



Terms and Conditions
(January 2018)

1. Applicability. This purchase order is an offer by OptiNose US, Inc. (the "**Buyer**") for the purchase of the goods/services specified on the face of this purchase order (the "**Goods**") from the party to whom the purchase order is addressed (the "**Seller**") in accordance with and subject to these terms and conditions (the "**Terms**"; together with the terms and conditions on the face of the purchase order, the "**Order**"). This Order, together with any documents incorporated herein by reference, constitutes the sole and entire agreement of the parties with respect to the Order, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, with respect to the subject matter of the Order unless a separate overriding written contract has been entered into and signed by the parties. No change to this Order is binding upon Buyer unless it is in writing, specifically states that it amends this Order and is signed by an authorized representative of Buyer. The Order expressly limits Seller's acceptance to the terms of the Order. These Terms prevail over any terms or conditions contained in any other documentation and expressly exclude any of Seller's general terms and conditions of sale or any other document issued by Seller in connection with this Order. Notwithstanding the foregoing, if a master agreement covering procurement of the Goods described in the Order exists between Buyer and Seller, the terms of such master agreement shall prevail over any inconsistent terms herein. These Terms apply to any repaired or replacement Goods provided by Seller hereunder. Buyer is not obligated to any minimum purchase or future purchase obligations under this Order.

2. Acceptance. This Order is not binding on Buyer until Seller accepts the Order in writing or delivers the Goods in accordance with the Order. If Seller does not accept the Order in writing within 10 days of its receipt of the Order or Seller does not deliver the Goods in accordance with the Order by the Delivery Date, whichever is sooner, this Order will lapse. Buyer may withdraw the Order at any time before it is accepted by Seller.

3. Delivery. Seller shall deliver the Goods in the quantities and on the date(s) specified in this Order or as otherwise agreed in writing by the parties (the "**Delivery Date**"). Timely delivery of the Goods is of the essence. If Seller fails to deliver the Goods in full on the Delivery Date, Buyer may terminate the Order immediately by providing written notice to Seller and Seller shall indemnify Buyer against any losses, claims, damages, and reasonable costs and expenses directly attributable to Seller's failure to deliver the Goods on the Delivery Date. All Goods shall be delivered to the address specified in this Order (the "**Delivery Location**") during the Delivery Location's normal business hours or as otherwise instructed by Buyer. Buyer shall own all right, title and interest in and to the Goods.

4. Shipping Terms. Delivery shall be made in accordance with the terms on the face of this Order. For goods, (i) Title passes to Buyer upon delivery of the Goods to the Delivery Location; (ii) Seller bears all risk of loss or damage to the Goods until delivery of the Goods to the Delivery Location; and (iii) All Goods shall be packed for shipment according to Buyer's instructions or, if there are no instructions, in a manner sufficient to ensure that the Goods are delivered in undamaged condition.

5. Inspection and Rejection of Nonconforming Goods. The Buyer has the right to inspect the Goods on or after the Delivery Date. Buyer, at its sole option, may inspect all or a sample of the Goods, and may reject all or any portion of the Goods if it determines the Goods are nonconforming or defective. If Buyer rejects any portion of the Goods, Buyer has the right, effective upon written notice to Seller, to: (a) rescind the Order in its entirety; (b) accept the Goods at a reasonably reduced price; or (c) reject the Goods and require replacement of the rejected Goods. If Buyer requires replacement of the Goods, Seller shall, at its expense, promptly replace the nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective goods and the delivery of replacement Goods. If Seller fails to timely deliver

replacement Goods, Buyer may replace them with goods from a third party and charge Seller the cost thereof and terminate this Order for cause pursuant to Section 9. Any inspection or other action by Buyer under this Section shall not reduce or otherwise affect Seller's obligations under the Order, and Buyer shall have the right to conduct further inspections after Seller has carried out its remedial actions.

6. Price; Payment. The price of the Goods is the price stated in the Order (the "**Price**"). Unless otherwise specified in the Order, the Price includes all packaging, transportation costs to the Delivery Location, insurance, customs duties and fees and applicable taxes. Seller shall issue an invoice to Buyer on or any time after the completion of delivery and only in accordance with the Terms. Unless otherwise specified in the Order, Buyer shall pay all properly invoiced amounts due to Seller within 45 days after Buyer's receipt of such invoice, except for any amounts disputed by Buyer in good faith. Without prejudice to any other right or remedy it may have, Buyer reserves the right to set off at any time any amount owing to it by Seller against any amount payable by Buyer to Seller.

7. Warranties. Seller warrants to Buyer that all Goods will: (a) be free from any defects in workmanship, material and design; (b) conform to applicable specifications; (c) be fit for their intended purpose and operate as intended; (d) be merchantable; (e) be free and clear of all liens, security interests or other encumbrances; and (f) not infringe or misappropriate any third party's patent or other intellectual property rights. These warranties survive any delivery, inspection, acceptance or payment of or for the Goods by Buyer. Seller is in compliance with and shall comply with all applicable laws, regulations and ordinances. Seller has and shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under the Order. Seller warrants to Buyer that Seller shall maintain insurance as is reasonable and customary for someone providing similar Goods to third parties. These warranties are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of Buyer's discovery of the noncompliance of the Goods with the foregoing warranties.

8. Indemnification. Seller shall defend, indemnify and hold harmless Buyer and Buyer's parent company, their subsidiaries, affiliates, successors or assigns and their respective directors, officers, shareholders and employees (collectively, "**Indemnitees**") against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers (collectively, "**Losses**") arising out of or occurring in connection with Seller's negligence, willful misconduct or breach of the Terms. Seller shall, at its expense, defend, indemnify and hold harmless Buyer and any Indemnitee against any and all Losses arising out of or in connection with any claim that Buyer's or Indemnitee's use or possession of the Goods infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party.

9. Termination. Buyer may terminate this Order, in whole or in part, at any time with or without cause for undelivered Goods on prior written notice to Seller. In addition to any remedies that may be provided under these Terms, Buyer may terminate this Order with immediate effect upon written notice to Seller, either before or after the acceptance of the Goods, if Seller has not performed or complied with any of these Terms, in whole or in part, or if Seller becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors. If Buyer terminates the Order for any reason, Seller's sole and exclusive remedy is payment for the Goods received and accepted by Buyer prior to the termination.

10. Waiver; Remedies; Survival. No waiver by any party of any of the provisions of the Order shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in the Order, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from the Order shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right,

remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights and remedies under this Order are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise. Provisions of this Order which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Order.

11. Assignment. Seller shall not assign, transfer, delegate or subcontract any of its rights or obligations under the Order without the prior written consent of Buyer. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve the Seller of any of its obligations hereunder. Buyer may at any time assign, transfer or subcontract any or all of its rights or obligations under the Order without Seller's prior written consent.

12. Confidential Information. Seller acknowledge that, in connection with providing the Goods hereunder, Seller may obtain information relating to Buyer, which is of a confidential and proprietary nature ("Confidential Information"). Seller will at all times keep in trust and confidence all such Confidential Information, and will use such Confidential Information only for Seller's delivery of the Goods hereunder, and Seller will not disclose such Confidential Information to third parties without Buyer's prior written consent. Notwithstanding the foregoing, Seller may disclose Buyer's Confidential Information to its contractors, agents, representatives and affiliates who are under appropriate confidentiality obligations and who have a business need to access such information for Seller's business purposes. The obligations of confidentiality shall not apply to information which (a) has entered the public domain except where such entry is the result of Sellers' breach of an Order; (b) prior to disclosure hereunder was already rightfully in Seller's possession from a third-party source; or (c) subsequent to disclosure hereunder is obtained by Seller on a non-confidential basis from a third party who has the right to disclose such information to Seller.

13. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in the Order shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever. No relationship of exclusivity shall be construed from this Order. This Order is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

14. Governing Law; Jurisdiction. All matters arising out of or relating to this Order shall be governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Delaware. Any legal suit, action or proceeding arising out of or relating to this Order shall be instituted in the federal courts of the United States of America or the courts of the State of Delaware in each case located in the City of Wilmington and County of New Castle, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

15. Severability. If any term or provision of this Order is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.