

# General Terms and Conditions

## Optiply BV

### Article 1. Definitions

The following definitions are written with initial capitals in these general terms and conditions and are defined as follows:

1.1. Optiply: Optiply BV as registered with the Dutch Chamber of Commerce (Kamer van Koophandel), registration number 65975839, the supplier of the Service. This also includes a possible affiliated company that has declared these general terms and conditions applicable.

1.2. Client: the natural person or (business) entity with whom Optiply has concluded the Agreement, the user of the Service.

1.3. Service: Optiply delivers and keeps the Service available to the Client, by which Optiply enables the Client to utilize the stock optimization algorithm through Supply Management Software.

1.4. Agreement: The general terms and conditions of Optiply as well as all requests, offers, assignments and agreements issued by Optiply under which Optiply delivers goods and / or services.

1.5. Term: The term starts when the account ID is created or the agreed latest start date, whichever occurs earlier, and runs for the duration of the contract period.

1.6. Party: each party to the Agreement.

1.7. Website: the website of the “Optiply” Service.

1.8. General Terms and Conditions: these general terms and conditions.

## **Article 2. Applicability**

2.1. The General Terms and Conditions apply to the Agreement between Optiply and the Client.

2.2. The General Terms and Conditions also apply to any form of Website use by the Client.

2.3. Unless explicitly agreed otherwise, in writing, the applicability of any other General Terms and Conditions is excluded, in particular the Client's own (general) terms and conditions, purchasing terms and conditions or other terms and conditions.

2.4. Any terms and conditions, which the Clients declare applicable, do not bind Optiply, unless and insofar as, they have been explicitly agreed upon and accepted by Optiply in writing.

## **Article 3. Communication**

3.1. Any communication between Optiply and the Client regarding the General Terms and Conditions will take place in writing and / or electronically documentable writing.

3.2. Relevant communication which has been confirmed upon by both Optiply and the Client, in writing or electronically, or actions from practices clearly showing that provisions have been complied with, can be assumed to be true.

## **Article 4. Conclusion of the Agreement**

4.1. Expressions by Optiply regarding the provision of the Service count as an invitation to make an offer. The Agreement is concluded when the

Client has signed Optiply's quotation or when Optiply carries out an order which has been given by the Client.

4.2. In addition to methods described in article 4.1, the Agreement is also concluded when Optiply has sent an order confirmation to the Client, unless the Client has objected to the order confirmation in writing or e-mail, within 3 working days after the date stamp of the order confirmation. In this case, the date of the order confirmation applies as the time at which the agreement is concluded.

4.3. All offers and quotations are without obligation, unless indicated or signed otherwise.

4.4. Optiply is not bound by its offer in the event of printing, typesetting, price or programming errors in its quotation, mailings or Website information.

4.5 If the acceptance deviates (on minor points) from the exact offer included in the quotation, Optiply is not bound by it. In this case, the deviated acceptance is viewed as a counter-offer from the Client which Optiply can accept, reject or renegotiate

4.6. A combined quotation counts only as a total offer, and does not oblige Optiply to perform part(s) of the assignment against the corresponding price for one or more part(s)..

4.7. Offers or quotations do not automatically apply to future assignments.

4.8. Offers and price lists provided must be treated confidentially by the Client.

4.9. Optiply has the right, without stating reasons, to refuse the Client.

4.10 Unless otherwise agreed in writing, Optiply has the right to annually adjust agreed prices through a reasonably determined inflation correction, based on market developments and cost indexation. Optiply will not inform the contracting party of this correction in writing, other than stating it on the invoice. This inflation adjustment does not provide grounds for terminating the agreement.

## **Article 5. Access and updates**

5.1. Optiply will provide the Client with the Service as agreed upon, for the duration of the Agreement by providing the Client with the URL of the Service and a username and password by which the Service can be utilized.

5.2. All information provided by the Client to Optiply during the registration process must be correct and complete.

5.3. Optiply has the right to adjust the software of the Service from time to time to improve the functionality and to correct errors. If an adjustment leads to a change in the functionality, Optiply will inform the Client before implementing adjustments. As the Service is provided to multiple Clients, it is not possible to opt out of a specific adjustment by the Client. In principle, Optiply is not liable, nor obliged to pay any form of compensation for damage resulting from improvement adjustments of the Service. However, if the Service is changed in such a manner that the functionality for the Client is void, or the change is not in accordance with the content of the agreement, the Client has the right to dissolve the agreement with immediate effect, without obligation for compensation from the Client to Optiply.

## **Article 6. Terms of use of the Service**

6.1. The information that is stored and / or exchanged using the Service may only be used anonymously in the further developments and improvements of the Optiply algorithm. Optiply explicitly declares that it will not process data within the scope of the GDPR that can be traced back to persons. At the request of the Client, Optiply will immediately provide access to the anonymised information. The Client remains responsible for

ensuring that this information has been obtained lawfully and does not infringe the rights of third parties.

6.2. Should Optiply become aware of, or come to the realization that information which Client has stored and / or exchanged using the Service is unlawful, Optiply will act immediately to remove that information or to block access to it. In such a case, Optiply also reserves the right to delete or block the information of the Client. This decision is at the discretion of Optiply. Under no circumstances will Optiply be liable for damage resulting from such actions.

6.3. The Client is obliged to keep secret: the usernames and passwords provided by Optiply to the Client. Optiply is not responsible for misuse of usernames and passwords and may assume that a Client who registers on the Service is in fact the Client. The Client must inform Optiply if the Client suspects that the usernames and passwords are breached by, hacked by or have come into the hands of any unauthorized persons. In such cases, Optiply has the right to take effective measures.

6.4 The Client will immediately inform Optiply electronically of any changes in name, e-mail addresses and other data that are important for Optiply to perform the Service.

6.5 The Client must refrain from unauthorized use of the Service and will act and behave in accordance with what may reasonably be expected by Optiply from a careful user of the Service.

6.6. Without prejudice to its other rights under the law or the Agreement, Optiply reserves the right to suspend its obligations towards the Client or to dissolve the Agreement if the Client acts or is reasonably suspected of acting in violation of the articles in these General Terms and Conditions, without obligation to pay any form of compensation to the Client.

## **Article 7. Maintenance**

7.1. Optiply reserves the right to temporarily put the Service out of use for the purpose of maintenance, adjustment or improvement of the Optiply Service and web servers. Optiply will have such a temporary shutdown take place outside office hours as much as possible and will inform the Client in advance of such a planned shutdown. Optiply will never be obliged to pay any damage costs to the Client resulting from the temporary deactivation of the Service described in this article. However, if the Client does not have access to the data afterwards due to the scheduled deactivation of the Service, a one-off discount on the monthly fee for the relevant month can be agreed upon between Optiply and the Client in mutual consultation.

## **Article 8. Support**

8.1. The Client can report malfunctions and questions by communication methods set out by Optiply. Optiply will make every effort to answer the questions adequately and within a reasonable period of time.

## **Article 9. Payment**

9.1. The compensation for the Service to be provided by Optiply is stated on the quotation and is expressed in euros and exclusive of VAT, unless explicitly stated otherwise.

9.2. Invoice will be sent at the start of the term based on the agreed prices and graduated scales in the agreement, which are paid by direct debit. Annual payments must be made within 14 days after the invoice is issued, unless otherwise agreed in writing. Objections to invoices sent by Optiply must be submitted in writing within 5 working days, stating the nature and grounds of the complaint in detail. In the absence of objection, after the expiry of 14 days after the invoice date, the Client who does not pay on time or charges back their direct debit, without notice of default being required,

will be in default by operation of law. When in default Optiply is obliged to charge 10% as a service charge over all overdue invoices.

9.3. In the event of late payment, in addition to the amount due and the statutory commercial interest appearing thereon, obliged to fully reimburse both extrajudicial and judicial collection costs, including the costs for lawyers, bailiffs and collection agencies. Optiply reserves the right to restrict access to the Service for overdue payments. Any restrictions will be lifted upon receipt of payment.

9.4. The claim for payment is immediately due and payable if the Client is declared bankrupt, applies for a moratorium on payments or if the Client's assets are seized in full, the Client dies and furthermore, if The Client goes into liquidation or is dissolved.

9.5. In the above cases, Optiply also has the right to terminate or suspend the Agreement or the part thereof that has not yet been performed upon, without notice of default or judicial intervention, without prejudice to the right of Optiply to demand compensation for any damage that may arise from any such cases. If the Client repeatedly or structurally fails to make timely payments, Optiply reserves the right to terminate the Agreement with immediate effect, without further notice of default.

## **Article 10. Intellectual property rights**

10.1. All intellectual property rights to all software made available under the Agreement or the Service, as well as preliminary material thereof, rests entirely with Optiply or its licensors. The Client only obtains a right of use that is not exclusive and non-transferable, and powers that are explicitly granted by these conditions or otherwise, and for the remainder, the Client will not reproduce or make copies of the Service or other materials.

10.2. The Client is not permitted to remove or change any claim and indication regarding copyrights, brands, trade names or other intellectual property rights from the software.

10.3. Optiply is permitted to take technical measures to protect the software of the Service. If Optiply has secured the Optiply software by means of technical protection, the Client is not permitted to remove or circumvent this protection.

## **Article 11. Liability**

11.1. The information and Services that appear on the Website may contain technical inaccuracies and / or typing errors.

11.2. Optiply does not guarantee that the Website is free from malfunctions. The Client acknowledges that the Service can be interrupted for various reasons. Optiply will strive to provide complete continuity of the Service and repair the interruption within acceptable terms.

11.3 Optiply is not liable for damage resulting from the temporary unavailability of the Website.

11.4. Optiply is never liable for any indirect damage to the Client or third parties, including consequential damage, lost turnover and profit, loss of data ( including e-mail messages), damage due to disclosure thereof or any form of immaterial damage.

11.5. Optiply's liability towards the Client, on any ground whatsoever, is limited to the amount paid out by the insurer per event (whereby a coherent series of events counts as one event). Optiply holds professional and business liability insurances up to 500,000 and 5,000,000 respectively. We will send the policy conditions for inspection upon request.

11.6. The Client indemnifies Optiply against all claims from third parties for whatever reason, with regard to compensation for damage, costs or interest in connection with this Agreement and / or the Service.

11.7. The previous paragraphs of this article do not apply if and insofar as the relevant damage is caused by intent or deliberate recklessness on the part of Optiply.

## **Article 12. Force majeure**

12.1. In the event of force majeure, which in any case includes civil disturbances, mobilization, war, transport obstructions, strikes, work stoppages, business disruptions, stagnation in the supply by third parties, fire, flooding and import and export impediments that reasonably prevent Optiply to deliver in compliance with the Agreement, Optiply reserves the right to suspend the performance of the Agreement or to terminate it completely, without any obligation to pay compensation.

## **Article 13. Complaints and limitation period**

13.1. Complaints should be submitted to Optiply in writing or by e-mail within a reasonable timeframe after the complaint has been discovered or could reasonably have been discovered.

13.2. If a complaint is legitimate, the Client must give Optiply the opportunity to continue performing the commissioned work as agreed upon, or to deliver a replacement product.

13.3 If the performance of the commissioned work or the delivery of a new product is no longer possible or advantageous, Optiply will only be liable within the limits of article 11 of these General Terms and Conditions.

13.4 Rights of action and other claims by the Client towards Optiply for whatever reason, will in any case expire after the expiration date of 1 year from the moment at which a fact occurs where the Client can make use of these rights and / or claims against Optiply.

## **Article 14. Duration of the Agreement**

14.1. The Agreement is always renewed for 12 months without prior notification, irrespective of the starting term unless otherwise agreed in

writing. At renewal discounts expire while they are applicable only for the first term of the contract or a period within the first contract term unless otherwise agreed in writing.

14.2. A Party can terminate the Agreement with due observance of a notice period of at least 1 (one) month before the end of the period for which the Agreement was entered into or extended by, which termination may take place without reasons and motivation.

14.3. If an Agreement to which Optiply is a Party ends before the time for which it was entered into has expired, the Client will owe Optiply the full fee for the time the Agreement has been entered into.

14.4. In case of dissolution or cancellation, as referred to in the aforementioned articles, the following obligations will continue after the end of the Agreement:

outstanding bills;

intellectual property rights;

liability;

These obligations will continue to exist for as long as Optiply can reasonably claim their continued existence.

## **Article 15. Confidentiality**

15.1. Both Parties undertake to observe secrecy regarding all confidential information they receive from the other Party. The Parties also impose this obligation on their employees as well as on third parties engaged by them for the implementation of the Agreement between the Parties.

15.2. Information is in any case considered confidential if it is designated as such by one of the Parties or if this arises from the nature of the information. The party that receives confidential information will only use it for the purpose for which it was provided.

15.3. The Client grants Optiply the right to use its (trade) name and/or logo in (online and offline) marketing and promotional materials, including but not limited to websites, presentations, brochures, and social media, unless otherwise agreed in writing.

15.4. Optiply will reasonably consider any objections raised by the Client against a specific use, provided that such objections are made timely and with proper justification.

## **Article 16. Amendments to T&C**

16.1. Optiply reserves the right to amend or supplement these General Terms and Conditions.

16.2. Changes also apply to Agreements already concluded with due observance of a period of 30 days after publication of the change on the Optiply Website or by electronic notification. Changes of minor importance can be made at any time.

16.3. If the Client does not wish to accept a change to these General Terms and Conditions, he can inform Optiply of this until the date on which the new terms and conditions take effect. If Optiply does not accept to continue under the old terms and conditions, the Client can dissolve the Agreement by this date or on the receipt date of the cancellation if this is after the effective date of the change.

## **Article 17. Final provisions**

17.1. Dutch law is applicable to the Agreement.

17.2. Changes in management or legal form do not affect the Agreement.

17.3. Insofar as the rules of mandatory law do not prescribe otherwise, all disputes that may arise as a result of the Agreement will be submitted to the competent Dutch court in Eindhoven.

17.4. Partial nullity: If a provision from the Agreement and / or the General Terms and Conditions appears to be invalid, this will not affect the validity of the entire Agreement / General Terms and Conditions. The parties will determine (a) new provision(s) as a replacement, which will give shape to the intention of the original Agreement / General Terms and Conditions as much as legally possible.

## **Contact details**

If, after reading our General Terms and Conditions, questions, complaints or comments arise about these General Terms and Conditions, please feel free to contact us in writing or by e-mail.

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