GENERAL TERMS AND CONDITIONS

VERSION 2021-11

General Terms and Conditions

Between **OPTIMISTIK SAS**, with capital of € 46 280, registered at Chambery - France under number 812 683 282 and with its head office at 536 rue Costa de Beauregard, 73000 Chambery, France, represented by Mr. Mathieu CURA, President, duly authorized,

Hereafter called **Optimistik**,

And the CLIENT company, hereinafter called the **Client**,

Individually referred to as **Party** and together referred to as **Parties**,

The Customer wishes to use Optimistik solutions specialized in the collection, visualization, and analysis of industrial data. Optimistik, throughout its relationship with the Customer, will provide him with all the advice and recommendations necessary for the evolution of the services it is likely to offer him so that its services best meet the Customer's needs. The Customer acknowledges having received from Optimistik all the necessary information allowing him to appreciate the suitability of the Solutions to his needs.

With these considerations in mind, it was agreed as follows.

Article 1 - Definitions

Terms beginning with a capital letter within the Contract, whether used in the singular or plural, will have the meaning given to them below.

Subscription means the right of Customer to use a Solution for a defined period.

Anomaly means a malfunction of a Solution that is reproducible by Optimistik that prevents its use in accordance with the documentation.

Content: Data, codes, messages, images, models, analyses, algorithms, studies, configuration files, results and any other content created by the Customer via the Application Services or uploaded by the Customer to the Application Services within the framework of the Contract, even if the media allowing their representation are those of Optimistik.

Contract means this contract and its appendices, and where applicable, any amendment to said contract and/or its appendices.

Credential refers to both the user's own login and the password.

Software refers to any software provided by Optimistik to the Customer such as OIBus and OIMotion;

OIAnalytics refers to the Data Collection, Storage and Analysis Application Services, edited by Optimistik and supplied in SaaS, whose name is protected by a trademark repository. If so, this term refers to the mark.

OIBus refers to the Industrial Data Collection Software published by Optimistik.

OIMotion refers to an Industrial Data Visualization Solution in the form of synoptics published by Optimistik provided as Application Service or Software.

Application Service means the service offered in "SaaS" mode by Optimistik, allowing the use of OIAnalytics by the Customer.

Solutions means Software and Application Services.

User means a person under the responsibility of the Customer (agent, employee, representative, etc.) and benefiting from access to solutions.

User Administrator refers to the Customer User in charge of managing access rights to Solutions.

Article 2 - Purpose of the Contract

The purpose of the Contract is to define the terms and conditions applicable to the Solutions ordered by the Customer. Optimistik grants the Customer, who accepts:

- a non-exclusive right of access to the Application Services through the Internet network.
- a non-exclusive right of final use of the Solutions designated in the Commercial Offer
- a set of services including Data hosting, maintenance of the Application Services, technical assistance.

Optimistik offers access to its Solutions through several subscription plans. The **list of Solutions** and the list of **subscription plans** offered by Optimistik on the day of the conclusion of this Contract are described in the Solutions Description.

Article 3 - Contractual documents

The contractual relationship between Optimistik and the Client are, in hierarchical order of decreasing legal value:

- The Commercial Offer signed by the Customer;
- The present General Terms and Conditions;
- The Solutions Description;

All these documents constitute the full commitments existing between the Parties, hereafter together the Contract. It replaces and cancels any prior oral or written commitments relating to the purpose of the Contract.

In the event of a contradiction between one or more provisions in any of these documents, the higher-ranking document will prevail.

Article 4 - Contract Effect and Duration

The Contract shall take effect for an indefinite period upon its signature or upon receipt of a purchase order referring to the Commercial Offer.

However, the parties may terminate it at any time by registered letter with acknowledgement of receipt subject to a notice period of THREE (3) months from the date of first presentation to the other Party.

Article 5 - Provision of Solutions

5.1 Provision Application Services

As soon as the Contract is signed, the Client will provide Optimistik with the information necessary to provide the Application Services:

- The name of the access URL that will have to be unique and end with .oianalytics.fr (for example, **theclient**.oianalytics.fr)
- The e-mail from the Administrative User

Optimistik will conduct all technical operations to allow the Client access to the Application Services and will create a User Administrative account allowing the management of the Client's Users' rights and accesses in complete independence without any subsequent intervention from Optimistik.

5.2 Provision of Software

As soon as the Contract is signed, Optimistik will provide the Client with the Software executables and documentations on a server accessible through the Internet network. The Client will have to download the Software and install it on his environment.

5.3 Start date

The **"Start Date"** is the date the Administrator User account was created or, in the case of a Software-only supply, the date of the download link's communication.

Article 6 - Access to Application Services

Optimistik ensures the hosting of the Data, the maintenance, and the security of the Application Services.

Optimistik undertakes to set up effective controls in order to provide a reasonable assurance that the Client can access and use the Application Services.

Only the Client may use this right of access. He will be able to connect to the Application Services at any time, namely: 24 hours a day, 7 days a week including Sundays and holidays.

Optimistik cannot be held responsible for any unavailability or slowing down of the Solutions due to a problem affecting the Internet network, the Client's Intranet network or the energy production and distribution networks.

It is up to the Client to respect the limits of use indicated in the Commercial Offer and to inform Optimistik in case of increase of its needs.

Optimistik will not be held responsible for any failure, malfunction, or inability to connect resulting either from a technical inadequacy of the Client network and/or equipment, or from exceeding the Client usage limits set out in the Commercial Offer.

The Application Services may be occasionally suspended due to maintenance interventions. Optimistik will follow the procedure of operations described in the Quality Charter so that the Customer can be informed as best as possible of the interruption.

Optimistik reserves the right to take any appropriate action, including suspending access to a Client's Application Services in the event of:

- Infringing Optimistik intellectual property rights;

- Dishonest, fraudulent, malicious or misappropriated use of Solutions;

- Endangering, even involuntary, the integrity of Application Services;

- Non-performance by the Client of the Contract.

- Injunction from any public or judicial authority.

Any measure occurring in the above terms will not in any way give rise to compensation on the part of Optimistik towards the Client.

Article 7 - Licence

Optimistik grants the Client a personal, non-exclusive, non-assignable and non-transferable right to use the Solutions, for the entire duration of the Contract.

The Client may only use the Solutions in accordance with its needs and their documentation. In particular, the license to the Solutions is granted for the sole and exclusive purpose of allowing the Client to use the Services for its own needs, to the exclusion of any other purpose.

The Client may not under any circumstances make the Solutions available to a third party and is strictly forbidden to make any other use of the Solutions, in particular, but not limited to, any adaptation, modification, translation, arrangement, distribution, decompilation.

Article 8 - Confidentiality of Credentials

Credentials are intended to restrict access to the Solutions to Client users, to protect the integrity and availability of the Solutions, and to protect the integrity, availability, and confidentiality of Client Content.

The Credentials may be:

- Managed by Solutions through login and password identification.
- Managed by the customer authentication system by (SSO) Single Sign On. In this case, the Customer will be fully responsible for authenticating the Users.

In the case where the Credentials are managed by the Solutions, they can be reset only on the Client's request or on Optimistik initiative to protect the integrity and confidentiality of the Data. Optimistik will inform the concerned Clients without delay.

The Client is entirely responsible for the use of the Credentials and is responsible for the custody of the access codes given to him. He will make sure that no other person not authorized by Optimistik has access to the Application Services and the Solutions. In general, the Client assumes the responsibility of the security of the individual access posts to the Solutions.

Optimistik shall not be held responsible for the accidental destruction of Content by the Client, or a third party having accessed the Application Services using the Credentials.

In case of loss or theft of one of the Credentials, the Client will use the procedure set up by Optimistik allowing him to change his Credentials and will inform Optimistik without delay by any means.

Article 9 - Maintenance

Optimistik offers a support service via internet allowing to report Anomalies and available online 7 days a week, 24 hours a day. Optimistik proceeds to the diagnosis of the Anomaly and then implements its correction.

Optimistik is not responsible for the maintenance in the following cases:

- refusal of the Client to collaborate with Optimistik in the resolution of the Anomalies and in particular to answer the questions and requests for information.

- use of the Application Services in a way that does not comply with their purpose or their documentation.

- unauthorized modification of the Solutions by the Client or by a third party.

- failure of the Client to comply with its obligations under the Contract

- failure of the Client's external (Internet) and internal (Intranet) electronic communication networks

- deliberate act of degradation, malice, sabotage.

- deterioration due to force majeure or misuse of the Application Services.

The Client benefits from updates and functional evolutions of the Application Services. Optimistik will provide the Client with the updated documentation of the new versions of the Solutions.

The corrections and evolutions of the Application Services are expressly subject to the Contract.

Article 10 - Personal Data

If Optimistik is required to process personal data, it undertakes to comply with existing legislation on the handling of personal data in all its developments, including Law 78-17 of 6 January 1978 as amended by Act 2018-493 of 20 June 2018 and EU Regulation No. 2016/679 of 27 April 2016.

Optimistik undertakes to process personal data only for the bare purposes necessary to execute the Contract. Optimistik is also committed to limiting access to data to only those who need access to it for the implementation of the Contract, and to impose confidentiality on those who process the data.

In the event of a breach of personal data, Optimistik undertakes to notify the Customer as soon as possible and to assist him.

The Client alone has the quality of processing manager within the meaning of French and European law, and Optimistik that of subcontractor involved in the implementation of the treatment on behalf of the Client. As such, Optimistik undertakes to process personal data only in the following context:

Nature/Finality of data transactions	Recording users' actions for traceability and security purposes.
Type of personal data	IP, login, name, first name, use of Solutions features
Categories of people affected	Users of Solutions

Optimistik undertakes to delete the personal data transmitted by the Client at the end of the Contract in accordance with the terms of the article Reversibility.

Article 11 - Customer Content

The Client is and remains the proprietary owner of all the Content.

The Client is the only one responsible for the nature of the Contents having fed the Solutions. Thus, it is not Optimistik responsibility to ensure:

- That the Contents comply with the legislation regarding the conservation and accessibility of personal data, in particular with regard to the "General Data Protection Regulation".

- That the Contents are in conformity with the laws and regulations, public order, intellectual property, respect of the private life and good morals.

The Client guarantees Optimistik against any recourse from third parties as well as against any damage suffered by Optimistik or indemnity claimed from it because of an action taken on the nature of the Contents. Optimistik defence will be ensured by the Client who will reimburse Optimistik for all damages

that the latter will be required to pay by virtue of a court decision rendered in the last resort (or the amount of any transaction concluded by the Client).

The Client is responsible for any editorial responsibility of the use of the Application Services.

Each of the Parties undertakes to implement the appropriate technical means to ensure the security of the Data.

Optimistik undertakes to preserve the integrity and confidentiality of the Contents and to implement technical and organizational measures to prevent any access or fraudulent use of the Contents and to prevent any loss, alteration, or destruction of the Contents.

Article 12 - Financial terms

12.1 Fees

The Client undertakes to pay the fees set out in the Commercial Offer at the intervals indicated therein and in accordance with the terms set out below.

The fees for the Solutions are indicated in euros and are exclusive of tax.

12.2 Revision

The fee and benefit fee schedule du will be revised each year on the anniversary of the Start Date according to the following indexation formula:

$P1 \times S / S1$ in which:

P represents the revised price

S the last Syntec index known at the time of the price revision

S1 the last known Syntec index at the time of the StartDate.

P1 the price set at the time of the Start Date

In the event of the index's disappearance, the Parties will agree to the new indices or indices for the establishment of a formula with comparable effect.

If, for any reason, a Party fails to avail itself of the benefit of this clause, the fact of paying or cashing the price of benefits from the old amounts cannot, under any circumstances, be considered an implicit waiver to invoke the game of indexation. In order to be considered, this waiver will have to be the result of a written agreement.

Optimistik states that this revision clause constitutes an essential and determining stipulation of its willingness to contract, without which the Contract would not have been concluded.

12.3 Payment terms

The Services are invoiced at the intervals defined in the Commercial Offer. Invoices are payable in advance, upon receipt of the invoice, by bank transfer or direct debit.

12.4 Delay or default

Without prejudice to any damages, the delay or failure of the Client to pay an invoice by its due date shall automatically result in

- the application of a late payment interest equal to three times the legal interest rate, without prior notice and from the first day of delay.

- the application of a fixed indemnity for collection costs of 40€.

- the immediate suspension of Services thirty (30) days after receipt by the Client of a formal notice to correct the default by registered mail with acknowledgement of receipt and without effect.

Article 13 - Subscription Evolutions

13.1 Change of subscription plans

The Description of the Solutions and the subscription plans it describes are likely to change with time, which the Client recognizes and expressly accepts.

Optimistik can introduce any other new subscription plan, option, or complementary service and/or modify the rates of the subscription plans. Optimistik can also withdraw subscription plans.

These modifications apply only to new subscriptions and/or to extensions of perimeter on existing subscriptions.

13.2 Termination of support of a subscription plan

Optimistik can also decide unilaterally to stop the support of a particular subscription plan if it has become technically obsolete.

Optimistik will make a commercially reasonable effort to propose a transfer to a subscription plan to replace the old plan without increasing the fee for the Client.

To do so, it will have to notify its decision by registered letter with acknowledgement of receipt to the Client one year before its effect.

No reproach nor any responsibility of Optimistik can be sought for this reason by the Client or any other third party.

Article 14 - Property

Optimistik is and remains the owner of the property rights relating to any element of the Application Services and Solutions, including the documentation, knowledge and processes made available to the Client, as well as more generally the IT infrastructure (software and hardware) implemented or developed within the framework of the Contract.

The Contract does not grant the Client any ownership rights to the Solutions. The temporary provision of the Solutions under the terms of the Contract shall not be construed as the transfer of any intellectual property rights to the Client, within the meaning of the French Intellectual Property Code.

The Client shall not reproduce any element of the Solutions, or any documentation relating to them, by any means whatsoever, in any form whatsoever and on any medium whatsoever.

The Client will not be able to transfer all or part of the rights and obligations resulting from the Contract, whether it is in the context of a temporary transfer, a sub-license or any other contract providing for the transfer of said rights and obligations.

The possible suggestions of the Client to improve or extend the Solutions will be used by Optimistik without any restriction, remuneration or attribution to the source.

Article 15 - Warranty of Eviction

Optimistik declares and warrants:

- that the Solutions it has developed are original within the meaning of the French Code of Intellectual Property,

- that it owns all the intellectual property rights that allow it to conclude the Contract, that the Solutions are not likely to infringe the rights of third parties except if the Client is in violation of articles 6 or 7.

Article 16 - Responsibility

Each of the Parties shall be liable for the consequences resulting from its own faults, errors, or omissions, as well as from the faults, errors, or omissions of its subcontractors, if any, causing direct damage to the other Party.

In the event that the Solutions are inaccessible for a period of more than TWENTY-FOUR (24) hours, due to a cause that is not the responsibility of the Client (excluding cases of force majeure, interruption of distribution services by the energy or telecommunications supplier, etc.) and excluding cases of scheduled maintenance, the Client shall be entitled to claim compensation for the pecuniary consequences of the direct and foreseeable damage caused by this non-performance.

Except in case of wilful misconduct, the amount of Optimistik responsibility is strictly limited to the reimbursement of the amount of the fees actually paid by the Client within the framework of the Contract and in proportion to the duration of this interruption for the period in question.

By express agreement between the Parties, in no case Optimistik can be held responsible or be sought for compensation of indirect or unforeseeable losses or damages of the Client or third parties, concerning in particular any lost profit, loss, inaccuracy or corruption of files or Data, commercial prejudice, loss of turnover or profit, loss of clientele, loss of a chance, cost of obtaining a substitute product, service or technology... in connection with or resulting from a total or partial non-performance or a faulty non-performance of the services.

Article 17 - Termination

In case of breach or non-performance by one of the Parties of any of its obligations, and TWO (2) months after notification by registered letter with acknowledgement of receipt mentioning the intention to enforce the present clause remained without effect during the said period, the present Contract will be terminated by right, the injured Party being able, moreover, to ask for the repair of the entirety of its damage.

In case of termination of the Contract not resulting from a breach of its obligations by Optimistik, Optimistik will not refund any payment received under the Contract.

The reversibility services will be implemented in accordance with the Article "Reversibility".

Article 18 - Reversibility

In case of termination of the contractual relationship, whatever the cause, Optimistik will return or destroy, free of charge, at the first request of the Client formulated by registered letter with acknowledgement of receipt and within 15 days from the date of reception of this request, all the Data transmitted to the Solutions by the client in a text format. This request for return or destruction must be made within a maximum of 90 days following the end of the Contract.

The Client will actively collaborate with Optimistik in order to facilitate the recovery of the Data.

Article 19 - Non-Solicitation

Each of the Parties waives the right to hire or cause to be hired, directly or through an intermediary, any employee of the other Party, without the prior consent of the latter. This waiver is valid for the entire duration of the Contract and for 12 months following its termination.

In the event that one of the Parties fails to comply with this obligation, it shall compensate the other Party by paying it immediately and upon request, a lump sum equal to 6 times the employee's gross monthly remuneration at the time of his departure.

Article 20 - Confidentiality

Each Party agrees to (i) keep confidential all information it receives from the other Party, including (ii) not disclose the other Party's confidential information to any third party, other than employees or agents with a need to know; and (iii) use the other Party's confidential information only for the purpose of exercising its rights and fulfilling its obligations under the Contract.

Each Party agrees to make or cause to be made the same commitment with respect to their employees and servants.

The obligations of the Parties with respect to Confidential Information shall not apply to information that (i) has or would have entered the public domain through no fault of the receiving Party, (ii) is independently developed by the receiving Party, (iii) is known to the receiving Party prior to disclosure by the other Party, or (iv) legitimately received from a third party not subject to a confidentiality obligation, or (v) required to be disclosed by law or court order (in which case it shall be disclosed only to the extent required and upon written notice to the providing Party).

The obligations of the Parties with respect to the Confidential Information shall remain in effect for the duration of the Contract and for so long after its termination as the information concerned remains confidential to the disclosing Party and, in any event, for a period of 3 years after the termination of the Contract.

Article 21 - Force Majeure

Any inability to perform, other than the payment of amounts due, caused by terms beyond the reasonable control of the performing Party shall not constitute a breach of the Contract. The obligations of the Parties shall then be automatically suspended if the inability is not permanent.

If the inability is definitive or lasts for more than SIX (6) months, the present Contract may be terminated by the Party wishing to do so by registered letter with acknowledgement of receipt.

Article 22 - Reference

The Client accepts that Optimistik can include among its references the work accomplished within the framework of the Contract.

Article 23 - Various

23.1 Severability of clauses

The invalidity, expiration, lack of binding force or unenforceability of one or any of the provisions of the Contract shall not entail the invalidity, expiration, lack of binding force or unenforceability of the other provisions, which shall retain all their effects. However, the Parties may, by mutual agreement, agree to replace the invalidated provision(s).

It is formally agreed between the Parties that any tolerance or waiver by one of the Parties, in the application of all or part of the undertakings provided for in the Contract, regardless of the frequency and duration thereof, shall not be deemed to constitute a modification of the Contract, nor to be likely to create any right whatsoever.

23.2 Applicable Law and Language of the Contract

By express agreement between the Parties, this Contract is subject to French law, excluding its conflict of laws rules.

It is written in French. In the event that it is translated into one or more languages, only the French text shall be deemed authentic in the event of a dispute.

23.3 Election of residence

For the execution of the Contract as well as their consequences, the Parties respectively elect domicile at their registered offices or addresses indicated at the head of the Contract.

23.4 Disputes

In the event of a dispute arising between the Parties as a result of the performance or interpretation of the Contract, the Parties agree, prior to any litigation, to reach an amicable agreement within thirty (30) days of notification by one of them of the need for an amicable agreement by registered letter with acknowledgement of receipt.

In the absence of an amicable agreement, any dispute arising from the Contract shall be submitted to the competent courts of Chambery, France.