

ISSUE DATE: March 2018

## OPICO LIMITED – STANDARD TERMS AND CONDITIONS OF SALE

### 1. INTERPRETATION

#### 1.1 Definitions:

<b>"Business Day"</b>	means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
<b>"Conditions"</b>	means the terms and conditions set out in this document as amended from time to time in accordance with clause 14.2.
<b>"Contract"</b>	means the contract between OPICO and the Dealer for the sale and purchase of the Goods in accordance with these Conditions.
<b>"Data Protection Legislation"</b>	means (i) unless and until the GDPR is no longer directly applicable in the UK, the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998.
<b>"Dealer"</b>	means the person or firm who purchases the Goods from OPICO.
<b>"End Customer"</b>	means a company, business or an individual who purchases the Goods from the Dealer.
<b>"Force Majeure Event"</b>	means an event or circumstance beyond a party's reasonable control.
<b>"Goods"</b>	means the goods (or any part of them) as referred to in the Order and Order Acknowledgement.
<b>"Manufacturer(s)"</b>	means the person, firm or company which manufactures or supplies the Goods sold by OPICO under the Contract.
<b>"OPICO"</b>	means OPICO Limited registered in England & Wales with Company number 06175803
<b>"Order"</b>	means the Dealer's order for the Goods, as set out in the Dealer's purchase order form.
<b>"Order Acknowledgement"</b>	means the written acknowledgement of an Order by OPICO confirming the details of the Order.
<b>"Personal Data"</b>	means as defined in the Data Protection Legislation.
<b>"Software Licence"</b>	means the Manufacturer's licence for software as defined in clause 6.1.

2. **BASIS OF CONTRACT**

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Dealer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Dealer to purchase the Goods in accordance with these Conditions. The Dealer is responsible for ensuring that the terms of the Order are complete and accurate.
- 2.3 The Dealer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Dealer that is inconsistent with these Conditions.
- 2.4 Any samples, drawings or advertising produced by OPICO or its Manufacturers and any descriptions or illustrations contained in the Manufacturer or OPICO's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them and they shall not form part of the Contract
- 2.5 A quotation for the Goods given by OPICO shall not constitute an offer and may be withdrawn at any time prior to OPICO issuing the Order Acknowledgement.

3. **GOODS**

- 3.1 Subject to this clause 3 the Goods shall be as described in OPICO's whole goods or parts price lists unless otherwise specifically set out in writing by OPICO.
- 3.2 OPICO reserves the right to make changes in the design and specification of the Goods providing that such changes do not materially affect in an adverse way the quality or the performance of the Goods.
- 3.3 OPICO and its Manufacturers reserve the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.

4. **DELIVERY**

- 4.1 The cost of carriage and delivery of the Goods shall be borne by OPICO unless otherwise specified by OPICO.
- 4.2 OPICO shall ensure that:
  - 4.2.1 each delivery of the Goods is accompanied by a despatch note that shows the date of the Order Acknowledgement, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered (or, in the case of Goods delivered directly to the Dealer from the Manufacturer OPICO shall ensure that a despatch note is sent separately to the Dealer from OPICO); and

- 4.2.2 OPICO or an independent carrier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after OPICO notifies the Dealer that the Goods are ready for delivery.
- 4.3 Delivery is completed when the Goods arrive at the Delivery Location unless otherwise agreed in writing between the parties.
- 4.4 Unless otherwise agreed in writing the Dealer shall provide at the Delivery Location a suitable forklift and/or other suitable lifting equipment complying with all legal requirements together with experienced, trained operatives to unload the Goods.
- 4.5 The care and carriage of the Goods shall in all respects be at OPICO's cost and risk unless otherwise agreed in writing between the parties.
- 4.6 The unloading of the Goods shall in all respects (save for the negligence of OPICO or its employees) be at the Dealer's risk unless otherwise agreed in writing between the parties.
- 4.7 Any dates quoted for delivery are approximate, and the time of delivery is not of the essence.
- 4.8 OPICO shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Dealer's failure to provide OPICO with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.9 If the Dealer fails to accept delivery of the Goods within five Business Days of OPICO or OPICO's independent carrier notifying the Dealer that the Goods are ready or OPICO or OPICO's independent carrier is unable to deliver the Goods due to the Dealer not providing the facilities for unloading the Goods pursuant to clause 4.4, then, except where such failure or delay is caused by a Force Majeure Event or OPICO's failure to comply with its obligations under the Contract:
- 4.9.1 Risk in the Goods shall pass to the Dealer;
- 4.9.2 delivery of the Goods shall be deemed to have been completed at 9.00am on the sixth Business Day after the day on which OPICO notified the Dealer that the Goods were ready; and
- 4.9.3 OPICO shall store the Goods until actual delivery takes place, and charge the Dealer for all related costs and expenses (including insurance).
- 4.10 The Dealer must notify the independent carrier (if any) and OPICO in writing within 5 Business Days of receipt of the Goods of any damage to Goods caused in transit or any irregularity in the carriage or delivery of the Goods. All Goods packed in cases or cartons must be opened and inspected for damage on delivery.
- 4.11 If fifteen Business Days after the day on which OPICO notified the Dealer that the Goods were ready for delivery the Dealer has not accepted delivery of them, OPICO may resell or otherwise dispose of part or all of the Goods.

4.12 OPICO may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Dealer to cancel any other instalment.

## 5. **CANCELLATION**

5.1 Once an Order Acknowledgement has been sent by OPICO no Orders can be cancelled without OPICO's consent in writing.

## 6. **SOFTWARE LICENCE**

6.1 Where Goods include a software component OPICO shall sub-licence or procure the licence to the Dealer and / or the End Customer (as appropriate) a licence to use such software for the purpose of making use of the Goods on the terms of the Manufacturer's standard licence (**Software Licence**).

6.2 The Dealer shall not modify, adapt, develop, reverse engineer, decompile, disassemble or carry out any act otherwise restricted by copyright or the Software Licence except and only to the extent that it is expressly permitted by applicable law

## 7. **WARRANTY**

7.1 Subject always to clause 8.1 OPICO warrants that except where any other period is agreed in writing by OPICO, for a period ending on the earlier of (a) 12 months from delivery of the Goods by the Dealer to an End Customer or (b) 4 years from delivery of the Goods to the Dealer by OPICO (**Warranty Period**), the Goods shall:

7.1.1 conform in all material respects with their description and any applicable specification; and

7.1.2 be free from material defects in design, material and workmanship;

(the **Warranty**).

7.2 Unless otherwise agreed in writing between the parties OPICO does not guarantee that the Goods are fit for any particular purpose.

7.3 Subject to clause 7.4, if:

7.3.1 the Dealer gives notice in writing to OPICO during the Warranty Period within 10 Business Days of discovery that some or all of the Goods do not comply with the Warranty set out in clause 7.1;

7.3.2 OPICO is given a reasonable opportunity of examining such Goods;

7.3.3 the Dealer (if asked to do so by OPICO) returns such Goods, parts of Goods or components thereof, to OPICO's place of business at the Dealer's cost; and

7.3.4 the Dealer (if asked to do so by OPICO) takes and sends photographs of the Goods to OPICO

OPICO shall, at its option in the case of whole goods repair or replace the defective Goods, or refund the price of the defective Goods in full. It is noted that where Warranty repair work is undertaken by the Dealer at OPICO's instruction the Dealer will be reimbursed for the labour element in respect of whole goods only.

- 7.4 OPICO shall not be liable for the Goods' failure to comply with the warranty set out in clause 7.1 in any of the following events:
  - 7.4.1 the Dealer or End Customer makes any further use of such Goods after giving notice in accordance with clause 7.3;
  - 7.4.2 the defect arises because the Dealer failed to follow OPICO's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
  - 7.4.3 the defect arises as a result of OPICO following any drawing, design or specification supplied by the Dealer;
  - 7.4.4 the Dealer alters or repairs such Goods without the written consent of OPICO;
  - 7.4.5 the Dealer fits parts to the Goods that are not approved by OPICO (acting reasonably);
  - 7.4.6 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
  - 7.4.7 the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 7.5 Except as provided in this clause 7 OPICO shall have no liability to the Dealer in respect of the Goods' failure to comply with the Warranty.
- 7.6 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 7.7 These Conditions shall apply to any repaired or replacement Goods supplied by OPICO.
- 7.8 OPICO and the Dealer acknowledge that the Warranty must be registered with OPICO in order for it to be relied on by the End Customer.

## 8. **DATA PROTECTION**

- 8.1 Pursuant to clause 7.8, in the event that the Dealer resells the Goods to an End Customer the Dealer must ensure that the following information is provided to OPICO (for the purposes of OPICO registering the Warranty with the Manufacturer) within 10 Business Days of delivery of the Goods to the End Customer:
  - 8.1.1 if the End Customer is a company, company name, company number, company's registered office, contact name, contact phone number and contact email address;
  - 8.1.2 If the End Customer is a not a company, business name (if any), full name, full address, phone number and email address;

- 8.1.3 In all cases, the date of delivery to the End Customer, the serial number of the Goods, and any other information reasonably requested by OPICO.
- 8.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 8 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 8.3 The parties acknowledge that the Dealer will need to pass Personal Data to OPICO for the purposes of the Warranty and that for the purposes of the Data Protection Legislation, the Dealer is the data controller and OPICO is the data processor (where **Data Controller** and **Data Processor** have the meanings as defined in the Data Protection Legislation).
- 8.4 Without prejudice to the generality of clause 8.2, the Dealer will ensure that it has all necessary appropriate consents, notices and processes in place to enable lawful transfer of the End Customer's Personal Data to OPICO for the purposes of the Warranty and service. For the avoidance of doubt nothing in this clause 8 shall require the Dealer to obtain the Customer's consent for marketing or other purposes.
- 8.4.1 The Parties acknowledge that there may be circumstances in which OPICO has obtained their own consent to market to Customers and that such consent and subsequent arrangements are outside the scope of these Conditions of sale.
- 8.5 Without prejudice to the generality of clause 8.2, OPICO shall, in relation to any Personal Data processed in connection with the performance by OPICO of its obligations under the Contract:
- 8.5.1 process that Personal Data only on the written instructions of the Dealer unless OPICO is required by the laws of England and Wales or any member of the European Union or by the laws of the European Union applicable to OPICO to process Personal Data (**Applicable Laws**). Where OPICO is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, OPICO shall promptly notify the Dealer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit OPICO from so notifying the Dealer;
- 8.5.2 ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
- 8.5.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- 8.5.4 not transfer any Personal Data outside of the European Economic Area unless the Dealer has confirmed that the prior written consent of the relevant End Customer has been obtained (which will be necessary to register the Warranty for Manufacturer's outside of the European Economic Area) and the following conditions are fulfilled:
- 8.5.4.1 appropriate safeguards in relation to the transfer are in place;

- 8.5.4.2 the Data Subject has enforceable rights and effective legal remedies;
- 8.5.4.3 an adequate level of protection to any Personal Data that is transferred is in place; and
- 8.5.4.4 OPICO complies with reasonable instructions notified to it in advance by the Dealer with respect to the processing of the Personal Data;
- 8.5.5 assist the Dealer, at the Dealer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 8.5.6 notify the Dealer without undue delay on becoming aware of a Personal Data breach;
- 8.5.7 at the written direction of the Dealer, delete or return Personal Data and copies thereof to the Dealer on termination of the Contract unless required by Applicable Law to store the Personal Data or where the End Customer has given their explicit consent for OPICO to retain their Personal Data in its own right as Data Controller; and
- 8.5.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 8.
- 8.6 The Dealer consents to OPICO appointing a reputable third-party processor of Personal Data under the Contract (for example, a Manufacturer). OPICO confirms that in such a case it has entered or (as the case may be) will enter with the third-party processor a written agreement substantially on that third party's standard terms of business but to incorporate terms which are substantially similar to those set out in this clause 8.

9. **TITLE AND RISK**

- 9.1 The risk in the Goods shall pass to the Dealer pursuant to clause 4.
- 9.2 Title to the Goods shall not pass to the Dealer until OPICO receives payment in full (in cash or cleared funds) for the Goods and any other goods that OPICO has supplied to the Dealer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.
- 9.3 Until title to the Goods has passed to the Dealer, the Dealer shall:
  - 9.3.1 store the Goods separately from all other goods held by the Dealer so that they remain readily identifiable as OPICO's property;
  - 9.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - 9.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
  - 9.3.4 notify OPICO immediately if it becomes subject to any of the events listed in clause 11.1; and

- 9.3.5 give OPICO such information relating to the Goods as OPICO may reasonably require from time to time.
- 9.4 Subject to clause 9.5, the Dealer may resell or use the Goods in the ordinary course of its business (but not otherwise) before OPICO receives payment for the Goods. However, if the Dealer resells the Goods before that time:
  - 9.4.1 it does so as principal and not as OPICO's agent; and
  - 9.4.2 title to the Goods shall pass from OPICO to the Dealer immediately before the time at which resale by the Dealer occurs.
- 9.5 If before title to the Goods passes to the Dealer the Dealer becomes subject to any of the events listed in clause 11.1, then, without limiting any other right or remedy OPICO may have:
  - 9.5.1 the Dealer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
  - 9.5.2 OPICO may at any time:
    - 9.5.2.1 require the Dealer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and
    - 9.5.2.2 if the Dealer fails to do so promptly, enter any premises of the Dealer or of any third party where the Goods are stored in order to recover them in which case OPICO shall not be responsible for and the Dealer will indemnify OPICO against any liability in respect of any damage (which is not reasonably practical to avoid) caused to the premises in such circumstances.
- 10. **PRICE AND PAYMENT**
  - 10.1 The price of the Goods shall be the price set out in the Order Acknowledgement, or, if no price is quoted, the price set out in OPICO's published price list in force as at the date of delivery.
  - 10.2 OPICO may, by giving notice to the Dealer at any time five Business Days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
    - 10.2.1 any request by the Dealer to change the delivery date(s), quantities or types of Goods ordered, or the specification; or
    - 10.2.2 any delay caused by any instructions of the Dealer or failure of the Dealer to give OPICO adequate or accurate information or instructions.
  - 10.3 The price of the Goods excludes amounts in respect of value added tax (**VAT**), which the Dealer shall additionally be liable to pay to OPICO at the prevailing rate, subject to the receipt of a valid VAT invoice;



- 10.4 OPICO may invoice the Dealer for the Goods on or at any time after the completion of delivery unless otherwise agreed in writing.
- 10.5 The Dealer shall pay the invoice in full and in cleared funds on the fifteenth day of the month following the month in which OPICO's invoice is presented unless otherwise agreed in writing between the parties. Payment shall be made to the bank account nominated in writing by OPICO. Time for payment is of the essence.
- 10.6 If the Dealer fails to make any payment due to OPICO under the Contract by the due date for payment, then the Dealer shall pay interest on the overdue amount at the rate of 8% per annum above NatWest Bank PLC's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Dealer shall pay the interest together with the overdue amount.
- 10.7 The Dealer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). OPICO may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Dealer against any amount payable by OPICO to the Dealer.

## 11. **TERMINATION**

- 11.1 Without limiting its other rights or remedies, OPICO may terminate the Contract with immediate effect by giving written notice to the Dealer if:
- 11.1.1 a Force Majeure Event occurs;
- 11.1.2 in OPICO's opinion the Dealer has not maintained a standard of organisation to sell, service or hold stocks of OPICO's Goods;
- 11.1.3 the Dealer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 10 Business Days of that party being notified in writing to do so;
- 11.1.4 the Dealer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
- 11.1.5 the Dealer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- 11.1.6 the Dealer's financial position deteriorates to such an extent that in OPICO's opinion the Dealer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 11.2 Without limiting its other rights or remedies, OPICO may suspend provision of the Goods under the Contract or any other contract between the Dealer and OPICO if the Dealer becomes subject to any of the events listed in clause 11.1.1 to clause 11.1.6, or OPICO

reasonably believes that the Dealer is about to become subject to any of them, or if the Dealer fails to pay any amount due under the Contract on the due date for payment.

- 11.3 Without limiting its other rights or remedies, OPICO may terminate the Contract with immediate effect by giving written notice to the Dealer if the Dealer fails to pay any amount due under the Contract on the due date for payment.
- 11.4 On termination of the Contract for any reason the Dealer shall immediately pay to OPICO all of OPICO's outstanding unpaid invoices and interest.
- 11.5 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract that existed at or before the date of termination.
- 11.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

## 12. **LIMITATION OF LIABILITY**

- 12.1 Nothing in these Conditions shall limit or exclude OPICO's liability for:
  - 12.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
  - 12.1.2 fraud or fraudulent misrepresentation;
  - 12.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
  - 12.1.4 any matter in respect of which it would be unlawful for OPICO to exclude or restrict liability.
- 12.2 Subject to clause 12.1 OPICO shall under no circumstances be liable to the Dealer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of use, loss of contracts or for any indirect or consequential loss arising under or in connection with the Contract and OPICO's total liability to the Dealer in respect of all other losses arising under or in connection with the Contract (howsoever arising) shall, in no circumstances exceed the higher of the price as stated in the relevant Order Acknowledgement or the amount recoverable by OPICO through their insurance for the relevant breach.

## 13. **FORCE MAJEURE**

Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from a Force Majeure Event. If the period of delay or non-performance continues for 4 months the party not affected may terminate the Contract by giving 2 weeks written notice to the affected party.

## 14. **GENERAL**

- 14.1 **Assignment and other dealings.**

- 14.1.1 OPICO may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 14.1.2 The Dealer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of OPICO.
- 14.2 **Variation.** No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 14.3 **Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 14.4 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 14.5 **Notices.**
- 14.5.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to such address as agreed between the parties from time to time and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service or commercial courier.
- 14.5.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 14.5.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 14.6 **Third party rights.** No one other than a party to the Contract shall have any right to enforce any of its terms.
- Governing law and Jurisdiction.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales and each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.