



## SALES QUOTE TERMS AND CONDITIONS

The following terms and conditions govern Optiv's sale of the Products (defined below) set forth on a sales quote or offer ("Sales Quote"). These terms and conditions are binding upon the party identified in the Sales Quote ("Client") and OPTIV SECURITY INC. or the applicable affiliate identified on the Sales Quote ("OPTIV").

### 1. PRODUCTS

(a) **Orders.** To purchase Products from OPTIV, Client shall issue a purchase order or similar order to OPTIV ("Purchase Order"). All Purchase Orders are binding and irrevocable once issued by Client. Client is solely responsible for the accuracy of any Purchase Orders issued by Client. OPTIV may accept or reject any Purchase Order in its sole discretion. If Client does not use Purchase Orders for procurement, the parties may agree to include a signature block on a Sales Quote. If Client signs the signature block, the signed Sales Quote will be deemed a binding and irrevocable Purchase Order. "Product(s)" means all hardware, appliances, equipment, software, support, maintenance, services, and other products which are (i) manufactured, licensed, or provided by Vendors, and (ii) resold by OPTIV to Client. "Vendor(s)" means third party manufacturers, vendors, licensors, or providers of hardware, appliances, equipment, software, support, maintenance, services, and other products.

(b) **Invoices and Payment.** OPTIV will invoice Client for the Products upon shipment of the Products. All invoices are due in accordance with the payment terms specified on the Sales Quote. Unless otherwise provided, OPTIV's invoices are due and payable by Client in full within thirty (30) days from the invoice date. Undisputed invoices not paid by the due date will bear interest from the due date until paid at a rate of one and one-half percent (1.5%) per month or the maximum rate permitted by law, whichever is less. Client shall also be responsible for all costs incurred by OPTIV in connection with collecting past due undisputed invoices.

(c) **Shipping Fees.** Client is responsible for all shipping, handling, and insurance fees for the Products.

(d) **Taxes and Fees.** Client is responsible for the payment of any sales, use, excise, value added, services, consumption, or other tax as well as all fees, duties, tariffs, customs fees, withholdings, and charges imposed by reason of the shipment, delivery, sale, and/or use of the Products (excluding any OPTIV income taxes) unless Client provides OPTIV with a valid and applicable exemption certificate or resale certificate. OPTIV shall itemize sales or use taxes separately on its invoices.

(e) **Warranties and Terms.** OPTIV warrants that it has full right, power, and authority to sell the Products to Client, and that the Products are free and clear of all liens and similar encumbrances of any kind. Client acknowledges that: (i) it has made the selection of the Products based on its own judgment and expressly disclaims any reliance upon statements made by OPTIV, (ii) OPTIV is an authorized reseller of the Products, (iii) Client's use of the Products is subject to the applicable Vendor's end user license agreement, service level agreement, terms of use or service, or other end user agreements or documents, and (iv) the only representations, warranties, indemnities, and other terms relating to the Products are those offered by the applicable Vendor, and OPTIV has no responsibility in connection therewith, (v) Client expressly acknowledges OPTIV provide no indemnity against infringement of any patent, copyright, trademark, or other intellectual property rights with respect to the Products, and (vi) Client assumes all responsibility for ensuring that the Products are used in accordance with all applicable laws and regulations. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT ALL EXPRESS AND IMPLIED WARRANTIES ARE HEREBY DISCLAIMED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, AND OF ANY OTHER OBLIGATION ON THE PART OF OPTIV, WITH RESPECT TO THE PRODUCTS.

(f) **Import/Export.** Client acknowledges that the Products may be subject to Export Control Laws (defined below). Client hereby agrees not to export, re-export, or otherwise distribute Products in violation of any Export Control Laws and to comply with applicable Export Control Laws. Client warrants that it will not purchase, export, or re-export any Products with knowledge they will be used in the design, development, production, or use of chemical, biological, nuclear, or ballistic weapons, or in a facility engaged in such activities, unless permitted by applicable laws. Client further warrants it will not export or re-export, directly or indirectly, any Products to embargoed countries or transfer or sell Products to companies or individuals listed on the Denied Persons List published by the United States Department of Commerce. "Export Control Law(s)" means all applicable export laws and regulations, including, without limitation, the Arms Export Control Act (22 U.S.C. § 2751-2794), the International Traffic in Arms Regulations (ITAR) (22 U.S.C. § 120 et seq), and the Export Administration Regulations (15 C.F.R. § 730-774), including the requirement for obtaining any export license or agreement, if applicable.

(g) **Risk of Loss and Title.** Title to the Products shall vest in Client upon delivery to the carrier for shipment (FOB shipping point). OPTIV will ship and deliver the Products to the Client's specified place of delivery using a carrier selected by OPTIV; provided, however, that Client shall be responsible for clearing any necessary customs with respect to the Products. Client shall bear the risk of loss, damage, and destruction from every cause once the Products have been delivered to the carrier. Client shall unload and inspect the Products upon delivery, and Client shall be responsible for notifying OPTIV of any defect or damage to the Products or of any claim arising hereunder within five (5) days of the delivery of the Products. Client's failure to advise OPTIV of such defect, damage, or claim within the specified time period will release OPTIV and the carrier from any liability for damages related thereto.

### 2. MISCELLANEOUS

(a) **Limitation of Liability.** In no event will OPTIV, its affiliates, or any of their respective officers, directors, employees, or agents, be liable to Client, its affiliates, or its vendors, or any of their respective officers, directors, employees, or agents, whether in contract or in tort or under any other legal theory (including, without limitation, strict liability and negligence), for lost profits or revenues, for loss of use or loss or corruption of data, for equipment or systems outages or downtime, or for any indirect, special, exemplary, punitive, multiple, incidental, consequential, or similar damages, arising out of or in connection with the Products, these terms and conditions, or otherwise, even if advised of the possibility of such damages. In no event will OPTIV's, its affiliates', or any of their respective officers', directors', employees', or agents' aggregate liability for all claims arising out of or in connection with the Products, these terms and conditions, and otherwise exceed the amount of fees actually paid by Client for the applicable Product which is the subject of the claim during the twelve (12) months preceding the date of the claim. No action regarding the Products (other than with respect to payments hereunder) may be brought more than one (1) year after the first to occur of either (i) the delivery of the Products, or (ii) the claimant party's knowledge of the event giving rise to such cause of action.

(b) **Sales Quote Confidential.** This Sales Quote is the confidential, exclusive property of OPTIV and is made available for use by Client and its immediate employees only.

(c) **Assignment.** Neither party shall be permitted to assign these terms and conditions or any of its rights and obligations pursuant to these terms and conditions, in whole or in part, without the prior written consent of the other party. Notwithstanding the foregoing, either party may assign these terms and conditions without consent (i) to any parent, subsidiary, or other affiliate in connection with a merger involving it or any of its affiliates, or (ii) in connection with an acquisition of all or substantially all of a party's or its affiliates' assets or equity interests. In addition, OPTIV may assign or delegate any of its rights or obligations under these terms and conditions, in whole or in part, to any of its affiliates without consent. Any other assignment without the other parties' consent is void.

(d) **Dispute Resolution.** In the event of any dispute arising out of or relating to the Products and/or these terms and conditions, the parties shall attempt to resolve the dispute first through good faith negotiations between the parties' senior executives. If the matter is not resolved by the parties' senior executives within thirty (30) days after the commencement of such negotiations, the parties shall attempt to resolve the dispute by mediation with a neutral third-party mediator acceptable to both parties. Mediation expenses shall be shared equally by the parties. Nothing in this Section shall be construed as prohibiting a party from applying to a court for interim injunctive relief or from immediately initiating a lawsuit with respect to any uncontested, unpaid fees due under this Agreement.

(e) **Force Majeure.** Neither party shall be liable for delays, failure to meet their obligations, or damages due to events, circumstances, or causes beyond that party's reasonable control, including without limitation war, terrorism, riots, acts of God, floods, fire, earthquakes, third party hacking attempts or attacks, viruses, malware, and similar software programs, and denial of service attacks. The nonperforming party must promptly notify the other party of such event, circumstance, or cause and



takes all reasonable steps to recommence performance promptly. Notwithstanding the foregoing, no such events, circumstances, or causes shall excuse Client's obligation to pay undisputed amounts when due hereunder.

**(f) Governing Law and Venue.** The Sales Quotes and these terms and conditions will be governed by, and construed and enforced in accordance with, the laws of the State of Colorado, excluding conflicts of law principles. Exclusive jurisdiction for any lawsuit or claim in connection with this the Sales Quotes and these terms and conditions shall be in the state or federal courts of the State of Colorado.

**(g) No Joint and Several Liability.** Only the entity that issues a Sales Quote or accepts a Purchase Order will be liable with respect to such Sales Quote and Purchase Order. There shall be no joint and several liability with respect to OPTIV affiliates.

**(h) Notices.** Any notice permitted or required under this Agreement shall be deemed to have been given if it is in writing and (i) personally served or delivered, (ii) mailed by registered or certified mail (return receipt requested), or (iii) delivered by a national overnight courier service with confirmed receipt, to the parties at the addresses set forth in the Quote.

**(i) Entire Agreement.** These terms and conditions contain the entire understanding between the parties with respect to the subject matter hereof and may not be changed except by a separate writing signed by all the parties. Purchase Orders, acknowledgment forms, or similar routine documents may be used by the parties from time to time. The parties agree that any provisions of such routine documents, which purport to add to or change, or which conflict with the provisions of these terms and conditions shall be deemed deleted and have no force or effect.