



Terms and Conditions of Supply

These are the Terms and Conditions of Supply referenced in the Product Order Form (the "Terms"). The offer by Optos, Inc. ("Optos") to supply Products to the Customer is governed by and expressly limited by Customer's acceptance of these Terms, as evidenced by Customer's execution of a Product Order Form or Customer's payment for any Product. Additional terms, appearing on any Customer purchase order, order forms, acknowledgment forms or any other documents shall not apply and are hereby void, except for any additional terms expressly agreed to in writing by Optos. Capitalized terms not defined herein shall have the meanings given in the Product Order Form.

1. Binding Terms. These Terms and the Product Order Form, when signed on behalf of Customer, constitute a binding NON CANCELLABLE agreement between Optos and Customer for the supply of Product(s). These Terms shall be deemed to be incorporated in and apply to any subsequent Product Order Form executed by the parties, whether or not the Terms are attached to the Product Order Form.

2. Shipping and Title.

(a) All shipments are F.O.B. Optos' facility. Title in Product(s) (except software and documentation) will not pass to Customer (notwithstanding delivery or installation) until payment is made in cleared funds of all sums (including interest and charges) due from Customer to Optos in respect of the relevant Product(s). Notwithstanding the foregoing, risk in the Product(s) shall pass to Customer upon delivery of the Product(s) by Optos. Until title in a Product has passed to Customer, Customer shall hold the Product as Optos' fiduciary agent and shall be solely responsible for ensuring that the Product is properly protected, operated, insured, and stored. Acquisition of any supplies, storage media, network, and internet connection not expressly set out in the Product Order Form or these Terms will be Customer's sole responsibility and at Customer's sole cost and expense.

(b) The software and documentation are licensed, not sold, to Customer, and Optos retains all right, title, and interest, including all intellectual property rights, in the software and documentation. Customer acknowledges that the software and documentation constitute Confidential Information of Optos and embody Optos trade secrets. Subject to Customer's compliance with these Terms (including payment of all applicable fees), Optos hereby grants to Customer a limited, non-exclusive, perpetual, non-transferable, non-sub-licensable license to access and use the software and documentation included with the Products solely for Customer's internal business purposes. Customer may not copy, translate, modify, or adapt the software or documentation, or incorporate it in any other product, create derivative works based on the software or documentation, and may not decompile, disassemble, or reverse engineer the software. Customer's use of any third-party software and/or documentation provided by Optos to Customer is subject to the terms and conditions of separate license agreements supplied by the applicable third party licensor.

3. Delivery, Installation, and Training.

(a) Optos shall use reasonable efforts to deliver Product(s) to the Installation Site on the Estimated Delivery Date, each as set forth on the Product Order Form, and the parties hereby acknowledge that time of delivery is not of the essence.

(b) Customer shall be responsible for preparing the Installation Site prior to the Estimated Delivery Date in accordance with specifications provided by Optos. Customer is solely responsible for providing, maintaining, and all costs associated with, all necessary power supplies, and high-speed internet service (including, without limitation, any wiring required to connect to any networking port on any Product(s)).

(c) If installation of Product(s) is included in an applicable Product Order Form, Optos may contact Customer prior to the Estimated Delivery Date to confirm whether the Installation Site is ready for installation of the Product(s). If the Installation Site will not be ready, Optos may opt to deliver the Product(s) but install on a later date or to delay the delivery date.

(d) If "Initial Training" is included in an applicable Product Order Form, Optos will provide training for up to five (5) operators in accordance with Optos Best Practice Guidelines. As part of this training, such operators will be given instruction and materials to provide appropriate cross training via Optos' Designated Trainer program for subsequent new operators. Additional training may be provided if agreed between Optos and Customer.

4. Use of the Product(s).

(a) Customer shall use the Product(s) in accordance with all applicable laws and regulations and all relevant standards of care which apply to the Product(s) in any jurisdiction, and shall be solely responsible for all patient diagnosis, treatment, and medical decisions and advice, including without limitation any decision regarding the use of the Product(s) in any particular case.

(b) If Customer removes any warnings, instructions or other notices of any kind affixed to the Product(s), Customer acknowledges that Optos may not be able to identify Products subject to a product recall and Customer assumes all liability resulting from any such inability.

(c) Customer acknowledges that it is solely responsible for ensuring the integrity of any images created through use of Product(s) which Customer requires to archive on its system and that, in the event of any loss or damage sustained in relation to such images (including but not limited to a failure in Customer's back-up integrity system on which images are stored, whether on CD- ROMS, DVDs or otherwise), Customer shall be solely liable for such loss or damage.

(d) Optos may from time to time and at its sole discretion provide Customer with updated versions of the software. Optos may charge an additional fee for updates that introduce new functionality or application(s).

5. Invoices. Optos shall invoice Customer by mail for all Products on shipment and for Support Services (if purchased separately from Product(s)) on execution of the applicable Product Order Form; invoices are payable net thirty (30) days after the date of invoice or as otherwise set forth on the Product Order Form. Prices do not include, and Customer shall be responsible for, all applicable taxes of any kind due in respect of the transactions contemplated by this Agreement, except taxes on Optos' net income. Optos reserves the right to change pricing with thirty days' written notice to Customer. If the pricing for products provided herein is subject to a discount, rebate, or other price reduction, the Customer may be obligated to disclose this information to Medicare, Medicaid, or similar state, federal, or private payer on cost reimbursement forms submitted to these entities for payment or review. Optos may withhold shipments, cease providing any services, and suspend access to any Products purchased under any Customer Product Order Form until past-due payments are made; Customer acknowledges that the Product software contains codes that must be renewed each 30 days until Customer has taken title to the applicable Product. Late payments are subject to a charge of the lesser of 1.5% per month or the maximum allowed by law during such time as any payment is late as well as collection costs, including reasonable collection and attorney's fees.

6. Trademark Usage. Optos hereby grants to Customer a non-exclusive, non-transferable, non-sublicensable license to use the Optos trademarks listed at <https://www.optos.com/en/terms-and-conditions/> (the "Optos Trademarks") in connection with Customer's advertising, including in promotional and printed materials, solely to the extent required to provide and promote Customer's services which make use of the Product(s), provided always that Customer's use of such Optos Trademarks is in accordance with Optos trademark usage policy, available on request from Optos. Customer acknowledges that Customer's use of Optos Trademarks shall not create in Customer any right, title, or interest in or to such trademarks. All goodwill created through Customer's use of the Optos Trademarks shall vest exclusively in Optos and Customer shall, upon request and at Optos' cost and expense, execute all documents and do all such things as are required to exclusively vest such goodwill in Optos. If Customer fails to use the Optos Trademarks in accordance with Optos' trademark usage policy, Optos may immediately terminate Customer's license to use the Optos Trademarks.

7. Indemnities.

(a) Customer shall indemnify, defend, and hold harmless Optos, its parent companies, and subsidiaries and their respective employees, officers, and directors, from and against all third-party liabilities, costs, expenses (including, without limitation, reasonable attorneys' fees), damages, and losses (collectively, "Claims") suffered or incurred by Optos to the extent arising out of (i) any claim made against Optos arising out of Customer's use of the Product(s) or any part thereof not in accordance with these Terms; (ii) any claims (including without limitation injury, death, damage, or loss to any person or property) arising from Customer's acts and/or omissions; (iii) any claims arising out of a material breach of these Terms, without limitation any terms or guidelines expressly referred to under this Contract; (iv) any claim arising from any diagnosis, treatment, and medical decisions and advice given by Customer, including without limitation any decision regarding the use (or non-use) of the Product(s) in a particular case; in all cases except to the extent such claims arise out of the negligent acts and/or omissions of Optos.

(b) Optos shall, as Customer's sole remedy for any infringement claims relating to the Products, indemnify, defend, and hold harmless Customer, its parent companies and subsidiaries and their respective employees, officers, and directors, from and against all Claims suffered or incurred by Customer to the extent arising out of a claim that the Product in an unaltered state and used in accordance with these Terms (and not the combination of the Product with any other products or software) infringes any United States patent or any copyright rights. If the use of a Product is enjoined, or, in Optos' judgment, may be enjoined, Optos may terminate the software and documentation license granted hereunder and, on receipt from the Customer of the Product, reimburse Customer for the price originally paid by Customer therefore, reduced by five-year straight line depreciation.

8. Limitations of Liability.

(a) Optos will not be liable for any failure or delay in performance which results directly or indirectly from "acts of God", acts of civil or military

authorities, civil disruptions, war, strikes, fire, theft, or vandalism or other causes beyond Optos' reasonable control.

(b) Optos shall be entitled to set off all sums due by Optos to Customer against any and all sums due by Customer to Optos whether under these Terms or otherwise.

(c) In no event shall Optos be liable to Customer for any indirect, incidental, special, consequential, exemplary, or punitive damages or lost profits, foreseeable or unforeseeable, of any kind (including, without limitation, loss of goodwill, lost or damaged data or software, loss of use of products, or downtime), even if Optos has been advised of the possibility of such loss or damages. In no event shall Optos' aggregate liability exceed the total actual amounts paid by Customer with respect to the relevant Product(s).

(d) Customer acknowledges that Optos has set its prices and entered into this Contract in reliance upon the limitations of liability and the disclaimers of warranties and damages set forth herein, and that the same form an essential basis of the bargain between Customer and Optos. Customer and Optos agree that the limitations and exclusions of liability and disclaimers specified herein will survive and apply even if found to have failed of their essential purpose.

(f) THE WARRANTY AND REMEDIES SET FORTH HEREIN IN RESPECT OF THE PRODUCT(S) AND/OR THE SOFTWARE AND/OR SERVICES PROVIDED HEREUNDER ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, ORAL OR WRITTEN, EXPRESS, IMPLIED OR STATUTORY, AND OPTOS EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES WITH RESPECT TO ANY MATTER, INCLUDING BUT NOT LIMITED TO TITLE, NON-INFRINGEMENT, OR THE QUALITY OR CONDITION OF THE PRODUCT(S) AND/OR THE SOFTWARE AND/OR SERVICES PROVIDED HEREUNDER, THEIR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

9. Confidential Information.

(a) "Confidential Information" means any non-public information that Optos has either marked as confidential or proprietary, or has identified as confidential or proprietary at the time of disclosure to the Customer; provided, however, that (i) the Optos software and (ii) information related to or regarding Optos' business plans, the details of any Product Order Form, strategies, technology (including Software), research and development, current and prospective customers, billing records, Product documentation, Product(s) or services, and any other information which ought reasonably to be considered as confidential shall each be deemed Confidential Information of Optos, regardless of whether it is so marked or identified. Customer's obligations set forth in this section shall not apply with respect to any portion of the Confidential Information that: (i) was in the public domain at the time it was communicated to Customer; (ii) entered the public domain through no fault of Customer; (iii) is rightfully received by Customer from a third party without a duty of confidentiality; (iv) is independently developed by Customer.

(b) Customer agrees that it will not: (i) use any Confidential Information except for the exercise of its rights and performance of its obligations under this Contract; or (ii) disclose any Confidential Information to any third party, other than as required by law or regulation.

(c) Customer acknowledges that Optos may inadvertently access images from patient files (such as during training or while providing support). Optos respects the confidentiality rights of all patients and agrees to abide by all legal requirements with respect to such images.

10. Optos Warranty and Support. During the Warranty Period and Support Services Period, if any, each as set forth on a Product Order Form, Optos shall provide the Warranty & Support Services described at <https://www.optos.com/en/terms-and-conditions/us-terms-and-conditions/>

11. Assignment. Customer may not assign any of its obligations, rights, or remedies under these Terms, including any assignment to a successor in a merger or sale or transfer of all or substantially all assets or stock or other ownership of Customer without the prior written consent of Optos, and any attempt at such assignments shall be null and void. Customer agrees that if Optos sells, assigns, or transfers this Agreement and/or the Equipment, the new owner will have the same rights and benefits that Optos now has and will not have to perform any Optos obligations unless the new owner assumes such obligations in writing. Customer agrees that the right of the new owner will not be subject to any claims, defenses, or setoffs that Customer may have against Optos. If Customer wishes to sell or transfer ownership of the software and documentation and to assign its rights to any remaining warranty and support periods ant to use the Optos Trademarks, Optos will enter into good faith discussions with Customer to consent to such sale and assignment, provided that the third party agrees in writing to be bound by

these Terms and all amounts owed to Optos by the Customer have been paid in full and cleared funds.

12. Discount Safe Harbor Compliance. The Parties intend that all discounts, rebates, or other price reductions provided under this Agreement comply with the federal discount safe harbor set forth at 42 C.F.R. § 1001.952(h) and/or the statutory discount exception at 42 U.S.C. § 1320a-7b(b)(3)(A) (the "Discount Safe Harbor"). If Customer is required to report its costs on a cost report or other claim for reimbursement to a federal healthcare program, then: A) Any discount or price reduction offered under this Agreement must be based on purchases of the same good or service made during a single fiscal year, B) Customer shall fully and accurately report the net cost (i.e., price after discount) of the goods or services on any such cost report or claim, in accordance with applicable laws and program instructions, and C) Customer shall claim the benefit of the discount in the fiscal year in which the discount is earned or in the immediately following year. Customer represents and warrants that it has independently determined that the products or services purchased under this Agreement are clinically appropriate and in the best interests of its patients, and that no discounts provided hereunder are conditioned on the purchase, order, or recommendation of any item or service reimbursable under a federal healthcare program.

13. Entire Agreement, Non-Waiver, and Severability. These Terms and the Product Purchase Order (and the on-line documents referred to herein) contain the entire agreement of the parties with respect to the transactions contemplated herein and supersede all prior and contemporaneous agreements, representations, and understandings, whether written or oral. No modification or waiver of any provision hereof is effective unless in writing and signed by each party. The failure or delay of a party to exercise any right or remedy provided for herein shall not be deemed a waiver of the right or remedy or of any other rights or remedies available hereunder. If any provision or portion of these Terms are held to be unenforceable or invalid, the remaining provisions and portions thereof shall nevertheless be given full force and effect and the parties agree to negotiate, in good faith, a substitute valid provision which most nearly effects the parties' intent. Without limiting the foregoing, it is expressly understood and agreed that each provision of these terms which provide for a limitation of liability, disclaimer of warranty or exclusion of damage is intended by the parties to be survivable and independent of any other provisions.

14. Governing Law. These Terms shall be governed by and construed in accordance with the laws of the State of Delaware without regard to its provisions regarding conflict of laws.

15. No Agency. Nothing contained herein shall be deemed to create any association, partnership, joint venture, or relationship of principal, agent, master, or servant between the Optos and Customer, or to provide Optos or Customer with the right, power, or authority to incur any obligation or make any representations, warranties, or guarantees on behalf of any other party hereto. No person who is not a party to this Contract shall have any rights under or in connection with it

16. Notices. All notices hereunder shall be in writing and shall be deemed to have been given when delivered in hand, when sent by registered or certified mail, return receipt requested, or when sent by commercial overnight courier (such as Federal Express), to the address stated in the Product Order Form. Either party may designate a different address by giving notice in the manner herein provided.

17. Global Anti-Corruption Policy. Optos strictly prohibits engaging in or tolerating bribery or any other form of corruption. Optos has adopted a policy which prohibits bribery in any form and mandates strict compliance with applicable anti-bribery laws and regulations in all countries and jurisdictions in which it conducts business. Optos expects that all employees, business partners, distributors, agents, and/or consultants to comply with all applicable laws in connection with and/or carrying out Optos' business and in doing so (i) comply at all times with the anti-bribery laws and applicable requirements of the Optos policy in connection with Optos' business; and (ii) require that all sub-partners, such as a sub-distributor, sub-agent and/or sub-consultant or other representative or similar third-party are made aware of and comply with the Optos policy. Customer provides its confirmation upon entering into this Agreement that it, at all times, prohibits bribery in any form and mandates strict compliance with applicable anti-bribery laws and regulations in all countries and jurisdictions in which it conducts business and in doing so that it strictly prohibits engaging in or knowingly tolerating bribery or any other form of corruption. Customer shall not induce or otherwise bribe, including but not limited to the provision of facilitation payments, any third party in its conduct of business on behalf of Optos.

18. Business Associate Agreement. Optos and Customer agree to be bound by the terms of the Business Associate Agreement set forth at <https://www.optos.com/en/terms-and-conditions/us-terms-and-conditions/>

19. Rental Terms. If Customer is renting the Products, as set forth in the Product Order Form, the terms and conditions set forth on Exhibit A, "Rental Terms" shall apply between the parties.

20. Cloud Computing Terms. If Customer is utilizing Optos Cloud Services, as set forth in the Product Order Form, the terms and conditions set forth on Exhibit B, "Cloud Computing Terms" shall apply between the parties.