

ANNEX: GENERAL TERMS & CONDITIONS



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ARTICLE 1: SUBJECT

These general terms and conditions apply to all agreements made between Opteon and the Customer or any services delivered or to be delivered by Opteon, unless specific derogations are stipulated in the agreements.

ARTICLE 2: FEES

- 2.1. The offers of Opteon are valid for 30 days past the date of the offering.
- 2.2. Invoicing is based on the prices and principles outlined in the offers. The standard service rates and product price-lists are published by Opteon and depend on the country where the services or products are delivered. These rates and prices are recalculated each year at the renewal of contracts. The recalculation is proportional to the general level of salary costs in the country. Opteon will publish at least 1 month in advance the index on which the recalculation is based. By default the consumer index in the country is used.
- 2.3. Standard rates are applicable if the services are delivered during normal business days and business hours between 08h00 and 18h00. If Opteon decides to intervene outside these hours then the standard rates do apply. If the services are provided outside the normal business hours on special request by the Customer then the following uplifts are applicable :
 - Sundays and official holidays: 100%. These periods start on 18h00 of the preceding day and end on 8h00 of the following day.
 - at night between 22h00 and 6h00 : 100%
 - other times outside the business hours, including Saturdays between 6h00 and 18h00 : 50%
- 2.4. If the services are performed outside the offices of Opteon, the travel costs are billed to the Customer according to the following rules :
 - Per car € 0,45 per km. The distance is calculated as shortest distance between the office of the Opteon consultant and the site of the Customer where the service is performed. Exception is when several consultants travel together in one car. For travel by public means the real cost is charged plus a 10 % administration fee.
 - The travel time is charged except if it takes place in lieu of normal home-work travel and if at least 8 hours of services are provided.
 - For certain products the transportation cost can be included in the unit-price, if explicitly stated so by the product price-list. In all other cases transportation costs and related risk&insurance are to be born by the Customer unless specifically and different relevant terms are made in the offer.
 - All other travel or transportation related direct costs are charged at real cost plus a 10 % administration fee.

ARTICLE 3: ORDERS

An order will bind Opteon only if it has been formally accepted by Opteon in writing by an order confirmation to the Customer. Every written order binds the Customer.

ARTICLE 4: CANCELLATION

- 4.1. Canceling of an order must happen via registered mail within 7 days of the ordering date and at least 31 days before the agreed start of the services or earliest delivery schedules, in which case Opteon will be entitled to a compensation of 10% of the total contract value, based on the elements of the order, unless Opteon can prove a greater loss.
- 4.2. In the special case of standard courses the cancellation policy is (percentage applies to total order amount)
 - 10% charge if cancellation is made at least 31 days before the course starts
 - 50% charge if cancellation is made between 15 and 30 days before the course starts
 - the full 100 % is due in all other cases.
 - The Customer may appoint a replacement before the course starts.

ARTICLE 5: DELIVERY SCHEDULES

The delivery schedules are specified in the order confirmation. Delivery Schedules are only indicative. Opteon will spent any reasonable effort to realize the given dead lines and will inform the customer as soon as possible if Opteon notices that certain dead lines cannot be met. In case an important delay arises, corrective actions will be discussed

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with customer. The Customer is not entitled to termination or damage if Opteon, notwithstanding its best efforts, is incapable of maintaining the schedules.

- In case of complex projects delivery schedules will be expressed in terms of project plans based on detailed a priori analysis.
- In case of a standard courses the course calendar defines the delivery schedule. Opteon reserves the right based on economic grounds to cancel courses on a short notice. Among economics grounds are: audience is too low and teacher is unavoidably detained.
- In case of products delivery will depend on availability and transportation times.

ARTICLE 6: ACCEPTANCE

- 6.1. When applicable, suitable acceptance criteria shall be included in the statement of work of a Service Order. If acceptance criteria are not so stated, such criteria will be based on Opteon's reasonable determination and compliancy with professional standards such as the "Code of Professional Conduct" of the Project Management Institute.
- 6.2. When applicable, acceptance by the Customer or on behalf of Customer's clients, shall be performed in such manner as not to unduly delay the invoicing and payment for services covered by the Order.
- 6.3. In the case of products, the acceptance by the Customer will be implied by the opening the package, or other punctual stage-gate explicitly communicated as part of the acceptance process of the Order

ARTICLE 7: PAYMENT TERMS

- 7.1. Opteon's standard payment terms are net cash, payable within fourteen (14) days after receipt of invoice which shall be expressed in Euro. For Service Orders covering International work and where other currency is applicable than the Euro, a conversion from that foreign currency to the Euro will be applied at the basis of a monthly average conversion rate stated in the Order
- 7.2. For Service Orders based on time and material:
Where performance contemplated by the Order is longer than (1) month, Invoicing is performed monthly and is based on the timesheets that are approved by the Customer. Protesting the timesheets by the Customer must be performed by registered mail within 5 working days of the reception of the timesheets. Where the performance of the Order is to be completed in less than one (1) month, Opteon shall invoice Customer for the full amount of the Order at the completion thereof.
- 7.3. For Service Orders based on fixed price:
If no financial milestone plan has been agreed upon and made part of the order confirmation then the following default milestones are applied :
 - 30 % at the time of the order confirmation
 - 70 % at delivery
- 7.4. For Products :
 - Invoicing is performed before delivery
 - Payment is due before installation/use
- 7.5. For Courses:
 - Invoicing is performed at order confirmation
 - Payment is due before the course starts.

ARTICLE 8: NON PAYMENT

- 8.1. If the invoice is not paid at the due date then Opteon is without any further notification and without prejudice to Opteon's other rights, entitled to charge daily interest on all outstanding amounts at the rate foreseen by the Directive 2000/35 on combating late payment in commercial transactions. Interest shall continue to accrue notwithstanding termination of the Agreement for any cause whatsoever.
- 8.2. If the invoice remains unpaid for 30 days after a written reminder then Opteon may opt for stop its engagement. In that case the Customer remains liable for a full damage claim by Opteon
- 8.3. All products, including the right of use of software and the associated documentation remains the full property of Opteon until the full agreed upon price as mentioned in the order confirmation is paid.

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ARTICLE 9: TAXES

In the event that products or services delivered under this Agreement are subject to VAT levied on the price thereof in Belgium and in any other country to which a Order may relate, such VAT shall be stated separately on Opteon's invoices and shall be payable by Customer.

ARTICLE 10: DEFECTS, PRODUCT-WARRANTY

Opteon shall provide the Services using reasonable skill and care and on a best efforts basis. Except as set out in this Agreement all conditions, warranties and representations (whether expressed or implied by statute, common law or otherwise) are excluded to the fullest extent permitted by law.

Visible defects must be notified upon reception of the products and services. Hidden defects must be notified to Opteon by registered mail within 8 days after their discovery. Standard warranty period is 3 months after delivery of the Products or Services. Opteon reserves the rights to undertake remedy actions or opt for a replacement. The Customer agrees to take all possible counter measures without any delays in order to remedy the defects as good as possible.

ARTICLE 11: RISK OF LOSS

All work, including data, after delivery by Opteon to Customer even prior to acceptance, shall become the responsibility of Customer with respect to risk of loss, damage or destruction. In the event of such loss, damage or destruction, the items so lost, damaged or destroyed shall be deemed as accepted, and replacement shall be at the sole expense of Customer.

ARTICLE 12: LIMITATION OF LIABILITY

12.1. It is agreed that, notwithstanding any other provision of this Agreement, Opteon's liability to Customer and Customer's liability to Opteon for any loss or damages, whether in contract or in tort, shall not exceed the amount billable to Customer for the work performed or services rendered since last invoicing and related acceptance by Customer or Customer's representative(s). Except as expressly set out in this Agreement and to the extent permitted under applicable law, Opteon shall not be liable to the Customer, whether for negligence, breach of contract, misrepresentation or otherwise, arising out of or in connection with this Agreement for (a) loss or damage incurred by the Customer as a result of third party claims; (b) direct or indirect loss of profits, revenue, business, contracts or anticipated savings; (c) indirect or consequential loss; or (d) loss of data.

12.2. This limitation of liability cannot be invoked in case of losses or damages due to willful misconduct.

ARTICLE 13: MODIFICATIONS and DELAYS

Extensions and modifications of the order can only go into effect after formal and written acknowledgement by Opteon. If those extensions or modifications provoke a delay of the original delivery dates by more than 180 days, or if the Customer asks for delays, the prices may be modified unilaterally by Opteon to reflect the most recent listed prices, except in case of force majeure.

ARTICLE 14: FORCE MAJEURE

Either party to this Agreement shall not be in default by reason of any failure in performance of this Agreement in accordance with its terms if such failure arises out of causes beyond its control and without the fault and negligence of such party.

ARTICLE 15: AVAILABILITY of PERSONNEL

If Opteon has scheduled staff for the Customer within an agreed upon timeframe and if the Customer is responsible for failure to use this staff effectively, then the Customer is responsible for the full opportunity cost at the agreed upon fee levels for the periods of time the staff was not engaged effectively.

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ARTICLE 16: CONFIDENTIALITY

- 16.1. Opteon will not disclose any confidential information concerning the Customers business to third parties, except for other professional advisers whom Opteon may consult in relation to its work and other parties involved in the project. Opteon may save information to the extent that the information is in the public domain, without your prior written consent unless otherwise required by law.
- 16.2. Notwithstanding the foregoing, the Customer recognizes that Opteon has knowledge, experience and know-how, (together "knowledge"), which it brings to bear in developing solutions. This knowledge is derived from a number of sources, including previous assignments for its clients. In the conduct of this engagement, Opteon will become aware of and have access to operational, process and other information relating to the Customers business, (together the "information"). Opteon acknowledges the confidentiality of this information. The Customer agrees that Opteon may include this information in internal knowledge sources for use in internal knowledge sharing activities and may use this knowledge in developing solutions for other clients. Opteon may also apply this information together with information from its sources in developing its knowledge products and services which will be in the public domain on the basis that it will protect the confidentiality of the information and of the sources concerned.
- 16.3. All presentations, reports, documents, deliverables and other advice given, including this letter, are for the Customers exclusive use and must not be handed over or otherwise disclosed to any third party without our prior written consent. The Customer agrees to take all steps necessary to procure that they are not stolen, handed over or otherwise disclosed or used by any third party without Opteon's prior written consent. Unless otherwise agreed, the material that belongs to Opteon and is protected by intellectual property rights may only be copied for archiving purposes. Unless otherwise stated, this Agreement does not transfer to the Customer any of Opteon's intellectual property rights and Opteon shall at all time keep title to, and all other ownership rights in any such intellectual property.

ARTICLE 17: USE of NAME

Notwithstanding the provisions of article 16, Opteon may use the name of the Customer in its reference lists.

ARTICLE 18: PERSONNEL

- 18.1. It is understood that Opteon, at the exclusion of Customer, shall have sole responsibility for the supervision and monitoring of Opteon's staff (if applicable) assigned by Opteon to the implementation of work covered by a Order. Opteon will endeavor to staff each Order assignment with professional individuals whose background and experience best suit the requirements of the Order. Should Customer for any reason, request Opteon to make an adjustment in staff assignments, Customer will, whenever possible, provide the request on at least sixty (60) days notice. Opteon will endeavor to carry out such a request with a minimum impact on work schedules
- 18.2. During the period of this Agreement and for 12 months after its completion, neither of the contractual parties hereto shall, without prior consent in writing of the other, employ, or attempt to employ any staff of the other party who has been in the employment of such other party during the validity of this Agreement. Exception from this mutual no-hiring agreement can only be obtained by payment of an indemnity equal to 12 months gross salary of the employee

ARTICLE 19: LAW

- 19.1. **Compliance with Applicable Laws and Regulations:** This Agreement and acceptances thereof by means of Orders, are subject to the condition that performance by Opteon and payment by Customer, in Euro, shall be permitted by the applicable laws and regulations of Belgium and of any other country or countries where performance or the making of payment may be required.
- 19.2. **Applicable Law:** This agreement and all Work Orders and changes thereto issued hereunder, shall be governed by the laws of Belgium. The UN Convention on international Sale of Goods shall not apply. Venue for any litigation concerning this agreement shall be the appropriate court in Ghent Belgium.

ARTICLE 20: SEVERABILITY

If any provision of this agreement shall be invalid under applicable law, it shall be deemed to have no force or effect and shall likewise be deemed separable and the remainder shall continue to be in full force notwithstanding.