

OptiSurface Partner Agreement

20Aug2021

This Agreement is between Davco OptiSurface Pty Ltd, by and through ("OptiSurface") and the "Partner" and establishes the terms and conditions for Partner's participation in the OptiSurface Partner Program (the "Program"). Under the Program, OptiSurface will provide marketing and promotional support to Partner as specified in this Agreement related to Partner's purchase and license of OptiSurface products for resale.

1. Partner Qualification

1.1 In order to ensure adequate technical and marketing support to end users, eligibility to resell OptiSurface products is subject to meeting authorization requirements. These Program Materials contain a detailed description of the benefits to a Partner of as well as the requirements of a Partner under this program. Partner will not sell OptiSurface products or services without arranging for adequate post-sales support.

2. Relationships

2.1. Partner is an independent contractor engaged in purchasing OptiSurface products for resale to its customers. Partner is not an agent or legal representative of OptiSurface for any purpose, and has no authority to act for, bind or commit OptiSurface.

2.2. Partner has no authority to make any commitment on behalf of OptiSurface with respect to quantities, delivery, modifications, interfacing capability, suitability of software or suitability in specific applications. Partner has no authority to modify the warranty offered with OptiSurface products. Partner will indemnify OptiSurface from liability for any modified warranty or other commitment by Partner not specifically authorized by OptiSurface.

2.3. Partner will not represent itself in any way that implies Partner is an agent or branch of OptiSurface. Partner will immediately change or discontinue any representation or business practice found to be misleading or deceptive by OptiSurface immediately upon notice from OptiSurface.

3. Term, Limitations, Termination

3.1. The term of this Agreement is shown in Attachment A. This Agreement shall automatically renew on each subsequent year for a one-year term, unless written notice is received within ninety (90) days of the end of this agreement in the form of a certified letter. OptiSurface reserves the right to terminate this agreement at the end of the original twelve month period without notice.

3.2. OptiSurface may, from time to time, give Partner written notice of amendments to this Agreement. Any such amendment will be agreed upon by both parties and become a part of this Agreement thirty (30) days from the date of the notice, unless otherwise specified in the notice.

3.3. Upon termination or non-renewal of this Agreement, all interests in accrued marketing funds (if any) will automatically lapse.

4. Partner Programs

4.1. OptiSurface Partner Program will contain various participation levels. OptiSurface may invite Partner from time to time to participate in the co-operative advertising, market development and promotional programs offered by OptiSurface as defined in the Program Materials. Partner may, at its option, participate in such programs during the term of this Agreement. OptiSurface reserves the right to terminate or modify such programs at any time at its sole discretion. The Partner program details are attached within Attachment A of this contract.

4.2. Partner shall exert best efforts to market OptiSurface products, and is able to use promotional materials supplied by OptiSurface.

4.3. Partner shall have sufficient technical knowledge of the OptiSurface products in general, and will have access to appropriate OptiSurface sales and technical training.

4.4. OptiSurface does not represent that it will continue to manufacture any particular item or model of product indefinitely or even for any specific period. OptiSurface specifically reserves the right to modify any of the specifications or characteristics of its products, to remove any product from the market, and/or to cease manufacturing or supporting it.

4.5. Partner is expected and encouraged to advertise and promote the sales of OptiSurface products through all appropriate media including trade show exhibits, catalogs and direct mailings, space advertising, educational meetings, sales aids, etc. OptiSurface must approve all original materials that use OptiSurface name or trademarks (aside from modifying existing OptiSurface supplied template materials). OptiSurface will assist Partner in advertising and promoting OptiSurface products in accordance with OptiSurface policy.

5. Limitation of Liability

UNDER NO CIRCUMSTANCES, INCLUDING ANY INFRINGEMENT CLAIMS, SHALL OPTISURFACE BE LIABLE TO PARTNER OR ANY OTHER PARTY FOR ANY RE-PROCUREMENT COSTS, LOST REVENUE OR PROFITS OR FOR ANY OTHER SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, EVEN IF COMPANY HAS BEEN INFORMED OF SUCH POTENTIAL LOSS OR DAMAGE.

6. Use of OptiSurface Trademarks

6.1. Partner acknowledges the following:

6.1.a.1. OptiSurface owns all right, title and interest in the OptiSurface names and logo types.

6.1.a.2. *OptiSurface is the owner of certain other trademarks and trade names used in connection with certain product lines and software.*

6.1.a.3. *Partner will acquire no interest in any such trademarks or trade names by virtue of this Agreement, its activities under it, or any relationship with OptiSurface.*

6.2. *During the term of this Agreement, Partner may indicate to the trade and to the public that it is an Partner of the OptiSurface products. Partner may also use the OptiSurface trademarks and trade names to promote and solicit sales or licensing of OptiSurface products if done so in strict accordance with OptiSurface guidelines. Partner will not adopt or use such trademarks or tradenames, or any confusingly word or symbol, as part of its company name or allow such marks or names to be used by others.*

6.3. *At the expiration or non-renewal of this Agreement, Partner shall immediately discontinue any use of the OptiSurface and OptiSurface names or trademarks or any other combination of words, designs, trademarks or tradenames that would indicate that it is or was a Partner of the OptiSurface products.*

7. Product Warranty

7.1. *The warranty terms and conditions will be as specified in the OptiSurface Standard Terms and Conditions of Sale.*

7.2. *OPTISURFACE'S WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES WHETHER EXPRESS, IMPLIED OR STATUTORY INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.*

8. Software

8.1 *The software license terms will be specified in OptiSurface Standard Terms and Conditions of Sale and any Software Maintenance Agreement entered into by the parties.*

9. Proprietary Information

9.1 *OptiSurface and Partner shall each exercise due diligence to maintain in confidence and not disclose to any third party any proprietary information furnished by the other to it on a confidential basis and identified as such when furnished. Except in accordance with this Agreement, neither party shall use such information without permission of the party that furnished it. As used in this paragraph, "due diligence" means the same precaution and standard of care which that party uses to safeguard its own proprietary data, but in no event less than reasonable care. The provisions of this Section shall survive for five (5) years beyond the expiration, non-renewal or termination of this Agreement.*

9.2 *This Agreement does not grant any license under any patents or other intellectual property rights owned or controlled by or licensed to OptiSurface. Partner shall not have any right to manufacture OptiSurface products.*

10. Export Controls

Regardless of any disclosure made by Partner to OptiSurface or Distributor of an ultimate destination of OptiSurface products, Partner shall not export, either directly or indirectly, any documentation, OptiSurface products, or system incorporating such OptiSurface products outside of their respective country.

11. Compliance with Laws

Partner agrees to comply with all laws and regulations that are applicable to the business that Partner transacts. Partner agrees to indemnify and hold OptiSurface harmless for all liability or damages caused by Partner's failure to comply with the terms of this provision.

12. Government Contract Conditions

In the event that Partner elects to sell OptiSurface products or services to the Government, Partner does so solely at its own option and risk, and agrees not to obligate OptiSurface as a subcontractor or otherwise to the Government. Partner remains solely and exclusively responsible for compliance with all statutes and regulations governing sales to the Government. OptiSurface makes no representations, certifications or warranties whatsoever with respect to the ability of its goods, services or prices to satisfy any such statutes and regulations.

13. Miscellaneous

Notices under this Agreement must be sent by telegram, telecopy, registered or certified mail, or by email (with return receipt acknowledging acceptance) to the appropriate party at its address stated within this Agreement (or to a new address if the other has been properly notified of the change). A notice will not be effective until the addressee actually receives it or acknowledges it by return email.

This Agreement and its schedules represent the entire agreement between the parties regarding this subject. This Agreement supersedes all previous oral or written communications between the parties regarding the subject, and it may not be modified or waived except in writing and signed by an officer or other authorized representative of each party. Neither party will be liable to the other for any delay or failure to perform if that delay or failure results from a cause beyond its reasonable control. If any provision is held invalid, all other provisions shall remain valid, unless such invalidity would frustrate the purpose of this Agreement. Texas' law governs this Agreement without consideration to that body of law referred to as "conflicts of laws". OptiSurface and Partner will attempt to settle any claim or controversy arising out of it through consultation and negotiation in good faith and a spirit of mutual cooperation. Any dispute which cannot be resolved through negotiation or mediation may be submitted to the courts of appropriate jurisdiction.

Attachment A – OptiSurface Partner Program

1. Partner Discounts/Margin

The current partner discounts or margins are based on volume purchased at one time:

Order (\$)	Discount (%)	Payment Method	To Dealer[^]
<1000	0%	credit card	None
1,000	10%	credit card	\$100 store credit
2,500	15%	credit card	\$375 store credit
5,000	20%	invoice	\$4,000 invoice
10,000	25%	invoice	\$7,500 invoice
15,000	30%	invoice	\$10,500 invoice
30,000	35%	invoice	\$19,500 invoice
60,000	40%	invoice	\$36,000 invoice

[^] If payment is via credit card, the discount is paid out as store credits on the OptiSurface Webstore and will be manually loaded 1 business day later. The store credit will be deducted from your future purchases.

These discounts can change with 90 days notice.

2. Other Requirements

OptiSurface logo will be placed on partner's internet homepage along with a link to OptiSurface.com.