

OEM Developers Agreement

THIS agreement is hereby made and entered into freely as of this ____ day of _____ 200_, hereinafter called “Effective Date,” by and between Ocean Optics, Inc., having its principal office at 830 Douglas Ave., Dunedin, Florida 34698, hereinafter referred to as “OOI” and _____, located at _____, and telephone of: _____ hereinafter referred to as “Developer”.

Whereas the Developer wishes to design, test, evaluate and/or produce products which may incorporate intellectual property, know-how, components or assemblies and sold by OOI, and OOI agrees to promote the use of its intellectual property, know-how, components or assemblies in Original Equipment Manufacturers (OEM) products, this agreement provides Developers with access to technical information and know-how, applicable product support and discounted price schedules consistent with known OEM costing structures for use in product evaluations without the annual volume commitment required for said OEM costing structures. The time allowance for the technical support will be limited to an amount determined solely by OOI.

1. The Developer will purchase at least one (1) spectrometer at the specified retail price, either from a published standard price sheet or OOI quotation, and adequately demonstrate or justify feasibility for the project to OOI.
2. The Developer is a For Profit entity, judged and determined capable of commercializing a product incorporating OOI intellectual property, know-how, components or assemblies. The judgment of said capability is determined solely by OOI.
3. The Developer agrees to utilize OOI hardware components in the development of their project as described in Section 1, and agrees to the terms and conditions of the OOI Nondisclosure Agreement.
4. This agreement is applies strictly to the Developer’s product development phase, and entitles the OEM Developer to a 25% discount off all OOI spectrometers and other manufactured components for a period of one year. The price for this Agreement is \$999 and includes OOI’s SpectraSuite operating software and OmniDriver software drivers, OEM Interface Guide, pin-outs, wiring diagrams, register maps and other pertinent information, and ongoing technical support from OOI’s OEM Engineering team. If the OEM has not commercialized their product within one year, this agreement may be renewed for \$599.
5. ***Pricing Structure:***
Once the Developer has commercialized their product, an annual forecast shall be submitted, and the purchase price for intellectual property, know-how, components or assemblies to the Developer will be in accordance to a set discount schedule applied to the US list price or based on a quotation initiated by the Director of OEM Sales. The discount applied will correspond to the ANNUAL QUANTITY as set in Attachment A.

If at subsequent annual intervals, based on either calendar or purchase order history, it is determined that the annual quantity of intellectual property, know-how, components or assemblies is fewer than the Developer has committed to, then OOI retains the right to recalculate the Unit Price, based on the discount schedule or aforementioned quotation, collect 100% of the reconciliation fees of all contracted differences at the end of the annual interval, for all intellectual property, know-how, components or assemblies included in the actual ANNUAL QUANTITY.

Unless otherwise stated in writing by OOI, there will be no retroactive discounts or future discounts based on blanket purchase orders.

6. OOI agrees to assist the Developer in product development by supplying products at discounted prices, as listed in the attached OEM Developers Price Schedule or based on an OOI quotation, on all orders regardless of quantity. The purpose of this effort is to assist the Developer in producing cost effective prototype(s) and beta test unit(s) for sale or distribution to its customers or agents. It is understood that there may be a change in the hardware requirements during the development of the prototype. The prices will be based on the OEM Developers Price Schedule and are subject to change without notice.
7. Purchased products cannot be returned or exchanged unless they fail to meet OOI published or agreed upon performance and warranty specifications. OOI will enter in a Mutual Non-Disclosure Agreement with the Developer when it is deemed necessary or prudent.
8. This agreement does not entitle the Developer to any exclusive application position for OOI intellectual property, know-how, products, components or assemblies.
9. The Developer shall be solely responsible for the design, supply, production, performance and assembly (excluding OOI supplied products) of its products and the protection of their intellectual property and trademarks.
10. No license or intellectual property right, by OOI or the Developer, is granted or inferred by this agreement.
11. Nothing in the agreement shall be construed to constitute the Developer as a partner in any respect of OOI nor shall either party have any authority to legally bind the other in any respect, it being intended that each shall remain an independent contractor responsible for its own actions.
12. If any part of this agreement is found inconsistent with the laws of the State of Florida, it shall in no way hinder the remainder of the agreement.

Intent of Application

The Developer's intent is to design, develop and manufacture specific products for the application of _____. If proprietary technologies or trade secrets are being introduced by

the Developer or OOI, a separate Non-Disclosure Agreement must be agreed upon and entered into in conjunction to this agreement.

Term

The term of this agreement shall be one year or until terminated by either party at the end of any calendar month, by giving not less than 30 days written notice to the other party by registered or certified mail. OOI will notify the Developer at the time of renewal. If the Developer does not renew the agreement, within a 30 day period, the renewal fee is subject to an additional \$50 administrative charge.

Shipping Terms

All products will be shipped ex-works (as defined in "INCOTERMS 2000") origin. Developer agrees to pay all applicable freight, handling and insurance charges.

Export Control

OOI agrees to and shall comply fully and completely with all United States export control laws and regulations, including those implemented by the Department of Commerce through its Export Administration Regulations (EAR) and the Department of State through its International Traffic and Arms Regulation (ITAR) as well as those imposed by the Treasury Department through its Office of Foreign Asset Control (OFAC). OOI agrees to and shall provide upon legitimate request by a U.S. government agency, all details relating to the purchase or shipping of its products.

Warranty

OOI warrants that all hardware will be free from defects in material and workmanship for a period of (1) year. The sole remedy for breach of the warrantee and OOI's sole obligation there under shall be limited to the repair at its facilities, of any parts, or replacement, of any parts which are deemed defective by OOI. This warrantee shall not apply to any hardware which has been subject to accident, alteration or misuse.

EXCEPT AS OTHERWISE SET FORTH IN THIS AGREEMENT OOI MAKES NO PERFORMANCE REPRESENTATIONS, WARRANTIES OR GUARENTEES, EITHER EXPRESSED OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE PRODUCT OR PRODUCT LITERATURE FURNISHED PURSUANT TO THIS AGREEMENT, INCLUDING ANY WARRANTY OF MERCHANTABILITY, WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTEE ARRISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE IN ANY REGARD, OCEAN OPTICS LIMIT OF LIABILITY IS ONLY THE AMOUNT OF MONEYS PAID BY THE DEVELOPER TO OCEAN OPTICS IN ONE YEAR.

Settlement of Disputes

All disputes, controversies or differences which may arise between the parties, out of or in relation to, or in connection with this Agreement, or for the breach thereof, shall be finally settled by arbitration in Florida under the then existing rules of the American Arbitration Association, by which rules each party hereto is bound.

This Agreement shall be construed and the rights of parties shall be governed by the laws of the State of Florida.

IN WITNESS WHEREOF the parties hereto cause this AGREEMENT to become binding upon the parties, as evidence by the signatures of their properly authorized representative.

Amendment and Notices

Amendments to this Agreement shall be made in writing at any time by mutual consent between the parties.

For Ocean Optics, Inc

For Developer

(Print Name Here)

(Print Name Here)

Title

Title

Signature

Signature

Date

Date