



TERMS AND CONDITIONS FOR EVALUATION OF PRODUCT

These *Terms and Conditions for Evaluation of Product* ("**Evaluation Terms**") are referenced and incorporated into the applicable Evaluation of Product Form ("Form"), together constituting the agreement ("**Agreement**") made by and between Carl Zeiss Meditec USA, Inc. ("**ZEISS**") and the named customer on the Form ("Customer") for the evaluation of any medical device manufactured by ZEISS or its affiliates ("**Product(s)**"). Customer agrees to be legally bound by these Evaluation Terms and acknowledges that ZEISS hereby expressly rejects all other terms and conditions that may accompany the delivery or evaluation of any Product. Delivery of the Product does not constitute acceptance of any of Customer's terms and conditions and does not serve to modify or amend this Agreement. For the avoidance of doubt, Customer's terms and conditions are expressly excluded.

1. Product. ZEISS shall provide and deliver the Product(s) to Customer's site at no charge to Customer during the Evaluation Period, as hereinafter defined.
2. Consumables. Any evaluation Product which is a consumable or implantable shall be provided for single use and delivered in the quantity set forth in the Form.
3. Evaluation Period. The evaluation period shall be as specified in Customer's Form, in any case not to exceed ninety (90) days from the date of delivery/installation of the Product ("Evaluation Period"). ZEISS, at its sole cost and expense, will promptly remove any Product that Customer elects not to purchase at the conclusion of the Evaluation Period, without any further obligation to Customer. Customer shall cooperate with ZEISS (including by providing ZEISS or its agent(s) with reasonable access to its site) to facilitate prompt removal of the Product.
4. Purpose. The Product is provided to Customer, at no cost, for internal evaluation purposes only. Delivery of the Product is not contingent on Customer agreeing to purchase such Product at the conclusion of the Evaluation Period. Prior to expiration of the Evaluation Period, Customer may elect to purchase/lease/rent the Product (as applicable) under a separate agreement, or request that ZEISS remove the Product from Customer's site.
5. Title. Title to the Product shall at all times remain with ZEISS during the Evaluation Period. Customer shall not sell, assign or otherwise encumber any interest in the Product.
6. Disclaimer. ZEISS provides the Product to Customer on an "as is" basis, and disclaims any and all express or implied warranties.
7. Customer's Responsibilities. Customer shall use the Product in accordance with its labeling, directions for use and any other instructions provided by ZEISS. No claim for payment or reimbursement shall be made to any federal or state health care program, other payor or patient for any use of the Product. Customer shall not modify the Product, or remove the Product from the delivery location set forth in Customer's Form. Customer shall use appropriate care with the Product and shall be liable for any theft, damage or loss of the Product, including any costs of repair (beyond normal wear and tear).
8. Indemnification. Customer shall defend, indemnify and hold harmless ZEISS (including its affiliates and their directors, officers, employees and agents) from and against any liabilities, losses, damages, claims and actions (including attorneys' fees and expenses) which may arise from or relate to use of the Product or Customer's negligence, misconduct or breach of this Agreement.
9. Governing Law. Any dispute relating to this Agreement shall be governed by the laws of the State of New York.
10. Assignment. Customer may not assign this Agreement without the prior written consent of ZEISS. 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.
11. 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 evaluation 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 document submitted by the Customer 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.