

**THALES OPTEM, INC.**  
**CONDITIONS OF SALE**

1. **DEFINITIONS**

1.1 For the purposes of these Conditions of Sale:

- a) The "Company" and "Company" shall mean Thales Optem, Inc. as specified in the Contract of sale.
- b) The "Article(s)" shall mean the products (including any installment of the products or any parts thereof) or services to be supplied by the Company in accordance with these Conditions of Sale.
- c) The "Customer" and "Customer" shall mean the person or party whose order for the Article(s) is accepted by the Company.
- d) The "Parties" shall mean the Company and the Customer.
- e) The "Contract" means the Contract for sale and purchase of the Articles to which these Conditions of Sale apply.
- f) The "Total Contract Price" shall be the price agreed between the Company and the Customer in respect of the total value of all the Articles. For the purposes of Total Contract Price, "firm" shall mean not subject to variation except in accordance with clause 3 below.

1.2 Any reference in these Conditions of Sale to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

2. **SCOPE**

**These Conditions of Sale govern the Contract and shall prevail over all other terms and conditions unless such other terms and conditions are specifically agreed in writing and signed by an authorized representative from each of the Parties. Any terms and conditions appearing in the Customer's documents shall have no contractual effect and appear only by reason of being printed on the Customer's stationery.**

3. **QUOTATIONS**

Quotations are subject to withdrawal at any time. A quotation by the Company is an invitation to the Customer and may be withdrawn at the Company's discretion. If the Customer wishes to proceed, it must make a written offer within the validity period of the quotation. The Company may then accept such offer. No contract for the sale of the Goods or the Services shall be concluded until the Company has issued an 'Acknowledgement of Order' Form.

4. **PRICES**

4.1 Unless otherwise agreed in writing, the Total Contract Price shall be firm, *ex works our facility*, exclusive of any applicable taxes.

4.2 In the event that the Customer requests any change in delivery dates, quantities or specifications or in the event that any delay arises from instructions of the Customer or from failure by the Customer to provide the Company with adequate information or instructions, the Company reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of the Article(s) to reflect any resultant increase in cost to the Company.

5. **PAYMENT**

5.1 Unless otherwise agreed in writing or unless the order involves component tooling, payment for components is shall be made by the Customer in U.S. dollars and upon a net thirty (30) day term.

5.2 Without prejudice to the Company's rights under Clause 21 of these Conditions of Sale, the Company shall be entitled to charge interest on any late payments of any sums due under these Conditions of Sale at the rate of 18% per annum. The Customer shall not be entitled to withhold payment for the Article(s) or to exercise any rights of set-off, counterclaim, or other deduction for any reason whatsoever.

5.3 Any failure on the part of the Customer to make payment in accordance with the terms of this Contract shall entitle the Company, at its option, to withhold further deliveries both in respect of this Contract or series of Contracts and/or any other Contract for delivery of goods to the Customer until such payment has been made.

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7. **DELIVERY**

7.1 All delivery dates are estimates only and the time of delivery shall not be of the essence of the contract. In no circumstances shall the Company be liable to compensate the Customer in damages or otherwise for non-delivery or late delivery of the Goods or non-performance or late performance of the Services or any of them for whatever reason or for any loss consequential or otherwise arising therefrom.

7.2 Notwithstanding any other provision of the contract, the Company shall be under no obligation and may terminate the contract without liability if the Company is unable to perform the contract as a result of any cause beyond the control of the Company including but not limited to acts of God, war (whether declared or not), sabotage, riot, explosion, Government control, restrictions or prohibitions or any other Government act or omission whether local or national, fire, accident, earthquake, storm, flood, epidemic, drought, or other natural catastrophes, inability to obtain equipment, suitable raw materials, components, fuel, power or transportation, disputes with workmen, strikes or lockouts or shortage of labour.

7.3 Should the Company be prevented from delivering part of the Goods or providing the Services by reason of any of the causes specified in the preceding sub-clause or for any other reason, including a delay in delivery due to any action on the part of Customer, the Company shall deliver and the Customer shall take and pay for such part of the Goods or the completed work the subject of the Services as the Company shall be able to deliver in accordance with the contract.

7.4 The Company shall be entitled to deliver the Goods and/or the completed work the subject to the Services in one or more consignments unless otherwise expressly agreed in writing.

7.5 Delivery shall be deemed to take place when the Goods or the completed work the subject of the Services (as the case may be) are despatched from the Company's facility (*ex works*).

7.6 The Company shall not be liable for any loss of any kind to the Customer arising from any damage to the Goods and/or the completed work the subject of the Services occurring after the risk has passed to the Customer however caused, or shall any liability of the Customer to the Company be diminished or extinguished by reason of such loss.

8. **PACKAGING**

Unless otherwise agreed in writing, packaging will be in accordance with the Company's normal commercial standards and the cost thereof shall be included in the Total Contract Price.

9. **TESTING AND ACCEPTANCE**

Testing and inspection of the Article(s) will be undertaken in accordance with the Company's quality assurance procedures. The Company shall certify conformity of the Article(s) to the agreed Contract specification(s). Upon such certification and delivery, the Customer shall have a period of thirty (30) days in which to reject the Article(s) on the grounds that they do not conform to the agreed Contract specification(s). Upon any such rejection, the Customer shall return the Article(s) to the Company, carriage paid, by the method of transport specified by the Company. If the Customer has not exercised its right of rejection within the said thirty day period, the Article(s) shall be deemed to have been accepted.

10. **DELIVERY OF WRONG QUANTITY**

Where a wrong quantity of Article(s) is delivered, the Customer shall be entitled to reject only such of the Article(s) as are in excess of the total quantity ordered always provided that the Customer shall have notified the Company in writing of its intention to reject the Article(s) within fourteen (14) days of receipt thereof.

11. **STORAGE**

11.1 If for any reason the Customer fails or is unable to give forwarding instructions sufficient to enable the Company to dispatch Article(s) within thirty (30) days of notification from the Company to the Customer that the Article(s) are ready for delivery or the Customer refuses or is unable to accept delivery, the Company shall be authorized to place the Article(s) in storage on behalf of the Customer and to arrange any necessary insurance. The Total Contract Price in respect of those Article(s) shall thereupon become due and payable. Risk in the Article(s) shall pass to the Customer immediately upon the Article(s) being placed in storage.

11.2 All storage, transport, handling, maintenance, insurance and associated administrative charges shall be for the account of the Customer, except that there will be no storage fee for the storage of Customer's tools by Company. Twenty-four (24) hours notice is required for inspection of Customer's tools at Company's place of business during normal business hours. If the above charges not paid for by the Customer within six (6) months, the Company shall be entitled to assume that the Customer has no further interest or right therein, and the Company shall be entitled to dispose of the Article(s) in such way as it deems fit.

12. **DESCRIPTION**

Whilst every effort is made to ensure the accuracy of all descriptions, diagrams and other information contained in documentation issued by the Company, such descriptions, diagrams and other information are for information only and do not constitute any representation, warranty or undertaking on the part of the Company unless specifically so agreed by the Company in writing.

13. **RISK AND TITLE**

13.1 Unless otherwise agreed in writing, risk in the Article(s) shall pass to the Customer *ex works our facility* in accordance with the *ex works* provisions of Incoterms 2000 as specified above.

13.2 Notwithstanding the passing of risk, title to the Article(s) shall not pass from the Company to the Customer until the Company has received payment in full of the price of the Article(s).

13.3 Until such time as title to the Article(s) passes to the Customer, the Customer shall, where appropriate, hold the Article(s) as the Company's fiduciary agent and bailee, and shall keep the Article(s) separate from goods belonging to the Customer and/or third parties, properly stored, protected and insured and identified as the Company's property.

13.4 Until such time as title to the Article(s) passes to the Customer, the Company may at any reasonable time enter upon any of the Customer's premises and remove the Article(s) therefrom and the Customer shall permit the Company reasonable access to the said premises to do so.

13.5 In the event that the price for the Article(s) is not paid by the due date in accordance with the provisions of Clause 4 of these Conditions of Sale, the Company shall at its absolute discretion be at liberty either to recover the Article(s) or commence an action for the price of the Article(s).

14. **WARRANTY**

14.1 The Company warrants the Article(s) against defects arising solely from defective materials or workmanship occurring during a period of twelve (12) calendar months from the date of *ex-works* delivery as defined in Incoterms 2000. **THE WARRANTY PROVIDED HEREIN IS EXCLUSIVE AND IN LIEU OF ANY OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF SATISFACTORY QUALITY OR FITNESS FOR A PARTICULAR PURPOSE. THE CUSTOMER'S EXCLUSIVE REMEDY AND THE COMPANY'S SOLE LIABILITY UNDER THE WARRANTY SHALL BE LIMITED TO THE REPAIR OR REPLACEMENT OF THE DEFECTIVE ARTICLE(S) AND THE COMPANY SHALL BE LIABLE FOR NO OTHER DAMAGES OR LOSSES INCLUDING, BUT NOT LIMITED TO, CONSEQUENTIAL OR INDIRECT DAMAGES OR LOSSES ARISING FROM THE DEFECTIVE ARTICLE(S).**

14.2 This warranty shall in any event be subject to the following conditions:

- a) Article(s) which are repaired or replaced during the warranty period shall remain under warranty for a period of time equivalent to the unexpired warranty existing at the time of notification by the Customer to the Company of warrantable arising.
- b) The Customer shall have notified the Company of any alleged defect within fourteen (14) days of its appearance and shall have given the Company the opportunity to examine the Article(s) and any relevant records of usage, maintenance and storage maintained by the Customer.
- c) The Customer shall have ensured that the Article(s) have been stored, fitted and used in accordance with any specifications, user instructions, maintenance manuals etc. provided by the Company.
- d) The Customer shall not have changed, removed or obscured any serial or identification numbers, labels, lettering or other markings which are on the Article(s) at the time of delivery thereof.
- e) The warranty does not extend to normal wear and tear, misuse, accidental damage and/or defects attributable to modification by persons other than authorized employees of the Company.
- f) The warranty does not extend to any damage caused by any type of operation or use outside that for which the Article(s) are reasonably intended.
- g) The Company shall be under no liability in respect of any defect in the Article(s) arising from any drawing, design or specification supplied by the Customer.
- h) The warranty does not extend to parts, materials or equipment not manufactured by the Company, in respect of which the Customer shall only be entitled to the benefit of any such warranty as is given by the manufacturer to the Company.
- i) The warranty may be asserted by the Customer only and not by any third party or other user of the Article(s).

- j) The warranty shall be ineffective in respect of such Article(s) for which payment has not been paid by the due date in accordance with Clause 4 above.
- 14.3 If so advised by the Company, the Customer agrees to return all defective Article(s) or parts thereof along with a statement of the alleged defect to the Company, carriage paid, by the method of transport stipulated by the Company. Where the examination of the said Article(s) or parts thereof finds that the defect is due to the fault of the Company, the Company will pay all charges in connection with return of the Article(s) to the Customer which will otherwise be the responsibility of the Customer.
- 14.4 All reasonable costs incurred by the Company in relation to a "No Fault Found" analysis/examination of Article(s), including those incurred in relation to the shipment of such Article(s), shall be fully reimbursed by the Customer to the Company.
15. **INDEMNITY**
- 15.1 Subject to sub-clause 14.2 below, the Company hereby indemnifies the Customer against all actions, claims, demands, charges and expenses arising from or incurred by reason of any infringement or alleged infringement of any patent, registered design, copyright, trade mark or trade name by or on behalf of the Customer arising as a result of the Customer's use of a design or instruction furnished by the Company in relation to the Article(s) (or any feature thereof) always provided that the Company shall not be liable to indemnify the Customer:
- If the Company has at its own expense procured for the Customer the right to continue to use the Article(s) or has replaced or modified the Article(s), or
  - If the Customer has failed to give the Company the earliest possible notice in writing of any action being threatened or claim being made, or has failed to permit the Company to conduct all necessary litigation and/or negotiations in accordance therewith, or
  - If the Customer has made any admission of liability on behalf of itself or the Company, or
  - If the Customer has used or caused the Article(s) to be used in a manner or for a purpose other than that for which they were originally intended by the Company, or
  - If the Customer has used, or caused the Article(s) to be used, sold or exported into any country not authorised by the Company.
- 15.2 The Company shall be entitled to require the Customer to take such steps as the Company may reasonably require to mitigate any losses, damages, costs or expenses for which the Company is liable to indemnify the Customer in terms of Clause 14.1.
- 15.3 The Customer hereby indemnifies the Company against all actions, claims, demands, charges and expenses in respect of any infringement or alleged infringement of any patent, registered design, copyright, trade mark or trade name resulting directly or indirectly from instructions from the Customer to the Company specifying the use by or on behalf of the Company of any material, design, process or other feature required by the Customer in the production of the Article(s).
16. **INTELLECTUAL PROPERTY**
- 16.1 Subject to clause 16.2, if the Customer is threatened with any action alleging that the goods in the form supplied by the Company infringe any patent, copyright registered design, design right or other intellectual property rights then provided that the Customer promptly informs and fully cooperates with the Company and in cases where the Company so requests allows the Company to defend any action on the Customer's behalf and have the sole control of any and all negotiations for settlement, then the Company will indemnify the Customer against any award of damages and costs against the Customer arising from such action. Further, if such event occurs the Customer agrees that the Company shall have the right at its option and its own expense either to:
- modify any goods so that they do not infringe; or
  - replace any goods with non-infringing goods; or
  - procure for the Customer the right for the Customer to continue its use of any goods
- 16.2 The Company shall have no liability in respect of claims for infringement or alleged infringement of any third parties' patent or other proprietary rights arising from the execution of the contract in accordance with the Customer's designs plans or specifications and the Customer shall indemnify the Company against all losses, damages, expenses, costs or other liability arising from such claims.
17. **CONFIDENTIALITY**
- The Contract, quotation and all material, documents and information issued by the Company in any form in connection therewith shall be confidential and their use and disclosure shall be strictly limited by the Customer to those of its employees having a need to know and the Customer shall under no circumstances disclose any such information to any third party without the prior written consent of the Company.
18. **TOOLS**
- All tools, jigs, moulds, dies, gauges and other equipment and associated software made by or for the Company, shall, unless otherwise agreed, become the property of the Company who may use the same for any purpose whatsoever. Where, for the purpose of the Contract, the Customer supplies such equipment to the Company, the Company shall not be liable for any loss or damage thereto unless such loss or damage is directly attributable to the Company's negligence.
19. **LIABILITY**
- 19.1 The Customer shall ensure that the end user of the Article(s) or of products incorporating the Article(s) shall be advised as to the nature of the Article(s) and shall be supplied with all relevant information (including any instruction and maintenance manuals and/or safety information) supplied by the Company to the Customer in respect of such Article(s).
- 19.2 Subject to any express provisions to the contrary contained in these Conditions of Sale, all representations, warranties, guarantees and conditions in relation to the Article(s), whether express or implied, statutory or otherwise, are hereby excluded and the Company shall not be liable in contract, tort, breach of statutory duty or otherwise for any loss, injury, destruction or damage whatsoever arising in connection with the supply of the Article(s). The Company does not exclude or limit liability arising in respect of death or personal injury caused by the Company's negligence.
- 19.3 Notwithstanding the provisions of Clause 14 of these Conditions of Sale and except in respect of liability for death or personal injury caused by the Company's negligence, the Company's liability in respect of any claim for loss or damage arising in any way in connection with the Article(s) shall cumulatively be limited to the Total Contract Price of the Article(s) inclusive of any subsequent amendments or changes thereto.
- 19.4 The Company accepts no liability whatsoever for any form of consequential or indirect loss or damage including but not limited to any loss of use, profit or contract.
- 19.5 The Customer acknowledges and agrees that the exclusions and limitations of liability provided for in this clause are reasonable and that, if they had not been included, the Total Contract Price would have been materially increased.
20. **FORCE MAJEURE**
- 20.1 The Company will not incur any liability arising out of any delay in delivery or other performance hereunder due to a "Force Majeure". A "Force Majeure" is defined as any circumstance beyond the reasonable control of the Company including, but not limited to, industrial disputes, fire, flood, earthquake, currency restriction, shortage of transport, general shortage of material or power or fuel, epidemic, quarantine, Acts of God or nature, riots, mutinies, civil commotion, war or warlike operations, sabotage or any acts of the United States Government thereof. An extension of time for delivery or other performance by the Company shall be granted for a period equal to the duration of the delay caused by the Force Majeure circumstance.
- 20.2 Notwithstanding the provisions of sub-clause 20.1 above, if the Force Majeure circumstances affecting the Company's performance hereunder continue for a period exceeding ninety (90) calendar days, the Parties shall use their best efforts to agree upon a mutually satisfactory course of action always provided that the Customer shall at all time after such ninety day period be entitled to terminate the Contract immediately by notice in writing to the Company.
21. **WAIVER**
- Unless formally agreed in writing, no delay by or failure of the Company in exercising any right under the Contract shall be construed as a waiver of such right, and waiver by the Company of any breach of any term hereunder by the Customer shall not prevent subsequent enforcement of that term or any other term.
22. **TERMINATION**
- 22.1 All orders are non-cancelable and irrevocable once accepted by the Company unless otherwise agreed in writing between the Parties. Without prejudice to any other right and remedy available to the Company, and in particular the right to accept a wrongful repudiation and recover un-liquidated damages, the Company shall have the right forthwith to determine the contract by notice:
- if the Customer commits any breach of any of the terms of the contract, or
  - if the Customer, being an individual, dies, or goes into liquidation or has a receiver appointed, or if any distress execution or other legal process is levied on or against any goods or property of the Company or the Customer, or against any premises where the same may be, or if the Customer suffers any analogous proceedings as referred to in this clause under foreign law or if the Customer permits any judgment against it to remain unsatisfied for 7 days; or
  - if the Customer is in breach of any other contract entered into by the Customer with the Company or any Group company and such termination will be without prejudice to the Company's accrued rights including any rights to damages, but the Company shall be relieved of any further performance.
- 22.2 On termination in any case, the Customer shall immediately pay any sums due to the Company, including the cost of materials and services used in the production of Customer's terminated order, and redeliver to the Company all goods of which the Customer has not already become owner. For the avoidance of doubt the provisions of clause 5 (as to risk) and clause 7 (as to the Company's title and ancillary remedies and Software) and clause 13 (as to the limitation of the Company's liability) shall continue after termination.
- 22.3 In the case of termination under clause 22 by the Company following breach by the Customer, the Customer shall pay all the Company's costs and expenses, including those costs of materials or services which are unique to the requirements of Customer (including any unique safety stock requirements), and the Company's loss consequent on such breach and termination being the full contract price less any saving to the Company as to further performance by being able to resell the goods and otherwise.
23. **NOTICES**
- All notices to be given under these Conditions of Sale shall be in writing and forwarded by express mail.
24. **AMENDMENT**
- Any amendment or addition to these Conditions of Sale must be in writing and signed by the authorized signatory of both Parties hereto.
25. **CLAUSE HEADINGS**
- Clause Headings are for convenience only and shall not affect in any way the interpretation of any of these Conditions of Sale.
26. **INVALIDITY OR ILLEGALITY**
- The invalidity, illegality or unenforceability of any provision or clause herein, in whole or in part, shall not affect the validity or enforceability of the remainder.
27. **LAW**
- The construction, validity and performance of these Conditions of Sale and any contract incorporating the same shall be governed in all respects by the laws of the state of New York.
28. **RIGHTS OF THIRD PARTIES**
- Notwithstanding anything to the contrary elsewhere in the Contract, no right is granted to any person who is not a party to the Contract to enforce any term of the Contract in his own right and the Parties to the Contract declare that they have no intention to grant any such right.