

# Omron – General Terms and Conditions for Services

**1. Definitions.** The following words have the prescribed meanings:

"**Business Day**" means a day other than a Saturday, Sunday or public holiday in the country in which the Services will be supplied;

"**Charges**" means the charges payable by the Customer for the supply of the Services in accordance with clause 5;

"**Commencement Date**" has the meaning set out in clause 2.2;

"**Conditions**" means these terms and conditions;

"**Contract**" means the contract between Omron and the Customer for the supply of Services based on Omron's written acceptance of an Order as set out in clause 2.2;

"**Customer**" means the person or company who purchases Services from Omron;

"**Customer Default**" has the meaning set out in clause 4.2;

"**Intellectual Property Rights**" means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

"**Order**" means the Customer's order for Services as set out in the Customer's purchase order form or the Customer's written acceptance of a quotation by Omron;

"**Services**" means the services, including the deliverables, supplied by Omron to the Customer as set out in the Contract;

"**Omron**" means the contracting Omron entity specified in the Contract;

"**Omron Materials**" has the meaning set out in clause 4.1.

**2. Basis of Contract.** (1) The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions. (2) The Order shall only be deemed to be accepted when Omron issues written acceptance of the Order at which point and on which date the Contract shall come into existence (*Commencement Date*). Omron shall be entitled at its discretion to reject any Order or to refuse to accept it. (3) These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. (4) Any quotation given by Omron is valid for a period of 20 Business Days from its date of issue.

**3. Supply of Services.** (1) Omron shall supply the Services to the Customer in accordance with the Contract in all material respects. Omron may use subcontractors to provide the Services in which case Omron procures that subcontractors adhere to the Conditions. (2) Omron shall use all reasonable endeavors to meet any performance dates specified in the Contract, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services. (3) Omron shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and Omron shall notify the Customer in any such event. (4) Omron warrants to the Customer that the Services will be provided using reasonable care and skill.

**4. Customer's Obligations.** (1) The Customer shall: (a) ensure that the terms of the Order are complete and accurate; (b) co-operate with Omron in all matters relating to the Services; (c) provide Omron, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by Omron; (d) provide Omron with such information and materials as Omron may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects; (e) where relevant, prepare the Customer's premises for the supply of the Services; (f) obtain and maintain all necessary licenses, permissions and consents necessary to perform the Services before the date on which the Services are to start; and (g) keep and maintain all materials, equipment, documents and other property of Omron (*Omron Materials*), if kept at the Customer's premises, in safe custody at its own risk, maintain Omron Materials in good condition until returned to Omron, and not dispose of or use Omron Materials other than in accordance with Omron's written instructions or authorization. Customer shall not in any way encumber Omron Materials and Omron shall at all times be allowed to repossess Omron Materials. (2) If the Customer fails to perform any relevant obligation (*Customer Default*): (a) Omron shall without limiting its other rights or remedies have the right to suspend performance of the Services or any other obligation until the Customer remedies the Customer Default; (b) Omron shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Omron's suspension to

## Omron – General Terms and Conditions for Services

perform the Services or any other obligation or from Omron's failure or delay to perform any of its obligations as set out in this clause; and (c) the Customer shall reimburse Omron on written demand for any costs or losses sustained or incurred by Omron arising directly or indirectly from the Customer Default.

**5. Charges and Payment.** (1) The Charges for the Services shall be on a time and material basis: (a) the Charges shall be calculated in accordance with Omron's standard daily fee rates; (b) Omron's standard daily fee rates for each individual are calculated on the basis of an eight-hour day from 8.00 am to 5.00 pm worked on Business Days; (c) Omron shall be entitled to charge an overtime rate of 150 per cent of the standard daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 5.1(b); and (d) Omron shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom Omron engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by Omron for the performance of the Services, and for the cost of any materials. (2) Omron shall invoice the Customer monthly in arrears. (3) The Customer shall pay each invoice submitted by Omron within 30 days of the date of the invoice. (4) All amounts payable by the Customer under the Contract are exclusive of value added tax. (5) If the Customer fails to make any payment due to Omron under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per cent per annum above the 6 months EURIBOR 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 Customer shall pay the interest together with the overdue amount. (6) The Customer 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). Omron may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by Omron to the Customer.

**6. Intellectual Property Rights.** (1) All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by Omron. (2) Omron hereby grants to Customer a revocable, non-exclusive, non-transferable, fully paid-up license to use such Intellectual Property Rights for Customer's internal business purposes only. Customer shall have no right to grant sublicenses. (3) The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on Omron obtaining a written license from the relevant licensor on such terms as will entitle Omron to license such rights to the Customer. (4) All Omron Materials are the exclusive property of Omron.

**7. Limitation of Liability.** (1) Omron's total liability to Customer related to or in connection with any Services and howsoever caused shall for any and all events that give rise to a claim not exceed in the aggregate the price actually paid by Customer to Omron for those Services. (2) Customer shall not bring any claim personally against individual officers or employees in respect of the foregoing liability. (3) Omron shall not be liable to Customer for any loss of profit, loss of business, depletion of goodwill, loss of investment, missed savings, loss of data, costs and expenses for recall, inspection, installation or dismantling and any indirect or consequential losses, damages, costs, expenses or other claims for consequential compensation related to or in connection with any Services including without limitation punitive or exemplary damages, howsoever caused, even if Omron has been advised of the possibility of such damages. (4) Should any exclusion/limitation of liability not be valid in any applicable jurisdiction, the exclusion/limitation shall be deemed to be replaced by such valid exclusion/limitation, which most closely matches the intent and purpose of the original exclusion. (5) The foregoing limitations of liability shall not apply if any liability results from gross negligence or willful misconduct of Omron's executive management.

**8. Indemnity.** Notwithstanding any other provision, Customer shall indemnify, defend and hold harmless Omron, its affiliates, their officers, directors, shareholders, agents and employees harmless from and against all claims, liabilities, costs and expenses, including legal fees and costs (except those resulting from the willful misconduct or gross negligence of Omron's executive management), arising in any way in connection with the Services.

**9. Termination.** (1) Without limiting its other rights or remedies, either party may: (a) terminate the Contract by giving the other party 3 months' written notice; and (b) terminate the Contract with immediate effect by giving written notice to the other party if the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy. (2) Without limiting its other rights or remedies by virtue of the Contract, law or otherwise, Omron may: suspend provision of the Services or any other obligation under the Contract or any other contract between the Customer and

## Omron – General Terms and Conditions for Services

Omron or terminate the Contract with immediate effect by giving written notice to the Customer if (a) the Customer fails to meet any obligation under the Contract and - only for termination of the Contract, not for suspension - if the breach is capable of being remedied fails to remedy this breach within 14 days after being notified of this breach; (b) a change of control in the Customer occurs, (c) any proceedings in insolvency, bankruptcy (including reorganization) liquidation or winding up are instituted against Customer, a trustee or receiver is appointed over Customer, any assignment is made for the benefit of creditors of Customer, (d) the Customer breaches any of its obligations under or ensuing from clauses 4, 11, 16 and 17, and (e) Omron reasonably believes that any of the foregoing events will apply.

**10. Consequences of Termination.** On termination of the Contract for any reason: (a) the Customer shall immediately pay to Omron all of Omron's outstanding unpaid invoices and interest and, in respect of Services performed but for which no invoice has been submitted, Omron shall submit an invoice, which shall be payable by the Customer immediately on receipt; (b) the Customer shall return all of Omron Materials, and any deliverables which have not been fully paid for. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract; (c) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and (d) clauses which expressly or by implication survive termination shall continue in full force and effect.

**11. Confidential Information.** (1) During the term hereof, each of Omron and Customer acknowledge that they will receive Confidential Information from or about the other party. As used herein, "Confidential Information" includes trade secrets, (new) product information, technical data and know-how, instructional and operating manuals, financial information, marketing and sales data and plans, and any other proprietary information relating to a party or any affiliate. (2) Each party shall use reasonable care to protect the confidentiality of Confidential Information disclosed to it by the other party during the term of the Contract. (3) Neither party shall, at any time (including after termination hereof) directly or indirectly (a) disclose any Confidential Information to a third party or (b) make any use for its own benefit any Confidential Information which was obtained by it at any time during the Contract. (4) The foregoing shall not apply to information that (a) is already or independently in possession of a party; (b) is received by a party from a third party; (c) is or becomes publicly available through no act of a party; (d) is disclosed with the party's consent; or (e) is required to be disclosed pursuant to an order issued by a court or regulatory agency.

**12. Force Majeure.** Omron shall not be liable for any delay or failure in performing its obligations resulting from causes beyond its or its subcontractors' control, including earthquakes, fires, floods, strikes or other labor disputes, shortage of labor or materials, accidents to machinery, acts of sabotage, riots, delay in or lack of transportation or the requirements of any government authority.

**13. Governing Law and Jurisdiction.** These Conditions shall be governed by and interpreted and enforced in accordance with the laws in force in the Netherlands (excluding any conflict of laws rule or principal which might refer such construction to the laws of another jurisdiction. The application of the United Nations Convention on contracts for the international sale of goods is hereby expressly excluded. All disputes arising in connection with these Terms and Conditions or agreements based on these Terms and Conditions will be subject to the exclusive jurisdiction of the Dutch courts.

**14. Assignment.** The Contract or any rights and obligations thereunder may not be assigned by Customer, whether voluntarily or by operation of law, without the prior written consent of Omron. The foregoing shall have property law effect ("*goederenrechtelijk effect*").

**15. Severability.** If any provision hereof is rendered ineffective or invalid, such provision shall not invalidate any other provision.

**16. Export Controls.** Each party acknowledges its obligations to control access to technical data and equipment under the applicable export laws and regulations and agrees to adhere to such laws and regulations and any license(s) issued thereunder with regard to any technical data or equipment received under this Contract.

**17. Anti-Corruption.** Customer shall (a) comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption including but not limited to the Foreign Corrupt Practices Act, the UK Bribery Act 2010 and all local legislation in this respect ("Relevant Requirements"); (b) have and shall maintain in place its own policies and procedures to ensure compliance with the Relevant Requirements and will enforce them where appropriate; and (c)

## **Omron – General Terms and Conditions for Services**

promptly report to Omron any request or demand for any undue financial or other advantage of any kind received by Buyer in connection with the performance of the Agreement.