



## TERMS AND CONDITIONS OF SALE

Version 5, 12.9.2022

### Optinova offers to sell goods on the following terms and conditions ("Conditions").

In these Conditions:

- "Associated Companies"** shall mean in relation to a party, any company, organization partnership or individual controlled by, controlling or under common control with that party, control being the ownership of greater than fifty per cent (50%) of the voting shares or interest of such entity, or such other relationship as, in fact, constitutes de facto control.
- "Best Effort"** shall, when stated in any of the Order Documents or otherwise, mean that the Company cannot guarantee that the Goods that shall be produced will conform fully to the applicable technical specifications, the drawings or information in the RFQ. See section 1.5.
- "Company"** shall mean Optinova Holding Ab, a company registered in Finland under Business ID 2377064-9, and its Associated Companies.
- "Contract"** shall mean a contract for the sale of Goods by the Company to the Customer which incorporates or refers to these terms and conditions. Each Contract is made up on the basis of the Order Documents and is concluded as stated in item 1.2.
- "Customer"** shall mean the body, company, organization, partnership, or individual who is supplied with Goods by the Company and who are bound by these Conditions.
- "Goods"** shall mean any goods in the form of plastic tubes which the Company agrees to supply to the Customer and any part or parts thereof.
- "Order"** shall mean the Customer's written acceptance of a Quote issued by the Company. An Order can also be referred to as a purchase order.
- "Order Confirmation"** shall mean the Company's written and final confirmation of an Order. The Order Confirmation is always and exclusively based on a Quote that has been accepted by the Customer.
- "Order Documents"** shall mean, in relation to one (1) specific order, the RFQ, the Quote, the Order and the Order Confirmation.
- "RFQ"** shall mean a written request for quote for Goods which is submitted to the Company by the Customer. An RFQ does not constitute a Quote.
- "Quote"** shall mean a written quote for Goods submitted to the Customer by the Company following the Company's receipt of an RFQ. Each Quote is valid of 30 days following the date stated on the Quote, unless otherwise agreed. As applicable and as advised by the Company, the Quote and/or the Order Confirmation can be conditioned as (i) Best Effort or (ii) Trial Run.
- "Trial Run"** shall, when stated in any of the Order Documents or otherwise, mean that the Company has a high-level of confidence that the Company will be able to meet the applicable specifications, drawings and/or information in the RFQ even though there may be some deviations. See section 1.5.

The headings in these terms and conditions are intended for reference only and shall not affect their construction.

## 1. CONTRACT

- 1.1. These terms and conditions will apply to all Contracts between the Company and the Customer and shall prevail over any other terms and conditions issued by the Customer or otherwise implied. Diverging conditions in Customer specific purchase agreements as per item 1.2 (ii) below will always prevail over these Conditions, to the extent not expressly excluded (in whole or part hereof).
- 1.2. A Contract is concluded either (i) when the Company has issued an Order Confirmation on the basis of the Customer's written approval of a Quote or (ii) when the Customer and the Company has entered into a separate purchase agreement. The Customer may not amend or make changes in a Quote; any amendments to or changes in a Quote will be considered by the Company as a new RFQ which shall be subject to the Company's review, approval, and Order Confirmation procedure.
- 1.3. A Quote issued by the Company can, subject to the Company's approval and separate Order Confirmation(s), be used for additional and subsequent Orders. Any such subsequent Order shall be subject to the conditions in the relevant Quote, including these Conditions.
- 1.4. All descriptions, illustrations and specifications contained in any of the Company's authorized brochures, price lists, websites or any other media whatsoever are for illustration only and shall not form any part of any Contract.
- 1.5. For avoidance of doubt, if and when the Customer accepts Order Documents issued by the Company that states that the Goods shall be produced and delivered as "Best Effort" or "Trial Run" the Customer undertakes to pay for such Goods as produced by the Company even though there may be differences and/or deviations compared to what has been stated in the applicable technical specifications, the drawings or information in the RFQ.
- 1.6. These Conditions may only be amended by the Company; no employee, representative, agent, or salesperson has the Company's authority to vary, amend or waive any of these Conditions on behalf of the Company. To the extent a separate purchase agreement does not specifically state otherwise, these Conditions shall be applicable also on such agreements.

## 2. THE GOODS

- 2.1. The quantity and description of the Goods shall be as set out in the Order Confirmation and the drawings referred to therein, unless otherwise agreed. The Company reserves the right to deliver within +/- 10% of the quantity set out in the Order Confirmation. In case there is a difference between the delivered quantity and the quantity stated in the Order Confirmation, the Company will proportionately adjust the price stated in the Order Confirmation to correspond to the actual delivered quantity.
- 2.2. The Goods shall conform only to the specifications in the Order Confirmation, subject to the conditions regarding Best Effort and Trial Run as may be applicable from Contract to Contract, and to the Company's Certificate of Compliance.

## 3. RETENTION OF TITLE

- 3.1. Goods that are supplied by the Company to the Customer shall remain at all times the property of the Company until full payment for such Goods and all other sums due to the Company from the Customer have been received by the Company in cleared funds.
- 3.2. The Customer agrees:
  - (i) to keep all Goods supplied by the Company in such manner and with such markings as to enable such stock to be immediately identifiable,
  - (ii) to keep the Goods free from any charge, lien, or encumbrance,
  - (iii) not to destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - (iv) to maintain the Goods in satisfactory condition and observe all directions for storage of the Goods given by the Company or the manufacturer (including where necessary all directions relating to cold storage); and
  - (v) subject to item 3.3, not to part with possession of the Goods.
- 3.3. The Customer's right to sell Goods for which it has not paid the Company in full shall terminate

immediately upon any one of the following occurrences;

- (i) if any petition is presented applying to the court for the winding up of the Customer or for any administration order in respect of the Customer;
- (ii) a resolution is made for the Customer's winding up or dissolution;
- (iii) on the appointment of a receiver, manager or administrator in relation to the Customer's business;
- (iv) if the Customer becomes bankrupt or enters into a composition or other voluntary arrangements with its creditors;
- (v) if the Customer becomes unable to pay its debts or satisfy its creditors; and/or
- (vi) if any order for voluntary or involuntary liquidation is made in relation to the Customer or any of the Customer's directors.

3.4. The Customer shall immediately notify the Company on the occurrence of any event(s) set out in item 3.3 and the Customer hereby grants an irrevocable license to the Company or its nominee to enter the Customer's premises immediately upon it becoming aware of any of the occurrences set out in item 3.3 above for the purpose of taking possession of Goods constituting the Company's property.

#### **4. PRICING AND PAYMENTS**

- 4.1. The price of Goods is exclusive of VAT which, where applicable, will be added to the price at the appropriate rate in force at the date of the Quote. Unless otherwise agreed between the Company and the Customer, the Customer is responsible for the correct and timely payment of any and all carriage, freight, postage or insurance costs relating to the Goods.
- 4.2. The invoice for the Goods shall separately specify the freight and delivery costs for the Goods, if any, to be paid by the Customer to the Company. The Company reserves the right to make an additional charge, statutory charge, or fuel surcharge as it sees fit to cover any changes in its cost structures.
- 4.3. Payment for all Goods provided by the Company shall be due 30 days from the date of invoice. Interest on overdue invoices shall accrue, and be charged, from the date when payment becomes overdue, on a daily basis at a rate of 8,50 % per annum.
- 4.4. In addition to the interest referred to in item 4.3 continuing to accrue, the Customer will also forfeit any and all discounts that the Company has agreed to provide in the course of trading. In addition, the Company may: (i) reduce or cancel any discounts that may be available in the future; and/or (ii) require suitable security for any and/or all future deliveries.
- 4.5. The Customer shall pay the full amount shown on the invoice due without making any deductions or offsets for any reason whatsoever unless previously agreed and authorized by the Company.
- 4.6. The Company reserves the right to charge the Customer for the supply of any duplicate documentation requested by the Customer.

#### **5. DELIVERY TERMS AND RISK OF LOSS**

- 5.1. Unless otherwise specified in the Order Confirmation, all deliveries of Goods are made subject to the Incoterms 2020, FCA the plant stated in the Order Confirmation, packing included.
- 5.2. The Goods shall be ready for delivery on the delivery date specified in the Order Confirmation, however so that the specified delivery date may be postponed subject to the Company's notification to the Customer.
- 5.3. On delivery of the Goods to the Customer, the Goods shall be held at the Customer's sole risk and the Customer warrants that it will insure such Goods to their full market value against all risks of loss or damage to the Goods.
- 5.4. The Customer shall submit remarks relating to shortages or errors in the Goods within 365 days from delivery. Remarks submitted after that will be considered void and will not be considered by the Company.
- 5.5. If the Customer for any reason fails or is unable to accept delivery of Goods in accordance with

these terms and conditions, the Goods will have deemed to have been delivered (with the risk in them passing to the Customer) and the Company may invoice the Customer and the Company may store the Goods at the Customer's risk and cost and redeliver at the next reasonable opportunity.

- 5.6. The Customer's failure to notify the Company that the information in the Order Confirmation is erroneous within five days from receipt of it or the signature on the delivery note or electronic hand held device by any person accepting receipt of the Goods at the point of delivery on behalf of the Customer or its carrier, as specified in item 5.1 or on the Order Confirmation, will be evidence that the Customer has accepted the delivery of the Goods.

## **6. TRADEMARKS/COPYRIGHTS**

- 6.1. Any intellectual property rights created or developed by the Company in the course of the performance of any Contract shall remain the sole property of the Company and nothing in these Conditions shall be deemed or interpreted to give the Customer a license or any other right to use any of the intellectual property rights of the Company.

## **7. LIMITATION OF LIABILITY AND REMEDIES**

- 7.1. Unless otherwise expressly stated and as limited in these terms, the Company gives no warranties or representations, express or implied, for the Goods beyond the Certificate of Compliance. The Goods are manufactured in large quantities and the Company does not possess complete medical or industrial information or knowledge concerning risks involved in the use of the Goods.
- 7.2. The Customer is solely responsible for the use of the Goods, including the permissibility to use the Goods under the relevant medical and security regulations and legislation of the Customer's place(s) of business and/or domicile. The Company is not in a position to determine what actions are appropriate to assure medical safety and efficacy. The Company takes no responsibility and cannot guarantee the safety and efficacy of the Goods or the use of the Goods in any given medical application.
- 7.3. The Company only warrants that the Goods conform to the specifications stated in the Order Confirmation and the description of the type and quality specified in Certificate of Compliance at the time of delivery.
- 7.4. Although employees of the Company are available for consultation concerning the selection of components and required specifications, they are not authorized to warrant the suitability of any component for any particular use or application. Final determination of the suitability of the components for the use contemplated by the Customer is the Customer's sole responsibility, and the Company has no responsibility and makes no warranty or representation in connection with that determination.
- 7.5. The Company's liability for breach of warranty is always limited to the replacement of the individual components of the Goods which do not conform to the Customer's written specification, including reasonable transportation costs for returning and replacing such components. Should the non-conformity persist after one (1) replacement attempt, the Company shall be liable for refunding the purchase price of the non-conforming components upon return of the components to the Company, including reasonable transportation costs for returning such components.
- 7.6. Unless otherwise agreed, the Company's liability of breach of warranty is conditioned by that the number of non-conforming components exceeds five (5) percentage of the total number of components included in the same order and that the Customer has submitted a written complaint, describing the non-conformity, to the Company at the latest 12 months following receipt of the Goods. Returned components shall be packed and sealed as when delivered incl. maintained clean room status when delivered in such a way. The volume of non-conforming components set to be returned shall always be approved by the Company before return.
- 7.7. Except as stated above regarding the Company's direct liability for replacing and refunding non-conforming components, the Company is not liable for any other direct or incidental or consequential damages, including lost profits, revenue, or data, whether in an action in contract, tort, strict liability, or otherwise in relation to the manufacture, sale, or use of the Goods. This applies also to loss, damages or injuries to persons or property of Customers or

others arising out of the use or possession of the Goods. Optinova does not accept any economic or other responsibility for how the Goods are used. The Customer assumes all risks and liability for loss, damage, or injury to persons or property of Customer or others arising out of the use or possession of the Goods.

## **8. CONFIDENTIALITY**

8.1. The Customer shall keep all non-public information relating to the Goods and the Company and its business strictly confidential and shall not divulge any such information to third parties.

## **9. FORCE MAJEURE**

9.1. Should the Company be prevented from performing any of its obligations under these terms and conditions for any reason whatsoever that is beyond its reasonable control ("**an Event of Force Majeure**"), it shall be under no obligation or liability to the Customer in respect of any such non-performance and it shall be entitled, at its option, to amend, delay or terminate any Contract affected by such Event of Force Majeure.

## **10. TERMINATION**

10.1. On or at any time after the occurrence of any of the events in item 10.2, the Company may:

- (i) stop and/or recall any Goods in transit;
- (ii) suspend further deliveries to the Customer;
- (iii) exercise its rights under item 3; and/or
- (iv) terminate any Contract with the Customer with immediate effect by written notice to the Customer.

10.2. The events are:

- (i) the Customer being in breach of any obligation under a Contract with the Company;
- (ii) the Customer passes a resolution for its winding up or a court of competent jurisdiction makes an order for the Customer's winding up or dissolution;
- (iii) the making of an administrative order in relation to the Customer or the appointment of a receiver over, or an encumbrancer taking possession of or selling, an asset of the Customer;
- (iv) the Customer making an arrangement or composition with its creditors generally or making an application to a court of competent jurisdiction for protection from its creditors generally; or
- (v) if any payment is overdue by 10 calendar days after the date that payment is due to the Company

10.3. Upon termination of a Contract pursuant to this item 10, any indebtedness of the Customer to the Company becomes immediately due and payable and the Company is relieved of any further obligation to supply Goods to the Customer pursuant to any Contract.

## **11. GENERAL**

11.1. Any rights and remedies of the Company arising under any Contract shall not be diminished, waived or extinguished by any indulgence forbearance extension of time for any period by the Company nor by any failure or delay by the Company in exercising any such rights or remedies.

11.2. The Customer shall not be entitled to assign, charge, subcontract or transfer any Contract or any part of any Contract without the prior written consent of the Company. The Company may assign, charge or subcontract any Contract or any part of any Contract at its sole discretion.

11.3. If any condition is held to be invalid or unenforceable whether wholly or partially for any reason, such condition shall be deemed severable to the extent that such invalidity requires it and the other conditions shall not be affected.

11.4. The waiver by either party of any breach of a Contract shall not prevent the subsequent enforcement of that breach. No waiver of these terms and conditions shall be effective unless written and signed and agreed by both parties.

11.5. The Company and the Customer remain independent contractors in relation to each other. Nothing in the Contract shall be read or construed as if the Company and the Customer has

entered into or established any form of resale, consignment, agent or other form of cooperation agreement or relationship.

- 11.6. The information that is provided by the Customer will be used by the Company for the purpose of managing the Customer's account. The Customer consents to all such information and all ordering data being used by the Company and consents to allow such information being passed onto third parties.
- 11.7. In the event of any dispute, contest, arbitration, or litigation between the parties hereto, the prevailing party in such dispute, contest, arbitration or litigation shall be fully reimbursed by the other party for all costs, including reasonable attorneys' fees, court costs, expert or consultant's fees and reasonable travel and lodging expenses, incurred by the prevailing party in its successful prosecution or defense thereof, including any appellate proceedings.

## **12. GOVERNING LAW/VENUE**

- 12.1. The United Nations Convention on Contracts for the International sale of Goods shall not be applicable on the Contract.
- 12.2. These terms and conditions, including the construction, validity, and performance of them, shall be governed by Finnish law.
- 12.3. All Contracts concluded in accordance with or otherwise referencing to these terms and conditions shall be governed by and construed in accordance with the substantive laws of Finland excluding its conflict of law principles.
- 12.4. Any dispute, controversy or claim arising out of or in connection with this contract, or the breach, termination or invalidity thereof, shall be finally settled by arbitration administered by the Arbitration Institute of the Stockholm Chamber of Commerce (the "**SCC**").

The SCC Rules for Expedited Arbitrations shall apply where the amount in dispute does not exceed EUR 100,000. Where the amount in dispute exceeds EUR 100,000 the SCC Arbitration Rules shall apply.

The Arbitral Tribunal shall be composed of a sole arbitrator where the amount in dispute exceeds EUR 100,000 but not EUR 500,000. Where the amount in dispute exceeds EUR 500,000, the Arbitral Tribunal shall be composed of three arbitrators. The amount in dispute includes the claims made in the Request for Arbitration and any counterclaims made in the Answer to the Request for Arbitration.

The seat of arbitration shall be Stockholm, Sweden, and the language to be used in the arbitral proceedings shall be English.