

# OPTVUE SALES AGREEMENT

This Sales Agreement (“Agreement”) is between OPTVUE., a California corporation with its headquarters located at 3204 Production Ave Suite C, Oceanside, CA 92058 (“OPTVUE”) and you or the entity you represent, or, if no such entity is designated by you in connection with a purchase of OPTVUE Products, and/or by continuing to purchase OPTVUE Products after being notified of a change to this Agreement. Customer accepts the terms of this Agreement by (1) signing a OPTVUE Rebate Agreement, (2) purchasing OPTVUE Products, and/or (3) continuing to purchase OPTVUE Products after being notified of a change to this Agreement. In consideration of the respective covenants, rights and obligations contained herein, the Parties agree to be legally bound as set forth in this Agreement. The terms of this Agreement will govern over any conflicting provisions in other documents issued by either Party.

## **TERMS AND CONDITIONS**

**1. Definitions.** For purposes of this Agreement, the following words and phrases shall have the following meanings:

**“Agreement”** means this Agreement and all attachments, schedules, exhibits, and annexes hereto, as may be amended from time to time.

**“Intellectual Property Rights”** means all intellectual property rights of any kind and of any type, including trademarks, trade names, service marks, service mark registrations, service names, patents, patent rights, copyrights, inventions, licenses, approvals, governmental authorizations, and trade secrets that belong to OPTVUE, or in which OPTVUE has any interest, including any pending patent or trademark, whether arising under statute, regulation, ordinance, common law, treaty, convention or otherwise, and whether or not perfected, vested or inchoate, and is further identified and governed by the provisions of this Agreement.

**“Price”** means the price that the Customer pays to OPTVUE for the Products.

**“Products”** means those products listed in either the order acknowledgement provided by OPTVUE to Customer and/or documentation provided by OPTVUE to Customer for products available for Customer to purchase from OPTVUE, which may be amended from time to time upon written notice by OPTVUE, or within an invoice submitted to Customer by OPTVUE.

**“Purchase Order”** means a communication that is in electronic or written form (including but not limited to quote, purchase order, invoice, order acknowledgement, EDI, ECOM, etc.), that contains an offer by Customer to purchase Product pursuant to the terms of this Agreement at a specified price.

**“Term”** has the meaning set forth in Section 9 of this Agreement.

**2. Relationship.** Subject to Customer’s compliance with the terms and conditions in this Agreement, during the Term, OPTVUE agrees sell to Customer its Products on a non-exclusive basis. Each Party acknowledges and agrees that during the Term nothing in this Agreement shall create any form of exclusive relationship between the Parties, unless the Parties mutually agree to such exclusivity, in writing. Customer agrees to participate with OPTVUE in creating an annual business plan with sales goals for identified key customers; a customized promotional approach for each specified Product line; targeted volume by location; showroom development; and personnel training.

**3. Supply of Product.**

A. OPTVUE will use commercially reasonable efforts to make Product available in order to fulfill Customer’s Purchase Orders during the Term of this Agreement, as such orders have been accepted by OPTVUE. OPTVUE may discontinue the availability of Products at any time; provided, however, OPTVUE shall provide notice of such cancellation to Customer.

B. Order Cancellations or Modifications. Purchase Orders from Customers for Products will not be subject to cancellation or modification by Customer, either in whole or in part, without OPTVUE’s written consent and then only on terms that will make OPTVUE whole for all applicable costs incurred by virtue of the anticipated sales, including the cost of materials, engineering and labor, and a reasonable allowance for profit. OPTVUE’s written consent must be received in advance of any Product returns for credit or replacement.

**4. Ordering.**

A. Purchase Order. Customer shall issue all Purchase Orders to OPTVUE in written form via facsimile, email, or electronic transmission and cause all Purchase Orders to contain the Purchase Order Transaction Terms in Section 4. B. below. Any issuance of a Purchase Order is for administrative purposes only. By placing a Purchase Order, Customer makes an offer to purchase Products under the terms and conditions of this Agreement, including the Purchase Order Transaction Terms, and on no other terms. Except regarding the Purchase Order Transaction Terms, any variations made to the terms and conditions of this Agreement by Customer in any Purchase Order are void and have no effect.

## B. Purchase Order Transaction Terms.

Customer shall specify the following information in each Purchase Order:

- (i) a list of Products to be purchased.
- (ii) quantities ordered.
- (iii) requested delivery date, consistent with this Agreement; and
- (iv) delivery point or address.

C. OPTVUE's Right to Accept or Reject Purchase Orders. OPTVUE may, in its sole discretion, accept or reject any Purchase Order. OPTVUE may accept any Purchase Order by confirming the order for Products (whether done by written confirmation, invoice, or otherwise) or by delivering the Products, whichever occurs first. No Purchase Order is binding on OPTVUE unless accepted by it as provided in this Agreement.

D. OPTVUE's Cancellation of Purchase Orders. OPTVUE may, in its sole discretion, without liability or penalty, cancel any Purchase Order placed by Customer and accepted by OPTVUE, in whole or in part:

- (i) if OPTVUE discontinues its sale of Products; or
- (ii) if OPTVUE determines that Customer is in violation of its payment obligations under or has otherwise breached this Agreement.

## **5. Shipment and Delivery.**

A. Shipment and Delivery. Unless expressly agreed to by the Parties in writing, OPTVUE shall: (i) Select the method of shipment of and the carrier for the Products. OPTVUE may, in its sole discretion, without liability or penalty, make partial shipments of Products, each of which shall constitute a separate sale, and Customer shall pay for the units shipped. (ii) Deliver the Products to Customer using OPTVUE's standard methods for packaging and shipping. All prices are in accordance with INCOTERMS 2020. Any time quoted for delivery is an estimate only.

B. Storage. If Customer is not able to accept delivery on the date agreed to by the Parties, Customer will pay OPTVUE a storage fee equivalent to one- and one-half percent (1½ %) of the total Order value per calendar month or fraction thereof (calculated and charged on a per day basis) until the date of delivery ("Storage Fee"). Additionally, if OPTVUE is installing Products and at the time of delivery Customer's location is not ready for installation or is unsafe for installation, as OPTVUE determines in OPTVUE's sole discretion, OPTVUE reserves the right to postpone or discontinue installation. In such event, OPTVUE may charge Customer an amount equivalent to the Storage Fee until such time that the location is ready for installation and/or safe for installation, as determined solely by OPTVUE.

C. Title and Risk of Loss. Title and risk of loss and/or damage to Product shall pass to Customer immediately upon tender of delivery FOB shipping (OPTVUE facility) and thereafter OPTVUE shall not be responsible for any loss or damage to the Product. Customer grants to OPTVUE a lien on and a purchase money security interest in and to all of Customer's right, title, and interest in the Products purchased hereunder until payment in full has been received by OPTVUE.

D. Acceptance of Products. Customer shall be deemed to have accepted the Products upon delivery.

## **6. Pricing and Payment.**

A. Price. Customer shall purchase the Products from OPTVUE at the prices set out in OPTVUE's price list in effect at the time OPTVUE accepts the related Purchase Order ("Prices"). OPTVUE reserves the right to change Prices at any time in its sole discretion. Pricing is set forth in in the quote, provided however that actual pricing will be in accordance with the price list in effect at the time of Purchase Order acceptance by OPTVUE.

B. New Products. Prices for new Products will be determined at such time as those Products are added to the Agreement. Unless otherwise agreed, such Prices will be subject to increase in accordance with Section 6(A) above.

C. Payments. Unless otherwise provided in a pricing exhibit/quote, Customer shall pay OPTVUE for Products within thirty (30) days of the invoice date. A delinquency charge of one- and one-half percent (1½ %) per month, or eighteen percent (18%) annually, of the delinquent balance shall be added to amounts not paid within thirty (30) days of invoice date. OPTVUE reserves the right to rescind credit terms, reduce credit lines, or take other appropriate actions if Customer's account is not kept current. Customer agrees to pay reasonable attorney fees of OPTVUE and all other costs of collection that OPTVUE may incur.

D. Taxes. All sales, use, excise, and similar taxes that OPTVUE may be required to pay or collect with respect to the Products will be for the account of Customer unless or when Customer has provided OPTVUE with proof of tax exemption via a tax exemption certificate.

## **7. Warranty; Rejection; Disclaimer; Liability.**

A. Warranties. OPTVUE warrants that Product will be conveyed with good title, free of lawful liens and encumbrances. OPTVUE further warrants that the manufacture of Product will not infringe any third-party patent right in the United States. The warranty pertaining to Product quality is found at <https://www.optvue.com/warranty>

B. DISCLAIMER. THE WARRANTIES ABOVE ARE OPTVUE'S SOLE AND EXCLUSIVE WARRANTIES PERTAINING TO THE PRODUCTS AND ARE IN LIEU OF AND EXCLUDE ALL OTHER EXPRESS OR IMPLIED WARRANTIES ARISING BY OPERATION OF LAW OR CUSTOM AND USAGE INCLUDING, BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS OR ANY WARRANTY RELATING TO THIRD PARTY SERVICES. FURTHER, CUSTOMER ACKNOWLEDGES THAT NO REPRESENTATIVE OF OPTVUE OR OF ITS AFFILIATES IS AUTHORIZED TO MAKE ANY REPRESENTATION OR WARRANTY THAT IS NOT IN THIS AGREEMENT.

C. CONSEQUENTIAL DAMAGES. IN NO EVENT WILL OPTVUE, ITS OFFICERS, DIRECTORS, AFFILIATES OR EMPLOYEES, BE LIABLE TO CUSTOMER OR ANY OTHER PERSON FOR (i) ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND INCLUDING LOSS OF PROFITS OR DAMAGES TO BUSINESS REPUTATION HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER IN AN ACTION FOR BREACH OF CONTRACT, WARRANTY, STRICT LIABILITY OR TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY; OR (ii) ANY CLAIM THAT AROSE MORE THAN ONE (1) YEAR PRIOR TO THE INSTITUTION OF SUIT FOR THE SAME.

D. LIMITATION OF LIABILITY. IN NO EVENT SHALL OPTVUE'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, WARRANTY OR TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID BY CUSTOMER TO OPTVUE FOR THE SPECIFIC PRODUCT(S) GIVING RISE TO THE CLAIM.

**8. Confidentiality.** By virtue of this Agreement, the Parties may have access to information that is confidential to one another. "Confidential Information" means information regarding a Party that is not generally known to the public, which includes but not limited to, whether or not available to the public, designs, records, plans, drawings, know-how, trade secrets, intellectual property, inventions, formulae, object and source code, products, specifications, techniques, models, data, programs, employee information, supplier information, documents, writings, manuals, processes, customer lists or information, global entity lists, business or marketing plans, insurance information, financial and technical information, administrative procedures, pricing methods and policies, price lists, business and marketing strategies, ideas about current and future services. Confidential Information may be disclosed orally, in writing or in any other recorded or tangible form. Information will be considered to be Confidential Information under this Agreement if it (i) is marked as confidential by the disclosing Party at the time of disclosure, (ii) is unmarked but treated as confidential by the disclosing Party at the time of disclosure, (iii) is disclosed whether inadvertently or not, whether by direct or indirect oral or written communication or mistake to the receiving Party and the disclosing Party knows or has reason to know such information is confidential, a trade secret or proprietary information of the disclosing Party, or (iv) that would reasonably be understood to be of a proprietary nature.

Both Parties agree to disclose only information that is required for the performance of obligations under the Agreement, and to maintain all Confidential Information as confidential and exercise reasonable precautions to prevent unauthorized access, use or disclosure of the same, but under no circumstances use less than reasonable care and not to disclose the Confidential Information to any third party other than its employees, its customers (in the case of Buyer only) or its Affiliates' employees, or contractors who have a legitimate need to know for the purposes contemplated herein and who are bound by written agreements or statutory obligations that are at least as protective of the Confidential Information as the restrictions in this Agreement.

Confidential Information shall not include information that: (a) is published or becomes available to the general public other than through a breach of this Agreement; (b) is lawfully obtained by the receiving Party from a third party with a valid right to disclose it, provided that said third party is not under a confidentiality obligation to the disclosing Party; (c) is independently developed by employees, agents or consultants of the receiving Party who had no knowledge of or access to the Confidential Information as evidenced by the receiving Party's records; (d) was possessed by the receiving Party prior to receipt from the disclosing Party, other than through prior disclosure by the disclosing Party. Furthermore, the confidentiality and use restrictions applicable to a Party's Confidential Information shall not apply to the extent that the receiving Party is obligated under law or government order to disclose the Confidential Information; provided, however, that where lawful to do so the receiving Party must give prompt advance written notification to disclosing Party before the date of required disclosure and the receiving Party uses reasonable commercial efforts to obtain confidential treatment of such information. Upon termination or expiration of this Agreement, receiving Party shall destroy or return any and all confidential information receiving Party is in receipt of and will verify such destruction or return, in writing, upon request of disclosing Party. Receiving Party may retain a copy of Confidential Information in accordance with receiving Party's records retention policy upon execution of this Agreement.

**9. Term and Termination.** The rights and duties under this Agreement will begin on the Effective Date of this Agreement, or (2) Customer's purchase of OPTVUE Products and shall be deemed to govern any Products purchased by Customer until the Agreement is terminated or a new written contract is signed by the Parties (the "Term"). OPTVUE may terminate the Agreement, in whole or in part, at any time and without cause by giving sixty (60) days written notice. OPTVUE may terminate this Agreement or Schedules immediately if Customer breaches a payment or other obligation and fails to correct the breach within ten (10) days of written notice. This Agreement will terminate immediately in the event Customer becomes bankrupt or insolvent or exits the window and/or door business, or files any documents indicating the same. In such event, Customer agrees to assign Customer's right to collect all sums owed by the ultimate purchaser of the Products to OPTVUE and OPTVUE agrees that any amounts due to Customer from OPTVUE will be

offset against any outstanding amount Customer owes OPTVUE provided Customer pays OPTVUE for amounts owed under this Agreement.

**10. Product Recall.** The Parties agree to provide reasonable assistance to one another in the event of any recall or issuance of any advisory letter. OPTVUE shall promptly pay or reimburse Customer for the reasonable costs of effecting such recall or issuing such advisory letter, including costs related to return of recalled Products and refunding to Customer the purchase price paid by Customer for recalled Products, including applicable Products in Customer’s inventory; provided, however, that to the extent such recall or the issuance of such advisory letter results from an act or omission of Customer, Customer shall be responsible for the costs of effecting such recall or issuing such advisory letter, including costs related to return of recalled Products.

**11. Notice.** Notices required hereunder shall be deemed to have been properly given if sent by certified mail (return receipt requested and postage prepaid) or by any nationally recognized overnight delivery service and addressed to:

Customer at the address denoted on OPTVUE’s quote to Customer.

OPTVUE at:

Attn: OPTVUE

3204 Production Ave Suite C, Oceanside CA 92058  
Attention: \_\_\_\_\_

with copy to:

OPTVUE.  
3204 Production Ave Suite C, Oceanside, CA 92058  
Attention: Legal Department  
With a copy to: info@optvue.com

**12. Force Majeure.**

A. Excused Performance. Each Party will be excused from its failure to perform its respective obligations under this Agreement, except the obligation to pay for Products, where such failure is caused by fire, flood, riot, act of nature, war hostilities, government regulations or other emergency acts imposed by governmental authority, embargoes, epidemics, pandemics (including COVID-19), strikes, labor disputes or work stoppages, supply chain issues, transportation issues, or any similar cause beyond the reasonable control of such Party (“Force Majeure Event(s)”); provided that such affected Party uses good faith and diligent efforts to perform its obligations despite the occurrence of such Force Majeure Event; and provided further that if any Party intends to rely on a Force

Majeure Event hereunder to excuse said Party's performance , such Party shall provide written notice to the other Party of its intent to rely on such a force majeure event and identify specifically such event and its expected duration.

### **13. Miscellaneous.**

A. No Agency or Franchise Created. Each Party is an independent contractor and is not an agent, employee or legal representative of the other Party under this Agreement. There is no agency, partnership, joint venture, franchise or other relationship between the Parties except that of a non-exclusive relationship. All persons engaged by a Party shall be that Party's employees, legal representatives or agents but not those of the other Party. Customer is not authorized to enter into any contracts or to create any obligations, commitments or responsibilities (expressed or implied) on behalf of, or in the name of OPTVUE, or to bind OPTVUE in any manner whatsoever, without the prior written approval of OPTVUE in each instance. No contract or commitment entered into by Customer without such written consent shall be binding on OPTVUE. Customer does not regard itself as a "franchisee" nor OPTVUE as a "franchisor" nor the relationship between Customer and OPTVUE as a "franchise" as defined in the Federal Trade Commission Franchise Trade Regulation rule, 16 CFR part 436.

B. Modification; Waiver. Neither this Agreement nor any term or provision hereof may be modified, amended or waived, except by a subsequent instrument in writing duly executed by the Parties. No waiver by either Party of any breach of this Agreement by the other Party will diminish or prejudice the rights of the non-breaching Party with respect to any other term of the Agreement or law. No delay or failure by either Party in exercising its rights with respect to any term of this Agreement will diminish or prejudice that Party's rights under that term of this Agreement or with respect to any other terms of this Agreement or law. The failure of either Party to insist in one or more instances upon strict performance of any provision of this Agreement or to take advantage of any of its rights shall not operate as a continuing waiver of such rights.

C. Assignment; Subcontracting. This Agreement shall be binding upon and inure to the benefit of OPTVUE and Customer, each of their respective successors and permitted assigns, and any entity in which Customer owns a 50% or greater equity interest. Neither Party shall assign, delegate or subcontract its rights or responsibilities under this Agreement, or any portion thereof, without the prior written consent of the other Party, which consent may not be withheld unreasonably; provided, however, that may assign this Agreement upon giving notice to Customer in connection with a merger, consolidation, sale of all or substantially all of its assets, reorganization, or change in ownership. In addition, Customer may assign this Agreement in connection with a reorganization or restructuring that does not involve a transfer of an ownership interest in Customer to a competitor of OPTVUE that is in the business of manufacturing any components, products, or Products similar to those manufactured by OPTVUE.



D. Severability. If any provision of this Agreement shall be held invalid or unenforceable, such provision shall be deemed deleted from this Agreement and replaced by a valid and enforceable provision which, so far as possible, achieves the same economic and other benefits for the Parties as the severed provision was intended to achieve, and the remaining provisions of this Agreement shall continue in full force and effect.

E. Entire Agreement. This Agreement, including any attachments, schedules, exhibits and annexes hereto, represent the entire integrated contract of the Parties with respect to the terms of purchase by Customer of the Products manufactured by OPTVUE for resale by Customer, and supersedes any previous agreements and understandings between the Parties with respect to the subject matter of this Agreement, and may not be modified except by an instrument in writing signed by the duly authorized representatives of both Parties and expressly stating that it is an amendment to this Agreement. OPTVUE expressly disclaims, objects to, and rejects any additional or different terms and conditions provided by Customer.

F. Governing Law. This Agreement shall be governed by, construed, and interpreted in accordance with the laws of the State of California, without reference to the conflicts of laws principles thereof. This Agreement shall be governed by, construed, and interpreted in accordance with the laws of the State of California, without reference to the conflicts of laws principles thereof. Any dispute arising out of or related to this Agreement must be adjudicated in state or federal court, in San Diego County, in the State of California, USA. The Parties expressly disclaim the application of the United Nations Convention on Contracts for the International Sale of Goods. The prevailing Party in any suit will be entitled to recover its reasonable attorneys' fees and expenses.