



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 on the attached pages issued by ZEISS ("**Quote**") constitute the agreement ("**Agreement**") made by and between Carl Zeiss Meditec USA, Inc. ("**ZEISS**") and the named purchaser on the Quote ("**Buyer**", "**You**", "**Your**") for Buyer's purchase of the consumable products, goods and related accessories (e.g., injectors, cartridges, lens fragmentation devices, etc.) described on the Quote ("**Product(s)**").

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.** All Product and other items ordered under this Agreement shall be sold and invoiced at ZEISS prices and charges in effect at the time of each Product shipment 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 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 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. **Minimum Order Quantity.** Products 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.

3. **Method of Payment; Balance Due on Delivery.** 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 will be made FCA ZEISS's shipping points. Absent specific agreement otherwise, ZEISS will select the carrier. Title and risk of loss to the Product(s) passes to the Buyer upon ZEISS's delivery to the designated carrier or delivery service. 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 Product(s) 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.

5.1 **Damage or Loss in Transit.** If there is damage, loss or shortage of ordered Product upon delivery, Buyer will notify ZEISS Customer Service 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 will notify ZEISS Customer Service to report concealed shortages or damages of delivered product within 7 business days of delivery in order to be eligible for credit. ZEISS will work in good faith with Buyer to issue credit for damaged, loss, or shortage of ordered Product. Buyer shall also send a copy of the carrier freight bill to ZEISS Customer Support indicating Product and quantity damaged or not received. ZEISS will assist Buyer to file claims with the carrier in the event of loss or damage to any such Products in transit.

6. **Acceptance.** Buyer will be deemed to have accepted the Products upon delivery of the Product(s).

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 keep the Product(s) separate from those of Buyer and third parties; properly stored, protected, insured and identified as ZEISS's property. Buyer may use the Product(s) in the ordinary course of its business. Upon use, payment terms will be per the applicable consignment agreement between Buyer and ZEISS, or per Section 3 of these Terms and

Conditions of Sale if no such consignment agreement is available for the Product or currently in force. Buyer may not encumber, transfer or attempt to encumber or transfer title to any Product(s) without the prior written consent of ZEISS.

8. Use Restrictions.

8.1 Single-Use Only. The Products are consumables 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 and may subject the Buyer to liability. Additionally, Buyer represents that (i) it has purchased the Products for its own use only, and shall not resell the Products to any other party, and (ii) at the time of use warrants that it has examined the Products and that they are acceptable and clinically suitable for its intended purposes.

8.2 Do Not Re-Sterilize. The Products are 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 the single-use 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 the Products or ZEISS and shall not make any representations regarding the Product inconsistent with Product information provided to Buyer by ZEISS.

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

9.1 Return Conditions. Returns may only be made on the following conditions: (i) Products must meet all Eligibility Requirements set forth below to be considered for return; (ii) Buyer will receive a ZEISS Credit Note for Product(s) considered Eligible for Return (as defined below) by ZEISS after successful inspection of the returned Product(s); (iii) each ZEISS Credit Note may be applied towards future orders from ZEISS; (iv) Buyer must obtain a "returned goods authorization (RGA) number" from ZEISS prior to returning Product(s) for return consideration; (v) Products returned without an RGA 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(s) that are not "Eligible for Return" those Product(s): (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(s) 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 RGA number and, in the case of direct sales of Product such RGA number is issued within 30 days of Buyer's receipt of an invoice for such Product and the Product is returned within 30 days of issuance of such RGA number. RGA 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 or power failure; (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, a special promotion sale item, or a custom or specially made Product or an accessory; (ix) is a current inventory item; and (x) 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 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.

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. 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. 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 referenced in the Quote.

13.1 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.

14. Limited Warranty and Disclaimer.

14.1 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.

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, improper maintenance, liquid contact, fire, electrical failure, earthquake or other external cause beyond ZEISS' reasonable control; (iii) damage caused by using the Product(s) 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 the Product(s), (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 Products, 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 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. ZEISS does not warrant that the Product(s) will operate error-free. The Limited Warranty extends to Buyer only and not to persons manufacturing, purchasing or using Buyer's products (each as applicable). This warranty does not apply to any products not manufactured by ZEISS. These items, 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.

14.4 Limited Warranty Remedy. In the event of breach of the Limited Warranty, 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 14.1 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. 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' obligation to repair, replace, or at its sole discretion refund the value of defective parts shall be Buyer's exclusive remedy and ZEISS' 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, 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 DUE TO FAILURE TO SUPPLY, PATIENT OUTCOMES, 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. In the event that applicable state law does 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' 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 Products out of which such claim or action arose. 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. Intellectual Property.

16.1 In all cases, all intellectual property rights in and to, and all technology relating to, the Products 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.

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

16.3 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: (i) Buyer timely notifies ZEISS of such claim, suit or proceeding; (ii) Buyer renders all reasonable cooperation to ZEISS; and (iii) Buyer gives ZEISS, in writing, 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' 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, customer data, or personal health information ("**Confidential Information**"). Receiving Party agrees that it will: (i) keep all Confidential Information strictly confidential; (ii) not use Confidential Information for any purpose other than to exercise its rights and responsibilities under this Agreement; and (iii) 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' 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 / Expiration.** Sections 3 ("Method of Payment; Balance Due on Delivery"), 7 ("Security Interest"), 15 ("Limitation of Liability"), 17 ("Compliance with Laws / Export/ Re-Export"), 18 ("Confidential Information"), 19.2 ("Effect of Termination / Expiration") and 20 ("Miscellaneous") shall survive any termination or expiration of this Agreement.

20. **Miscellaneous.**

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

20.2 **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.

20.3 **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.

20.4 **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.

20.5 **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.

20.6 **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.

20.7 **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 is responsible for and shall fully and accurately reflect in cost reports or other submissions to federal, state or private 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.

20.8 **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 **Product Recalls.** ZEISS will promptly notify Buyer of any Product recalls and will use its best efforts to monitor the recall status of all Products. 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 Products as covered under Warranty as soon as practicable.

20.10 **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.