

Service Plan

Terms and Conditions



Customer First!

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1. Terms and Conditions

6.1 Service Term and Registration

Net Optics Service Plan coverage beyond the first year must be purchased within ninety (90) days of the purchase of the Net Optics product to which they will be applied, or there may be a fee to inspect the product. The services are provided for twelve (12) months, starting the day of your purchase. After the Service Plan expires, you may purchase a renewal of this service contract in 1-year increments directly from Net Optics or from your reseller. These terms may be terminated by Net Optics in the event that you breach any term in this Agreement or become insolvent, have a receiver or other similar officer appointed or a change in ownership or control of your company takes place.

6.2. Service Provided.

a. Net Optics will provide access to the Net Optics Customer Portal (NOC) on the main website, twenty-four (24) hours a day, to assist you with product use, configuration and troubleshooting. Net Optics will use reasonable efforts to respond to you on the same day for all calls and emails received from 8:00 a.m. to 5:00 p.m. PST, Monday through Friday excluding scheduled local holidays ("Normal Business Hours"). For lower priority calls received outside our Normal Business Hours, Net Optics will use reasonable efforts to respond no later than its next business day.

b. Net Optics will use reasonable efforts to generate solutions to software and hardware problems. Net Optics will support each product for a minimum of thirty-six (36) months from the date of first commercial shipment of that release.

c. Net Optics will provide access to our web page, which will also provide you with new releases of software and/or documentation on-line. Net Optics will use reasonable efforts to ship you replacement hardware the next business day if your request and Net Optics hardware diagnoses is made before 1:00 p.m. PST. If you call after 1:00 p.m. PST, hardware will be shipped the following business day.

- Where available (U.S. and Canada) the replacement hardware will be shipped with the expectation that it will arrive the next business day. In all other locations the arrival time is subject to the destination country's importation and customs processes.
- Replacement hardware may be either new or equivalent to new.

6.3. Service Restrictions.

In order to receive services, you must observe the following conditions:

a. You must pay a separate Service Plan fee for each product on which you receive support.
b. Net Optics Service Plan is not available in certain countries. Net Optics reserves the right to refuse requests for service (including shipment of replacement hardware) in such countries.

c. You must meet any custom requirements necessary for importation of the hardware replacement, including (i) payment of import duties, taxes, and fees (including storage) where applicable and (ii) securing any import documentation required (i.e., import permits, licenses) before requesting a hardware replacement.

d. You may have to use a more current release of the software for Net Optics to be able to support you. A more current release of software may require a hardware upgrade at additional cost.

e. You must provide a priority level for all calls placed with Net Optics, according to the following definitions:

- Priority 1: An existing network is down or there is a critical impact to your business operation.
- Priority 2: Operation of an existing network is severely degraded, or significant aspects of your business operation are being negatively impacted by unacceptable network performance.
- Priority 3: Operational performance of the network is impaired while most business operations remain functional.

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- Priority 4: Information or assistance is required on Net Optics product capabilities, installation, or configuration. There is clearly little or no impact to your business operation.

f. You must provide reasonable access to the product through the Internet or a modem so that Net Optics may attempt to correct problems through remote access.

g. When Net Optics ships replacement hardware, you are responsible for identifying any damage in transit.

h. When you ship products back to Net Optics, you must comply with the return shipment instructions provided with the replacement hardware.

6.4. Support Entitlement.

You are entitled to receive support on a product only if you have paid the appropriate support fee for such product and have registered such product's serial number with Net Optics. If there is any indication that support is being received on product for which the above requirements have not been met, Net Optics reserves the right, upon reasonable advance notice, to perform an audit of your products and records. If Net Optics reasonably determines that unauthorized support is occurring, you may be charged the appropriate support fee as well as, without limitation, legal fees and audit fees and interest at the rate of one and a half percent (1 1/2%) per month, calculated from the date on which unauthorized support was first received and compounded on each monthly anniversary of that date.

6.5. Services Excluded.

a. Any customization or installation of software, or any visits to your site.

b. Support or replacement of product that is altered, modified, mishandled, destroyed, damaged by natural causes or damaged due to a negligent or willful act or omission by you or use other than as specified in the Net Optics-supplied documentation, or resolution of software or hardware problems resulting from third party products or causes beyond Net Optics control.

c. Services for non-Net Optics software installed on any Net Optics product.

d. Any hardware upgrade required to run new or updated software.

6.6. Software License.

Any software downloaded from the Net Optics website is licensed under the same terms and conditions as the Software License that comes with the product you purchased (such terms are also available on NOC). You are licensed to use downloaded software only on hardware registered to receive support.

6.7 Confidentiality.

You acknowledge that, in the course of receiving support, you may obtain information relating to Net Optics, which is of a confidential and proprietary nature ("Proprietary Information"). Such Proprietary Information may include, but is not limited to, trade secrets, know how, invention techniques, processes, programs, schematics, software source documents, data, financial information, and sales and marketing plans. You shall at all times, both during the term of receiving support and for a period of at least three (3) years after support is terminated, keep in trust and confidence all such Proprietary Information, and shall not use such Proprietary Information other than as authorized under these terms and conditions, nor shall you disclose any such Proprietary Information without Net Optics prior written consent. You further agree to immediately return to Net Optics any Proprietary Information (including copies thereof) in your possession, custody, or control upon termination of support. You will indemnify Net Optics for any misuse of Proprietary Information.

6.8. Warranty.

All services provided by Net Optics will be performed with reasonable skill and care and, except as specified in these terms and conditions, all other express or implied terms, conditions or warranties including, without limitations, implied terms as to fitness for a particular purpose or satisfactory quality are excluded. You must notify Net Optics promptly of any claimed breach of warranty and your sole and exclusive remedy for any such breach

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shall be, at Net Optics sole discretion, re-performance of the relevant services or reimbursement of that portion of the fees paid in relation to such services.

6.9. Limitation of Liability.

Except as provided at Clause 6.11 below, Net Optics and its suppliers' total liability arising out of or in connection with this service contract during the twelve month period for which any fee paid relates, whether in contract, tort (including negligence) or otherwise, is limited to the amount paid for provision of the services in relation to that period. In no event shall Net Optics or its suppliers be liable to any person or entity for incidental, consequential, indirect or special damages of any nature or for loss of business profits, income or data.

6.10. Net Optics Written Assurance.

You hereby acknowledge that the Services and deliverable and technology or direct products thereof (hereafter referred to as Products and Technology), supplied by Net Optics under these Terms are subject to export controls under the laws and regulations of the United States (U.S.). You agree to comply with such laws and regulations governing use, export, re-export, and transfer of Net Optics Products and Technology and will obtain all required U.S. and local authorizations, permits, or licenses. Net Optics and you each agree to provide the other such information and assistance as may reasonably be required by the other in connection with securing such authorizations or licenses, and to take timely action to obtain all required support documents. You agree to maintain a record of exports, re-exports, and transfers of the Products and Technology according to U.S. and local laws. Nothing in these terms and conditions shall operate to exclude or restrict Net Optics and its suppliers' liability for the tort of deceit or for personal injury or death caused by their negligence.

6.11. Entire Agreement.

The contract letter, registration guidelines and terms and conditions provided with this service contract contain all the terms between you and Net Optics regarding their subject matter and supersede any prior agreement, understanding or arrangement, whether oral or in writing. No representation, undertaking or promise shall be taken to have been given or be implied from anything said or written in negotiations whether by Net Optics or by a Net Optics reseller prior to your purchase of Net Optics services except as expressly stated here. You shall not have any remedy in respect of any untrue statement made and upon which you relied in entering into this service contract (unless such untrue statement was made fraudulently) and your only remedies shall be for breach of contract as provided here.

6.12. Severability.

In the event that any of the terms of this service contract become or are declared to be illegal or otherwise unenforceable by a court of competent jurisdiction, such terms shall be null and void but all remaining terms shall remain in full force and effect.

6.13. Net Optics Terms and Conditions.

The individual acknowledges that he/she is an authorized representative of the company/organization registered with Net Optics and has read and agrees to Net Optics services terms and conditions. US law governs these terms and the parties submit to the exclusive jurisdiction of the US Courts.

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