

Doc. nr. 2955507.1

## **GENERAL TERMS AND CONDITIONS**

### **CLAUSE 1 GENERAL**

- (1) These General Terms and Conditions (hereafter: "GTC") are used by OPTICOM TRANSPORT B.V., also trading under the names Opticom Logistics, Opticom Thermo Logistics and Opticom Thermo ("Opticom"), with its statutory seat in Oud-Beijerland, registered with the Chamber of Commerce under no. 91857759.
- (2) The GTC apply to all quotations, offers, confirmations, deliveries, agreements, the performance of work as well as to any and all other factual acts, legal acts and legal relationships in connection with or arising out of services supplied or to be supplied by Opticom at the instructions of any party (hereafter: "the Customer").
- (3) To the extent that the GTC apply to any agreement, they shall continue to apply without exception to any and all services supplied or to be supplied by Opticom and to future agreements concluded between Opticom and the Customer.
- (4) If Opticom does not invoke any of the provisions of the GTC in one occasion, such shall not constitute a waiver by Opticom of its right to invoke the provisions of the GTC in other or similar occasions.
- (5) The GTC supersede all previous written, oral or tacit agreements between Opticom and the Customer.
- (6) The applicability of any of Customer's general terms and conditions whatsoever is explicitly rejected.

### **CLAUSE 2 FORMATION OF AGREEMENTS**

- (1) All quotations and offers made by Opticom, both verbally and in writing, are nonbinding and can be revoked by Opticom at all times.
- (2) Changes or supplements to the GTC and/or the agreement only bind Opticom after written confirmation by an authorised representative of Opticom and only relate to the agreement concerned.

### **CLAUSE 3 PERFORMANCE OF SERVICES**

- (1) Opticom is, without having to inform Customer in advance, at liberty to engage third parties for the performance of any of its obligations vis-à-vis the Customer.
- (2) Delivery times and dates indicated by Opticom are, unless otherwise agreed upon in writing, estimates and for information purposes only.
- (3) Unless otherwise agreed upon in writing, it is understood that Opticom will perform its services on a non-exclusive basis, so that Opticom shall remain free to engage with other parties with respect to the same or similar services as offered to Customer.

### **CLAUSE 4 PRICING AND PAYMENT**

- (1) Prices put quoted by Opticom shall, unless explicitly stated otherwise, at all times be exclusive of VAT or any other applicable tax, levy or duty imposed with respect to the goods and/or the performance of services.
- (2) Opticom is entitled to charge the Customer for any and all taxes, fines, levies and/or duties imposed with respect to the performance of services, including increases thereof.
- (3) Any amounts due pursuant services supplied by Opticom shall be paid by the Customer within 14 days of the date of Opticom's invoice.
- (4) The risk of exchange rate fluctuations shall be borne by the Customer.

**CLAUSE 5 OPTICOM'S LIABILITY**

- (1) Opticom's liability with respect to carriage of goods shall be determined in accordance with the following provisions:
- (a) in case of national carriage of goods by road, the most recent version of the Dutch General Transport Conditions (Dutch: "Algemene Vervoerscondities 2002") applies, with the exclusion of the rules on the settlement of disputes included therein;
  - (b) in case of international carriage of goods by road, the CMR Convention applies, with the exclusion of the rules on the settlement of disputes included therein;
  - (c) in case of carriage of goods by rail, the COTIF-CIM 1999 applies, with the exclusion of the rules on the settlement of disputes included therein;
  - (d) in case of carriage of goods by air, the 1999 Montreal Convention applies, with the exclusion of the rules on the settlement of disputes included therein;
  - (e) in case of carriage of goods by sea, the Hague-Visby Rules apply, with the exclusion of the rules on the settlement of disputes included therein;
  - (f) in case of carriage of goods by inland waterway, whether national or international, the Budapest Convention on the Contract for the Carriage of Goods by Inland Waterways (CMNI) applies.
  - (g) in case of multimodal transport of goods:
    - (i) if the place of loss, damage or delay is known, Opticom is liable for loss of and/or damage to the goods and/or delay in delivery of the goods in accordance with the provisions mentioned under 5.1.a – 5.1.f, whichever of these provisions apply to the transport mode during which the loss, damage or delay occurred.
    - (ii) if the place of loss, damage or delay is not known, Opticom is liable for loss, damage and/or delay unless Opticom proves it is not liable in accordance with the provisions of paragraph 5.1.a – 5.1.f on liability. If Opticom is liable pursuant to this paragraph, Opticom liability shall be limited in accordance with the set of provisions mentioned in paragraph 5.1.a – 5.1.f resulting in the highest amount of damages to be awarded to Customer.
  - (h) in all cases of carriage of goods, Opticom shall not be liable for any losses and/or damages other than to the carried goods, including, but not limited to, any and all damages and/or losses arising out of or in connection with a breach of obligations ancillary to the carriage of goods, unless Customer proves that the loss or damage has been caused by fault or negligence on the part of Opticom itself. If Opticom is liable pursuant to this provision, its liability shall in any and all cases be limited to EUR 100,000 per event or series of events with one and the same root cause.
- (2) For any and all services performed by Opticom falling outside the scope of Clause 5.1, including, without limitation, services that entail storage, warehousing, freight forwarding, shipping agent, ship brokering and customs activities, Opticom shall not be liable for any loss, damage and/or delay whatsoever, unless Customer proves that the loss or damage has been caused by fault or negligence on the part of Opticom itself. If Opticom is liable pursuant to this provision, its liability shall in any and all cases be limited to EUR 100,000 per event or series of events with one and the same root cause.
- (3) Opticom shall never be liable for any indirect or consequential losses and/or damages whatsoever, including, without limitation, loss of production, business interruption, loss of profit, loss of time or any other indirect or consequential loss.

**CLAUSE 6 CUSTOMER'S LIABILITY**

- (1) The Customer shall be liable for any and all loss or damage incurred by Opticom (including, without limitation, material and immaterial damages, consequential damages, fines, interest, and penalties) arising out of or resulting from any breach of any obligation of whatsoever nature by the Customer.
- (2) The Customer shall indemnify and hold Opticom harmless from and against any and all claims of third parties in connection with or arising out of performance of services and/or the agreement, including, without limitation, claims from employees and auxiliaries of both Opticom and the Customer.

**CLAUSE 7 CUSTOMER'S RIGHTS AND OBLIGATIONS**

- (1) The Customer represents and warrants that it complies and will comply with all laws, statutes, rules, regulations, standards and requirements applicable to or ensuing from the supplied goods and/or services and/or the agreement, including, without limitation, those relating to environmental protection, working conditions, anti-discrimination, payment of wages, minimum age of employment, anti-bribery, data protection and privacy.
- (2) Customer guarantees that, unless otherwise agreed upon in writing, any goods to be transported at Customer's instructions are not considered hazardous or dangerous as meant in the ADR (The European Agreement concerning the International Carriage of Dangerous Goods by Road) or comparable legislation, nor regulated goods to which special regulations for transport, storage and/or handling apply.
- (3) Customer will provide Opticom with all relevant records, documentation and information with respect to any Services performed or to be performed, including, without limitation, the goods' quantity, weight, value of the goods, treatment and packaging requirements. The Customer shall ensure that any records, information or documentation given to Opticom is complete, accurate and up to date.
- (4) The Customer is not entitled to, and is not allowed to, assign, sell or transfer any of its rights, interests or obligations to third parties.

**CLAUSE 8 SECURITY RIGHTS, SUSPENSION AND SET OFF**

- (1) Opticom has a right of retention (Dutch: retentierecht) and a right of pledge (Dutch: pandrecht) towards any person in respect of all properties, documents, goods and funds that Opticom has directly or indirectly at its disposal or will obtain for any reason or for any purpose whatsoever, for any and all claims it has or may obtain against the Customer. The Customer also expressly grants a right of pledge on all trademarks and other intellectual property rights attached to the goods.
- (2) Opticom is entitled to suspend the performance of any of its obligations in case Customer fails to fulfil any obligation arising out of or in connection with the agreement. In addition, Opticom has a right to set off any amounts payable to Customer against any amounts due by the Customer.
- (3) The Customer is not entitled to set off any debt, nor is the Customer entitled to suspend any of its obligations, including, without limitation, payment obligations.
- (4) Upon Opticom's first demand, the Customer shall furnish security for any amounts owed or to be owed by the Customer to Opticom, as well as for any costs paid or to be paid by Opticom to third parties or government authorities and other costs that Opticom incurs or expects to incur, including, without limitation, taxes, levies, fines and duties.

**CLAUSE 9 TERMINATION**

- (1) If the Customer fails to fulfil any obligation arising out of or in connection with the agreement, regardless of whether the failure to fulfil the obligation is attributable to Customer or not, Red is entitled to terminate the agreement for cause (Dutch: ontbinden) with immediate effect, condition that Opticom gave written notice of the default to Customer and provided at least 14 calendar days from the date of the written notice to remedy the default, and Customer failed to remedy such default within the given term.
- (2) Furthermore, Opticom may terminate the agreement for cause (Dutch: ontbinden) with immediate effect if:
  - (a) Customer's failure to fulfil its obligations cannot be remedied, whether temporarily or permanently; or
  - (b) the Customer has a receiver, trustee in bankruptcy or administrator appointed, or a request thereto is filed with regard to the whole or a material part of its undertaking or assets; or
  - (c) the Customer petitions for or is granted a suspension of payment;
  - (d) the Customer passes a resolution for winding up or if a court shall make an order to that effect; or
  - (e) the Customer submits a statement in accordance with art. 370 of the Dutch Bankruptcy Act (Faillissementswet) or in the event the court appoints a restructuring expert (herstructureringsdeskundige) pursuant to art. 371 Dutch Bankruptcy Act or any other corresponding provision; or
  - (f) a transaction will take place or has taken place that will result or has resulted in any change, directly or indirectly, in the ownership or control of the Customer;

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- (3) Opticom is, unless otherwise agreed upon in writing, at all times entitled to terminate an agreement for convenience (Dutch: "opzegging") subject to a notice period of one (1) month.
- (4) Termination of the agreement, whether for cause or convenience, does not affect any obligations or liabilities that have accrued up to the date of termination, including Opticom's right to claim damages in respect of any breach of the agreement or the law existing at the time of termination.
- (5) The Customer shall under no circumstances have the right to terminate any agreement for cause (Dutch: "ontbinding") or to terminate the agreement for convenience (Dutch: "opzegging").

### **CLAUSE 10 FORCE MAJEURE**

- (1) For the purposes of these GTC, force majeure (hereafter: "Force Majeure") is understood to mean any event that affects Opticom's ability to partially or fully perform any of its obligations which Opticom has not been able to avoid and the consequences of which Opticom has not been able to prevent, including, without limitation, strikes, lockouts, stagnation with suppliers, government measures and/or measures by order of any permit to be obtained from the government, bans on import, export or transports, fire, flooding, epidemic, pandemic, war, revolution, act of terrorism, riot or civil commotion.
- (2) If Opticom is affected by Force Majeure, it shall as soon as reasonably possible notify the Customer of the matter constituting the Force Majeure and shall keep the Customer informed of its continuance and of any relevant change of circumstances whilst such Force Majeure continues.
- (3) In the event of Force Majeure, the agreement shall remain in force; Opticom's obligations shall, however, be suspended for the duration of the Force Majeure.
- (4) All additional costs caused by Force Majeure, shall be borne by the Customer and shall be paid to Opticom on first request.

### **CLAUSE 11 SEVERABILITY**

- (1) If any provision of this GTC is found to be invalid or unenforceable in any respect in any jurisdiction:
  - (a) the validity or enforceability of such provision will not in any way be affected in respect of any other jurisdiction;
  - (b) the validity and enforceability of the remaining provisions are not affected, except if this GTC reasonably fails in its essential purpose without the unenforceable provision;
  - (c) the remaining provisions will be construed as if such invalid or unenforceable provision was not contained herein; and
  - (d) such provision shall be substituted by a valid and enforceable provision approximating to the greatest extent possible the essential purpose of the invalid or unenforceable provision.

### **CLAUSE 12 HIMALAYA CLAUSE**

- (1) All exceptions, defences, immunities, limitations of liability, indemnities, provisions and conditions provided for by any applicable statute, these GTC, the agreement and/or the performance of work for the benefit of Opticom shall also apply to and be for the benefit of Opticom's subcontractors and auxiliaries.

### **CLAUSE 13 DUTIES TO FURNISH INFORMATION AND AUDIT**

- (1) Customer will provide Opticom with all relevant records, documentation and information with respect to any goods to be transported at Customer's instructions, including, but not limited to, the quantity, weight, value, treatment and packaging requirements of the goods, as well as any other records, documentation and information relevant for the Services.
- (2) Customer guarantees that, unless otherwise agreed upon in writing, any goods to be transported at Customer's instructions are not considered hazardous or dangerous as meant in the ADR (The European Agreement concerning the International Carriage of Dangerous Goods by Road) or comparable legislation, nor regulated goods to which special regulations for transport, storage and/or handling apply.

**CLAUSE 14 INSURANCE**

- (1) Customer will be solely responsible to insure any and all risks relating to any goods to be transported at Customer's instructions. It is understood and agreed that Opticom will not take out any property insurance with respect to any goods to be transported at Customer's instructions.

**CLAUSE 15 TIME BAR**

- (1) Any and all claims vis-a-vis Opticom shall be time-barred (Dutch: vervallen) by the mere expiry of a period of 12 months from the date on which the claim arose.

**CLAUSE 16 CHOICE OF LAW AND DISPUTE RESOLUTION**

- (1) All quotes, offers, instructions, assignments and legal relations ensuing from or related to these GTC, the agreement and/or the performance of work shall be governed by Dutch law.
- (2) The Court of Rotterdam, the Netherlands, shall have exclusive jurisdiction in respect of any and all disputes arising between Opticom and the Customer. If the jurisdiction provision of article 31 CMR applies, the Court of Rotterdam, the Netherlands, shall have alternative jurisdiction in respect of any and all disputes arising between Opticom and the Customer.