



Optro Purchase Order Terms and Conditions

These Optro Purchase Order Terms and Conditions ("**Terms and Conditions**") are made between the entity as listed on the Purchase Order ("**Vendor**") and Optro, Inc. ("**Company**") for the provisions of the Goods and/or Services as specified in the Purchase Order.

1. **GOODS/SERVICES.** Vendor agrees to perform the services ("**Services**") and/or provide the goods ("**Goods**") described in this Purchase Order in accordance with these Terms and Conditions. Upon acceptance of a purchase order, shipment of Goods or commencement of Services, Vendor shall be bound by the provisions of this Purchase Order whether Vendor acknowledges it in writing or otherwise signs this Purchase Order. This order is limited to the terms and conditions on the front and back hereof. Any additional, different or supplementary terms in Vendor's form are objected to and rejected by Optro. Optro's signature on any invoice or other form or document accompanying delivery of the goods furnished in performance of this order shall constitute acknowledgement of receipt of said Goods only and shall not constitute Optro's consent to any terms and conditions contained thereon. Optro hereby reserves the right to cancel the Purchase Order at any time prior to shipment of Goods or prior to commencement of any Services. Optro shall not be subject to any charges or other fees as a result of such cancellation. Optro reserves the right to terminate these Terms and Conditions upon ten (10) days' written notice, provided that Optro will pay Vendor for all Goods and Services that were accepted by Optro prior to the date of termination.

2. **DELIVERY.** Time is of the essence and Optro reserves the right to cancel the Purchase Order or any portion thereof in the event shipments are not made within the specified time, without liability. Delivery of Goods shall conform to the schedule, via the carrier and to the place specified on the face of the applicable purchase order. All boxes and packages must contain packing sheets listing contents. Vendor is responsible for clearing Goods through customs as well as any charges associated with importing or exporting Goods during the delivery and if applicable, the return process. The delivery of the Goods will be deemed accepted by Optro if Optro does not report an issue with the Goods to Vendor within ten (10) business days' of delivery. Notwithstanding any term to the contrary, Optro can still make any warranty claims for defective Goods pursuant to Section 6 of these Terms and Conditions.

3. **RISK OF LOSS.** Vendor assumes all risk of loss until acceptance of Goods by Optro. Title to Goods shall pass to Optro upon receipt by Optro of Goods at the designated destination. If Goods ordered are destroyed prior to title passing to Optro, Optro may at its option cancel the Purchase Order or require delivery of substitute Goods of equal quantity and quality. Such delivery will be made as soon as reasonably possible by Vendor. If loss of Goods is partial, Optro shall have the right to require delivery of Goods by Vendor to replace the destroyed Goods as soon as reasonably possible. With respect to the destroyed Goods, Vendor will be responsible for all charges associated with returning such Goods to the Vendor. In the event Optro rejects or returns some or all of the Goods, then Vendor shall be responsible for all charges associated with such rejection or return, including but not limited to refunding amounts Optro paid for such Goods, removal of such Goods from Optro's premises, as well as paying for any packing, shipping and delivery charges associated sending the Goods back to Vendor.

4. **PAYMENT.** As full consideration for the Deliverables and the assignment of rights to Optro as provided herein, Optro shall pay Vendor the lesser of (i) the amount agreed upon and specified in the Purchase Order, or (ii) Vendor's quoted price on date of shipment (for Goods), or the date services were started (for Services). Prices specified shall include all shipping, packaging, handling, transportation charges and applicable taxes, and no additional charges or taxes will be charged as a result of failure by Vendor to have included any applicable tax or shipping, packaging, handling, or transportation charge or as a result of any change in Vendor's tax liabilities. All personal property taxes assessable upon the Goods prior to receipt by Optro of Goods conforming to the purchase order shall be borne by Vendor. Vendor shall invoice Optro for all Goods delivered and accepted by Optro and all Services actually performed and accepted by Optro. Optro reserves the right to withhold payment on any delivery in settlement of outstanding claims or on any shipments not made to Optro's satisfaction. Optro also reserves the right to return or not pay any incorrect invoices. Vendor will work with Optro's purchasing department in obtaining a valid Optro purchase order ("Optro PO") prior to issuing any invoice. Vendor acknowledges and accepts that Optro will not process nor accept any invoice submitted by Vendor unless such invoice conspicuously displays a valid Optro PO Number. Vendor agrees to either enter the invoices into Optro's electronic procurement system ("eProcurement System") electronically, after registering with eProcurement System, or send hard copy invoices to Optro's corporate accounts payable department for processing according to the email address listed on the applicable Optro PO. Vendor acknowledges and accepts



that invoices submitted to Optro must match the pricing and unit specified in the applicable Optro PO. Any variance or deviation from Optro PO must be approved by Optro in writing.

5. INSURANCE. Vendor shall be responsible for insuring any Goods sent to Optro. Vendor will maintain at its expense insurance in types and amounts sufficient to cover Vendor's obligations under this Agreement, including, without limitation: (i) workers' compensation insurance and employer's liability insurance meeting federal and state minimum requirements; and (ii) Comprehensive General Liability coverage and Umbrella and/or Excess Liability coverage with a minimum total limit of \$2,000,000 combined single limit for property loss or damage and bodily injury; and (iii) Professional liability insurance with a minimum total limit of \$2,000,000; and (iv) a Fidelity Bond with a minimum total limit of \$2,000,000; (v) cyber liability insurance with a minimum total limit of \$2,000,000; and (vi) network and information security liability insurance with a minimum limit of at least \$5,000,000. Vendor's worker's compensation insurance, employer's liability, Comprehensive General Liability, and Excess Liability insurance shall be primary, shall waive subrogation against Optro, and name Optro as additional insured on its Comprehensive General Liability and Umbrella and/or Excess Liability coverage. Vendor shall provide Optro with a joint loss payable endorsement with respect to the Fidelity Bond. Upon Optro's request, Vendor shall provide Optro with certificates of insurance evidencing all of the above-required insurance coverage. In no event shall the minimum insurance coverages listed herein constitute a cap on Vendor's liability.

6. WARRANTIES. Services shall be completed in a professional, workmanlike manner, with the degree of skill and care that is required by acceptable industry standards. Further, Vendor represents and warrants that the Services shall be completed in accordance with applicable specifications as required for the purposes contemplated in this Purchase Order. Vendor further represents and warrants that: (a) while at Optro's facilities, Vendor shall observe and comply with Optro's work and safety rules and workplace policies and standards; (b) Vendor shall only assign to Optro qualified personnel reasonably screened by Vendor; (c) all materials developed, collected and compiled by Vendor, its employees or contractors pursuant to these Terms and Conditions, including, but not limited to, tracking and analysis, process flow, specifications, reports, and other tangible items, (collectively, "Materials") are considered to be "works made for hire" as defined in the United States Copyright Act and are the sole and exclusive property of Optro, free from any claim or retention of rights thereto on the part of Vendor, its employees or contractors; (d) any information Vendor or Vendor's employees or agents become aware of during the performance of Services for Optro will be treated as confidential information ("Confidential Information"). Vendor warrants that Vendor shall not, at any time, whether during the term of this Agreement or any engagement by Optro of Vendor's Services or thereafter, directly or indirectly, disclose, furnish or make accessible to any person, firm, corporation, or other entity, or make use of, any Confidential Information other than for the purpose of providing Services to Optro; (e) Vendor shall conduct a background screen on employees or agents prior to their performance of Services at Optro's premises consisting of: (i) a Social security number (SSN) verification; (ii) a Criminal history check including seven (7) years for felonies and misdemeanors in all counties where the personnel resides; (iii) an employment verification for last 7 years; and (iv) an education verification consisting of any degree above high school.

6.1 Goods: Vendor expressly warrants that all Goods delivered hereunder will conform to applicable specifications, that they will be free from defects in material and workmanship, and that they will be fit for their intended use. Vendor further warrants the Goods will be brand new, free of all liens and encumbrances, and in the event the Goods are defective within two (2) years of delivery, then Vendor shall repair with new replacement parts or replace with new Goods any such Goods that were defective. The foregoing warranty two (2) year warranty will continue to apply to any replacement or repaired Goods. Vendor also warrants that the Goods are labeled, packaged and tagged in compliance with all applicable local, state and federal rules, regulations and laws.

6.2 All of said warranties shall inure to the benefit of Optro, its affiliates, successors, assigns and customers, shall be construed as conditions as well as warranties, and shall not be exclusive. Vendor shall promptly reimburse Optro for any and all damages, cost or expense, including transportation charges, sustained or incurred by Optro as a result of Vendor's breach of warranty.

7. REMEDIES. If Vendor breaches this Purchase Order, Optro shall have all remedies available by law and at equity. For the purchase of Goods, Vendor's sole remedy in the event of breach of this Purchase Order by Optro shall be the right to recover damages in the amount equal to the difference between market price of the Goods at the time of breach and the purchase price specified in this Purchase Order.

8. EXCUSABLE DELAY. Optro shall not be liable for any failure to (i) accept performance of Services or, (ii) take delivery of the Goods as provided if such failure is caused by circumstances beyond its control which make such



performance commercially impractical including, but not limited to, acts of God, fire, flood, acts of war, government action, civil insurrection, accident, third party strikes, third party labor difficulties or shortage, inability to obtain materials, equipment, or transportation. In the event Optro is so excused from taking delivery, either party may terminate the Purchase Order and Optro shall at its expense and risk, return any Goods received to the place of shipment.

9. CONFIDENTIALITY. Vendor shall safeguard and keep confidential any and all information relating to Optro obtained by it or provided to it by Optro in connection with these Terms and Conditions and shall use such information only for the purposes of carrying out its obligations under these Terms and Conditions.

10. INDEMNITIES. Vendor shall indemnify, defend, and hold harmless Optro, its affiliates, and their respective officers, directors, employees, consultants, and agents (the "Optro Indemnified Parties") from and against any claims, fines, losses, actions, damages, expenses, legal fees, and all other liabilities brought against or incurred by the Optro Indemnified Parties or any of them arising out of: (a) death, bodily injury, or loss or damage to real or tangible personal property resulting from the use of or any actual or alleged defect in the Goods or Services, or from the failure of the Goods or Services to comply with the warranties hereunder; (b) any claim that the Goods or Services infringe or violate the Intellectual Property Rights or other rights of any third party; (c) any intentional wrongful or negligence act or omission of Vendor or any of its affiliates or subcontractors; (d) Vendor's breach of any of its obligations under these Terms and Conditions; or (e) any liens or encumbrances relating to any Goods or Services.

11. LIMITATION OF LIABILITY. IN NO EVENT SHALL OPTRO BE LIABLE TO Vendor OR ANY THIRD PARTY FOR ANY INCIDENTAL, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF, OR IN CONNECTION WITH, THIS PURCHASE ORDER, WHETHER OR NOT OPTRO WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

12. ASSIGNMENT. Vendor may not assign this Purchase Order or any monies due or to become due or any of its rights or obligations under this Purchase Order, without the prior written consent of Optro.

13. GOVERNING LAW. This Purchase Order shall be governed by the laws of California without regard to its choice of law provisions.

14. COMPLIANCE WITH LAWS.

14.1 General: Vendor agrees to assume full responsibility that the Goods and/or Services fully comply with all applicable laws including, but not limited to, all applicable employment, tax, export control, environmental, and health and safety laws.

14.2 Hazardous Materials: If Goods include hazardous materials, Vendor represents and warrants that the Goods are in compliance with all applicable laws regarding the manufacture, handling, and use and transportation of such hazardous materials.

14.3 Customs: Upon Optro's request, Vendor will promptly provide Optro with a statement of origin for all Goods and United States Customs documentation for Goods wholly or partially manufactured outside of the United States.

14.4 EEO. The parties agree to comply with all applicable equal employment opportunity laws, including Title VII of the 1964 Civil Rights Act, the Civil Rights Act of 1991, the Americans with Disabilities Act, and, if applicable, the affirmative action requirements of the Executive Order 11246, the Rehabilitation Act of 1973, as amended, and the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended.

14.5 Waiver. No waiver of any provision of this Agreement shall be enforceable against that party unless it is in writing and signed by that party.

14.6 Independent Contractors. Vendor will perform its obligations under these Terms and Conditions as an independent contractor and in no way will Vendor or its employees be considered employees, agents, partners, fiduciaries, or joint venturers of Optro. Vendor and its employees will have no authority to represent Optro or its affiliates in any way, and neither Vendor nor its employees will hold themselves out as having authority to act for Optro or its affiliates.

15. PUBLICITY. Vendor may not (i) use Optro's (or its affiliated companies) names, logos, service marks or trademarks or (ii) reveal the existence or terms of this Agreement, in any way or manner or under any circumstance



whatsoever including without limitation in any advertising, promotion, publicity release, website posting, case-study, press release, sales representation, or in any other manner for any purpose whatsoever without the prior written consent of a senior executive of Optro.

16. OVERTIME. Vendor's employees or agents providing Services will not work more than (8) hours per day or forty (40) hours a week without Optro's express written permission.

17. ENTIRE AGREEMENT. These Terms and Conditions contained or referenced on the Purchase Order, constitute the entire understanding with respect to the subject matter hereof and supersede all prior agreements or understandings, either oral or written, provided that no signed and negotiated agreement exists between the parties. In such an event, the terms of the signed and negotiated agreement shall control. These Terms and Conditions may only be amended by a written agreement between the parties.