



## Standard Purchase Terms & Conditions

**1. Purpose.** The provisions contained in these Standard Terms and Conditions (the “Standard Provisions”) set forth the terms and conditions that apply to (a) all sales of equipment (“Equipment”) by OSI Hardware, Inc., a California corporation (“OSI”), to its customer (“Customer”) and (b) all Equipment Service Agreements between OSI and its Customer (“Service Agreements”). These Standard Provisions supplement the terms of any written quotes provided by OSI to Customer and the terms of any purchase orders provided by Customer to OSI. These Standard Provisions, together with any quotes and purchase orders, are collectively referred to herein as the “Contract Documents.” In the event of any inconsistencies between these Standard Provisions and the terms of any written quote provided by OSI, the terms of the written quote shall apply and be controlling. In the event of any inconsistencies between these Standard Provisions and the terms of any purchase order provided by Customer to OSI, the terms of these Standard Provisions shall apply and be controlling.

**2. Late Fees.** If Customer fails to make any payment to OSI when due, OSI shall be entitled to (i) a late fee equal to five percent (5%) of the amount payable, and (ii) interest at the rate of the lesser of one and one half percent (1.5%) per month or the maximum rate allowed by law, in addition to any other costs associated with the collection thereof.

**3. Returns.** Any Equipment purchased from OSI may be returned for a full refund within thirty (30) days from the date of delivery, subject to a twenty percent (20%) restocking fee. Notwithstanding the foregoing, returns shall not be permitted for software, Equipment replaced under warranty, new Equipment, special orders, or Equipment purchased by a wholesale customer for the purpose of resale. Equipment which is not received by OSI within thirty (30) days after the date of the original delivery to Customer shall not be eligible for a refund. All Equipment returns, including returns of Equipment replaced by OSI under a Service Agreement shall be made in accordance with the Equipment Return Procedures set forth below.

**4. Warranty.** OSI warrants that the Equipment shall be free from defects in materials and workmanship, excluding normal wear and tear, as more particularly set forth and subject to the limitations herein. For retail end users of Equipment, the warranty shall remain in effect for the lifetime of the Equipment pursuant to the Advance Replacement Warranty and Lifetime Replacement Warranty provisions set forth below. For wholesale Customers purchasing Equipment for the purpose of resale, the warranty shall remain in effect for a period of ninety (90) days pursuant to the Wholesale Warranty provisions set forth below.

**a. Advance Replacement Warranty.** For a period of one (1) year from the date of delivery to Customer, OSI agrees to provide advance replacements for any defective items of Equipment. OSI shall, within twenty-four (24) hours of being notified by Customer of a suspected Equipment defect, use its commercially reasonable best efforts to (i) attempt to resolve the problems through troubleshooting, and (ii) for any Equipment determined, in OSI’s sole discretion, to be defective, ship suitable replacement Equipment to Customer via expedited delivery service.

**b. Lifetime Replacement Warranty.** After one (1) year from the date of delivery to Customer, OSI agrees to repair or replace any defective items of Equipment. OSI shall, within seven (7) business days of receipt of the returned Equipment, use its commercially reasonable best efforts to (i) determine, in OSI’s sole discretion, whether the Equipment is defective, (ii) make required repairs, where repairs are feasible, and (iii) ship the repaired Equipment or a suitable replacement to Customer via standard delivery service.

**c. Wholesale Warranty.** For a period of ninety (90) days from the date of delivery to a wholesale Customer purchasing Equipment for the purpose of resale, OSI agrees to repair or replace any defective items of Equipment. OSI shall, within seven (7) business days of receipt of the returned Equipment, use its commercially reasonable best efforts to (i) determine, in OSI’s sole discretion, whether the Equipment is



defective, (ii) make required repairs, where repairs are feasible, and (iii) ship the repaired Equipment or a suitable replacement to Customer via standard delivery service.

**d. Shipping.** Shipments by OSI will be sent by UPS, FedEx or other provider of OSI's choice with shipping costs to be paid by OSI. For international deliveries, shipments will be sent delivery duty unpaid (DDU), with freight prepaid by OSI, excluding import duties, taxes and fees, where applicable.

**e. Limitations on Warranties.** The following limitations and requirements apply to this Section 4:

**i.** Technical support by OSI shall be limited to determining whether an Equipment defect exists.

**ii.** The warranty hereunder does not apply to any Equipment failure resulting from misuse, abuse, neglect or mishandling, failure to use the Equipment with due care and in accordance with all recommendations of OSI and the manufacturer, damage from accident or casualty, including fire, flood or natural disaster, improper installation, configuration, maintenance, operation, modifications or adjustments, incorrect environment, or electrical issues such as lightning, power surges, incorrect electrical voltages or other electrical stress.

**iii.** The warranty hereunder does not apply in the event Equipment fails to perform properly or becomes incompatible due to software or code changes.

**iv.** OSI shall have no obligation to replace Equipment nor to compensate or reimburse Customer for licenses, upgrades or software installed by Customer on Equipment which is subsequently returned to OSI.

**v.** If OSI is unable to repair any item of defective Equipment covered by warranty or replace the Equipment with the same product, OSI may satisfy its warranty obligations by providing replacement Equipment which offers a comparable level of functionality.

**vi.** If, despite its commercially reasonable good faith efforts, OSI is unable to repair any item of defective Equipment covered by warranty or replace the Equipment with the same product or with Equipment offering a comparable level of functionality, OSI shall refund the original purchase price, in which event OSI shall have no further liability to Customer hereunder.

**vii.** OSI shall have no liability to Customer if, despite its commercially reasonable good faith efforts, OSI is unable to make shipments within the times specified under Section 4.a, 4.b or 4.c above.

**viii.** The warranty hereunder applies only to the original purchaser of the Equipment from OSI. The warranty shall terminate if the Equipment is sold or otherwise transferred to another party.

**5. Return Procedures.** The following procedures apply to all Customer returns of (i) non-defective Equipment within thirty (30) days of delivery ("Non-Warranty Returns"), (ii) defective Equipment within one (1) year from the date of delivery ("Advance Replacement Returns"), (iii) defective Equipment after one (1) year from the date of delivery ("Lifetime Warranty Returns"), (iv) defective Equipment within ninety (90) days from the date of delivery where the Equipment was purchased by a wholesale Customer for the purpose of resale ("Wholesale Warranty Returns"), and (v) Equipment that is subject to a Service Agreement that cannot be repaired with the assistance of OSI's technical support personnel and requires replacement ("Service Agreement Returns").

**a. Procedures Applicable to all Returns.**



i. Prior to returning any Equipment, Customer must contact its OSI account representative. OSI will attempt to troubleshoot and resolve any problems reported by Customer. If the problems cannot be resolved, OSI will issue a return merchandise authorization (“RMA”) number.

ii. Customer will be responsible for repackaging the Equipment in a manner which fully protects it from damage during shipping and arranging for shipping to the location designated by OSI.

iii. Customer must include the RMA number on the shipping label.

iv. All Equipment must be returned in the same condition in which it was originally delivered, reasonable wear and tear excluded.

v. All returned Equipment becomes the property of OSI.

**b. Non-Warranty Returns.**

i. All Non-Warranty Returns must be received by OSI within thirty (30) days of the date of the original delivery to Customer.

ii. Shipping costs for Non-Warranty Returns will be paid by Customer.

**c. Advance Replacement Returns.**

iii. Upon the issuance of a RMA number for an Advance Replacement Return, OSI will send Customer a label for shipping by UPS, FedEx or other provider of OSI’s choice.

iv. All Advance Replacement Returns must be received by OSI within fourteen (14) days of the date that the replacement Equipment is delivered to Customer.

v. If an Advance Replacement Return is not received by OSI within fourteen (14) days of the date that the replacement Equipment is delivered to Customer, Customer will be charged the full purchase price for both the original Equipment and the replacement Equipment.

vi. Shipping costs for Advance Replacement Returns will be paid by OSI.

**d. Lifetime and Wholesale Warranty Returns.**

i. Upon the issuance of a RMA number for a Lifetime Warranty Return or a Wholesale Warranty Return, OSI will send Customer a label for shipping by UPS, FedEx or other provider of OSI’s choice.

ii. All Lifetime and Wholesale Warranty Returns must be received by OSI within fourteen (14) days of the date that the RMA number is issued by OSI.

iii. If a Lifetime or Wholesale Warranty Return is not received by OSI within fourteen (14) days of the date that the RMA number is issued by OSI, Customer shall not be entitled to return the Equipment for replacement under warranty unless Customer first obtains a new RMA number from OSI.

iv. Shipping costs for Lifetime and Wholesale Warranty Returns will be paid by OSI.

**e. Service Agreement Returns.**



i. Upon the issuance of a RMA number for a Service Agreement Return, OSI will send Customer a label for shipping by UPS, FedEx or other provider of OSI's choice.

ii. Replaced Equipment must be received by OSI within fourteen (14) days of the date that the replacement Equipment is delivered to Customer.

iii. If the replaced Equipment is not received by OSI within fourteen (14) days of the date that the replacement Equipment is delivered to Customer, Customer will be charged the full purchase price for the replacement Equipment. If such purchase price is not paid and OSI terminates the Service Agreement an account of such non-payment, the purchase price may be applied against the fees paid to OSI by Customer.

iv. Shipping costs for Service Agreement Returns will be paid by OSI.

**6. Licensing.** Customer acknowledges and agrees that (i) software installed on used Equipment does not come with a manufacturer's license, and (ii) it shall be Customer's responsibility to contact the manufacturer to determine the licensing requirements applicable to any used Equipment purchased from OSI.

## **7. Equipment Service Agreements.**

a. **Services Provided by OSI.** For any Equipment covered by a Service Agreement, OSI will provide technical support services at the agreed service level (i.e., 8x5xNBD Service or 24x7xNBD Service) and, when required, replacement of Equipment, as more particularly described herein. All additions or deletions of Equipment covered by a Service Agreement are subject to OSI's approval, and require at least thirty (30) days prior written notice.

i. **Technical Support.** For covered Equipment, OSI's technical support personnel will assist Customer by telephone or email in diagnosing Equipment failures and in making repairs and replacing failed parts.

ii. **Equipment Replacement.** If the Equipment cannot be repaired with the assistance of OSI's technical support personnel, OSI will ship the necessary replacement parts to Customer at no cost, with shipping charges prepaid. Replacement parts are provided on an exchange basis only, and replaced Equipment become the property of OSI. OSI shall only stock replacement parts in accordance with the original standard configurations for each item of Equipment, unless otherwise specified.

b. **Equipment Service Limitations.** Services provided by OSI pursuant to a Service Agreement shall be subject to the following limitations:

i. Technical support services and Equipment replacements due to the following causes are subject to additional charges, unless otherwise agreed to by OSI in writing: (a) negligence of Customer or of any third party; (b) Equipment misuse, neglect, mishandling or abuse, including failure to install, operate, configure, and maintain the Equipment in accordance with the specifications of the original equipment manufacturer ("OEM"); (c) movement, transportation, or reconfiguration of the Equipment not in accordance with the OEM's specifications; (d) maintenance or repair of the Equipment by any party other than a properly qualified technician; (e) failure or fluctuation of electrical power, or inadequate cooling; or (f) damage ordinarily covered by insurance including damage from accident or casualty, such as fire, flood, or natural disaster.

ii. The obligations of OSI hereunder do not apply in the event Equipment fails to perform properly or becomes incompatible due to software or code changes.



iii. OSI obligations hereunder do not apply to Equipment where new licenses, upgrades or software have been installed after the commencement of the term of the Service Agreement unless the same have been approved by OSI in writing.

iv. OSI shall have no obligation to replace Equipment nor to compensate or reimburse Customer for licenses, upgrades or software installed by Customer on Equipment which is subsequently returned to OSI.

v. OSI is not required to provide replacement Equipment that is identical to the Equipment replaced, but may satisfy its obligations hereunder by providing replacement Equipment which offers a comparable level of functionality.

vi. OSI's technical support personnel provide technical support and guidance in installing publicly available software patches, upgrades and enhancements only. OSI's services do not otherwise extend to addressing software issues, and OSI does not assume the software warranty obligations of any manufacturer or maintain software of any kind pursuant.

vii. OSI's services do not include onsite repairs of Equipment, or the installation of replacement parts or Equipment.

c. **Customer Obligations.** Customer agrees to maintain the site where the Equipment is located in accordance with the OEM's then-current specifications. Customer is responsible for having available personnel trained in appropriate hardware problem diagnosis, Equipment repair, and component exchange and replacement. Customer is also responsible for: (i) safeguarding all programs, data and removable storage media before OSI support services begin; and (ii) providing all software support for the services performed by OSI, including but not limited to reloading programs and data, system recovery, disk initialization and proper application and recovery routines and procedures after the completion of OSI support services. Customer acknowledges that OSI does not assume the costs or risks associated with such activities. Customer is solely responsible for maintaining a right-to-use license and for paying all right-to-use license fees and software media expenses. Customer will be responsible for any software replacements or upgrades required as a result of the replacement of Equipment by OSI.

d. **Condition of Equipment.** Customer agrees, represents and warrants that, to the best of Customer's knowledge after making reasonable inquiries, investigations and tests, as of the commencement of the term of the Service Agreement, the Equipment is in normal operating condition and is free of damage and defects. Customer agrees to allow OSI to conduct an on-site inspection of the Equipment to confirm that it is in normal operating condition, to inventory the configuration and to obtain component serial numbers. Any service necessary to return Equipment to normal operating condition as of the commencement of this Agreement is Customer's responsibility.

e. **Appointment of OSI as Agent.** Customer hereby appoints OSI as its agent for purposes of obtaining warranty and technical assistance on its behalf for the Equipment covered hereunder. The designation of agency specifically does NOT authorize OSI to contractually or financially bind Customer without Customer's prior written consent.

f. **Equipment Replacement.** If the Equipment cannot be repaired with the assistance of OSI's technical support personnel, OSI will ship the necessary replacement parts to Customer, and Customer agrees to return the replaced Equipment to OSI in accordance with the Equipment return procedures set forth in Section 5, above.

g. **Term.** Upon the expiration of the initial term of the Service Agreement, the Service Agreement shall automatically renew for successive terms of one (1) year each unless either party notifies the other in writing



of its intent not to renew, at least thirty (30) days prior to the expiration of the then-current term. OSI may adjust the service fee payable during any renewal term, which fee shall be reflected in the invoice provided by OSI. Either party may terminate the Service Agreement upon thirty (30) days written notice in the event of a material breach hereof by the other party, provided that such breach has not been cured within thirty (30) days after delivery of said notice.

**h. Fees.** Customer agrees to pay OSI the required service fee within thirty (30) days after the date on which the Service Agreement is entered into. Not less than forty-five (45) days prior to the expiration of the initial term and any renewal term of the Service Agreement, OSI will send Customer an invoice for the service fee payable during the renewed term. Customer agrees to pay the service fee stated in the invoice within thirty (30) days after the commencement of the renewal term. Customer is responsible for any applicable taxes on all fees. OSI is not responsible for performance of services hereunder until it has received payment. Any start of performance shall not be deemed receipt of payment, nor shall OSI be obligated to perform any further services until actual receipt of payment. OSI may, in its sole discretion and without advance notice, terminate or suspend services in the event Customer is delinquent in the payment of any amount due to OSI for a period in excess of thirty (30) days from the due date.

**i. Subcontracting.** OSI may subcontract the services to be provided by it pursuant to the Service Agreement, or portions thereof, to third-party service providers. If so subcontracted, OSI shall remain primarily responsible for providing the services.

## **8. Limitations of Remedies/Liability.**

OSI SHALL NOT BE LIABLE FOR ANY EXPENSE OR DAMAGE INCURRED BY CUSTOMER, WHETHER INTERNAL TO CUSTOMER OR PAID BY CUSTOMER TO ANY THIRD PARTY, FROM A FAILURE OF ANY EQUIPMENT TO FUNCTION PROPERLY OR DUE TO ANY MALFUNCTION OF THE EQUIPMENT UPON WHATEVER CAUSE OF ACTION ANY CLAIM IS BASED, EXCEPT WHERE SUCH EXPENSE OR DAMAGE IS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF OSI.

THE CUMULATIVE LIABILITY OF OSI TO CUSTOMER FOR ALL CLAIMS RELATING TO ANY ITEM OF EQUIPMENT PURCHASED BY CUSTOMER FROM OSI (INCLUDING WITHOUT LIMITATION THE WARRANTY PROVIDED HEREIN) SHALL BE LIMITED TO THE TOTAL AMOUNT PAID BY CUSTOMER FOR SUCH EQUIPMENT.

THE CUMULATIVE LIABILITY OF OSI TO CUSTOMER FOR ALL CLAIMS RELATING TO SERVICES PROVIDED BY OSI UNDER A SERVICE AGREEMENT IS LIMITED TO RESTORING THE EQUIPMENT TO GOOD OPERATING CONDITION. IF UNABLE TO SO RESTORE THE EQUIPMENT, OSI MAY, AT ITS OPTION, ELECT TO (A) REPLACE THE EQUIPMENT, OR (B) REFUND THE SERVICE FEE PAID BY CUSTOMER FOR THE THEN CURRENT TERM OF THE SERVICE AGREEMENT (I.E., THE INITIAL TERM STATED OR THE THEN-CURRENT ONE (1) YEAR RENEWAL TERM), WHICH SHALL BE CUSTOMER'S SOLE REMEDY THEREFOR. UNDER NO CIRCUMSTANCES SHALL OSI'S LIABILITY EXCEED THE AMOUNT OF THE REFUNDED SERVICE FEE FOR THE THEN-CURRENT TERM OF THE SERVICE AGREEMENT AS PROVIDED ABOVE. UNLESS AGREED IN WRITING, OSI SHALL NOT ASSUME THE EQUIPMENT WARRANTY OBLIGATIONS OF ANY MANUFACTURER.

IN NO EVENT SHALL OSI BE LIABLE TO CUSTOMER FOR CONSEQUENTIAL, INDIRECT, SPECIAL, OR INCIDENTAL DAMAGES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION OR OTHER PECUNIARY LOSS) RESULTING FROM ANY FAILURE OF THE EQUIPMENT TO FUNCTION PROPERLY, ANY TEMPORARY OR PERMANENT LOSS OF USE OF EQUIPMENT, OR IN CONNECTION WITH THIS AGREEMENT, WHETHER IN AN ACTION OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EVEN IF OSI HAS BEEN ADVISED OR IS OTHERWISE AWARE OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE. THE FOREGOING WILL NOT APPLY TO DAMAGES FOR BODILY INJURY THAT, UNDER APPLICABLE LAW, CANNOT BE SO LIMITED. THE REMEDIES PROVIDED



FOR OR REFERENCED HEREIN ARE EXCLUSIVE. NOTWITHSTANDING THE FAILURE OR INEFFECTIVENESS OF ANY EXCLUSIVE REMEDY, CUSTOMER AND OSI WAIVE ALL OTHER LEGAL AND EQUITABLE REMEDIES. CUSTOMER ACKNOWLEDGES THAT THE PRICES AND FEES CHARGED HEREUNDER HAVE BEEN AGREED TO BY OSI IN RELIANCE ON THE ALLOCATION OF RISK AND LIMITATION OF LIABILITY SET FORTH HEREIN. THE LIMITATIONS OF THIS SECTION SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT.

SOME STATES, JURISDICTIONS OR COUNTRIES DO NOT ALLOW THE EXCLUSION OF CONSEQUENTIAL, INDIRECT, SPECIAL OR INCIDENTAL DAMAGES, SO THE ABOVE EXCLUSION MAY NOT APPLY IN ALL CASES.

**9. Warranty Disclaimers.**

THE WARRANTIES HEREUNDER ARE IN LIEU OF ALL OTHER WARRANTIES OF OSI, AND OSI DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS OR ADEQUACY FOR ANY PARTICULAR PURPOSE OR USE, QUALITY OR CAPACITY AND ANY WARRANTIES ARISING FROM A COURSE OF PERFORMANCE, A COURSE OF DEALING, OR TRADE USAGE. OSI DOES NOT WARRANT THAT THE OPERATION OF EQUIPMENT SUBJECT TO A SERVICE AGREEMENT WILL BE UNINTERRUPTED OR ERROR FREE OR THAT OSI WILL CORRECT ALL MALFUNCTIONS.

THE WARRANTIES HEREUNDER GIVE CUSTOMER SPECIFIC LEGAL RIGHTS. CUSTOMER MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE, JURISDICTION TO JURISDICTION OR COUNTRY TO COUNTRY. SOME STATES, JURISDICTIONS OR COUNTRIES DO NOT ALLOW THE EXCLUSION OF CERTAIN IMPLIED WARRANTIES OR CONDITIONS, OR LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY OR CONDITION LASTS, SO CERTAIN LIMITATIONS HEREUNDER MAY NOT APPLY IN ALL CASES.

**10. Entire Agreement/Modifications.** The Contract Documents and any exhibits incorporated therein constitute the entire agreement between the parties and supersede all prior agreements and understandings of the parties relating to the subject matter hereof. The Contract Documents may not be modified in any way except by an instrument in writing signed by each of the parties hereto.

**11. Severable Provisions.** If any provision of the Contract Documents is determined to be void, invalid or otherwise unenforceable, in whole or in part, the remaining provisions shall nevertheless continue in full force and effect.

**12. Successors.** The provisions of the Contract Documents shall be binding upon and shall inure to the benefit of the parties and their respective successors, assigns, executors, administrators and heirs.

**13. Construction.** Headings at the beginning of each paragraph and subparagraph herein are solely for the convenience of the parties and are not a part hereof. Whenever required by the context, the singular shall include the plural and the masculine shall include the feminine and vice versa. All exhibits referred to in or attached to the Contract Documents are incorporated by this reference. The parties agree that the rule that ambiguities are construed against the drafter of a writing shall not apply in any dispute arising out of the Contract Documents.

**14. Signatures.** The Contract Documents may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. In the event executed copies of the Contract Documents are provided by one party to the other by facsimile or email transmission, the facsimile or email copies and the signatures thereon shall for all purposes be treated as originals.



**15. Governing Law.** The parties expressly agree that (i) the Contract Documents shall be governed by, interpreted under and enforced in accordance with the laws of the United States of America and the State of California, without regard to the conflict of laws provisions thereof or the United Nations Convention on the International Sale of Goods, (ii) in the event of any dispute, the parties shall be subject to the jurisdiction of the courts of the State of California, regardless of their place of residence, and (iii) in any action arising in connection with the Equipment or the Contract Documents, venue shall be in the County of Santa Barbara, State of California, United States of America.

**16. Force Majeure.** OSI shall not be liable to Customer for any losses or damages attributable to an event or circumstance which is beyond the reasonable control of OSI and without its fault (including, without limitation, effects of fire, strike, war, insurrection, terrorism, acts of God, civil or military authority, civil disturbance and government restriction or prohibition), and the performance of OSI's obligations hereunder shall be suspended during the existence of such cause.

**17. Attorneys' Fees.** In any action at law or in equity arising out of the Contract Documents, the prevailing party shall be entitled to recover reasonable attorneys' fees in addition to any other relief awarded to said party.