

**Special terms and conditions for training courses, webinars  
and conferences held by  
OMICRON electronics Corp. USA  
3550 Willowbend Blvd, Houston TX 77054  
(hereinafter referred to as "OMICRON")**

## **1 Validity**

- 1.1 The following special terms and conditions (hereinafter referred to as "**Special Terms**") shall apply to all contracts, offers, and services provided by OMICRON in respect of training courses, webinars and conferences (hereinafter referred to in summary as the "**service**" or "**services**"). In addition to these special provisions, OMICRON's general sales conditions, as amended from time to time, shall apply at all times (herein referred to as "**General Terms**"). The General Terms can be examined online at <http://www.omicron.at/en/legal/terms/sales-usa/>.
- 1.1 The general terms of business of the customer (herein referred to as the "**customer**") or of third parties shall not apply, even if they are part of a letter or other communication from the customer and OMICRON has not expressly objected to them, or OMICRON does not separately contradict their validity in individual cases. Any silence shown by OMICRON is to be understood as a rejection of those conflicting general terms and conditions. In order to become effective, any terms or conditions of the customer must be expressly approved in writing by OMICRON. Even if OMICRON makes reference to a written document that contains the terms of business of the customer or of a third party, this shall not constitute any agreement to the applicability of those terms of business.
- 1.2 These Special Terms shall apply only in respect to companies conducting business activities with OMICRON or its affiliates.
- 1.3 In all cases the customer shall be responsible for providing its information correctly, accurately and in full.
- 1.4 OMICRON distinguishes between the following types of services: **Scheduled training courses** are advertised on the website (web shop) and are held as open seminars for all interested parties. **Customized training courses** are held to order for individual clients and designed for an individually agreed scope and content. Additionally, **webinars** are conducted via an Internet platform. These webinars may be of two types, either recorded webinars or live webinars. Recorded webinars are available for download from OMICRON's website. Live webinars are advertised in the same way as regular training courses and are held as open online seminars. **Conferences** are defined by OMICRON as events designed to facilitate a specific exchange of experience between specialists, for example user conferences, symposia and workshops in which not only OMICRON but also third parties may speak.

## **2 Offer and conclusion of contract**

- 2.1 All offers by OMICRON are non-binding and subject to change, except to the extent an offer expressly states it is binding or contains a specific term of acceptance.
- 2.2 Orders must be placed in writing by post, fax, e-mail or via the web shop. OMICRON may confirm acceptance of the order within 14 days of its receipt, which acceptance must be in writing and may be delivered by post, fax or e-mail. An order shall not be or constitute a legally binding offer or contract until such time as OMICRON so confirms its acceptance.
- 2.3 Irrespective of the location of the event or the employees who conduct it, the contractual partner shall be OMICRON. For certain services, however, an affiliate of OMICRON shall be involved in the transaction or provide the actual service. This will be made evident by OMICRON or such affiliate no later than at the time of confirmation of registration. In such case, the customer shall have the right to withdraw from the contract within five (5) days of receipt of the registration confirmation, by delivering to OMICRON written notice, by post, fax, e-mail. Unless the customer timely and properly delivers such notice, the affiliate shall be deemed to be accepted as a different contractual partner.
- 2.4 The legal relationship between OMICRON and the customer shall be solely governed by the specific contract agreed to in writing between OMICRON and the customer (herein referred to as the "**Individual Agreement**"), these Special Terms, and the General Terms, which shall collectively constitute the entire agreement between the customer and OMICRON, and which may be amended, supplemented or modified only with the mutual written consent of the customer and OMICRON.
- 2.5 In order to avoid misunderstandings, any changes, modifications and amendments to the Individual Agreement, these Special Terms, or the General Terms must be made in writing in order to be effective. Any waiver of any provisions thereof, including any waiver of any rights or remedies of the parties thereunder, must be in writing to be effective. Any failure, neglect, or delay by a party to at any time enforce any such provisions, rights or remedies (i) will not be construed and will not be deemed to be a waiver of such party's rights, (ii) will not in any way affect the validity of all or any part thereof, and (iii) will not prejudice such party's right to take subsequent actions to enforce such provisions, rights or remedies. Any such changes, modifications, amendments or waivers (i) may be executed in multiple counterparts, which shall collectively constitute a single agreement, and (ii) may be delivered by personal delivery, mail, fax or telecopier, third party delivery service, or as a PDF attachment to an email. Except as otherwise expressly permitted under these Special Terms or the General Terms, the use of electronic telecommunications, in particular transmission by e-mail, shall not by itself be deemed to constitute a binding change, modification, amendment or waiver, without a mutually agreed writing physically signed by both parties and transmitted or delivered as set forth in the immediately preceding sentence.

## **3 Scheduled training courses**

- 3.1 The descriptions of the services on the website are for information only. By registering, the customer makes a contractual offer. OMICRON shall notify the customer electronically if the contractual offer cannot be accepted. The customer shall undertake to pay the price stated in the invoice in full within the term set out in section 8.2 hereof. The customer agrees to receive notifications in respect of fulfilling the contract by e-mail.
- 3.2 To maintain the high level of training quality, the number of participants in all training courses is limited. Registrations shall be accepted in the order in which they are received.

3.3 Information concerning withdrawal, cancellation or alterations to agreements for regular training can be found in section 9.5.1 hereof.

## **4 Customized training courses**

4.1 For training courses that are carried out abroad, in the event OMICRON has any concerns regarding safety considerations (including, without limitation, the existence of travel warnings), OMICRON may in its sole, absolute and uncontrolled discretion either withdraw from the contract or agree to a new date for the event with the customer.

4.2 The customer shall provide commercially reasonable support for the services to be provided by OMICRON under the Individual Agreement.

4.3 Information concerning withdrawal, cancellation or alterations to agreements for customized training can be found in sections 9.5.2 and 9.6 hereof.

## **5 Webinars**

5.1 Webinars are offered free of charge at the time at which they take place. OMICRON reserves the right, in its sole, absolute and uncontrolled discretion, to restrict or suspend this free service.

5.2 The customer receives login data from OMICRON to allow the customer's participants access to a particular webinar. Under no circumstances may such login data be passed to another party. The login data is for the exclusive use of one participant on one computer, to allow him to view, download or participate in a webinar. Downloaded data and the login data may not be passed to third parties.

5.3 No legal entitlement exists in respect to any webinar being held by OMICRON.

5.4 The webinar service includes a function that allows the recording of any audio, documents and other materials that may be shown or exchanged during the event. By participating in a webinar, the customer and its participants automatically agree to the making of such a recording. Should the customer not wish to be involved in such recording, this issue should be resolved with OMICRON in at least five (5) days prior to the webinar, or else the customer or any objecting participants should not participate in the webinar.

## **6 Conferences**

6.1 Information concerning withdrawal, cancellation or alterations to agreements for conferences can be found in section 9.5.1 hereof.

6.2 The customer agrees (i) that OMICRON is entitled to make photographic and/or film recordings of the customer or its participants during conferences and to make audio recordings and to use these individually or together for advertising and marketing purposes, public relations or other commercial or business purposes; (ii) that OMICRON is entitled to use the above-mentioned photographs and recordings for the stated purposes in the United States of America and abroad; (iii) to indemnify and hold harmless OMICRON, any subsidiary or affiliate of OMICRON, their respective management, employees and customers, and any commissioned advertising agencies, or their respective management and employees, from claims of any kind related in any way to the use of such photographs and/or sound recordings.

## **7 Scope of services**

7.1 The content, quality and scope of the services to be provided by OMICRON shall be as provided in the Individual Agreement.

7.2 Prices charged for training or conferences do not include other costs incurred in respect thereto, including the costs of travel, overnight accommodations, or parking etc., except as and to the extent otherwise stated in the Individual Agreement.

7.3 OMICRON reserves the right to modify the content of any service program in order to adapt it to the state of the art, with or without prior notice being given. This may lead to deviations arising from the Individual Agreement and from the course program.

7.4 Except where stated otherwise in the Individual Agreement, OMICRON uses exclusively its own systems for training purposes. Where the Individual Agreement stipulates the use of the customer's systems for training purposes, it shall be the responsibility of the customer to implement suitable and adequate protection mechanisms to protect these systems against destruction or damage, and from loss of data and similar mishaps. OMICRON accepts no obligation to check for such protection.

7.5 The customer is prohibited from extracting, copying, translating or reverse developing any software or documents or parts thereof made available to the customer for training or conference purposes. OMICRON likewise prohibits the customer from any utilization of such software, documentation or parts thereof that has not been expressly permitted in the Individual Agreement. The documentation also includes all the electronic knowledge products and learning systems given to the participants or made available via the Internet or by other means.

7.6 The intellectual property rights in all products, software, devices, and services of OMICRON, and in all documents, teaching materials and software used in each particular service, and all related copyrights, patent rights, trademark rights or proprietary rights, shall be and remain OMICRON's sole and exclusive property.

## **8 Prices and payment**

8.1 All prices are for the scope of services specified by OMICRON in the Individual Agreement. Additional or special services shall be invoiced separately by OMICRON. Prices are quoted as net amounts excluding any statutory sales, use or value added taxes applicable on the day on which the service is delivered.

8.2 Invoice amounts must be paid by the customer no later than 30 days from receipt, to a bank account specified by OMICRON, except where otherwise agreed in the Individual Agreement. The time of payment shall be the time of actual receipt of fully available funds by OMICRON.

8.3 Offsetting of payments by counterclaims of the customer or the withholding of payments owing to such claims shall only be permitted where the counterclaim is undisputed by OMICRON or has been established in law.

- 8.4 OMICRON may at any time require prior payment or collateral security for future services, if in OMICRON's sole, absolute and uncontrolled discretion, circumstances exist which significantly reduce the creditworthiness of the customer and/or which jeopardize the payment of outstanding or future invoices by the customer.
- 8.5 OMICRON is entitled to demand appropriate cost advances and/or to issue partial invoices for services already provided. Partial invoices need not be designated as such; the receipt of an invoice does not mean that OMICRON has thereby billed for the order in full.

## **9 Withdrawal, cancellation and changes to orders**

- 9.1 OMICRON may, in its sole, absolute and uncontrolled discretion, withdraw from the Individual Agreement, (i) if the service has to be canceled owing to illness of the trainer, (ii) if the minimum number of participants is not reached, (iii) for technical reasons, (iv) for other reasons beyond OMICRON's control, or (v) if a creditworthiness check conducted by OMICRON yields a negative result as to the customer.
- 9.2 Before exercising the right to withdraw for reasons other than the customer's lack of creditworthiness, OMICRON shall endeavor to provide another suitable employee to provide the service or to reschedule the service for another date mutually agreed to by OMICRON and the customer.
- 9.3 OMICRON shall promptly notify the customer of any such changes.
- 9.4 In the event of withdrawal, funds paid in advance for services that are canceled shall be refunded. There shall be no further rights or claims of the customer as a result of the withdrawal.
- 9.5 The customer must give OMICRON written notice of any cancellations or changes to bookings for services by the customer, and the following conditions shall apply to such cancellations or changes:
- 9.5.1 For scheduled training courses and conferences: Since places on regular training courses and conferences cannot be filled at short notice, OMICRON reserves the right to apply a charge of 50% of the total cost for cancellations received in writing between 28 and 14 days before the start of the event and a charge of 100% of the total cost for cancellations received later than 14 days before the start of the event. The customer is entitled to nominate a substitute participant at no cost. Should it be necessary, after registration has been confirmed, to reschedule a regular training or conference for reasons beyond OMICRON's control, each of the customer's participants shall be entitled to withdraw their registration at no cost within a period of three (3) weeks after OMICRON gives the customer or such participant notice of such rescheduling.
- 9.5.2 For customized training courses: Dates for customized training courses may be canceled by the customer free of charge up to 90 days before the start of the event. OMICRON shall thereafter apply (i) a charge of 25% of the invoice value for cancellations received in writing up to 30 days before commencement of training, (ii) a charge of 50% of the invoice value for cancellations received in writing between 30 to 15 days before commencement of training, and (iii) a charge of 100% of the invoice value for cancellations made less than 15 days before commencement of training. Where a customer does not make use of the entire service, there shall be no right to refund for the unused portion of such service.
- 9.6 Should the customer wish, after placing the order, to change the type or scope of the order, this shall be subject to the approval and agreement of OMICRON, in OMICRON's sole, absolute and uncontrolled discretion. The customer shall additionally be liable for the costs incurred thereby and to accept any rescheduling of dates that such change may necessitate.

## **10 Customer Obligations to Cooperate**

- 10.1 If and to the extent the customer's facilities and equipment are used to access, provide or obtain the services, the customer shall be responsible for providing data security and for blocking malicious software, using current state of the art methods, software and/or hardware.
- 10.2 Where the customer does not comply with the stated cooperation obligations, or where the customer violates an obligation to cooperate that is not stated here but which is nevertheless commercially reasonable, OMICRON shall be entitled, in its sole, absolute and uncontrolled discretion,
- 10.2.1 to adhere to the Individual Agreement by unilaterally amending the services specified in the Individual Agreement,
- 10.2.2 to cancel the provision of some or all of the services, or
- 10.2.3 to terminate the Individual Agreement.
- 10.3 The customer's participants shall observe the safety, regulatory and accident prevention regulations that apply at the place of the training or conference.

## **11 Dates and deadlines**

- 11.1 Except as otherwise expressly provided herein, the dates and deadlines set out in the Individual Agreement are binding for both contracting parties (except in the case of webinars).
- 11.2 OMICRON shall not be responsible for any delay or non-performance caused by or resulting from malfunctions, transportation or telecommunications problems, governmental regulation, legislative, administrative or judicial restrictions, labor disputes, strikes, lockouts, war or war-like actions, sabotage, terrorism, civil disturbances or riots, fire, acts of God, road conditions, weather or any other causes beyond the reasonable control of OMICRON. Under such circumstances, any failure by OMICRON to perform any of its obligations hereunder shall not constitute a default hereunder or give rise to any claim for damages. If the failure to comply with a specified time of service is due to any such circumstances, the dates of service specified in the Individual Agreement shall be postponed by the duration of such circumstances, plus any additional response, preparatory and/or travel periods reasonably necessary as a result of such circumstances.
- 11.3 The customer's failure to promptly accept within a reasonable time a service duly offered by OMICRON shall be at the sole risk and expense of the customer.

## 12 Liability and Limitations

- 12.1 OMICRON makes no representations or warranties regarding the services, or OMICRON's products or software, except as set forth and limited in the General Terms. OMICRON makes no representations or warranties regarding any materials or third party software or hardware used or supplied in conjunction with the services. **OMICRON DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED (BY STATUTE, TRADE USAGE OR OTHERWISE), INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE SERVICES OR THE MATERIALS OR SOFTWARE PROVIDED IN CONJUNCTION WITH THE SERVICES.**
- 12.2 EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE GENERAL TERMS, OR IN THESE SPECIAL TERMS AND TO THE EXTENT THE LIMITATION OF LIABILITY IS PERMISSIBLE BY THE LAW OF THE PERTINENT JURISDICTION, THE OVERALL LIABILITY OF OMICRON FOR ANY DAMAGES SHALL UNDER NO CIRCUMSTANCES EXCEED A TOTAL OF USD 3 MILLION (THREE MILLION US DOLLARS) PER EVENT CAUSING THE DAMAGE. THIS LIMITATION OF LIABILITY SHALL APPLY IRRESPECTIVE OF WHETHER OMICRON WAS INFORMED OF THE POSSIBILITY OF SUCH DAMAGES AND EXTENDS TO ANY ACTUAL, CONSEQUENTIAL, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES, ARISING OUT OF OR RELATED IN ANY WAY (I) TO OMICRON'S PRODUCTS OR SERVICES, INCLUDING WITHOUT LIMITATION TECHNICAL SUPPORT SERVICES PROVIDED IN RESPECT TO ITS PRODUCTS, OR (II) TO ANY AGREEMENTS, OFFERS OR DELIVERIES ENTERED INTO OR MADE BY OMICRON. OMICRON SHALL NOT BE LIABLE TO THE CUSTOMER OR ITS PARTICIPANTS, NOR TO ANY OTHER PERSON OR COMPANY WHO OR WHICH MAY CLAIM ANY RIGHT DUE TO HIS, HER, OR ITS RELATIONSHIP WITH CUSTOMER, FOR ANY ACTS OR OMISSIONS OF OMICRON, OR OMICRON'S EMPLOYEES OR AGENTS, IN THE PERFORMANCE OF THE SERVICES, EXCEPT WHEN SUCH ACTS OR OMISSIONS ARE DUE TO THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF OMICRON OR OMICRON'S EMPLOYEES OR AGENTS. To the greatest extent permitted by applicable law, the limitations and exclusions set forth in this paragraph 12 will apply regardless of whether liability arises from breach of contract, warranty, tort (including without limitation, negligence), by operation of law, or otherwise.
- 12.3 OMICRON does not accept, and hereby disclaims, any liability or claims for damages for violation of non-essential contractual obligations.
- 12.4 Where services are provided at the customer's facility, the customer shall be solely responsible for determining and maintaining the safety and adequacy of the customer's facility, and for obtaining and determining the sufficiency of all insurance policies regarding protection against fire, theft, loss, damage, destruction and other risks, and against liability for bodily injury, death and property damage. If requested by OMICRON, the customer will verify in detail the nature and extent of all such insurance coverage. The customer hereby assumes full and complete liability for and agrees to indemnify, protect, save, keep and hold harmless OMICRON, its agents, representatives, officers, employees, successors and assigns from and against any and all losses, damages, injuries, claims, liabilities, demands and expenses (including attorney's fees, costs of court and other legal expenses, arising out of or related in any way to the use, operation or maintenance of the customer's facilities.
- 12.5 OMICRON shall not be liable to the customer for a specific outcome or a specific achievement in respect to the services. Webinars shall be executed using software chosen by OMICRON (e.g., WebEx). OMICRON has no control over the availability and fault-free technical preconditions of this software. The customer acknowledges that 100% availability of the webinars and of the OMICRON website is not technically possible. OMICRON shall however endeavor to keep the website available as constantly as possible. In particular, maintenance, security and capacity issues and events that are beyond OMICRON's control (e.g. faults on public communications networks, power failures etc.) may lead to short-term interruptions or to the temporary suspension of the services on the website.
- 12.6 ALL ELECTRONIC DOWNLOADS ARE MADE AT THE SOLE RISK OF THE CUSTOMER AND ITS PARTICIPANTS. OMICRON DOES NOT ACCEPT, AND HEREBY DISCLAIMS, ANY LIABILITY FOR DAMAGE CAUSED THROUGH DOWNLOADING, INSTALLING, STORING OR USE OF SOFTWARE OR CONTENT FROM OMICRON'S WEBSITE, EXCEPT TO THE EXTENT REQUIRED BY LAW IN CASES OF WILLFUL MISCONDUCT OR GROSS NEGLIGENCE BY OMICRON OR OMICRON'S EMPLOYEES OR AGENTS.
- 12.7 The technical information supplied in OMICRON's services is carefully compiled in accordance with the applicable regulations, recognized technical principles and OMICRON's own experience. However, OMICRON does not accept any liability for, or make any representations or warranties regarding, the correctness, completeness, timeliness or quality of the information provided or of information from third parties. OMICRON DOES NOT ACCEPT, AND HEREBY DISCLAIMS, ANY AND ALL LIABILITY FOR ANY DIRECT OR CONSEQUENTIAL DAMAGE THAT MAY RESULT FROM THE USE OF SUCH INFORMATION BY THE CUSTOMER, ITS PARTICIPANTS OR ANY THIRD PARTY. OMICRON SHALL NOT BE LIABLE TO THE CUSTOMER, ITS PARTICIPANTS OR ANY THIRD PARTIES IN THE EVENT OF ACCIDENTS OR OF LOSS OR DAMAGE TO THEIR PROPERTY CAUSED BY SUCH USE, EXCEPT TO THE EXTENT REQUIRED BY LAW IN CASES OF WILLFUL MISCONDUCT OR GROSS NEGLIGENCE BY OMICRON OR OMICRON'S EMPLOYEES OR AGENTS.

## 13 Place of fulfillment

Except where stated otherwise in the Individual Agreement, the place of fulfillment of all obligations arising from the contractual relationship shall be the principal office of OMICRON in Houston, Texas.

## 14 Data protection

The customer acknowledges and agrees that OMICRON does and may store data from the contractual relationship for data processing purposes and that OMICRON reserves the right, where necessary for fulfillment of the Individual Agreement, to provide such information to third parties (e.g. insurance companies) or to affiliated companies of OMICRON. OMICRON reserves the right to use the insights gained from its services for research purposes and for the continuing development of its products.

## 15 Final provisions

- 15.1 Unless otherwise agreed to in writing by OMICRON, the place of jurisdiction for any disputes that may arise from the Individual Agreement between OMICRON and the customer shall be the principal office of OMICRON in Houston, Texas.
- 15.2 All relationships between OMICRON and the customer shall be exclusively governed by the laws of the State of Texas (without regard to choice of law principles thereunder) customer.

- 15.3 Should one or more provisions of the Individual Agreement, these Special Terms, the General Terms, or other related agreements be determined to be illegal, invalid, or unenforceable, in whole or in part, then any such illegal, invalid or unenforceable provision (i) shall not affect the legality, validity or enforceability of the remaining provisions of such Individual Agreement, these Special Terms, the General Terms, or such other related agreements, and (ii) shall be replaced with legal, valid and enforceable provisions which are as similar as possible to the terms and intended economic purposes of the original provisions. The Individual Agreement, these Special Terms, the General Terms, and such other related agreements shall not be construed more favorably for or against either of the parties based upon which party drafted it.