



## GENERAL TERMS AND CONDITIONS FOR THE SALE OF PRODUCTS AND SERVICES

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The following General Terms and Conditions set forth the basis upon which OnTime Networks AS or OnTime Networks LLC (hereinafter, "OTN") conducts its business. These General Terms and Conditions, including the Limited Warranty contained herein, are incorporated by reference into each of OTN's contracts. These General Terms and Conditions, and any updates thereto, may be found on OTN's website at [www.ontimenet.com](http://www.ontimenet.com).

### 1. GENERAL OFFER AND ACCEPTANCE.

Notwithstanding any other provision of any proposal, purchase order, or other similar document, the following terms and conditions shall apply to any sale of products or services by OnTime Networks AS (OTN), a Norway corporation having its principal place of business at Gjerdrums vei 11, 0484 Oslo, Norway or OnTime Networks LLC ("OTN"), a Delaware corporation having its principal place of business at 22 Century Hill Drive, Suite 101, Latham, NY 12110, USA. Any order covering the sale of OTN's products and services shall be governed solely by these General Terms and Conditions ("GTCs"). OTN shall not be deemed to have waived the GTCs if it fails to object to provisions appearing on, incorporated by, referenced in, or attached to customer's order which provisions are hereby expressly rejected. Customer's order shall be deemed accepted when OTN sends an acknowledgement to customer. OTN reserves the right to reject any order, in its sole discretion. Customer's silence, acceptance, or use of the products constitutes its acceptance of the GTCs.

### 2. PRICES.

The prices for the products and services shall be at OTN's standard prices in effect at the time of shipment unless otherwise agreed to in writing by OTN. All advertised prices for OTN products and services are subject to change, without prior notice. If such prices are based on the purchase of a particular quantity of products and customer fails to purchase such quantity, OTN shall have the right to collect from customer the difference between the price paid by customer for the products purchased and OTN's standard price for such products in the quantity purchased by customer. Prices do not include shipping charges. All shipping charges are the responsibility of customer. Prices do not include applicable taxes including, without limitation, excise, sales or use taxes. Any taxes (other than taxes due on OTN's net income) that are payable on transactions hereunder shall be the responsibility of customer. OTN reserves the right to invoice customer for any such taxes that are or may become payable by OTN. Customer shall supply OTN with a copy of an appropriate tax exemption certificate. OTN reserves a security interest in any products sold to the extent of the invoiced amount to secure payment of customer's obligation. At OTN's request, customer will execute any instrument OTN shall desire to perfect its security interest.

### 3. PAYMENT.

All payments are due and payable thirty (30) days from the date of invoice, provided however, that OTN shall have the right, in its sole discretion, to require payment before shipment or payment via letter of credit in the event OTN determines that customer is delinquent in payment or will exceed its credit limit. Payments shall be made in Euros to OnTime Networks AS or in U.S. dollars to OnTime Networks LLC, in accordance with the remittance instructions on the invoice. If all the products and services ordered are not delivered or performed at one time, customer shall pay the unit prices applicable to the products delivered or services performed. Each shipment shall be considered a separate and independent transaction. Late payment of invoices may be assessed a charge equal to the lesser of 1.5% per month of the balance due or the maximum rate of interest permitted in accordance with the laws of Norway or of the State of New York. The customer will be charged twenty dollars (\$20.00) plus bank fees for each check returned due to insufficient funds. All products and services ordered shall at all times be subject to the credit approval of OTN. OTN may at any time decline to make any shipments or deliveries or perform any services except upon receipt of payment for such product or service.

#### **4. TITLE, RISK AND INTELLECTUAL PROPERTY.**

Title to the Product shall remain with OTN and shall not pass to the Customer until payment in full has been received. Risk of loss or damage to the Products shall pass to Customer at the time of Delivery. OTN retains all right, title and interest in and to the intellectual property related to or contained in the products and/or services.

#### **5. PACKAGING AND DELIVERY.**

All packaging will be performed by OTN in accordance with OTN's standard practices. OTN shall make reasonable efforts to meet the proposed Delivery schedule provided OTN's standard lead times are observed. However, OTN shall not be liable for, nor shall OTN be in breach of, its obligations to customer because of any delays in Delivery. Title and all risk of loss or damage to the products shall pass to customer upon Delivery. "Delivery" means Incoterms 2010, FCA OTN's Oslo, Norway or Latham, New York facility. All returns must be made within thirty (30) days from the date of Delivery and may be subject to a fifteen percent (15%) restocking fee.

#### **6. INSPECTION.**

Within two (2) business days of receipt of the products, customer shall inspect the products to check for shortages or other non-conformity. Customer shall notify OTN of any discrepancies within two (2) business days of inspection. Failure of customer to comply with this Section may result in customer's inability to file a claim for such discrepancy. Notwithstanding the above, all claims for loss or damage to the product caused after Delivery are the sole responsibility of customer and customer is responsible for pursuing such claims directly with the shipping company.

#### **7. CANCELLATION.**

Customer may not cancel an order without OTN's prior written consent. OTN will inform customer of cancellation fees, if any, that may be incurred by customer in the event of such cancellation.

#### **8. EXCUSABLE DELAY.**

OTN shall not be liable for any failure to deliver, or delay in the Delivery of, any products or services due to any cause beyond its reasonable control, including but not limited to acts of God, acts of civil or military authority, fires, epidemics, floods, riots, wars, sabotage, labor disputes, governmental actions, or inability to obtain materials, components, energy, manufacturing facilities, or transportation. In the event of any such delay, the date of Delivery or performance hereunder shall be extended by a period equal to the time lost by reason of such delay. In the event OTN's production is curtailed for any of the above reasons, OTN may allocate its production among its various customers. Such allocation shall be made in a commercially fair and reasonable manner.

#### **9. WARRANTY.**

Supplier warrants that all Products, when purchased through OTN or an authorized distributor, shall be free from defects in material and workmanship under normal use one year from the time of shipment of the Products. Supplier does not warrant that operation of the Software will be completely uninterrupted or error free or that all program errors will be corrected. Buyer shall be responsible for determining that a Product is suitable for Buyer's use and that such use complies with any applicable local, state or federal law. Provided that Buyer notifies Supplier in writing of any claimed defect in the Products immediately upon discovery and any such Products are returned to the original shipping point, transportation charges prepaid, within the relevant warranty period and upon examination Supplier determines to its satisfaction that such Products are defective in material or workmanship Supplier shall at its option repair or replace the Products, shipment to Buyer prepaid. Supplier shall have reasonable time to make such repairs or to replace such Products. Any repair or replacement of Products shall not extend the warranty period.

This warranty is limited to the period of without regard to whether any claimed defects were discoverable or latent on the date of shipment. The warranty covers only defects arising out of the manufacture of the Products and not defect caused by other circumstances, including, but not limited to accident, misuse, unforeseeable use, neglect, alteration, improper installation, improper adjustment, improper repair, or improper testing. In addition, and without limiting the foregoing, Supplier shall not be responsible for any Buyer custom software or firmware, configuration information, or memory data contained in, stored on, or integrated with any products returned to Supplier pursuant to this warranty.

- B. If Buyer shall fail to pay when due any portion of the purchase price or any other payment required from Buyer to Supplier under this contract or otherwise, all warranties and remedies granted under this section may, at Supplier's option, be terminated.
- C. THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER REPRESENTATIONS, WARRANTIES AND COVENANTS, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS AND ANY DEFECTS THEREIN OF ANY NATURE WHATEVER, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SUPPLIER SHALL NOT BE LIABLE FOR, AND BUYER ASSUMES ALL RISK OF, ANY ADVICE OR FAILURE TO PROVIDE ADVICE BY SUPPLIER TO BUYER REGARDING THE PRODUCTS OR BUYER'S USE OF THE SAME. UNDER NO CIRCUMSTANCES SHALL SUPPLIER BE LIABLE TO BUYER UNDER ANY TORT, NEGLIGENCE, STRICT LIABILITY, OR PRODUCT LIABILITY CLAIM AND BUYER AGREES TO WAIVE SUCH CLAIMS. SUPPLIER'S SOLE AND EXCLUSIVE LIABILITY, AND BUYER'S SOLE AND EXCLUSIVE REMEDY, FOR ANY NONCONFORMITY OR DEFECT IN THE PRODUCTS OR ANYTHING DONE IN CONNECTION WITH THIS CONTRACT, IN TORT (INCLUDING NEGLIGENCE), CONTRACT, OR OTHERWISE, SHALL BE AS SET FORTH IN SUBSECTION 11A HEREOF AS LIMITED BY SUBSECTION 11B HEREOF. THIS EXCLUSIVE REMEDY SHALL NOT HAVE FAILED OF ITS ESSENTIAL PURPOSE (AS THAT TERM IS USED IN THE UNIFORM COMMERCIAL CODE) PROVIDED THAT THE SUPPLIER REMAINS WILLING TO REPAIR OR REPLACE DEFECTIVE PRODUCTS (AS DEFINED IN SUBSECTION 11A) WITHIN A COMMERCIALY REASONABLE TIME AFTER RECEIVING SUCH PRODUCTS. BUYER SPECIFICALLY ACKNOWLEDGES THAT SUPPLIER'S PRICE FOR THE PRODUCTS IS BASED UPON THE LIMITATIONS OF SUPPLIER'S LIABILITY AS SET FORTH IN THIS CONTRACT.

#### **10. DISCLAIMER.**

THE LIMITED WARRANTIES PROVIDED WITH THE PRODUCT AT THE TIME OF SHIPMENT, ARE PROVIDED IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, ALL OF WHICH ARE HEREBY EXPRESSLY DISCLAIMED.

#### **11. LIMITATION OF LIABILITY.**

OTN SHALL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES UNDER THESE GTCs ARISING OUT OF OR CONNECTED WITH BUYER'S PURCHASE OR USE OF OTN'S PRODUCTS OR SERVICES, INCLUDING, WITHOUT LIMITATION, INTERRUPTION OF BUSINESS, LOSS OF PROFITS OR SAVINGS, LOSS OR ALTERATION OF DATA, DELAYS, OR LOSS OF USE, EVEN IF OTN HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. IN NO EVENT, HOWEVER, SHALL OTN'S AGGREGATE LIABILITY ON ANY CLAIM FOR LOSS OR DAMAGE ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM THESE GTCs, OR FROM THE PERFORMANCE OR BREACH THEREOF, OR FROM THE MANUFACTURE, SALE, DELIVERY, RESALE, REPAIR OR USE OF ANY PRODUCT OR SERVICE EXCEED THE PRICE PAID BY CUSTOMER TO OTN FOR THE PRODUCTS AND/OR SERVICES UNDER THE EXPLICIT PURCHASE ORDER OR AGREEMENT.

## **12. INDEMNIFICATION.**

Customer agrees to indemnify, defend and hold harmless OTN, its shareholders, directors, officers, employees, agents and affiliated companies, from and against any losses, costs, or damages (including reasonable attorneys' fees), or any third party claims, resulting from or in connection with any injury to persons, real property or tangible personal property, or infringement of third party rights, caused by, arising out of or related to (i) anything customer provides OTN which is incorporated into OTN's product or service (including, but not limited to specifications, designs, documents, reports, or data); (ii) customer's modification of OTN's product or service; (iii) the combination, operation, or use of a product or service with any product, data, or apparatus that OTN did not provide; (iv) infringement by a non-OTN product; or (v) the negligence or willful misconduct of customer or its agents; or (v) from customer's breach of any term of the GTCs.

## **13. CONFIDENTIALITY.**

The pricing terms provided to customer shall remain confidential and customer shall not disclose such information to any third party without the prior written consent of OTN.

## **14. GOVERNING LAW AND VENUE.**

This GTCs will be governed, construed, interpreted, and enforced in accordance with the substantive laws of Norway for sales made by OnTime Networks AS and the laws of the State of New York for sales made by OnTime Networks LLC., without regard to conflicts of law principles. The Parties further agree that in the event of legal or other proceedings to interpret, execute or enforce any provision of this Agreement, the New York Venue for such shall be Albany County.

## **15. ARBITRATION.**

The Parties further agree, except as otherwise provided herein, to submit any dispute as to the interpretation, execution, or enforcement of this Agreement to binding Arbitration under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said rules. The Arbitration shall take place in Oslo, Norway. In the USA the parties will follow the Rules of American Arbitration Association. In the event of such Arbitration, the prevailing Party shall be entitled to reasonable attorney fees and costs.

## **16. NOTICES.**

All communications, including without limitation notices, consents, requests or approvals, required or permitted to be given to OTN or Customer will be in writing and will be deemed to have been duly given when hand delivered, dispatched by electronic facsimile transmission (with receipt thereof confirmed) or e-mail, or five business days after having been mailed by United States registered or certified mail, return receipt requested, postage prepaid, or three business days after having been sent by a nationally recognized overnight courier service such as Federal Express or UPS, addressed to the addresses set forth below, or to such other address as any Party may have furnished to the other in writing and in accordance herewith, provided, however, that notice of changes of address will be effective only upon receipt. Any notice sent to OTN, shall be addressed to:

OnTime Networks AS  
Gjerdrums vei 11  
0484 Oslo  
Norway

OnTime Networks LLC  
22 Century Hill Drive, Ste 101  
Latham, NY 12110  
USA

Any notice sent to Customer shall be sent to the address set forth on Customer's order.

**17. ASSIGNMENT.**

Customer may not assign its rights or obligations under the order without the prior written consent of OTN, and any purported assignment without such consent shall have no force or effect.

**18. WAIVER.**

Any waiver by OTN of any default of customer hereunder shall not be deemed to be a continuing waiver of such default or a waiver of any other default or of any of the terms and conditions of the GTCs.

**1g. AMENDMENT.**

The terms and conditions of the GTC may not be superseded, modified, or amended except in writing by stating that it is such a modification and signed by an authorized representative of each party hereto, provided, however, that OTN may modify the specifications of the products sold hereunder if such modification does not change the form, fit or function of such products.

**20. EXPORT CONTROL LAWS.**

The parties hereby represent and warrant that they are familiar with and will comply in all respects with the Norwegian Export Control Laws and United States laws, regulations, and administrative requirements applicable to the GTCs including but not limited to the Foreign Corrupt Practices Act ("FCPA"), as amended; the International Traffic In Arms Regulations ("ITAR"); the Export Administration Act ("EAA"); the antiboycott and embargo regulations and guidelines issued under the EAA, and the regulations of Norway and the United States Department of the Treasury, Office of Foreign Assets Control.

**21. INTERPRETATION.**

Ambiguities, inconsistencies, or conflicts in the order will not be strictly construed against the drafter of the contract language; rather, they shall be resolved by applying the most reasonable interpretation under the circumstances, giving full consideration to the intentions of the parties at the time of contracting.

**22. SEVERABILITY.**

The invalidity or enforceability of any particular provision of the GTCs shall not affect the other provisions within the GTCs, and the remaining provisions of the GTCs shall be construed in all respects as if such invalid or unenforceable provisions were omitted. In the event that any part of the GTCs is held by any court or other judicial or administrative body to be null, void or unenforceable, said provision shall survive to the extent it is not so declared, and all of the other provisions of the GTCs shall remain in full force and effect.

**23. ENTIRE AGREEMENT.**

Customer's order, along with these terms and conditions and any documents incorporated by reference on the face hereof (but expressly excluding any of the terms and conditions of customer's order or any similar document issued by customer), constitutes the entire agreement between customer and OTN with regard to the products or services listed in customer's order, and expressly supersedes and replaces any prior or contemporaneous agreements relating to such products or services unless such agreement is in writing and signed by both parties and expressly states that the GTCs are superseded. Any additional or different terms set forth or referenced in customer's order are hereby objected to by OTN and shall be deemed a material alteration of this offer and not a part of any resulting order, unless specifically agreed to in writing signed by an authorized representative of OTN.