

# Oncam Terms and Conditions of Supply

**1. DEFINED TERMS.** The following terms shall have the following meanings: “T&Cs” means the Terms and Conditions of Supply set out in this document to apply to the purchase of Products by the Customer from Oncam. “Contract” means any applicable Contract between the Oncam entity which executes the Order Acknowledgement with the Customer and the “Customer” means the entity which name and address appears on an Order Acknowledgement for the sale and purchase of Products which incorporates these T&Cs. “Delivery Address” means the Customer’s address which appears in the Purchase Order. “Order Acknowledgement” means a confirmation of receipt by Oncam of a Purchase Order delivered by Oncam to the Customer in Writing. “Writing” or “Written” means a communication in the form of a letter, facsimile or email. “Purchase Order” means an offer from a Customer to purchase Products from Oncam. “Documentation” means any applicable material delivered by Oncam concerning a Product, and any installed updates, whether in machine-readable, print, or any other form. “Products” means Oncam’s products listed on the price list. Any reference to Products shall, except where the context may require otherwise, mean and include any portion of such Products. “Intellectual Property Rights” means all intellectual property rights, including patents, utility models, trade and service marks, trade names, domain names, rights in designs, copyrights, moral rights, topography rights, rights in databases, trade secrets and know-how, in all cases whether or not registered or registrable and including registrations and applications for registration of any of these and rights to apply for the same and all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these anywhere in the world. If applicable, other capitalized terms used herein shall have the meaning set forth in any applicable Contract between Oncam and the Customer.

**2. SCOPE.** These T&Cs shall apply to all Contracts entered into between Oncam and the Customer in respect of the purchase of Products, and unless mutually and expressly agreed in writing and confirmed in an Order Acknowledgement, shall be formed in the following manner:

2.1 Where the Customer delivers to Oncam a Purchase Order, this shall be deemed to be an offer made by the Customer to purchase Products as set out in it (as varied thereafter by Contract between the Customer and Oncam) and on these T&Cs, which offer shall be deemed accepted and a Contract formed between the Customer and Oncam on the delivery to the Customer of an Order Acknowledgement by or on behalf of Oncam.

2.2 Any typographical, clerical or other error or omission in any sales literature, Order Acknowledgements, price lists, invoices or other documents or information originating from or issued by Oncam shall be subject to correction without any liability on the part of Oncam.

2.3 No contingency contained on any Purchase Order shall be binding upon Oncam. The terms of these T&Cs shall apply, regardless of any additional or conflicting terms on any Purchase Order or other correspondence or documentation submitted by Customer to Oncam, and any such additional or conflicting terms are deemed rejected by Oncam. The T&Cs prevail over any Customer’s general terms and conditions of purchase regardless whether or when Customer has submitted its Purchase Order or such terms. Fulfillment of Customer’s order does not constitute acceptance of any Customer’s terms and conditions and does not serve to modify or amend these T&Cs.

**3. PRODUCT CHANGES.** Oncam reserves the right, prior to actual delivery, to make any changes, without notice, to the Products where those changes are required to conform with any applicable safety or other legal requirement or which do not materially affect the Products’ quality, performance or functionality.

## **4. PRODUCT ORDERS.**

4.1 Customer shall purchase Products by issuing a Purchase Order, signed, if requested by Oncam, or (in the case of electronic transmission) sent by its authorized representative, indicating specific Products, Oncam Product numbers, quantity, unit price, total purchase price, shipping instructions, requested shipping dates, bill-to address, Delivery Addresses, tax exempt certifications, if applicable, contract reference, and identity of the Customer (or, if applicable, End User or Authorized Customer recipient) for each Product. No contingency contained on any Purchase Order shall be binding upon Oncam. The terms of these T&Cs shall apply, regardless of any additional or conflicting terms on any Purchase Order or other correspondence or documentation submitted by Customer to Oncam, and any such additional or conflicting terms shall not operate as a rejection of the Contract but as a rejection of the additional or different terms in the Purchase Order.

4.2 Oncam shall use commercially reasonable efforts to provide order acknowledgement information within a reasonable time for all Purchase Orders submitted to Oncam. Oncam may accept a Purchase Order even if some of the information required by Section 4.1 above is missing or incomplete.

4.3 Customer may not cancel or modify any Purchase Order, in whole or in part, after Oncam delivers the Order Acknowledgement without Oncam express Written approval. Approval of any such cancellation or modification requests shall be at Oncam’s sole discretion.

## **5. PRODUCT PRICE & PAYMENT.**

5.1 The price of the Products shall be as specified in the Order Acknowledgement.

5.2 Except for taxes based on Oncam’s net income, Customer shall pay any applicable sales, use, property, value-added or similar taxes, duties or assessments, or amounts levied in lieu of such taxes, now or later imposed and all payments due in respect of the Products shall be made without set-off or deduction of taxes, charges or other duties that may be imposed.

5.3 Upon and subject to credit approval by Oncam, payment terms shall be thirty (30) days from shipping date (Ex Work (INCOTERMS 2010)). All payments shall be made in the currency quoted in the Order Acknowledgement applicable to the Purchase Order.

5.4 If the Customer fails to make any payment on the due date then without prejudice to any other right or remedy available to Oncam, it shall be entitled in its discretion and on notice to the Customer to:

5.4.1 withhold or delay shipment, including partial shipments of Products, cancel any or all remaining deliveries of Products and/or any or all other contracts to which Oncam and the Customer may be party to; and/or

5.4.2 require pre-payment prior to any deliveries of Products; and/or

5.4.3 charge the Customer interest (both before and after any judgment) on the amount unpaid at the rate of (i) 3 per cent per annum (compounded quarterly) above The Wall Street Journal prime rate on the date of default (if the date of default was not on a business day, then the first business day immediately prior to the date of default, and if *The Wall Street Journal* stops publishing the Prime Rate, Oncam will select a similar reference rate) or (ii) the maximum rate permitted by law, whichever is less, from time to time until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

5.5 Customer grants Oncam a security interest in Products purchased under these T&Cs to secure payment for such Products. If requested by Oncam, Customer agrees to execute financing statements to perfect this security interest. The security interest granted under this provision constitutes a purchase money security interest under the Massachusetts Uniform Commercial Code.

## **6. DELIVERY.**

6.1 Unless agreed to the contrary and specified in the Order Acknowledgement, delivery of all Products under these T&Cs shall be Ex Works (Incoterms 2010). Customer shall be responsible for all

freight, handling and insurance charges subsequent to delivery. Title and risk of loss shall pass from Oncam to Customer and delivery shall be deemed to occur upon transfer of possession to the first common carrier or Customer’s representative at the delivery point per the applicable shipping term.

6.2 Oncam will use its reasonable endeavors (although time is not of the essence) to deliver Products to the Customer on the date or dates which appear in the Order Acknowledgement or, within a reasonable time thereafter. Oncam shall not be liable for any delay in delivery, howsoever caused and delivery may be effected early. Where no delivery date is specified in the Order Acknowledgement, Oncam will deliver the Products within a reasonable period of time. Indicative, but not binding, indications of likely delivery dates in those circumstances may be given to the Customer from time to time.

6.3 Oncam shall be entitled to deliver the Products in installments. Each delivery shall constitute a separate contract and failure by Oncam to deliver any one or more of the installments in accordance with these T&Cs or any claim by the Customer in respect of any one or more installments shall not entitle the Customer to treat the Contract as a whole as repudiated.

6.4 Canceled orders, rescheduled deliveries, any return of unopened stock, or any other type of amendments, however specified, will be subject to: (i) Oncam acceptance and approval in Writing at its sole discretion; and (ii) a charge to the Customer of a restocking/ administration fee of twenty-five percent (25%) of the total order value. If any of the above was not approved by Oncam in Writing or if any other attempt was made by Customer to return Products or not to fulfill its obligations under the Order Acknowledgement pertaining to a Purchase Order then, in addition to any other remedies available to Oncam, Customer will pay the entire amount reflected in the Order Acknowledgement.

**6.5 ONCAM SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE OR PENALTY FOR DELAY IN DELIVERY OR FOR FAILURE TO GIVE NOTICE OF ANY DELAY. EXCEPT IN ACCORDANCE WITH THE APPLICABLE SHIPPING TERMS SET FORTH IN THESE T&CS, ONCAM SHALL NOT HAVE ANY LIABILITY IN CONNECTION WITH SHIPMENT, NOR SHALL THE CARRIER BE DEEMED TO BE AN AGENT OF ONCAM.**

6.6 If for any reason Customer fails to accept delivery of any Products on the date fixed pursuant to Oncam’s notice that Products have been delivered at the delivery point, or if Oncam is unable to deliver the Products at the delivery point on such date because Customer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the Products shall pass to Customer, (ii) the Products shall be deemed to have been delivered; and (iii) Oncam, at its option, may store the Products until Customer picks them up, whereupon Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

## **7. BRANDING**

7.1 Oncam reserves the right to approve all uses by Customer of the Oncam name, logo, trademarks, and Product names, styles or other marks of Oncam (collectively, the “Branding”).

7.2 If such consent is granted, Customer’s use of such Branding shall be in accordance with Oncam’s then-current policies as provided to Customer.

7.3 The Customer shall not undertake or authorize any development work in relation to any of the Products.

7.4 Customer shall promptly inform Oncam of any actual or potential infringement of any of Oncam’s Intellectual Property Rights it becomes aware of and shall provide the assistance and information reasonably required by the Oncam in connection with the defense or protection of such rights.

7.5 Customer shall not (i) make any modifications to the Products or their labeling or packaging as supplied, or any of the Branding, (ii) register or use any trademark, service mark or business name that is confusingly similar to any Oncam trademark, service mark, business name, or Branding, or (iii) obtain or attempt registration of any registered design or patent related to the Product.

7.6 Any press release or publication regarding these T&Cs or Oncam or the Products is subject to prior review and Written approval of Oncam.

7.7 The Customer hereby acknowledges that it has no claim whatsoever on any of the Intellectual Property Rights embodied in the Products or Documentation. All Intellectual Property Rights in or arising out of the Products and Documentation shall remain at all times in the exclusive ownership of Oncam. If at any time Intellectual Property Rights related to the Product or Documentation become owned by the Customer, the Customer shall take all steps required by Oncam to ensure they are vested in Oncam and hereby assigns all such rights in the Intellectual Property Rights pertaining to the Products and Documentation to Oncam for no additional consideration.

## **8. WARRANTIES & LIABILITIES.**

8.1 Hardware Warranties. The Products are covered by a 3 year warranty from the date of shipment (Ex Works (INCOTERMS 2010)), with the exception of Oncam Halocam line of Products which are covered by a 1 year warranty, in accordance with these T&Cs, the extent of which shall be limited to defects in work and materials but excluding any and all defects arising from any drawing, design, specification or requirement of the Customer or which arise from fair wear and tear, willful damage, negligence, abnormal working conditions, failure to follow Product environment or operating instructions, voltage fluctuations, lightning, water damage, faulty installation or adjustments, improper maintenance, misuse or alteration or repair of the Products other than by Oncam or an approved engineer and as a result of connection to or a location near any third party equipment.

8.2 Software Warranties. For a period of one hundred and eighty (180) days from the date of delivery of Products, Oncam warrants that any and all software provided on a hard disc media is free of defects in materials and workmanship under normal use and that the software will function materially in accordance with all published specifications of Oncam relating thereto.

8.3 The Customer shall notify Oncam in Writing within five (5) days of the time Customer discovers or ought to have discovered the defect or non-conformity of the Products covered by the warranties at Clauses 8.1 and/or 8.2 above and in any event prior to the expiry of the warranty periods in each case. Oncam shall have no liability in respect of the Products under the above warranties (or any other warranty, condition or guarantee) unless (i) Written notification is received within the time provided above reasonably describing in detail the defect or non-conformity alleged, (ii) Customer provides Oncam a reasonable opportunity after receiving the notice to examine such Products and Customer (if requested to do so by Oncam) return such Products to Oncam’s place of business at Oncam’s cost for the examination to take place there; (iii) Oncam reasonably verifies Customer’s claim that the Products are defective; (iv) Customer makes any further use of the Products after given such Written notice; (v) the defects arise because Customer failed to follow Oncam’s oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Products; or (vi) Customer alters or repairs such Products without the prior Written consent of Oncam.

8.4 The above warranties in Clauses 8.1 and 8.2 do not extend to parts, materials, equipment or software not manufactured (or, in the case of software, not developed or owned) by Oncam in respect of which the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to Oncam.

**8.5 EXCEPT AS EXPRESSLY PROVIDED IN THESE T&CS, ONCAM HEREBY DISCLAIMS AND CUSTOMER WAIVES ALL REPRESENTATIONS, CONDITIONS AND WARRANTIES (WHETHER EXPRESS, IMPLIED, OR STATUTORY), INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OR CONDITION (A) OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, TITLE, SATISFACTORY**

QUALITY, QUIET ENJOYMENT, ACCURACY, OR SYSTEM INTEGRATION, OR (B) ARISING FROM ANY COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE IN THE INDUSTRY. TO THE EXTENT AN IMPLIED WARRANTY OR CONDITION CANNOT BE DISCLAIMED, SUCH WARRANTY OR CONDITION IS LIMITED IN DURATION TO THE APPLICABLE EXPRESS WARRANTY PERIOD. Products manufactured by a third party ("Third Party Product") may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the Products. Third Party Products are not covered by the warranty in Sections 8.1 and 8.2. for the avoidance of doubt, ONCAM MAKES NO REPRESENTATION OR WARRANTY WITH RESPECT TO ANY THIRD PARTY PRODUCT, INCLUDING ANY (A) WARRANTY OF MERCHANTABILITY; (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (C) WARRANTY OF TITLE; OR (D) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

8.6 Unless Oncam receives notice of rejection of any Products delivered to the Customer within five (5) business days of the date of delivery, the Products shall be deemed to have been accepted by the Customer.

8.7 Oncam's liability to the Customer in respect of the Products supplied on these T&Cs both generally and specifically under Clauses 8.1 and 9.2 including as regards any defect in their quality, performance, condition or functionality or failure to meet any agreed specification comprising part of the Contract for which Oncam will be liable under these T&Cs shall be limited to the replacement or repair of the Products or repayment of the price paid by the Customer for such Products (in the absolute discretion of Oncam) but without further liability to the Customer in respect thereof.

**9. LIMITATION OF LIABILITY. IN NO EVENT SHALL ONCAM OR ITS SUPPLIERS BE LIABLE FOR ANY INCIDENTAL, SPECIAL, INDIRECT OR LOST PROFITS, OR LOST OR DAMAGED DATA, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EVEN IF ONCAM OR ITS SUPPLIERS HAVE BEEN INFORMED OF THE POSSIBILITY THEREOF. NOTWITHSTANDING ANYTHING ELSE IN THESE T&CS TO THE CONTRARY, ALL LIABILITY OF ONCAM, ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND SUPPLIERS COLLECTIVELY FOR CLAIMS UNDER THESE T&CS OR OTHERWISE HOWSOEVER ARISING SHALL BE LIMITED TO THE MONEY PAID TO ONCAM FOR PRODUCTS UNDER THE PURCHASE ORDER RELATING TO THE EVENT OR CIRCUMSTANCES FIRST GIVING RISE TO SUCH LIABILITY. THIS LIMIT OF LIABILITY FOR PRODUCTS IS CUMULATIVE AND NOT PER- INCIDENT (I.E., THE EXISTENCE OF TWO OR MORE CLAIMS WILL NOT ENLARGE THIS LIMIT).**

9.1 Oncam shall not be liable to the Customer if performance of its obligations under the Contract is prevented or hindered due to any circumstances outside its control.

9.2 The Customer acknowledges that, in entering into the Contract for the purchase of Products it has not relied on any representation from or on behalf of Oncam and that no such representations are to be implied as contractual terms herein or form (in whole or in part) terms of any collateral or related contracts between Oncam and the Customer. The Customer recognizes that any and all facts and matters upon which it relies have been included in the Contract.

**10. TERMINATION OF WARRANTY.** If the Customer fails to comply with all these T&Cs including, but not limited to, as to the time of performance in relation to such matters as payment under Clause 5 above, or the conditions of Section 8.3, then, without prejudice to all other rights of Oncam, the warranties contained in Clauses 8.1 and 8.2 shall from the date of such non-performance terminate and for the purposes of these T&Cs shall be deemed excised.

#### **11. LAWS & REGULATIONS.**

11.1 In its performance hereunder, Customer will comply with all laws, all licenses, permits and approvals required by any government or authority, including any recycling or take-back programs applicable to packaging, authorized resale or use of Products, all export and import laws of all countries involved in the sale of the Products and shall comply with all applicable laws, rules, policies and procedures including without limitation the U.S. Foreign Corrupt Practices Act, European Union ("EU") Directive 2002/96/EC, and requirements applicable to the use of Products under telecommunications and other laws and regulations (collectively "Applicable Laws"). EU Customers shall exclusively finance the collection and delivery of waste electrical and electronic equipment (WEEE) to the recycler's address specified by Oncam, as required by EU Directive 2002/96/EC and applicable national law. Customer will indemnify and hold harmless Oncam for any violation by Customer of any Applicable Laws.

11.2 The Products and technology or direct products thereof (hereafter referred to as "Products and Technology"), supplied by Oncam hereunder may be subject to export controls under the laws and regulations of an applicable government or authority. Customer shall comply with such laws and regulations governing export, re-export, transfer and use of Oncam Products and Technology and will obtain all required authorizations, permits, or licenses. Oncam and Customer each agree to provide the other information, support documents, and assistance as may reasonably be required by the other in connection with securing authorizations or licenses. Customer's obligations under this clause shall survive the expiration or termination of any Contract.

#### **12. GENERAL.**

12.1 No waiver by Oncam of any breach of these T&Cs or any Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision and any such waiver of Oncam must be in express Writing signed by an authorized representative of Oncam. The failure of Oncam to enforce any provision of these T&Cs shall not be construed as a waiver or modification of such provision, or impairment of its right to enforce such provision thereafter.

12.2 If any provision of these T&Cs or any Contract is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these T&Cs or any Contract and the remainder of the provision in question shall not be affected.

12.3 These T&Cs or any Contract contain all the terms agreed by the parties relating to the subject matter of the T&Cs or any Contract and supersedes any prior agreements, understandings or arrangements between them, whether oral or in Writing.

12.4 Any notice required to be given under or in respect of these T&Cs or any Contract shall be served personally, sent by fax, electronic mail, or by first class recorded delivery post and any such notice so given shall be deemed to have been duly served if personally delivered, on the day of delivery, if faxed or emailed, immediately after the recorded transmission time or, if posted, two days after the day after posting.

12.5 Oncam reserves the right to modify the T&Cs at any time. Oncam shall notify Customer of any such modifications, and such modifications shall only apply to Purchase Orders received after the date of notification.

12.6 The validity, interpretation, and enforcement of these T&Cs or any Contract shall be governed by and construed solely and exclusively in accordance with the laws of the State of Delaware, USA, excluding its conflict of law principles. Oncam and the Customer accept the exclusive jurisdiction of the Delaware courts, provided that either party may bring an action before any court of appropriate jurisdiction for interim injunctive relief for protection of Intellectual Property Rights and confidential information. The parties specifically disclaim the UN Convention on Contracts for the International Sale of Goods, and the UNIDROIT Principles of International Commercial Contracts.

12.7 Customer may not assign or delegate its rights or obligations under these T&Cs without the prior Written consent of Oncam at its sole discretion. Oncam may assign its rights and obligations under these T&Cs.

12.8 A person who is not a party to these T&Cs or any Contract has no right under the Contracts to enforce any term of these T&Cs or any Contract.

12.9 Customer shall hold confidential and shall not use or permit others to use, or disclose to any third party, any confidential information identified as such in Writing or orally by Oncam or information which Customer knows or has reason to know is confidential, proprietary or trade secret information of Oncam. Pricing offered to Customer by Supplier is confidential information. Upon Oncam's request, Customer will promptly return any confidential information provided by Oncam to Customer (including any copies).

12.10 Except for the obligation to pay monies due and owing, neither party shall be liable for any delay or failure in performance due to events outside the defaulting party's reasonable control, including without limitation acts of God, earthquakes, labor disputes, shortages of supplies, actions of governmental entities, riots, war, acts of terrorism, fire, epidemics, delays of common carriers or other circumstances beyond its reasonable control. The obligations and rights of the defaulting party shall be extended for a period equal to the period during which such event prevented such party's performance.

12.11 The relationship between the parties is that of independent contractors. Nothing contained in these T&Cs shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever. These T&Cs are for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these T&Cs.