

# Terms and Conditions

*Valid from 11th May 2020*

These Terms and Conditions (“Conditions”) apply to all deliveries of products and/or services (“Products”) to any customer (“Customer”). These Conditions shall be mutually binding on OptiUnit ApS (“OptiUnit”) and Customer unless otherwise agreed in writing signed by an authorized person of OptiUnit. No additional or different terms or conditions will be binding upon OptiUnit unless specifically agreed to in writing, signed by an authorized person of OptiUnit. Failure of OptiUnit to object to conditions contained in any other writing or other communication from Customer shall not be construed as a waiver of these Conditions nor acceptance of any such other provisions. None of any past practice, industry standards, course-of-dealing or usage of trade shall constitute a modification of any term or condition contained herein, nor shall same add any term not contained herein. These Conditions also serve as notice of OptiUnit’s objection to and express rejection of any terms and conditions of purchase included in Customer’s order or other writing that are different from or additional to these Conditions.

## **1. Order Confirmation**

All quotes are submitted subject to the goods being unsold. Quotes are only accepted when Customer has received OptiUnit’s written acceptance of the quote, including confirmation in electronic form. If OptiUnit submits a quote to Customer, Customer must accept in writing, including electronically, before the expiry of the acceptance deadline. Cancellation of orders must be made in writing and must be confirmed by OptiUnit in writing. Customer is, regardless of the reason for the cancellation, obliged to buy any goods commissioned for the order which cannot be cancelled. The goods in question shall be invoiced to Customer, at the latest by the order’s originally planned delivery time, at OptiUnit’s purchase price with the addition of any delivery costs.

## **2. Delivery and Transfer of Risk**

Products are delivered Incoterms 2010 ex works Horsens, Denmark. If no details are forthcoming from Customer regarding the mode of transportation, OptiUnit can dispatch the Products to Customer by a mode of transportation chosen by OptiUnit. All OptiUnit’s costs arising from this shall be paid by Customer and transportation is at the risk of Customer, including but not limited

to, risk of loss and damage. Ex works shall be interpreted in accordance with Incoterms 2010 or if outdated which Incoterms is valid at the time of the order and/or order confirmation.

### **3. Delay**

The delivery time shall be stipulated by OptiUnit in accordance with its best estimation in accordance with those conditions which exist when the quote was submitted/the agreement was signed. The estimated date of delivery shall never be regarded as a deadline. Unless specifically agreed otherwise, postponement of the delivery time by fourteen (14) days due to circumstances at OptiUnit in any respect shall be regarded as a delivery being on time, and for this reason Customer cannot make any claim against OptiUnit. If OptiUnit does not perform delivery in accordance with the above, Customer can insist on the delivery and specify a final, reasonable deadline for this. If the delivery is not made by the deadline, Customer is entitled to cancel the purchase. Beyond this, Customer cannot make any demands on OptiUnit as a result of the delay.

### **4. Prices**

Prices are as described in the quote provided to Customer, or as described in the agreement between OptiUnit and Customer. OptiUnit is entitled to adjust the prices for the subscriptions in the Renewal Term as described in Section 7 once a year on the 1<sup>st</sup> of January, the prices shall not be adjusted with more than 3% per year. Further, OptiUnit reserves the right at any time to adjust the agreed prices for non-delivered Products, in the event of price increases from sub-suppliers, increases in the price of materials, in the event of exchange rate change, changes in wages, government intervention or similar circumstances. Any tax, assessment, duty, custom or other fee of any nature imposed upon the Products, their sale, transportation, delivery, use or consumption imposed by any governmental authority, domestic or foreign, on or measured by the transaction between OptiUnit and Customer shall be paid by Customer in addition to the price quoted or invoiced. In the event that OptiUnit is required to pay any such tax, duty, fee or charge, Customer shall reimburse OptiUnit therefore unless otherwise agreed upon in writing.

### **5. Payment Conditions**

All invoices will be sent electronically. Payment for OptiUnit Products shall be made by the date indicated on the invoice as the last date for payment for it to be regarded as on time. If no such date is indicated, payment shall be made in cash upon delivery. If the delivery is postponed due to Customer's circumstances (claimant's default), Customer – unless OptiUnit notifies Customer in writing otherwise – is still obliged to make any payment to OptiUnit, as though the delivery was made at the agreed time. OptiUnit is entitled to charge default interest from the time the payment falls due at the maximum rate permitted by applicable law. When sending payment reminders, OptiUnit is entitled to make a dunning charge if permitted by applicable law. In the case of default

of payment, OptiUnit is entitled to request that collection costs are paid in full. In the event that an invoice is not paid on time, OptiUnit reserves the right to suspend the subscription without notice until the invoice is paid. If the invoice is not paid within the timeframe set in the reminder to the Customer, OptiUnit will close Customer's account. Customer can within 30 days of an account being closed pay the amount due and a re-activation fee to have the account re-opened.

Customer is not entitled to offset any counterclaims against OptiUnit which are not recognized by OptiUnit in writing and is not entitled to withhold any part of the purchase sum due to offsetting of any type. Any assignment of Customer's counterclaims to a third party without OptiUnit's prior written consent shall be void. Customer agrees to reimburse OptiUnit for any costs and expenses (including reasonable attorneys' fees or costs of collection agencies) in connection with the collection of any amounts owed to OptiUnit under these Conditions or transaction contemplated hereby.

## **6. Subscriptions**

Unless otherwise agreed in writing, the subscription is calculated from the date of delivery and shall be invoiced from the 1<sup>st</sup> of the following month until 1<sup>st</sup> of January. Billing frequency is yearly.

## **7. Term and Termination**

The subscriptions are renewed automatically for a 12-month period (Renewal Term), unless terminated by either party on the terms mentioned in this Section 7. The subscription can be cancelled by either party with a notice of three (3) months. OptiUnit may cancel the subscriptions at any time with immediate effect, if Customer's account is closed according to Section 5. The subscriptions can be cancelled by either party effective immediately upon written notice, if the other party breaches any obligation in these Conditions which remains uncured within thirty (30) days after written notice, or a petition in bankruptcy or petition alleging insolvency or inability to pay debts when due in the ordinary course of business shall be filed against the other party and is not be dismissed within thirty (30) days, or a receiver shall be appointed for the assets of the other party and not be dismissed within thirty (30) days, or the party shall make an assignment for the benefit of creditors, shall become insolvent, or shall be unable to pay its debts when due in the ordinary course of business.

## **8. Data Protection and Privacy**

The definitions in this Section 8 shall have the same meaning as in the General Data Protection Regulation (GDPR). When you use equipment in which tracking devices of OptiUnit have been installed ('the Equipment') as an end-customer you are the Data Controller for Personal Data Processed by the OptiUnit tracking device. As an end-customer (Data Controller) you are obliged

to fulfill the obligations in the relevant data protection legislation. The Personal Data relating to the end-users of the Equipment shall be Processed in accordance with the Rights of the Data Subject (e.g. Access to Personal Data). OptiUnit acts as Data Processor or sub-processor. OptiUnit does only Process Personal Data upon specific instructions from the end-customer (Data Controller) or another Data Processor (e.g. a rental company) acting on behalf of the end-customer as a Data Controller. The relationship between the end-customer and OptiUnit or a Data Processor and OptiUnit is regulated in a Data Processing Agreement in accordance with the requirements in the relevant data protection legislation. OptiUnit is entitled to aggregate and/or anonymize data collected from the tracking devices. When data are anonymized, it is no longer possible to identify the end-user of the Equipment. In accordance with Danish, EU laws and regulations, OptiUnit shall implement appropriate technical and organizational security measures to protect data against accidental or unlawful destruction, loss or alteration and against unauthorized disclosure, abuse or other processing in violation of such laws and regulations. OptiUnit and Customer undertake to handle any information as confidential, including but not limited to documents, source code, e-mail correspondence, etc., pursuant to Section 10 below. After expiration or termination of these conditions, such information shall remain confidential for five years. The only exception shall be information characterized as general knowledge. OptiUnit shall retain the right, but not the obligation to access data generated by Customer for purposes of (a) processing such data on behalf of Customer, and (b) for OptiUnit's internal statistical purposes on an anonymized basis. OptiUnit shall also retain the right, but not the obligation, to store data indefinitely while at all times acting in accordance with all applicable laws and regulation. OptiUnit shall not sell or disclose any data unless pursuant to written direction from the Data Controller(s) of such data or pursuant to court order. However, OptiUnit retains the right to analyze and disclose market statistics which, among other sources are based on anonymous operating data from OptiUnit Hardware installed on Customer's equipment. OptiUnit shall retain the right, but not the obligation to make use of subcontractors with regard to the data Processing, and to make use of Standard Contractual Clauses if needed to uphold applicable data protection legislation and regulation. OptiUnit shall upon request from Customer, produce a list of subcontractors to Customer. OptiUnit shall at all times ensure, that the subcontractor meets the same standards as required by these Conditions between OptiUnit and Customer. For any questions please contact us at [info@optiunit.com](mailto:info@optiunit.com).

## **9. Product Information**

Any Product information – regardless of whether it stems from OptiUnit or one of OptiUnit's business associations – including information regarding weight, dimensions, capacity or other technical data, description, prospectus, advertisement etc. which is regarded as providing information, is only binding to the extent that OptiUnit specifically refers to it in the order and/or order confirmation. Specific requirements from Customer are only binding to the extent they are confirmed in writing by OptiUnit. OptiUnit reserves the right to revise and discontinue Products at

any time and without prior notice. OptiUnit will ship Products that have the same or similar functionality and performance of Products ordered, but changes, including, but not limited to, changes with regard to measurements and weight, due to technical requirements between what is shipped and what is described in specification sheets, catalogues, or the like, are possible. Customer is at all time responsible for Customer's use of OptiUnit Products. Customer understands that OptiUnit Products shall not be used for any purpose other than equipment managing and tracking. OptiUnit prohibits the use of OptiUnit Products in any way that is unlawful.

## **10. Protected and Confidential Information**

Any type of information which is not publicly available, including drawings and technical documents and other trade secrets, transferred by OptiUnit to Customer ("Confidential Information"), shall remain the exclusive property of OptiUnit and shall be treated as confidential by Customer. Such Confidential Information has been developed at substantial expense and contains trade secrets that are the exclusive property of OptiUnit. Confidential Information thus must not, without OptiUnit's written consent, be copied, reproduced or forwarded to a third party or used for any purpose other than the one for which it was intended when transferred. Confidential Information shall be returned to OptiUnit upon request. For the avoidance of doubt, Confidential Information supplied by OptiUnit does not include information that (a) was generally available to Customer from public or published sources, provided publication did not take place in violation of these Conditions or through fault or omission of Customer, (b) was lawfully obtained from a source under no obligation of confidentiality, directly or indirectly, to either Customer or OptiUnit, or (c) was disclosed to the general public with the written approval of OptiUnit, and Customer shall exercise due diligence and reasonable care to hold such information in confidence. Customer's confidentiality obligations under this Section 10 shall survive the termination or expiration of these Conditions.

## **11. Product Changes**

OptiUnit reserves the right to make changes to its Products including updates without notice if this can be done without substantially changing agreed technical specifications and without any substantial change to the Products' shape or function.

## **12. Limited Warranties and Inspection**

### **12.1 Hardware Warranties**

The Customer is obliged to check the Products immediately upon receipt. If there is any difference in terms of quantity, quality or any other defect is noticed, Customer shall, immediately after receipt, without unfounded delay, inform OptiUnit in writing of the defect. OptiUnit warrants that Products

delivered by OptiUnit shall be free from defects in material and workmanship for a period of one (1) year from the date of delivery although not for defects which should have been noticed during Customer's check upon receipt of the Products, cf. above. If there are no objections to it doing so, Customer shall send the Product which Customer claims to be defective to OptiUnit, after prior agreement with the latter. In this case, freight and insurance costs shall be ultimately borne by Customer. The Product shall be returned to Customer if OptiUnit's examination shows that the Product is not defective. Freight and insurance shall be paid by Customer. OptiUnit also reserves the right to invoice Customer for the technician's time for investigating the fault. If OptiUnit discovers defects, OptiUnit shall send the repaired Product or a replacement Product to Customer. OptiUnit shall choose the mode of dispatch and shall pay for freight and insurance. For parts which are replaced or repaired, OptiUnit has the same obligations as those which applied to the original Product. OptiUnit is not responsible for defects which are due to normal wear and tear, opening of the units, lightning, fire, overloading, water, improper maintenance, incorrect installation or faults with repairs carried out by anyone other than OptiUnit. THE LIMITED WARRANTY EXPRESSED HEREIN SHALL BE IN LIEU OF ANY OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, WHICH ARE EXPRESSLY DISCLAIMED, AND IS IN LIEU OF ANY AND ALL OTHER OBLIGATIONS OR LIABILITY ON OPTIUNIT'S PART.

## **12.2 Software Warranties**

CUSTOMER EXPRESSLY UNDERSTANDS AND AGREES THAT CUSTOMER'S USE OF OPTIUNIT SERVICES IS AT CUSTOMER'S SOLE RISK AND THAT SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT WARRANTY OF ANY KIND, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

The provisions of this clause do not affect any of Customer's legal rights that can not be excluded under applicable mandatory national legislation, including but not limited to any mandatory statutory warranties. If any part of this limited warranty is held to be invalid or unenforceable, the remainder of the limited warranty shall nonetheless remain in full force and effect. The warranty of Services shall in no case extend further than the warranty of the hardware as described in Section 12.1 (Warranty Period). Warranty of Services is contingent on Customer maintaining current releases of the Services provided by OptiUnit. Customer's sole remedy and OptiUnit's sole obligation under the foregoing warranty shall be for OptiUnit to use commercially responsible efforts to correct any substantial nonconformity of the Services reported to OptiUnit by Customer during the Warranty Period. The foregoing warranty shall not apply to any failure to conform by Services that is caused by a) the use or operation of Services in an environment other than that

intended or recommended by OptiUnit, b) modifications to Services not made by OptiUnit, or c) third party hardware or software provided by third party and not authorized by OptiUnit for use of Services.

### **13. Online Purchase**

If you have purchased any hardware or service on our online platform, and you are not satisfied with your product, you have the possibility to make a complaint on the Online Dispute Resolution website: <https://webgate.ec.europa.eu/odr/>. It is a free independent online dispute resolution located in the EU.

### **14. Indemnity**

Customer agrees to indemnify, defend and hold harmless OptiUnit, its directors and employees and insurers of each of them, from and against any and all third party claims, demands, actions, damages, expenses, costs, claims, judgments and liabilities (including, without limitation, interest, penalties and reasonable attorneys' fees and investigative costs) incurred by OptiUnit, arising from, in connection with or as a consequence of (a) any negligent, or wrongful act or omission by Customer; (b) Customer's transfer, use or sale of any Product, except to the extent that such suit or demand arises out of the failure of such Product to meet OptiUnit's express warranties; and/or (c) Customer's possession, operation, maintenance, delivery or return of any Product. Such protection shall include, without limitation, claims for personal injury or death or property damage arising out of any act or omission of Customer or its customers. This Section 14 shall survive the termination or expiration of these Conditions.

### **15. Limitation of Liability**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND NOTWITHSTANDING ANY PROVISION IN THESE CONDITIONS OR ELSEWHERE TO THE CONTRARY, EXCEPT FOR DAMAGES FOR BODILY INJURY (INCLUDING DEATH), DAMAGE TO REAL PROPERTY OR TANGIBLE PERSONAL PROPERTY, AND THE INDEMNIFICATION OBLIGATIONS UNDER THESE CONDITIONS: (a) IN ANY ACTION UNDER OR RELATED TO THESE CONDITIONS, WHETHER ARISING IN CONTRACT, TORT, (INCLUDING NEGLIGENCE) OR OTHERWISE, NEITHER PARTY, OR ITS AFFILIATE, SHALL BE LIABLE TO THE OTHER PARTY OR ITS AFFILIATE FOR ANY OF THE FOLLOWING EVEN IF INFORMED OF THEIR POSSIBILITY AND WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE: (i) THIRD PARTY CLAIMS FOR DAMAGES; (ii) LOSS OF, OR DAMAGE TO, DATA; (iii) SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES; OR (iv) LOSS OF PROFITS, BUSINESS, REVENUE, GOODWILL OR ANTICIPATED SAVINGS; AND (b) THE MAXIMUM CUMULATIVE LIABILITY OF EITHER PARTY AND ITS AFFILIATES TO THE

OTHER PARTY AND ITS AFFILIATES FOR ALL ACTIONS ARISING OUT OF OR RELATED TO THIS AGREEMENT, REGARDLESS OF THE FORM OF THE ACTION OR THE THEORY OF RECOVERY, SHALL IN NO CASE EXCEED THE AMOUNT OF 500.000 DKK OR 80.000 USD OR 70.000 EUR. If applicable, Customer agrees to cause its customers and anybody in the chain of manufacturing supply and distribution including the end customer to be bound by limitations of liability substantially equal to those contained in these Conditions. This Section 15 shall survive the termination or expiration of these Conditions. Furthermore, OptiUnit renounces all liability for any installation costs in connection with a defective Product. Any costs in this respect shall be borne by Customer. OptiUnit renounces liability for any operational problems at the chosen tele-operator and supplier of digital grids. OptiUnit renounces all liability for any repairs to damage which the Product or use thereof may entail.

OptiUnit's liability towards Customer for loss or damage arising from defective quality or for any other non-conformity is limited to the purchase price of the OptiUnit equipment claimed to be defective.

OptiUnit shall only be liable towards Customer for product liability, if such product liability cannot be derogated from under the mandatory Danish law, and if Customer – in addition to the otherwise applicable requirements under mandatory Danish law – can prove that the defect having caused the damage is a result of OptiUnit's negligence.

## **16. Intellectual Rights**

If Product is supplied with accompanying software, Customer acquires a non-exclusive and non-perpetual software license in the form of a right to use the software for the purpose made clear in the accompanying product specifications. The License is only applicable for the contracted term, and will terminate, when the term expires or is terminated. Over and above this, Customer acquires no rights in the form of licenses, patents, copyrights, trademarks or other intellectual rights connected with the Product. Customer acquires no rights to the source code of the software.

## **17. Force Majeure**

OptiUnit is entitled to cancel orders or defer the agreed delivery of Products, and is otherwise free from liability for any lack of delivery, or defective or delayed deliveries, which are wholly or partially due to circumstances which are outside the reasonable control of OptiUnit, such as any act of God, embargo, rebellion, unrest, war, terrorism, fire, state regulations, strikes, lockout, go-slows, lack of means of transportation, scarcity of goods, sickness, delay in or lack of supplies from suppliers, accidents in production or testing, lack of energy supplies, inability to obtain necessary labor, manufacturing facilities or delays by sub-contractors. All Customer's rights are suspended or are

discontinued in such cases. In the event of cancellation or delayed implementation, Customer cannot request compensation from or assert any other claim against OptiUnit.

#### **18. Partial Invalidity**

If at any time any one or more of the provisions of these Conditions become invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions of these Conditions shall not be in any way impaired.

#### **19. Transfer of Rights and Obligations**

OptiUnit is entitled to assign and transfer, in whole or in part, its rights and obligations under this agreement to a third-party. Customer may not assign or transfer its rights and obligations hereunder without the prior written consent of OptiUnit.

#### **20. Governing Law**

The parties agree that these Conditions, any sale hereunder, or any claim, dispute or controversy between OptiUnit and Customer arising from or relating to these conditions, its interpretation, or the breach, termination or validity thereof, the relationships which result from these Conditions or any related sale shall be governed by the laws of Denmark, without regard to its conflicts of law provisions. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

#### **21. Arbitration**

Any dispute, claim or controversy arising out of or relating to these Conditions or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in Odense, Denmark before one (1) arbitrator, the arbitrator is appointed by the Danish Institute of Arbitration. The arbitration shall be administered by the Danish Institute of Arbitration in accordance with the rules of arbitration procedure adopted by the Danish Institute of Arbitration and in force at the time when such proceedings are commenced. Judgment on the award may be entered in any court having jurisdiction. The arbitrator's decision shall be reduced to writing. Further, the award by the arbitrator shall be final and binding on the parties. All judgments are confidential and shall not be disclosed to the public.

Notwithstanding the immediately preceding paragraph, the parties expressly acknowledge and agree that either party may seek from a court any interim or provisional relief, including, but not

limited to, temporary or permanent injunctions, restraining orders, or a decree of specific performance that may be necessary to protect their rights or property. In particular, but not in limitation of the aforesaid, the parties acknowledge that the covenants contained in Sections 10 and 15 are unique and integral to these Conditions and that monetary damages would be an inadequate remedy at law in the event of a breach. The remedies provided in this section shall be cumulative and not exclusive and are in addition to any other remedies, which either party may have under these Conditions or applicable law.

## **22. Survival**

Section 10, 14, 15, 20 and 21 shall survive the termination or expiration of these Conditions.

## **23. Complete Agreement**

These Conditions and OptiUnit's written acceptance constitute the complete and exclusive statement of the agreement between the parties hereto. It supersedes all prior written and oral statements, including prior representations, statements, conditions, or warranties with respect to the Products.