE

Ownership of Products ordered by the Client will only be transferred to the Client when the total price has been paid in full by the latter to SUPPLIER, even if the Products have already been delivered to the Client. In no circumstances can the Client make use of them, alter, sell, use or pass them on to a third party until payment for all amounts due has been made in full.

If amounts due are not paid in full, SUPPLIER can exercise its right to ownership and the Client must allow SUPPLIER to recover the Products without difficulty.

## 5. RIGHT TO USE THE SUPPLIER’S PRODUCT SOFTWARE

The Product Software and any modifications or enhancements made to the Product Software by SUPPLIER shall be owned by SUPPLIER, except to the extent they contain or embody Client’s Confidential Information (e.g., a proprietary synthesis sequence).

SUPPLIER hereby grants to the Client the ordinary non-exclusive and non-transferable right to install and to use of the contractual Product Software.

Except otherwise agreed by the parties, the license rights on the Product Software will be granted to the Client only when full payment has been received by SUPPLIER.

Except in case of a specific agreement, SUPPLIER shall be entitled but not obligated to develop updates and upgrades of the Product Software.

All documentation and any user manuals, training materials, specifications and other written materials related to the Product Software shall be provided to Client in an English language format.

The Client may not transfer, sell, distribute, reverse engineer, decompile, or disassemble the Product Software, except and only to the extent that it is expressly permitted by SUPPLIER.

SUPPLIER does not represent or warrant that use of the Product Software and Products will be uninterrupted, timely, secure or free from error, from bugs or loss of data or will not suffer of data failure.

## 6. DEADLINES AND EXTENSIONS

SUPPLIER undertakes to use its best endeavors and all reasonable care to perform its obligations in conformity with the terms and requirements agreed by the parties in the Contract. No commitment of SUPPLIER shall be construed as a result guarantee, except otherwise specified.

The deadlines for the fulfilment of SUPPLIER’s obligations are those agreed by the parties but are not compulsory. SUPPLIER can only be held liable if the delay is considerable and exclusively due to its intentional gross negligence. The Client does not have the right to refuse Products, the Product Software or the Services, demand compensation or termination of the Contract if the Products, the Product Software or the Services are delivered/supplied late unless this is due to SUPPLIER’s intentional gross negligence.

Any later modification demanded by the Client which digresses from the initial Contract shall be approved in writing by SUPPLIER at its discretion. It may result in an increase in price and extend the completion deadline.

## 7. COMPLIANCE AND WARRANTY/GUARANTEE

The Products are manufactured, the Product Software is developed, and the Services are performed in accordance with the norms and standards in force in Belgium and in the European Union, and according to the specifications detailed in the Contract.

SUPPLIER reserves the right to modify some features of the Products, the Product Software or the Services (such as changes in design and specifications) without warning or agreement from the Client as long as their expected performances are not reduced.

As soon as the Products and Product Software are available to the Client or the Services are done, the Client must examine them carefully within 8 calendar days, and give specific details of any apparent examples of non-compliance for which SUPPLIER is responsible.

SUPPLIER guarantees that the Products and Product Software are free from having any material or manufacturing faults/defects for which it is exclusively responsible, for a period of one (1) year from the date on which the Products or Product Software are delivered to the Client, provided however that such defects are not due to external cause, wear and tear, alteration, abuse, negligence, misuse, unreasonable use, transport, loading/downloading, abnormal conditions of temperature or humidity, dirt, or in an otherwise improper manner, either intentional or otherwise, caused by the Client or by a third party.

If there are faults/defects which are reported according to the terms of the last two paragraphs, at its own discretion, SUPPLIER must exchange (in part or in full) the faulty Products and/or Product Software. The replaced Products and/or Product Software will be sent to the Client with the next order made by the latter, unless otherwise agreed by the Parties. Products and/or Product Software will continue to be covered by the guarantee for the remaining period of the original guarantee but no longer than this. The cost of packing and return will be borne by the Client.

SUPPLIER may suspend its obligation of warranty/guarantee as long as the Client does not execute entirely its own obligations. Such suspension does not extend the initial warranty/guarantee period.

No other warranties/guarantees whether statutory, written, oral, express, implied, including without limitation (the warranties of merchantability or fitness for a particular purpose for instance), or otherwise, shall apply.

## 8. USE AND HANDLING OF THE PRODUCTS

The Client acknowledges that the Product(s):

- are device(s) that shall not be placed in another area and used for any other purposes than what is strictly specified in the manual;
- are fragile items that must be handled carefully and must be stored in a dry and clean area.

## 9. CLIENT REFERENCES

Unless otherwise agreed in writing, SUPPLIER can quote the Client's name (including Client's logos and pictures) as a reference in any format (brochures, websites, displays, posters, press releases, etc.), as well as general information in the public domain about the Products, Product Software and/Services sold by SUPPLIER to the Client.

## 10. INTELLECTUAL PROPERTY

SUPPLIER is and will remain the sole proprietor and beneficiary of all present and future intellectual rights, whatever they are, connected with the brand names, logos, designs, artwork, products, models, concepts, know-how, documentation, user manuals, training materials, specifications and other written materials and original ideas associated with the Products, the Product Software and the Services, whether or not they are protected or registered. The Client agrees not to imitate or forge the Products, Product Software and Services, market identical or similar concepts, apply for or register trademarks, logos or models, generally demonstrate any intellectual property right to any of these elements, or remove the labels from the Products, Product Software and Services that it has acquired, in any way whatsoever.

## 11. CONFIDENTIALITY

All documents and information, without restriction, given or shown by SUPPLIER to the Client, manufacturing methods and techniques related to the Products, the Product Software and the Services; applications to government authorities, pricing or cost shall remain strictly confidential. Unless this information has already come into the public domain in a completely lawful manner, the Client may not under any circumstances, even after complete execution of the Contract, directly or indirectly divulge or communicate it to third parties and make use of it for himself or for a third party, other than for the strict execution of the Contract.

## 12. LIMITATION OF LIABILITY

SUPPLIER shall not, in any way, be held responsible for the results or diagnoses obtained by the Product (or absence of results or diagnoses), and for the interpretations and decisions made by the Client further to these results and diagnoses.

If SUPPLIER is found to be liable, it will only be liable for direct damage caused exclusively by its willful gross negligence, to the exclusion of any other damage including, but not limited to, loss of earnings, a rise in general costs, a loss of profit, discounts, special, incidental, consequential, exemplary or penal loss or damage of any nature whatsoever or any other indirect damage or loss. The total amount of damages for which SUPPLIER is liable cannot exceed 10% of the value of the Contract.

## 13. FORCE MAJEURE

The Parties are not liable for failure to fulfil any contractual obligation which is due to events of *force majeure* which are out of their control, and which they could not have been expected to foresee when the Contract was signed or prevent or overcome, even if the event does not make execution of the Contract impossible but merely substantially more difficult or more expensive. *Force majeure* includes fire, strike, accident, sickness, natural disaster, destruction of plants or equipment, computer bugs, changes in IT environments, general lack of supplies or means of transport, delay or failure to fulfil obligations on the part of SUPPLIER's suppliers or subcontractors.

In such circumstances, the defaulting party must inform the other party of the situation in writing as soon as possible. The parties' obligations which are impossible to fulfil because of *force majeure* can be temporarily suspended or renegotiated. Should the case of *force majeure* lasts more than 6 months, the Contract will automatically be terminated or rescinded, without any compensation, unless otherwise agreed by the parties.

## 14. TERMINATION OF THE CONTRACT

SUPPLIER can terminate the Contract or suspend its own obligations at any time and without notice or any compensation to the Client, as of right and without prior notice:

- if the Client fails to fulfil one of its contractual obligations or if it turns out that he will fail or if there is a risk that he will fail to fulfil one of his obligations, even if this happens before this obligation is due to be fulfilled. In this case, any payment(s) made or due from the Client is/are definitively acquired by SUPPLIER. In addition, the SUPPLIER will automatically be entitled to a lump-sum compensation worth 50% of the cost of the work still to be done by SUPPLIER, without prejudice to any damages and interest if the total value of the damage actually suffered by SUPPLIER turns out to be higher.
- in the event of incapacity, bankruptcy, insolvency, inability to make payments, a request to defer payment, voluntary or compulsory bankruptcy or any other event demonstrating the Client's financial difficulties.
- if SUPPLIER ceases trading or makes substantial changes to its activities.
- in the event of an instance of *force majeure* which lasts for more than 6 months.

If the Client terminates the Contract without intentional gross negligence on the part of SUPPLIER, any payment(s) made or due from the Client is/are definitively acquired by SUPPLIER. In addition, the SUPPLIER will automatically be entitled to a lump-sum compensation worth 50% of the cost of the work still to be done by SUPPLIER, without prejudice to any damages and interest if the total value of the damage actually suffered by SUPPLIER turns out to be higher.

## 15. APPLICABLE LAW AND JURISDICTION

The Contract and these terms and conditions are exclusively governed by Belgian law and the courts and tribunals of Liège, Belgium.

The parties agree to resolve any dispute arising from the Contract, or any later modifications thereto, in an amicable fashion.

If this is not possible within the month following the beginning of the dispute, the parties will refer to the regulations of the CEPANI (Belgian Arbitration and Mediation Centre, [www.cepni.be](http://www.cepni.be)) which relate to Mediation for any dispute arising from the Contract or relating to it either directly or indirectly. This Mediation must take place in Liège and the process will take place in English.

If no settlement can be arrived at during the mediation process, or if the parties agree to abandon the mediation process, any dispute, disagreement or claim which arises from or relates to the Contract will be ruled on by the courts and tribunals of Liège.

## 16. SURVIVAL

The obligations set forth in the sections entitled "client references", "Intellectual property", "Confidentiality", "Limitation of liability" shall survive cancellation, termination or nullity of the Agreement for three (3) years.