

# **General Terms and Conditions optohive AG**

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## 1. General

- 1.1. The contract between optohive AG (hereafter referred to as "optohive") and the purchaser of optohive's Products and/or Services (hereafter referred to as "the Purchaser") shall be deemed concluded upon receipt of written confirmation by optohive that it has accepted the order ("confirmation of order").
- 1.2. Optohive's offers are non-binding unless explicitly marked as binding.
- 1.3. Optohive provides modular wearable brain imaging systems, which include hardware, wearable caps, and software (hereinafter collectively referred to as "Products and/or Services"). These systems are designed to support neuroscience research and integrate optohive's proprietary and innovative technologies.
- 1.4. The payment terms, delivery conditions pursuant to Incoterms, delivery dates, and pricing are detailed in the confirmation of order. Ex Works (EXW) Incoterms® 2020 shall apply unless otherwise specified. In the event that the Purchaser does not provide shipping instructions, shipping will be arranged by optohive at the Purchaser's expense.
- 1.5. All prices are quoted EXW, including packing for shipment and excluding any discounts or deductions unless specified otherwise. Prices are exclusive of VAT, which will be added to the total amount where applicable.
- 1.6. Payment is due within 30 days of the invoice date, unless otherwise specified in the confirmation of order.
- 1.7. These General Terms and Conditions are binding when they are declared applicable in the offer or confirmation of order. Terms and conditions of the Purchaser that deviate from these shall only apply if explicitly accepted in writing by optohive.
- 1.8. Optohive reserves its property rights, copyrights, and any other protective rights pertaining to documents such as cost estimates, technical specifications, and drawings. These documents shall not be made accessible to third parties without prior consent and shall be returned to optohive upon request if the contract is not concluded.

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## 2. Scope of Goods Supplied and Services Rendered

- 2.1. The goods supplied and services rendered by optohive are exhaustively and definitively specified in the confirmation of order and these General Terms and Conditions, including any annexes or attachments to these documents.
- 2.2. The specifications for the Products and/or components are detailed in optohive's order confirmation or if applicable in the data sheets, which are definitive. Any characteristics or guarantees beyond those explicitly stated require a written agreement.

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## 3. Payment

- 3.1. Optohive will invoice the Purchaser for consignments or partial consignments upon delivery or notification of readiness for shipment. Payment must be made in full to optohive's Swiss domicile without deductions for cash discounts, bank charges, or taxes.
- 3.2. Payments are deemed timely when credited to optohive's account within the specified payment period. The Purchaser shall pay interest at 0.3% per week of delay, starting from the due date, without any reminder. Optohive reserves the right to halt further deliveries until all outstanding payments are settled.
- 3.3. Ownership of the goods shall remain with optohive until full payment is received.

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## 4. Delivery

- 4.1. The ordered goods are delivered to the Purchaser by a shipping company or courier. Unless otherwise explicitly agreed upon in writing, delivery shall be effected EXW. Under this arrangement, all risks and responsibilities for the goods, including loss or damage, transfer to the Purchaser upon optohive's notification that the goods are ready for collection at optohive's designated premises. If an alternative Incoterms® rule is specified in the confirmation of order, the corresponding point of risk transfer shall apply in accordance with the agreed terms.
- 4.2. Delivery dates provided by optohive are indicative unless explicitly confirmed in writing. Even when a deadline is agreed upon, optohive will only be in default if the Purchaser has served written notice of the delay and provided a reasonable grace period for delivery.
- 4.3. The delivery date shall be extended automatically as reasonable in the following cases:
  - a) when impediments arise that optohive could not have avoided despite exercising proper care, whether they arose on its side, the Purchaser's side, or the side of a third party. Examples of such impediments include, but are not limited to, force majeure events such as epidemics; mobilization of law enforcement or armed forces; war; insurrections; substantial interruption of operations; lockouts, strikes, or other concerted acts of workmen (whether of the parties or others); casualties or accidents; shortages of power, labor, or materials; delayed deliveries or non-delivery by suppliers of requisite raw materials, semi-finished or finished goods; essential components becoming defective; embargoes; acts or omissions by government authorities; acts of God, natural phenomena, and disasters; or any other causes, circumstances, or contingencies beyond optohive's control.

b) when the Purchaser or a third party is in delay or default of completing work to be performed by them or of complying with their contractual obligations, particularly when the Purchaser does not adhere to the payment terms.

- 4.4. The Purchaser shall not be entitled to any claims for compensation or damages arising from delayed deliveries, except in cases of fraudulent intent or gross negligence directly attributable to optohive.
- 4.5. Optohive is not liable for delays caused by circumstances beyond its reasonable control, as detailed in Section 4.3. Any changes to delivery terms due to such circumstances shall be communicated promptly to the Purchaser.

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## 5. Examination and Acceptance

- 5.1. Optohive inspects and tests the Products and/or components prior to shipment within the framework of the production testing conducted by it. In the event that the Purchaser should want optohive to perform testing and inspection extending beyond this, the type and extent thereof have to be specifically agreed upon, confirmed in the confirmation of order, and paid for by the Purchaser.
- 5.2. The Purchaser shall examine the Products and/or components within a reasonable time and notify optohive of any defects in writing within 30 days. Failure to do so will result in the Products and/or components being deemed accepted.
- 5.3. Optohive shall remedy any defects promptly, provided they are reported within the specified time.

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## 6. Installation and Training

- 6.1. Optohive requires training for end-users of its Products and/or Services to ensure the safe and proper use (according to intended use as outlined in Section 8) and maintenance of the equipment, as outlined in the product manuals and documentation provided by optohive. Onsite training is mandatory for new customers purchasing optohive's Products and/or Services unless otherwise agreed in writing.
- 6.2. The goal of the training is to ensure that end-users fully understand the safe operation and maintenance of the Products and/or Services. Optohive requires end-users to assume full responsibility for the safe use and maintenance of the Products and/or Services following the completion of training. Support or updates from optohive will not be provided until the training requirement is fulfilled.
- 6.3. Existing customers who have previously received training on similar Products and/or Services may be exempt from mandatory training for additional purchases, unless significant updates or changes to the Products and/or Services have occurred since their initial training. In such cases, it may require additional training to address these changes.
- 6.4. Installations and training sessions will be scheduled as promptly as possible, based on coordination between the Purchaser and optohive's support team. Unless otherwise explicitly stated in the order confirmation, the costs for onsite installation and training are not included in the product price and will be invoiced separately.

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## 7. Use Rights and Restrictions

- 7.1. Upon purchasing optohive's Products and/or Services, the Purchaser is granted the right to use them exclusively for their intended use as detailed in Section 8, subject to all rules and regulations pertaining to their proper use and maintenance. All other rights to the Products and/or Services, including but not limited to optohive's intellectual property rights, remain solely with optohive and are not transferred by virtue of the sale of its Products and/or Services.
- 7.2. The use of software and firmware provided by optohive on hardware other than the designated hardware is expressly prohibited. Additionally, the following actions are strictly forbidden:
  - Reverse engineering of the software or firmware.
  - Software pirating, including the unauthorized use of software or firmware on other products, copying, or extracting the software or firmware.
- 7.3. Any breach of the restrictions specified in this section shall result in the immediate nullification of all utilization rights granted to the Purchaser for the products and/or components. In such cases, the Purchaser shall not be entitled to any reimbursement of the purchase price or other compensation.

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## 8. Intended Use

- 8.1. Optohive's Products and/or Services are intended for research purposes only and are not authorized for patient diagnostic purposes. We do not accept any liability when our Products and/or Services are used for patient diagnostic purposes.
- 8.2. Optohive's Products and/or Services are not authorized for use as critical components in life support systems. As used herein:
  - a) Life support systems are systems which
    - (1) are intended for surgical implants into the body, or
    - (2) support or sustain life, and whose failure can reasonably be expected to result in significant injury or death, or
    - (3) are used for patient diagnostic purposes.
  - b) A critical component is any component whose failure can reasonably be expected to affect the safety or effectiveness of the system.

## 9. Data Protection and Privacy

Optohive commits to processing any personal data in accordance with applicable data protection laws, including but not limited to the Swiss Federal Act on Data Protection (FADP) and, where applicable, the General Data Protection Regulation (GDPR) of the European Union.

If and to the extent that the Purchaser provides or enables access to personal data during the use, support, installation, or maintenance of the Products and/or Services, both parties agree to comply with applicable data protection obligations.

Optohive shall:

- Only process personal data as necessary for the performance of contractual obligations, support services, or legal compliance.
- Implement appropriate technical and organizational measures to ensure a level of security appropriate to the risk, in line with Article 32 GDPR.
- Not retain personal data longer than necessary to fulfill its contractual or legal obligations.

If required under GDPR Article 28 or equivalent provisions, the parties shall enter into a data processing agreement.

The Purchaser represents that it has the necessary rights and consents to provide any personal data to Optohive for processing in accordance with this Agreement.

## 10. Warranty and Liability for Defects

10.1. The warranty period for optohive's products is 24 months, starting from delivery as defined in Section 4.1.

10.2. The warranty applies exclusively to hardware sold by optohive. Software provided by optohive is subject to the following conditions:

- Software functionality is warranted to conform to the specifications described in the product manual or documentation for a period of 12 months from delivery.
- The warranty for software is limited to addressing critical defects or bugs that prevent the software from functioning as intended. Software updates to address such issues will be provided during this period, free of charge.

10.3. The warranty does not cover defects resulting from normal wear and aging, improper maintenance, non-compliance with the operating instructions (as detailed in the product manual), operation in an impermissible area (as detailed in the product manual), chemical or electrolytic influences, or defects caused by use of the Products and/or Services that deviates from the directions provided in the product manual.

10.4. Any repair or modification not performed or approved in writing by optohive will void the warranty.

10.5. Optohive's warranty is limited to repair or replacement, at optohive's choice. The Purchaser must deliver the defective Products and/or Services to optohive at their own expense, within the warranty period. Warranty service will typically be performed at optohive's offices during regular working hours. If the Purchaser requests warranty work to be performed on-site, optohive is authorized to charge the Purchaser for travel, personnel, and accommodation expenses.

The warranty period starts anew for replaced or repaired Products and/or Services and lasts 6 months as from replacement or conclusion of repair work. This period cannot be extended.

The warranty shall elapse prematurely in the event that the Purchaser or third party perform improper modifications or repair work or when, in the event that a defect has occurred, the Purchaser fails to take all the measures necessary and suitable to minimize damage and doesn't afford optohive with an opportunity to remedy the defect.

10.6. If a Product and/or Service returned for warranty service is found to be free of defects, optohive reserves the right to charge the Purchaser for the incurred expenses.

## 11. Liability Exclusion

11.1. Optohive does not accept any liability when equipment supplied by optohive is used in a way that differs from the application directions provided in the manual, including instructions for proper use and maintenance.

11.2. All entitlements and claims of the Purchaser resulting from warranty and liability, as well as any other claims of the Purchaser regardless of their legal basis, are exhaustively covered and definitively specified in the confirmation of order and herein. This precludes any and all claims for compensation for damage or loss, reduction in the purchase price, suspension or rescission of the contract, as well as claims for indirect, consequential, or punitive damages, including but not limited to loss of profits or business interruption, unless explicitly stated otherwise.

11.3. Optohive only warrants the characteristics of its Products and/or Services as explicitly described in the confirmation of order and the data sheet. Optohive does not warrant the suitability or fitness of its Products and/or Services within the Purchaser's system environment. The Purchaser assumes full responsibility for integrating the Products and/or Services into its system environment. While optohive provides technical support to address compatibility questions, the responsibility for integration lies solely with the Purchaser.

11.4. This exclusion of liability does not apply in cases of unlawful intent or gross negligence directly attributable to optohive. Furthermore, this exclusion of liability does not apply where it would contravene mandatory legal provisions.

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## 12. Replacement Parts and Compatibility

- 12.1. During the warranty period, optohive guarantees follow-up deliveries of functionally compatible Products and/or Services that comply with the specifications outlined in the relevant specification sheet.
  - 12.2. Replacement parts are defined as all functionally compatible Products and/or Services capable of delivering the functionality of the original Products and/or Services in a manner as similar as possible. However, optohive does not guarantee identicalness in design, method of manufacture, or function. The Purchaser acknowledges that the greater the time elapsed between the delivery of the original Products and/or Services and the replacement, the more likely the replacement may deviate from the original in terms of design, function, or manufacturing process. As a result, the Purchaser may need to adapt the software and hardware of adjoining products in their system environment to accommodate such replacements.
  - 12.3. If technological advances necessitate adaptations to adjoining products to use the replacement parts, the Purchaser shall perform such adaptations at their own responsibility. Optohive shall provide the Purchaser with the specification sheet for the replacement Product and/or Service to assist in this process.
  - 12.4. The Purchaser acknowledges that optohive does not maintain stock of replacement parts unless explicitly agreed upon in advance.
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## 13. Rescission of Contract; Modifications and Amendments

- 13.1. The Purchaser shall not be entitled to modify or amend the contract after it has been concluded pursuant to Section 1. The Purchaser is obligated to carefully review the confirmation of order and notify optohive in writing of any discrepancies within 48 hours of receipt. If no such notification is received, the confirmation of order shall be deemed the sole binding agreement between the parties. Failure to notify discrepancies within this timeframe shall constitute a waiver of the Purchaser's right to contest the terms of the confirmation of order.
  - 13.2. Either party may withdraw from the contract concluded pursuant to Section 1.2 within 10 days of the confirmation of order by providing written notice of termination. Such withdrawal shall not incur any additional costs or charges. After this 10-day period, the Purchaser may still request cancellation, but any such cancellation will be subject to optohive's review and approval. Optohive will provide written confirmation of approval or rejection of the cancellation request within 10 business days of receipt. If approved, a minimum 2% processing fee of the total order value will be applied to the cancellation. Custom products and components are not eligible for cancellation once production has commenced. The Purchaser shall hold optohive harmless in the event of any withdrawal from the contract, whether in whole or in part, beyond the agreed terms.
  - 13.3. Unless otherwise specified in the confirmation of order, the Purchaser shall not be entitled to return or exchange products and/or components that have been supplied. This limitation does not apply to returns of defective goods, which shall be governed by the warranty terms outlined in Section 6.
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## 14. Compliance with Export Control Regulations

- 14.1. If the Purchaser transfers goods (hardware and/or software and/or technology, along with any corresponding documentation, regardless of the mode of provision) delivered by optohive, or works and services (including all forms of technical support) performed by optohive to a third party, the Purchaser shall comply with all applicable national and international (re-) export control regulations. This includes compliance with export control regulations of the Swiss Confederation, the European Union, and the United States of America, and/or the United Nations.
  - 14.2. Prior to transferring any goods, works, or services provided by optohive to a third party, the Purchaser shall verify and guarantee, through appropriate measures, that:
    - a) There will be no infringement of embargoes imposed by the Swiss Confederation, the European Union, the United States of America, and/or the United Nations, including limitations on domestic business or prohibitions against circumventing embargoes.
    - b) The goods, works, or services are not intended for use in connection with armaments, nuclear technology, or weapons if such use is subject to prohibition or requires authorization, unless the necessary authorization has been obtained.
    - c) All applicable Sanctioned Party Lists of the Swiss Confederation, the European Union, the United States of America, and/or the United Nations are considered, particularly concerning trade with listed entities, persons, or organizations.
  - 14.3. If required to enable authorities or optohive to conduct export control checks, the Purchaser shall, upon optohive's request, promptly provide all necessary information regarding the end customer, destination, intended use, and any export control restrictions pertaining to the goods, works, or services provided by optohive.
  - 14.4. The Purchaser shall indemnify and hold harmless optohive from any claims, proceedings, actions, fines, losses, costs, or damages arising from non-compliance with export control regulations by the Purchaser or third parties under the Purchaser's control. The Purchaser shall compensate optohive for all resulting losses and expenses.
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## **15. Governing Law and Venue**

- 15.1. These General Terms and Conditions shall solely be governed by and construed in accordance with Swiss law without giving regard to any conflict of law rules. The applicability of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is expressly precluded.
- 15.2. The ordinary courts of Zurich (Switzerland) shall have sole jurisdiction with regard to any and all disputes arising from or in connection with these General Terms and Conditions.
- 15.3. If any provision of this Agreement is held to be or becomes invalid or unenforceable, this shall not affect the validity of the remaining provisions.