



## TERMS AND CONDITIONS OF SALE - CONSUMABLE PRODUCTS

These *Terms and Conditions of Sale - Consumable Products* ("**Terms and Conditions of Sale**") combined with the specific terms included on the accompanying product quote or other attached sales documentation issued by ZEISS ("**Quote**"), if any, constitute the agreement ("**Agreement**") made by and between Carl Zeiss Canada Ltd. ("**ZEISS**") and the named purchaser ("**Buyer**", "**You**", "**Your**") for supply to Buyer of the consumable products, goods and related accessories (e.g., injectors, cartridges, lens fragmentation devices, etc.) described on the Quote or covered by an IOL Consignment Agreement (individually or collectively, "**Product**"). This Agreement applies to all sales of Product by ZEISS to Buyer and, if Buyer and ZEISS have entered into an IOL Consignment Agreement, to all implanted, damaged, expired, lost or otherwise unaccounted for Consignment Inventory (as defined in the Consignment Agreement) ("**Ex-Consigned Inventory**").

In the event that Quote terms conflict with these Terms and Conditions of Sale, the Quote terms will supersede the specific conflicting terms contained in these Terms and Conditions of Sale. ZEISS' agreement to sell Product is expressly conditioned on Buyer's assent to this Agreement and is limited to acceptance of this Agreement; and, no other condition or term, in whole or part, issued, referenced and/or communicated by Buyer in any purchase order and/or any other document shall prevail over this Agreement. Buyer acknowledges and agrees that all such other conditions and terms are expressly excluded, objected to and rejected by ZEISS. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend this Agreement. For the avoidance of doubt, Buyer's general terms and conditions of purchase are expressly excluded. Buyer is responsible for ensuring the accuracy of the Quote, and for giving ZEISS any necessary information relating to the Product or the Quote within a sufficient time to enable ZEISS to perform this Agreement in accordance with its terms.

1. **Prices and Taxes.** All Product and other items ordered under this Agreement shall be sold and invoiced at ZEISS list prices and charges in effect at the time of each Product shipment or upon Product becoming Ex-Consigned Inventory unless otherwise specified by ZEISS in writing ("**Price(s)**"). ZEISS reserves the right to change or withdraw published ZEISS list prices without notice. All Prices are in Canadian dollars (CAD). Price(s) do not include applicable sales, excise, use, or other taxes in effect and/or as later levied. ZEISS complies with all laws to collect applicable sales taxes and is required by law to collect sales tax in all provinces and territories. Except for those taxes attaching to ZEISS (e.g. income taxes), Buyer is responsible for payment of all taxes associated with its purchase of Product, and Buyer agrees to indemnify and hold ZEISS harmless for any liability for such taxes, as well as the collection or withholding by ZEISS or remittance by Buyer thereof, including penalties and interest thereon. For ZEISS to extend tax-exemption status to Buyer, Buyer must provide its tax-exemption certificate from the jurisdiction of the location where the Product will be used prior to acceptance of the order. No refund or adjustment to previously withheld taxes will be made by ZEISS sixty (60) days after the invoice date.

2. **Minimum Order Quantity.** Product may be subject to minimum order or unit quantities. For example, MiLOOP devices must be ordered in full box quantities (5 units per box) and, if Buyer has an IOL Consignment Agreement in effect, orders must maintain the agreed-to inventory volume. All orders by Buyer are subject to acceptance or rejection, in whole or in part, in the sole discretion of ZEISS.

3. **Method of Payment; Balance Due on Delivery.** Unless stated otherwise on the Quote, payment in full will be due thirty (30) days from the date of invoice or upon Product becoming Ex-Consigned Inventory regardless of controversies relating to other Product deliveries or undelivered Product. Alternatively, ZEISS may require a deposit upon placement of the order, in which case the payment balance will be due on delivery (including applicable sales tax, cost of freight, insurance, etc.). Notwithstanding the foregoing, ZEISS reserves the right to require payment in full, in advance, or C.O.D., or otherwise modify credit terms either before or after acceptance of any order if, for any reason, Buyer's credit is or becomes objectionable to ZEISS. Pending correction of any objectionable credit situation, ZEISS may withhold shipments without incurring any liability to Buyer. All balances not paid when due shall be subject to a service charge equal to 18% per annum, or the highest rate permitted by law, whichever is less. Buyer shall make all payments hereunder in Canadian dollars. Buyer's obligation to pay outstanding invoices and any other amounts due shall be not subject to any abatement, reduction, set-off, defense, counterclaim, interruption, deferment or recoupment for any reason whatsoever. Any discounts, rebates, administrative fees, credits, or other fees due or owed to Buyer by ZEISS will be applied by ZEISS against such delinquent balances first before a payment or reimbursement is made to Buyer.

4. **Credit Statement.** Buyer certifies that any information submitted pertaining to its credit worthiness is accurate. Buyer, its owners and/or principals, expressly authorize credit reporting agencies and other persons to furnish credit information to ZEISS, separately or jointly with other creditors, for use in connection with this Agreement. ZEISS and joint users of such information are authorized to receive and exchange credit information and to update such information as appropriate for the express purpose of assessing Buyer's credit worthiness. Buyer, its owners and/or principals hereby consent to and authorize ZEISS to obtain and use one or more personal credit reports from time to time as may be needed in the credit evaluation and/or in connection with the extension or continuation of the credit by ZEISS to Buyer. Buyer, its owners and/or principals hereby consent to the collection, use and disclosure of their respective personal information in order for ZEISS to: determine the creditworthiness of Buyer, its owners and/or its principals; to meet Buyer's requests for Product; to administer accounts; and to comply with legal requirements. Without limiting the foregoing, Buyer, its owners and/or principals hereby consent to the disclosure of their respective personal information to third parties where required in order to obtain credit reports and credit references and to otherwise determine the creditworthiness of Buyer, its owners and/or principals. In addition, Buyer, its owners and/or principals hereby authorize ZEISS to disclose to third parties, including one or more credit reporting agencies, any delinquencies by Buyer in paying invoice(s) and balance(s) thereunder.

5. **Shipment; Risk of Loss; Date of Shipment.** All shipments will be DAP Customer location. Absent specific agreement otherwise, ZEISS will select the carrier. Title and risk of loss to Product passes to the Buyer upon ZEISS's delivery to the Customer. If a shipment date is specified, such date is only an estimated delivery date, and not a binding term of this Agreement. ZEISS will make commercially reasonable efforts to meet the specified delivery date. If ZEISS does not deliver the Product within sixty (60) days of the specified delivery date, then Buyer may cancel the applicable order(s), in which case neither Buyer nor ZEISS will have any further obligations or liability in connection with such cancelled order(s) to the extent not fulfilled. ZEISS may, in its sole discretion, without liability or penalty, make partial shipments of Product to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for Product shipped whether such shipment is in whole or partial fulfillment of Buyer's order. When expedited delivery, specialized service, or alternate transportation modes are requested, or if requests are inconsistent with efficient distribution practices, an additional charge to cover the premium expense will be added to the invoice. Inside deliveries are subject to additional charges based on current common carrier rates or hourly rates. If requested by Buyer, ZEISS will, with any additional costs being billed to the Buyer, utilize Buyer's preferred delivery company and desired delivery time specifications (e.g., overnight, second day air) for any order placed.

5.1 Damage or Loss in Transit. If there is damage, loss or shortage of ordered Product upon delivery, Buyer will notify ZEISS Customer Care immediately. Identity of items and extent of damage or loss must be noted on Buyer's copy of the delivery document by the agent of the transportation company. If damage is discovered after receipt of shipment, Buyer must notify ZEISS Customer Care to report concealed shortages or damages of delivered Product within 7 business days of delivery in order to be considered by ZEISS for credit. ZEISS will work in good faith with Buyer to issue credit for damaged, loss, or shortage of ordered Product. Buyer must also within 7 business days of delivery send a copy of the carrier freight bill to ZEISS Customer Support indicating Product and quantity damaged or not received. Buyer will assist ZEISS to file claims with the carrier in the event of loss or damage to any such Product in transit.

6. Acceptance. Buyer will be deemed to have accepted the Product upon delivery of such Product.

7. Security Interest. Until Product is paid for in full, Buyer gives ZEISS a security interest in such Product, all monies received for such Product (including without limitation insurance proceeds), and in any chattel paper regarding such Product (e.g., lease agreements); provided that the foregoing does not apply to Consigned Inventory. At ZEISS's request, Buyer agrees to execute any documents, including one or more financing statements under applicable personal property securities legislation, which ZEISS may reasonably request to evidence ZEISS's right, title and interest in and to such Product and ZEISS may file a copy of such documents with the appropriate governmental authority. Until such time as title to Product passes to Buyer, Buyer shall hold such Product as ZEISS's fiduciary agent and bailee, and shall keep such Product separate from those of Buyer and third parties; properly stored, protected, insured and identified as ZEISS's property. Buyer may use Product in the ordinary course of its business. Upon removal from Consignment Inventory, payment terms will be per Section 3 of these Terms and Conditions of Sale. Prior to payment, Buyer may not encumber, transfer or attempt to encumber or transfer title to any Product without the prior written consent of ZEISS.

8. Use Restrictions.

8.1 Single-Use Only. Each Product is a consumable sold pursuant to a limited license to use only once, in a single eye. Buyer shall not re-use any Product. Any Product used more than once shall immediately void all applicable warranties, express or implied, and result in Buyer's automatic forfeiture of any ZEISS indemnification or other responsibility of ZEISS and may subject the Buyer to liability. Additionally, Buyer represents and warrants that (i) it has purchased Product for its own use only, and shall not resell such Product to any other party, and (ii) such Product is acceptable and clinically suitable for its intended purposes.

8.2 Do Not Re-Sterilize. Product is single-use only and not suitable for re-sterilization, by any manner, means or process, including but not limited to, autoclave, ultrasonic bath or otherwise. Any attempt to re-sterilize Product voids all applicable warranties (express or implied) and carries the risk of cross-contamination and infection, which may subject the Buyer to liability.

8.3 Claims. Buyer shall make no false or misleading representations or omissions with regard to Product or ZEISS and shall not make any representations regarding Product inconsistent with Product information provided to Buyer by ZEISS.

9. Return Policy. Unless it has given its written consent, ZEISS will not accept returns of any Product. Any returns of Product shall be in ZEISS's sole discretion and must comply with ZEISS's return policy set forth below. Risk of loss for returned Product is Buyer's responsibility.

9.1 Return Conditions. Returns may only be made on the following conditions: (i) Product must meet all Eligibility Requirements set forth below to be considered for return; (ii) Buyer will receive a ZEISS Credit Note for Product considered Eligible for Return (as defined below) by ZEISS after successful inspection by ZEISS of the returned Product; (iii) each ZEISS Credit Note may be applied towards future orders from ZEISS; (iv) Buyer must obtain a "returned materials authorization (RMA) number" from ZEISS prior to returning Product for return consideration; (v) Product returned without an RMA number will not be considered Eligible for Return; (vi) unless the return of a Product was requested in writing by ZEISS, Buyer must pay return shipping and handling fees; (vii) if ZEISS receives Product that is not "Eligible for Return" such Product: (a) will not be returned to Buyer and; (b) Buyer will not be issued a credit; and (viii) risk of loss and any damage for returned Product during transit is Buyer's responsibility.

9.2 Eligibility Requirements. In the sole discretion of ZEISS, a Product is "Eligible for Return" if it: (i) has been issued an RMA number and, in the case of direct sales of such Product such RMA number is issued within thirty (30) days of Buyer's receipt of an invoice for such Product and the Product is returned within thirty (30) days of issuance of such RMA number. RMA numbers are serial number-specific; (ii) was purchased directly from ZEISS by Buyer in accordance with the Terms and Conditions of Sale; (iii) is in Saleable Condition as determined by ZEISS in its sole and absolute discretion; (to be considered "in Saleable Condition" the Product must not (a) be damaged by water, fire, smoke, power failure or other similar event; (b) be subjected to extremes in temperature or exposure; (c) be improperly stored or handled, and/or; (d) contain improper packaging or use of shipping materials during return); (iv) is in its original packaging, and has not been opened, damaged, repacked, over-labeled, price-stickered or reconstituted or tampered with in any way; (v) is in its minimum selling unit of measure; (vi) is not within six (6) months prior to its expiration date; (vii) is not a sample or clinical evaluation package; (viii) is not an accessory, special promotion sale, or a custom or specially made Product or an accessory; (ix) Product is a current inventory item; and (x) Product has been shipped and billed to Buyer by ZEISS, and Buyer has paid for said Product.

10. Cancellation. Buyer's order can only be cancelled prior to shipment by written agreement of Buyer and ZEISS. If Buyer cancels Buyer's order after shipment, Buyer may be charged an administration fee equal to twenty percent (20%) of the invoice amount. If Buyer only cancels part of Buyer's order under this Agreement, ZEISS may in its sole discretion adjust the price of any remaining Product being purchased, which may mean that discounts offered on the original order will not be available.

11. Services. This Agreement only applies to the sale and purchase of goods. If the Quote contains provisions under which services are sold and purchased, the ZEISS Terms and Conditions of Service will apply to those services.

12. Training. ZEISS may provide training related to Product at ZEISS's discretion. ZEISS will determine the form, duration and content, and any associated cost, of the training referenced in the Quote.

12.1 Special Training Requirements for MiLOOP. With respect to MiLOOP purchases, Buyer shall comply with the training requirements detailed in the applicable Quote or other written document provided by ZEISS.

13. Limited Warranty and Disclaimer.

13.1 Limited Warranty. All Product will conform to its labeling, Directions for Use ("DFU") and/or Instructions for Use ("IFU"). Other than as provided in the applicable labeling, DFU and/or IFU, ZEISS makes no warranty, express or implied, regarding the Product.

13.2 Product Warranty Exclusions. The limited warranty in Section 13.1 does not apply to Product damage or defects which ZEISS determines, upon inspection, are caused due to: (i) unauthorized use with another product; (ii) accident, abuse, misuse, improper maintenance, liquid contact, fire, electrical failure, earthquake or other external cause beyond ZEISS' reasonable control; (iii) damage caused by using the Product outside ZEISS' (IFU or DFU) published guidelines; (iv) use by un-trained or improperly trained or un-qualified personnel; (v) damage caused by service (repairs, alterations, or otherwise) performed by anyone who is not a representative of ZEISS or a ZEISS-authorized service provider; (vi) modifications made without the written permission of ZEISS; (vii) defects caused by normal wear and tear or otherwise due to the normal aging of Product, (viii) unauthorized transportation from the initial delivery location or environmental conditions outside of those prescribed in the Product specifications, (ix) negligence, (x) improper packaging or shipment, storage, or (xi) re-use of the Product. Parts and accessories for Product, including but not limited to, cartridges, bulbs, flashtubes, lamps, filters, paper, printer ribbons, floppy disks, back-up media, user manuals, test chambers, test eyes and test fixtures (collectively,

"**Excluded Consumables**") and items with a limited expected useful life are not subject to the Limited Warranty in Section 13.1. On-site planned or preventive maintenance activities are not included as a part of the Limited Warranty in Section 13.1.

13.3 Other Warranty Exclusions. ZEISS does not warrant that the Product will operate error-free. The Limited Warranty in Section 13.1 extends to Buyer only and not to persons manufacturing, purchasing or using Buyer's products (each as applicable). The limited warranty does not apply to any products not manufactured by ZEISS. Items not manufactured by ZEISS, as well as any third-party supplied items, may be covered by their manufacturer's warranty and any arrangements for service or replacement of such items must be made through that manufacturer.

13.4 Limited Warranty Remedy. In the event of breach of the Limited Warranty in Section 13.1, ZEISS will, at its sole discretion, replace or issue Buyer a refund for any nonconforming Product. ZEISS shall not be liable for a breach of the warranty set forth in Section 13.1 unless Buyer gives written notice of the defect, reasonably described, including whether such Product came into contact with any patients, to ZEISS within 10 business days of the time when Buyer discovers or ought to have discovered the defect.

13.5 DISCLAIMER OF WARRANTIES. TO THE FULLEST EXTENT PERMITTED BY LAW, THE LIMITED WARRANTY AND THE REMEDIES SET FORTH IN THIS SECTION 13 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, REMEDIES AND CONDITIONS, WHETHER ORAL, WRITTEN, STATUTORY, EXPRESS OR IMPLIED. ZEISS EXPRESSLY DISCLAIMS ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS, INCLUDING WITHOUT LIMITATION, WITH RESPECT TO MERCHANTABILITY OR QUALITY OF THE PRODUCT, FITNESS OF THE PRODUCT FOR A PARTICULAR PURPOSE, SUITABILITY OF THE PRODUCT FOR BUYER'S INTENDED USE, HIDDEN OR LATENT DEFECTS AND INFRINGEMENT. To the extent that such warranties cannot be disclaimed, ZEISS' obligation to repair, replace, or at its sole discretion refund the value of non-conforming Product shall be Buyer's exclusive remedy and ZEISS' entire liability under the Limited Warranty in Section 13.1. To the extent that any Province or Territory of Canada does not allow limitations on exclusion of or limitation of remedies, the foregoing limitations and exclusions will not apply to Buyer.

14. LIMITATION OF LIABILITY. NOTWITHSTANDING ANYTHING CONTAINED IN THIS OR ANY OTHER AGREEMENT BETWEEN ZEISS AND BUYER, NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY LOSS, DAMAGE, COST OF REPAIRS, LOSS OF DATA, OR INCIDENTAL, PUNITIVE, EXEMPLARY, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING (WITHOUT LIMITATION) DUE TO FAILURE TO SUPPLY, PATIENT OUTCOMES, LOSS OF PROFIT, REVENUES, OR BUSINESS OPPORTUNITY, OR THIRD PARTY CLAIMS, ALL OF WHICH EACH PARTY EXPRESSLY WAIVES TO THE FULLEST EXTENT PERMITTED BY LAW, EVEN IF EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND EVEN IF SUCH DAMAGES WERE FORESEEABLE, WHETHER OR NOT BASED UPON EXPRESS WARRANTY OR IMPLIED WARRANTY, CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHER CAUSE OF ACTION ARISING IN CONNECTION WITH THIS AGREEMENT OR WITH THE DESIGN, MANUFACTURE, SALE, USE OR REPAIR OF THE PRODUCT, AND EVEN IF RECIPIENT'S REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. If applicable law limits the application of the provisions of this Section 14 ("Limitation of Liability"), ZEISS' liability shall be limited to the maximum extent permissible. In no event shall ZEISS' total liability for any claim or action exceed the purchase price of the Product out of which such claim or action arose.

#### 15. Intellectual Property.

15.1 In all cases, all intellectual property rights in and to, and all technology relating to, the Product supplied to Buyer, their design and all improvements thereto or thereof, whether or not such Product, design or improvement is made pursuant to Buyer's specifications or at Buyer's expense, shall be and remain the exclusive property of ZEISS.

15.2 Trademarks. Buyer may not change, adulterate, obscure, remove or deface trademarks, tradenames or labels appearing on any Product of ZEISS.

15.3 Patent Indemnity. ZEISS will defend or settle any claim, suit or proceeding brought against Buyer based on allegations that the Product infringes a third-party patent, provided that: Buyer timely notifies ZEISS of such claim, suit or proceeding; Buyer shall render all reasonable cooperation to ZEISS in connection with the defence of such claim, suit or proceeding; and Buyer gives ZEISS the sole authority to defend or settle the same. If the Product is held to infringe any patent and the use of the Product is enjoined, ZEISS will have the option, at its discretion (i) to procure Buyer the right to use the Product or (ii) to modify the Product so that they no longer infringe such patent or (iii) upon the return of the Product, refund Buyer the then fair market value of the Product and accept the return thereof. This indemnification will not apply to changes made by ZEISS at Buyer's instruction or by Buyer, or by the use of third-party items in conjunction with the Product (unless sold or directed by ZEISS). In no event will ZEISS' total liability to Buyer under this Section 15.3 with respect to any infringement or misappropriation exceed the depreciated value of the Product.

16. Compliance with Laws / Export/Re-Export. Buyer shall comply with all applicable laws, rules and regulations, including, but not limited to, U.S. and Canadian export control laws to the extent permitted by applicable Canadian law.

17. Confidential Information. Each party ("**Receiving Party**") acknowledges that, in the course of the performance of this Agreement, it may learn certain confidential and proprietary information about the other party's ("**Disclosing Party**") business and operations including, but not limited to, products, marketing, distribution, technology, know-how, charges, pricing, intellectual property rights, software, tools, business information, or customer data, information or personal health information ("**Confidential Information**"). Receiving Party agrees that it will keep all Confidential Information strictly confidential, and that it will not use Confidential Information for any other purpose other than to exercise its rights and responsibilities under this Agreement, will not resell, transfer, or otherwise disclose such information to any third party without the Disclosing Party's specific, prior written consent. Receiving Party may disclose Confidential Information to employees, contractors and affiliates of Receiving Party that have a need to know, solely for the purpose of assisting Receiving Party to facilitate the transactions contemplated hereunder, and only subsequent to such persons having executed nondisclosure agreements with confidentiality obligations at least as restrictive as those contained herein. Receiving Party agrees that Disclosing Party is and shall remain the exclusive owner of Confidential Information disclosed hereunder and all patent, copyright, trade secret, trademark and other intellectual property rights therein. Receiving Party shall, upon the request of Disclosing Party, return to Disclosing Party or destroy all drawings, documents and other tangible manifestations of Confidential Information received by Receiving Party pursuant to this Agreement (and all copies and reproductions thereof). The obligations in this provision shall remain in effect following termination of this Agreement. Specifically excluded from this confidentiality obligation is all information that: (i) was in the Receiving Party's legitimate possession prior to receipt of such information from Disclosing Party; (ii) is independently developed by personnel of Receiving Party without any use of or reference to the Confidential Information; (iii) was rightfully received from third parties and, to the best knowledge of Receiving Party, without an obligation of confidentiality to Disclosing Party; (iv) is in the public domain through means other than by breach of this Agreement by Receiving Party; or (v) is disclosed pursuant to any judicial or government request, requirement or order, provided that, to the extent legally permitted, the Receiving Party takes reasonable steps to provide the Disclosing Party the ability to contest such request, requirement or order. The parties acknowledge that Confidential Information has competitive value and that irreparable damage may result to the Disclosing Party if the Receiving Party discloses Confidential Information. The parties agree that legal proceedings at law or in equity, including without limitation injunctive relief, are appropriate in the event of a breach hereof without the duty of posting bond.

#### 18. Termination.

a. Termination by ZEISS. In addition to any remedies or termination rights that may be provided under this Agreement, ZEISS may terminate this Agreement, with notice and thirty (30) days' opportunity to cure, or immediately if, in ZEISS' sole and reasonable opinion, no cure is

practicable, if the Buyer refuses to or is unable to perform its obligations under this Agreement or is in breach of any material provision of this Agreement.

b. Effect of Termination / Expiration. Sections 3 ("Terms and Method of Payment"), 7 ("Security Interest"), 14 ("Limitation of Liability"), 16 ("Compliance with Laws"), 17 ("Confidentiality"), 18b ("Effect of Termination / Expiration") and 19 ("Miscellaneous"), and any other provisions of this Agreement which by their nature are to be performed or paid following termination or expiration of this Agreement, shall survive any termination or expiration of this Agreement.

#### 19. Miscellaneous.

a. Cooperation. Buyer shall fully cooperate with ZEISS in the investigation and reporting of complaints and adverse events related to Product, including by using its best efforts to retrieve, preserve and return any affected Product to ZEISS for investigation in accordance with ZEISS's instructions.

b. Assignment. Buyer shall not assign or transfer any rights, duties or obligations under this Agreement, in full or in part by operation of law or otherwise, without ZEISS' prior written consent. ZEISS may freely assign this Agreement.

c. Waiver. The failure of either party to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by the party in writing. If either party fails to exercise a right or insist on strict performance under this Agreement on one (1) occasion, that party will not be precluded from exercising that right, or insisting on performance of that obligation on any other occasion; nor will this Agreement be modified in any way by such failure to exercise a right or insist on strict performance under this Agreement.

d. Entire Agreement. This Agreement constitutes the final and complete agreement between the parties and supersedes all prior agreements and understandings, whether written or oral, relating to the purchase or sale of the Product. The terms and conditions of this Agreement shall prevail over any other terms and conditions of any order or other similar document submitted by the Buyer for the Product, regardless of any provisions to the contrary, and such other terms and conditions are hereby rejected by ZEISS. No claimed additions to or modifications or amendments of this Agreement, nor any claimed waiver of any of its terms or conditions, shall be effective unless in writing and signed by the party against whom the same may be asserted.

e. Severability. If for any reason a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible and the other provisions of this Agreement will remain in full force and effect.

f. Governing Law; Dispute Resolution. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. The courts in the Province of Ontario shall have non-exclusive jurisdiction over all matters relating to the Agreement. The 1980 United Nations Convention on Contracts for the International Sale of Goods ("CISG") and any reference thereto are explicitly excluded. EACH PARTY HEREBY WAIVES ITS RIGHT TO A TRIAL BY JURY FOR DISPUTES ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING WITHOUT LIMITATION COUNTERCLAIMS REGARDING SUCH DISPUTES, CLAIMS RELATED TO THE PARTIES' NEGOTIATIONS AND INDUCEMENTS TO ENTER INTO THIS AGREEMENT, AND OTHER CHALLENGES TO THE VALIDITY OR ENFORCEABILITY OF THIS AGREEMENT. THE WAIVER IN THE PRECEDING SENTENCE APPLIES REGARDLESS OF THE TYPE OF DISPUTE, WHETHER PROCEEDING UNDER CLAIMS OF CONTRACT OR TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE) OR ANY OTHER THEORY. NOTWITHSTANDING ANY OTHER PROVISION CONTAINED IN THESE TERMS AND EXCEPT IN RESPECT OF DEATH OR PERSONAL INJURY CAUSED BY ZEISS'S GROSS NEGLIGENCE OR FRAUDULENT REPRESENTATION, ZEISS SHALL NOT BE LIABLE FOR ANY CLAIM BY BUYER FOR ANY LOSS OR DAMAGE WHATSOEVER AND HOWSOEVER ARISING, UNLESS SUCH CLAIM HAS BEEN ISSUED IN A COURT OF COMPETENT JURISDICTION WITHIN TWELVE (12) MONTHS FROM THE DATE ON WHICH BUYER HAS FIRST BECOME AWARE OR OUGHT TO HAVE REASONABLY BECOME AWARE (WHICHEVER OCCURS EARLIER) OF THE CIRCUMSTANCES GIVING RISE TO SUCH CLAIM, FAILING WHICH ANY SUCH CLAIM SHALL BECOME TIME BARRED IN ITS ENTIRETY.

g. Force Majeure. ZEISS will make commercially reasonable efforts to complete shipment, but shall not be liable for any loss or damage for delay in delivery, or any other failure to perform due to causes beyond the reasonable control of ZEISS, including but not limited to, fire, storm, flood, earthquake, explosion, accident, acts of a public enemy, war, rebellion, insurrection, sabotage, epidemic or pandemic, quarantine restrictions, labor disputes, labor or material shortages, embargo, failure or delays in transportation, unavailability of components or parts for machinery used for manufacture of its Product(s), acts of God, acts of the federal or a foreign government or any agency thereof, acts of any provincial, territorial or local government or any agency thereof, and judicial action. Should such a delay or failure occur, ZEISS may reasonably extend delivery or, at its option, cancel the order in whole or part without any liability to Buyer or any other person other than to return any unearned deposit or prepayment.

h. Notice to ZEISS. Buyer may contact ZEISS using the address information enclosed with the Product to contact the local ZEISS office serving Buyer's country, or write to Customer Care, Carl Zeiss Canada Ltd., 45 Valleybrook Drive, Toronto, ON M3B 2S6.

i. Product Recalls. ZEISS will promptly notify Buyer of Product recalls and will use its best efforts to monitor the recall status of Product. ZEISS, at ZEISS' sole option, shall, to the extent reasonably possible, replace affected Product as soon as practicable with comparable unaffected Products or repair any such recalled Product as covered under warranty as soon as practicable.

j. Medical Device Regulation. If any of the Products are medical devices, Buyer acknowledges that it is familiar with SOR /98-282 Medical Devices Regulations and the reporting obligations imposed on device users thereunder. In this regard, Buyer agrees to notify ZEISS within ten (10) days of the occurrence of any event identified in the Regulations imposing a reporting obligation on Buyer and/or ZEISS, except for critical incident events representing an imminent hazard that require notification to Health Canada within ten days, in which case, such notice will be delivered to ZEISS immediately. Buyer shall maintain adequate tracking for the Products to enable ZEISS to meet the Health Canada requirements applicable to the tracking of medical devices.

k. Language. The parties agree that the Agreement and any other document contemplated hereby will be drawn up in the English language only. Les parties acceptent que la présente Convention et tous les autres documents envisagés aux présentes soient rédigés en anglais uniquement.