



## TERMS AND CONDITIONS OF SALE

These *Terms and Conditions of Sale* ("**Terms and Conditions of Sale**") combined with the specific terms included on the accompanying product quote or on the attached pages issued by ZEISS ("**Quote**") constitute an agreement ("**Agreement**") with Carl Zeiss Meditec USA, Inc. ("**ZEISS**") in which the purchaser named on the Quote ("**Buyer**", "**You**", "**Your**") will purchase the product(s) described on the Quote ("**Products**").

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 objected to and rejected. 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.** The Products and other items under this Agreement shall be sold and invoiced at ZEISS prices and charges in effect at the time of each shipment of Products under this Agreement 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 U.S. dollars. The Price does not include applicable sales, excise, use, or other taxes in effect or later levied. ZEISS complies with all laws to collect applicable sales taxes and required by law to collect sales tax in all states. Except for those taxes attaching to ZEISS (e.g. income taxes), Buyer is responsible for payment of all taxes associated with its purchase of the Product(s), including (but not limited to) sales, use or excise taxes, VAT, duties, or property taxes, and Buyer agrees to indemnify and hold ZEISS harmless for any liability for such taxes, as well as the collection or withholding 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 60 days after the invoice date.

**2. Trade-In Policy.** If Buyer's return of "trade-in" equipment ("**Trade-In(s)**") is part of the Price, Buyer warrants that Buyer owns the Trade-In(s) free of any liens, security interests or other encumbrances. Buyer must complete the de-installation of the Trade-In(s), including without limitation, removal of any data or other information on the Trade-In(s). ZEISS is not responsible for any Protected Health Information ("**PHI**") stored on or otherwise contained in any Trade-In and hereby disclaims all liability in connection with any PHI stored on or otherwise contained in any Trade-In. Trade-In(s) shall (i) be in the condition as noted on the Quote, (ii) include all hardware, software, components, and applicable license(s), and (iii) correspond to the model and serial number listed on the Quote. Buyer's completion of (i), (ii) and (iii) will make the initial Trade-In(s) process complete ("**Complete**"). Trade-In(s) are subject to ZEISS's inspection and acceptance. If Trade-In(s) are not delivered to ZEISS within 60 days of delivery of the Products, are not Complete, or are otherwise unacceptable to ZEISS, ZEISS may recalculate the Price and Buyer agrees to pay ZEISS the adjusted Price. Buyer will bear the risk of loss for Trade-In(s) until they are delivered to and accepted by ZEISS or its carrier, and the terms contained in Section 5 below are applicable to Trade-In(s). If the Trade-In is accepted by ZEISS, ZEISS may immediately dispose of the Trade-In, and Buyer will have no right to a return of the Trade-In. If this Agreement is terminated, or the Products are returned to ZEISS, then Buyer agrees that Buyer will only receive a credit for the Trade-In's fair market value at the time of termination or return of the Products towards Buyer's next purchase of ZEISS product(s). For the avoidance of doubt, Buyer will not receive a refund or reimbursement for any Trade-In.

**3. Terms and Method of Payment.** Unless stated otherwise on the Quote, payment in full will be due 30 days from the date of invoice regardless of controversies relating to other Product deliveries or undelivered Products. 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 1.5% per month, or the highest rate permitted by law, whichever is less. Buyer shall make all payment hereunder in U.S. dollars. Buyer's obligation to pay outstanding invoices and any other amounts due shall not be 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 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 consumer 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.

**5. Shipment; Risk of Loss; Date of Shipment.** All shipments for products that require ZEISS installation services will be made FCA Origin (per Incoterms® 2020). ZEISS assumes all responsibility for proper packing of Products for safe shipment to Buyer and in accordance with carrier requirements and applicable laws and regulations. All shipments for products that do not require ZEISS installation services will be made FCA ZEISS's shipping points. Absent specific agreement otherwise, ZEISS will select the carrier. For Products shipped FCA ZEISS' shipping points: (i) title and risk of loss to the Product(s) passes to the Buyer upon ZEISS's delivery to the designated carrier or delivery service; and (ii) Buyer shall reimburse ZEISS for any insurance proceeds obtained covering losses associated with delivering the Product(s) to the carrier. If a shipment date is indicated on this Agreement, 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 delivery date. If ZEISS does not deliver the Products within 60 days of the delivery date, then Buyer may cancel the applicable order(s), and neither Buyer nor ZEISS will have any further obligations. ZEISS may, in its sole discretion, without liability or penalty, make partial shipments of Products to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units 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 may utilize Buyer's preferred delivery company and utilize Buyer's dedicated shipping number and desired delivery time specifications (e.g., overnight, second day air) for any order placed.

6. Acceptance. Buyer will be deemed to have accepted the Products on the earliest of (i) delivery of the Products to the Buyer (if installation is not priced separately on the Quote), (ii) confirmation by ZEISS that the Products have been installed and conform to ZEISS's specifications and requirements for operation; or (iii) Buyer's use of the Products.

7. Security Interest. Until the Products are paid for in full, Buyer gives ZEISS a security interest in the Products, all monies received for the Products (including without limitation insurance proceeds), or in any chattel paper regarding the Products (e.g., lease agreements). At ZEISS's request, Buyer agrees to execute any documents, which ZEISS may reasonably request to evidence ZEISS's title in the Product(s), and ZEISS may file a copy of such documents with the appropriate governmental authority (e.g., UCC-1 financing statement filed with the Secretary of State). Until such time as title to the Product(s) passes to Buyer, Buyer shall hold the Product(s) as ZEISS's fiduciary agent and bailee, and shall properly store, protect, insure and identify it as ZEISS's property. Buyer may not encumber, transfer or attempt to encumber or transfer title to any Product(s) without the prior written consent of ZEISS.

8. Return Policy. Unless it has given its written consent, ZEISS will not accept any Product returns. If ZEISS consents to the return, Buyer may be charged a 20% restocking fee for all ZEISS-authorized Product(s) returns. Risk of loss, shipping and handling fees for returned Product(s) are Buyer's responsibility. Unless ZEISS agrees otherwise, returned Product(s) must be in new condition and contained in the original packaging. Consumables (as defined below in subsection 13.2), such as bulbs, lamps, fuses, fiber optic cables, etc., are not returnable.

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

10. 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.

11. Training. ZEISS may provide training related to certain Product(s) at ZEISS's discretion. ZEISS will determine the form, duration and content of the training reference the Quote.

12. Authorized Use; Intellectual Property; Data; Inventions.

12.1 Buyer must use, maintain and dispose of Products, as well as any results or information generated from such Products, in accordance with the Instructions for Use ("IFU"), product documentation, and any other ZEISS documentation accompanying such Products, and in accordance with all applicable law and regulation (including disposal rules), and ethical guidelines promulgated by established national and international ethical bodies. ZEISS is not engaged in rendering medical advice or services, and results from Products are not intended in any manner to substitute any professional medical advice or treatment from a trained healthcare professional. ZEISS is not responsible for any clinical decisions made with respect to results from use of Products. Only ZEISS may authorize and carry out Product recalls, and Buyer will cooperate with ZEISS in such efforts upon reasonable request. Buyer must promptly inform of ZEISS of all complaints or adverse effects caused by Products. Buyer may use Products solely to treat patients in accordance with applicable laws. Without limiting the foregoing, Buyer may not (i) disassemble, reverse engineer, reverse compile, or reverse assemble a Product, or make any modifications to a Product, (ii) separate, extract, or isolate components of a Product or engage in other unauthorized analysis of a Product, (iii) gain access to or determine the methods of operation of a Product, (iv) take any action to determine any characteristic and/or composition or structure of a Product, (v) attempt to gain unauthorized access to a Product, (vi) access or use a Product to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or interfaces, (c) copy any ideas, features, functions or interfaces of the Product, or (d) generate data or information for any use or purpose other than to treat patients; (vi) use Products for any time sharing, leasing or service bureau purposes or permit use by anyone other than your employees and agents and/or (vii) aid or permit others to do any of the foregoing.

12.2 Buyer is solely responsible for its use of Products and for making sure the way it uses Products complies with applicable laws, regulations and governmental policies. Buyer must obtain all necessary approvals and permissions it may need to use Products. It is Buyer's responsibility to make sure Products are suitable for Buyer's particular use.

12.3 To the extent and as permitted by applicable law, ZEISS may monitor, collect and analyze data based on Product use and Product performance to optimize, improve and support products and services, and for ZEISS's business and data analytics purposes, and ZEISS may disclose the same provided that in connection with such disclosure, such data is de-identified or anonymized in accordance with applicable laws, is aggregated, and does not identify individual patients or subjects, health care providers, or other entities, and such data shall not be identified as originating from Buyer. Such data, and all technology, products and information based on such data, is exclusively owned by ZEISS.

12.4 As between the parties, ZEISS exclusively owns all intellectual property rights relating to, covering, claiming, included and/or embodied in, Products. The license, sale, loan or lease of Products grants Buyer only a limited, nontransferable right under ZEISS intellectual property only for the specific use of the Products as permitted herein and strictly in accordance with this Agreement. Buyer will not modify, change, remove, cover or otherwise obscure any trademarks, logos, trade or service marks on Products. Nothing in this Agreement limits ZEISS's ability to enforce its intellectual property rights. Buyer may not use any ZEISS trademark, trade name, trade dress or product name except to identify Products. Except as expressly permitted herein, no license or right, whether express or implied, is granted to any person under any ZEISS patent, trademark or other proprietary right, and ZEISS reserves all rights.

12.5 Buyer hereby assigns to ZEISS all right, title and interest in and to all feedback, suggestions, ideas, improvements and other comments provided by Buyer to ZEISS relating to Products ("**Feedback**"), and ZEISS will have the unrestricted right to use and disclose Feedback without duty or obligation or accounting to Buyer, and any improvements, modifications and changes made based on Feedback are our exclusive property.

12.6 Any development, invention, improvement, use, method, technique, conception, know how, data, specification, information, or result relating to use of a Product, and any newly discovered property or use of a Product, in each case that is developed, invented, conceived, reduced to practice, discovered, generated or developed by Buyer, including without limitation any improvements or modifications to a Product (collectively "**Developments**"), and all intellectual property rights relating to Developments, shall be solely and exclusively owned by ZEISS, and Buyer hereby assigns to ZEISS all right, title and interest in and to Developments, and Buyer shall disclose all Developments to ZEISS promptly upon becoming aware of the same. For the avoidance of doubt, data generated by Buyer's use of the Product constitute a Development. Developments constitute ZEISS's Confidential Information. This Section 12.6 does not limit the restrictions set forth in Section 12.1.

13. License for Use of Software; Disclaimer of Warranty. Provided that Buyer complies with the restrictions set forth herein, ZEISS hereby grants to Buyer a limited, non-exclusive, non-transferable license (without the right to sublicense) to: (i) use a single copy of the software incorporated in the Product (the "**Software**"), solely in conjunction with the applicable software package and for Buyer's own internal business operations on the Product on which the Software was first installed for production operation or, on a temporary basis, on a backup system if such equipment is inoperative, consistent with the limitations specified or referenced in this Agreement and the user guides for installation and use of the Software (including readme files, notice files, and installation details) or the hardware on which the Software operates ("**Documentation**"). If the Product on which the Buyer uses the Software is a multi-user system, this license covers all users on that single system; and (ii) to use the Documentation provided with the Software in support of Buyer's authorized use of the Software. Buyer will not, and will not permit any third-party to, copy or use the Software (including the Documentation) except as expressly permitted by this Agreement. In addition, Buyer will not, and will not permit any third-party to: (a) relicense, sublicense, rent or lease the Software or use the Software for rental, timesharing, subscription service, hosting or outsourcing; (b) modify, reverse engineer (except to the extent expressly permitted by applicable law, and then only after Buyer has notified ZEISS in writing of Buyer's intended activities), disassemble or decompile the Software, including, but not limited to, review of data structures or similar materials

produced by the Software; (c) copy the Software; (d) assign, give or transfer the Software to any third-party except as expressly permitted in Section 19.1; (e) remove or modify any Software markings (or any markings from the hardware on which the Software operates), or any notice of ZEISS or any third-party licensors' proprietary rights; (f) publish the results of any benchmark tests performed on the Software or the hardware on which the Software operates; or (g) use any source code that is provided with the Software. The Software is licensed, and not sold, to Buyer. ZEISS and its licensors retain ownership of the Software and reserve all rights not expressly granted to Buyer. Upon termination of this Agreement, Buyer will cease all use of the Software, return to ZEISS or destroy the Software and all Documentation and related materials in Buyer's possession, and so certify to ZEISS. Without limiting the generality of the foregoing, ZEISS has no obligation to indemnify or defend Buyer against claims related to infringement of intellectual property rights in connection with Buyer's use of the Software. ZEISS has the right, but not the obligation to supply corrective software updates or upgrades (i.e., new versions or new or in-line releases). Notwithstanding the foregoing, the Products sold under this Agreement may require the use of certain software code or materials owned by third parties that are licensed to Buyer under separate terms and conditions (such software, the "**Third-Party Software**"). The Third-Party Software is licensed separately and is not licensed to You under this Agreement. You may be presented with an End User Software License Agreement that includes terms related to Software, including Third-Party Software, that You will need to accept before You use the Product (the "**End User License Agreement**"). To the extent that the terms and conditions of the End User License Agreement are inconsistent with or contrary to the terms and conditions of this Agreement, then the terms and conditions of the End User License Agreement will prevail and control, but solely with respect to the Software, including Third-Party Software.

#### 14. Limited Warranty and Disclaimer.

14.1 Limited Warranty. All parts are warranted to be free from defects in workmanship and materials (any Product containing a defect in workmanship or materials to be a "**Nonconforming Product**") for a period of 1 year from date of shipment ("**Warranty Period**") when used in accordance with ZEISS's instructions for use and documentation (the "**Limited Warranty**"). This Limited Warranty is void outside of the U.S.A.

14.2 Product Warranty Exclusions. The Limited Warranty 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, liquid contact, fire, electrical failure, earthquake or other external cause beyond ZEISS's reasonable control; (iii) damage caused by operating the Product(s) outside ZEISS's (IFU or DFU) published guidelines; (iv) damage caused by service (including upgrades and expansions) performed by anyone who is not a representative of ZEISS or a ZEISS-authorized service provider; (v) modifications made without the written permission of ZEISS; (vi) defects caused by normal wear and tear or otherwise due to the normal aging of the Product(s); (vii) any removal of the serial number from the Product(s); (viii) unauthorized transportation from the initial installation location or environmental conditions outside of those prescribed in the Product specifications; or (ix) improper packaging or shipment. Consumables including but not limited to bulbs, flashtubes, lamps, filters, paper, printer ribbons, floppy disks, back-up media, user manuals, test chambers, test eyes and test fixtures (collectively, "**Consumables**") and items with a limited expected useful life are not subject to this Limited Warranty. On-site planned or preventive maintenance activities are not included as a part of this Limited Warranty.

14.3 Other Warranty Exclusions. Software is not covered by the Limited Warranty, and ZEISS does not warrant that the Products will operate uninterrupted or error-free. The Limited Warranty extends to Buyer only and not to persons manufacturing, purchasing or using Buyer's products. This warranty does not apply to any products not manufactured by ZEISS. These items, as well as any third-party supplied items (software or hardware), may be covered by their manufacturer's warranty and any arrangements for service or replacement of such items must be made through that manufacturer.

14.4 Limited Warranty Remedy. In the event of breach of the Limited Warranty, ZEISS will, at its sole discretion, repair or replace any parts that it reasonably determines to have failed due to defects in material or workmanship during the Warranty Period, free of any charge for either parts or labor, or if such attempts to repair or replace do not succeed in remedying the defect(s) in workmanship and/or materials, ZEISS may, at its sole discretion, refund the value of the Nonconforming Product. ZEISS shall not be liable for a breach of the warranty set forth in Section 14.1 unless Buyer gives written notice of the defect, reasonably described, to ZEISS within 10 business days of the time when Buyer discovers or ought to have discovered the defect. This Section 14.4 represents ZEISS' sole liability, and Buyer's sole and exclusive remedy, for Nonconforming Product.

14.5 DISCLAIMER OF WARRANTIES. TO THE EXTENT PERMITTED BY LAW, THE LIMITED WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, REMEDIES AND CONDITIONS, WHETHER ORAL, WRITTEN, STATUTORY, EXPRESS OR IMPLIED. ZEISS DISCLAIMS ALL OTHER WARRANTIES, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND WARRANTIES AGAINST HIDDEN OR LATENT DEFECTS AND INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY LAW. To the extent that such warranties cannot be disclaimed, ZEISS'S obligation to repair, replace, or at its sole discretion refund the value of defective parts shall be Buyer's only remedies and ZEISS'S entire liability under this limited warranty. To the extent that any jurisdictions do not allow limitations on exclusion of or limitation of remedies, the foregoing limitations and exclusions may not apply to Buyer.

15. LIMITATION OF LIABILITY. NOTWITHSTANDING ANYTHING CONTAINED IN THIS OR ANY OTHER AGREEMENT BETWEEN ZEISS AND BUYER, AND EXCEPT FOR DAMAGES CAUSED BY BUYER'S BREACH OF SECTION 12.1 OR BREACH OF SECTION 13, AND EXCEPT FOR DAMAGES CAUSED BY A PARTY'S BREACH OF SECTION 18, NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY COST OF REPAIRS, LOSS OF DATA, OR INCIDENTAL, PUNITIVE, EXEMPLARY, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, OR FOR LOSS OF PROFIT, REVENUES, OR BUSINESS OPPORTUNITY OR COSTS OF COVER, 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(S), AND EVEN IF RECIPIENT'S REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. Some states do not allow the exclusion or limitation of consequential or incidental damages, so the above limitation or exclusion may not apply. If applicable law limits the application of the provisions of this Section 15 ("Limitation of Liability"), ZEISS's liability will be limited to the maximum extent permissible. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, ZEISS'S TOTAL AGGREGATE LIABILITY TO BUYER IN CONNECTION WITH THIS AGREEMENT, OR IN CONNECTION WITH ANY PRODUCT, PROCESS, MATERIAL OR INFORMATION RELATED TO THIS AGREEMENT, SHALL NOT EXCEED THE AMOUNTS PAID BY BUYER TO ZEISS UNDER THE ORDER UNDER WHICH THE LIABILITY AROSE.

16. Patent Indemnity. ZEISS will defend or settle any claim, suit or proceeding brought against Buyer based on allegations that ZEISS's manufacture or sale of the Product(s) infringe a third-party patent, provided that: Buyer timely notifies ZEISS of such claim, suit or proceeding; Buyer renders all reasonable cooperation to ZEISS; and Buyer gives ZEISS the sole authority to defend or settle the same. If the Product(s) are held to infringe any patent and the use of the Product(s) is enjoined, ZEISS will have the option, in its sole discretion, to (i) procure Buyer the right to use the Product(s); (ii) modify the Product(s) so that they no longer infringe; or (iii) upon the return of the Product(s), refund Buyer the then fair market value of the Product(s) 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(s) (unless sold or directed by ZEISS). In no event will ZEISS's total liability to Buyer with respect to any infringement or misappropriation exceed the depreciated value of the Product(s).

17. Compliance with Laws / Export / Re-Export. The Product(s) may be subject to United States Export Administration Regulations, and diversion contrary to U.S. law is prohibited. Buyer shall comply with all applicable laws, rules and regulations, including, but not limited to, U.S. export control laws. Regulatory approval for use and/or importation into Buyer's country is the sole responsibility of the Buyer.

18. **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 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.

#### 19 Termination.

19.1 **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 30 days' opportunity to cure, or immediately if, in ZEISS's 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.

19.2 **Effect of Termination.** Sections 3 ("**Terms and Method of Payment**"), 7 ("**Security Interest**"), 15 ("**Limitation of Liability**"), 18 ("**Confidential Information**"), 19.2 ("**Effect of Termination**") and 20 ("**Miscellaneous**") shall survive any termination of this Agreement.

#### 20 Miscellaneous.

20.1 **Assignment.** Neither party shall have the right to assign this Agreement or any of the rights or obligations hereunder without the prior written consent of the other party. Notwithstanding the foregoing, ZEISS may freely assign this Agreement to an affiliate, subsidiary, or successor to that area of its business to which this Agreement is related that is controlled by, has control over, or is under common control with ZEISS. Subject to the limitations on assignment set forth in this paragraph, this Agreement will apply to, be binding in all respects upon, and inure to the benefit of, the successors and permitted assigns of the parties.

20.2 **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 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.

20.3 **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(s). The parties agree that there are no promises, agreements, conditions, undertakings, warranties, or representations, oral or written, expressed or implied, between them, other than as set forth herein. The terms and conditions of this Agreement shall prevail over any variance with the terms and conditions of any order submitted by the Buyer for the Product(s), regardless of any provisions to the contrary. 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.

20.4 **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.

20.5 **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, 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 state 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 other than to return any unearned deposit or prepayment.

20.6 **Discount Disclosure.** All rebates and other discounts provided under this Agreement are intended to comply with the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b). To the extent required by 42 C.F.R. § 1001.952(h) (the Anti-Kickback Statute safe harbor regulations) or other applicable laws or regulations, the Buyer shall fully and accurately reflect in cost reports or other submissions to federal healthcare programs all discounts provided under this Agreement and, upon request by the Secretary of the U.S. Department of Health and Human Services or a state agency, shall make available information provided to the Buyer by ZEISS concerning the discounts. Buyer shall retain and make such information available as required by applicable law.

20.7 **Notice to United States Government End Users.** The Software and related documentation delivered to U.S. Government end users are "commercial computer software" as defined in the Federal Acquisition Regulation ("FAR"). As such, use, duplication, disclosure, modification and adaptation of the Software and related documentation will be subject to the license and license restrictions set forth in this Agreement.

20.8 **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 Service, Carl Zeiss Meditec USA, Inc., 5300 Central Parkway, Dublin, CA 94568 USA.

20.9 **Medical Device Act.** If any of the Products are medical devices, Buyer acknowledges that it is familiar with the Safe Medical Devices Act of 1990 ("Devices Act") and the reporting obligations imposed on device users thereunder. In this regard, Buyer agrees to notify ZEISS within 10 days of the occurrence of any event identified in the Devices Act imposing a reporting obligation on Buyer and/or ZEISS (except for events representing an imminent hazard that require notification to the United States Food and Drug Administration ("FDA") within 72 hours, 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 FDA requirements applicable to the tracking of medical devices.