



TERMS & CONDITIONS FOR THE SALE OF PRODUCTS

1. **APPLICABILITY.** These Terms and Conditions for the Sale of Products & Services ("**Terms**") are the only terms governing the sale of Systems, Components, and Services (individually defined below, and collectively the "**Product(s)**") by the seller, Carl Zeiss Industrial Metrology, LLC ("**ZEISS**") to the buyer ("**Buyer**"), as identified in the accompanying quotation, Order Confirmation (defined below), or invoice (the "**Order(s)**"). Except for specific items noted in the ZEISS quotation, these Terms: (i) supersede all prior or contemporaneous agreements and representations and warranties, whether written or oral, between Buyer and ZEISS; (ii) may not be amended or modified except by a writing signed by both parties; and (iii) will prevail over any inconsistent terms. ZEISS' acceptance of Buyer's purchase order is limited to, and conditioned upon Buyer's acceptance of, these Terms. Not objecting to Buyer's terms, or fulfilling a Buyer Order, does not constitute ZEISS' acceptance of Buyer terms. Buyer accepts these Terms by: (i) signing and returning ZEISS' quotation; (ii) sending ZEISS a purchase order in response to ZEISS' quotation; or (iii) instructing ZEISS to ship the Product(s) or commence work on the Order(s).
2. **DEFINITIONS.**
 - A. "**Agreement**" means a combination of these terms and ZEISS' quote/invoice.
 - B. "**Component(s)**" means parts, spare parts, retrofits, and retrofit parts sold under this Agreement.
 - C. "**Certified Pre-Owned System**" means a ZEISS System (defined below), that has been inspected, refurbished, and re-certified by ZEISS, is considered by ZEISS to be previously owned or titled. Certified Pre-Owned Systems qualify for the applicable Limited Warranty coverages, as detailed in Section 10 below, however, Certified Pre-Owned Systems may have scratches, chips, and/or repaired scratches/chips on the working table and body of the System that are not detrimental to the System's performance, which are not covered by the Limited Warranty.
 - D. "**Demo/Demonstration System**" means a ZEISS System that has been used for demonstration purposes, has not been previously owned or titled. Demo Systems qualify for the applicable Limited Warranty coverages, as detailed in Section 10 below, however, Demo Systems may have scratches, chips, and/or repaired scratches/chips on the working table and body of the System that are not detrimental to the System's performance, which are not covered by the Limited Warranty.
 - E. "**Install/Installation/Initial Installation Service(s)**" means the labor required for ZEISS to fulfill an Order involving the sale of a System (e.g. the installation of a System or the completion of a retrofit).
 - F. "**Microscopy Product(s)**" means a Product manufactured by Carl Zeiss Microscopy, LLC.
 - G. "**New System**" means a ZEISS System that is in new/original condition that has not been previously owned or titled.
 - H. "**Order Acknowledgment**" means ZEISS's written confirmation to Buyer that the Buyer's purchase order has been received and processed.
 - I. "**Service(s)**" means the labor ZEISS performs to fulfill an Order that does not accompany the sale of a System (e.g. the installation of a System or the completion of a retrofit).
 - J. "**Software**" means software (in object code) incorporated with the Product(s)...
 - K. "**System**" means a complete and functioning system as configured and sold.
 - L. "**Used System**" means a ZEISS System, that is in used condition, has been previously owned or titled, has been inspected by ZEISS, but has not been refurbished or accuracy certified by ZEISS. Used Systems qualify for the applicable Limited Warranty coverages, as detailed in Section 10 below, however, Used Systems may have scratches and/or chips on the working table and body of the System that are not detrimental to the System's performance, and therefore, are not covered by the Limited Warranty.
 - M. "**Warranty Service(s)**" means the labor required for ZEISS to fulfill a repair under the Limited Warranty.
3. **PRICE; TAXES.** The Order states the price of the Product(s) (the "**Price**"). The Price includes all packaging costs. Unless the Order states otherwise, the Price does not include: (i) delivery; (ii) transportation; (iii) rigging; (iv) transit insurance; (v) installation; (vi) additional fittings/adjustments; (vii) training; or (viii) any tax, fee, levy, assessment, exaction, imposition or other charge imposed by any local, state or government levied upon the Product's production, sale, use, import, export, ownership, shipment, except for taxes on ZEISS' net income.

4. **PAYMENT.** Payments will be made as indicated in the official ZEISS quotation. Past due amounts are subject to a service charge at the maximum rate of interest then-permitted by law, until paid in full. Payment terms are as indicated in the official ZEISS (non-budgetary) quote. No deductions or offsets are permitted. Buyer will pay all of ZEISS' costs and expenses incurred in the collection of past due amounts, including reasonable collection agency or attorney's fees, court filing fees and other costs and disbursements.
5. **SHIPPING; RISK OF LOSS; DELIVERY SUSPENSION.** Shipping dates are estimates, until definitively established in a ZEISS Order Acknowledgment. Product(s) will be shipped according to the date(s) specified in the Order Acknowledgment, subject to Product availability. ZEISS will not hold, store, or warehouse Product(s) that ZEISS has deemed ready for shipment. If Buyer is not able to take delivery when a Product is ready to ship, or has shipped, Buyer must make alternate storage arrangements, and immediately notify ZEISS of a change in destination. Buyer will be responsible for all additional costs associated with a change in shipping destination. ZEISS may elect to treat such failure or notice as Buyer's repudiation of this Agreement and may recover from Buyer ZEISS's costs of manufacture, customization, preparation, shipping and storage of the Product(s). If Buyer requests a delay in delivery of more than 30 days, ZEISS may charge Buyer a holding charge of 2% of the net sales price per month. Buyer must carefully examine the Product(s) immediately upon delivery. Before signing any receipt, Buyer must note on the shipping receipt any visible damage to the Product(s) (or container) and notify ZEISS of that damage within five (5) days of receipt of delivery. Buyer's signature on a receipt without notation of damage or Buyer's failure to send notice to ZEISS of damage within such 5-day period will constitute proof of Buyer's receipt of the Product(s) in satisfactory condition. ZEISS will not be liable for any delays, loss, or damage in transit. Regardless of the Incoterm (2010) designation used, title and risk of loss will pass to Buyer at ZEISS' premises (the **"Shipping Point"**), when loading onto the first carrier is complete. Air-ride transportation is required for the shipment of all Systems. All rigging, including confirming requirements, is the responsibility of the Buyer. Shipments are made as follows, unless otherwise agreed to in writing by ZEISS:
- i. **For New Systems & Components**
 - CPT Carriage Paid To (INCOTERMS 2010) the named place at destination (the **"Named Destination"**). Transportation costs will be prepaid and added to Buyer's invoice.
 - **BUYER BEARS THE FULL RISK OF LOSS FROM THE SHIPPING POINT TO THE NAMED DESTINATION. BUYER IS RESPONSIBLE FOR PROVIDING ADEQUATE TRANSPORTATION INSURANCE UPON DELIVERY TO THE FIRST CARRIER, OTHERWISE THE SHIPMENT WILL NOT BE INSURED AND THE BUYER WILL BE RESPONSIBLE FOR THE FULL RISK OF LOSS.**
 - These INCOTERMS only apply to orders shipped within the United States and US territories. Shipments destined for delivery outside of the United States will require an alternate shipping method/Incoterm designation, to be established in the ZEISS Quotation.
 - ii. **For Certified Pre-Owned, Demo, and Used Systems, and for New Systems Shipping from Germany**
 - EXW Ex-Works (INCOTERMS 2010) ZEISS' Shipping Point.
 - **BUYER BEARS THE FULL RISK OF LOSS FROM THE SHIPPING POINT TO THE DESTINATION. BUYER IS RESPONSIBLE FOR PAYING FOR AND ARRANGING SHIPPING, TRANSPORTATION INSURANCE, RIGGING, ETC.**
 - iii. **For Microscopy Products**
 - EXW Ex-Works (INCOTERMS 2010) ZEISS' Shipping Point.
 - **BUYER BEARS THE FULL RISK OF LOSS FROM THE SHIPPING POINT TO THE DESTINATION. BUYER IS RESPONSIBLE FOR PAYING FOR AND ARRANGING SHIPPING, TRANSPORTATION INSURANCE, RIGGING, ETC.**
6. **SECURITY INTEREST & FINANCIAL INSECURITY.** As collateral security for the payment of the Price of the Product(s), until ZEISS is paid in full, Buyer hereby grants to ZEISS a lien on and security interest in and to all of the right, title, and interest of Buyer in, to and under the Product(s), wherever located, whenever arising, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the State of New York Uniform Commercial Code. Buyer warrants that it: (i) has established a budget, (ii) approved financing, (iii) is able to pay its debts as they become due, (iv) is in fact now paying its debts in the ordinary course of business, and (v) is not insolvent within the meaning of the Federal Bankruptcy Act. Buyer understands that ZEISS is relying upon these representations in extending credit under this Agreement. ZEISS may, at any time suspend shipment, cancel its obligations under these Terms, require cash payment(s), payment(s) in advance, or other adequate assurances of performance satisfactory to ZEISS, when, in ZEISS' sole and commercially reasonable opinion, such measures are warranted because of Buyer's financial condition or other grounds for insecurity regarding Buyer's ability to perform under this Agreement. Until the Product(s) are paid for in full, Buyer gives ZEISS a security interest in: the Product(s), all monies received for the Product(s), or in chattel paper for the Products (e.g.: a lease).

7. **INSTALLATION ACCEPTANCE TESTING.** If Product does not conform to ZEISS' published specification, Buyer must notify ZEISS within 7 business days of: (a) delivery to Buyer (if Price excludes install by ZEISS); or (b) certification by ZEISS that the Product has been installed and meets ZEISS' published specifications for that System (if Price includes install by ZEISS) (the **"Inspection Period"**), not to exceed 60 days from the delivery date. Buyer's use of the Product constitutes Product's conformance with ZEISS' specifications. If ZEISS is timely notified of Buyer's express rejection of a non-conforming Product, and ZEISS determines the Product's non-conformance is a defect in material or workmanship, and therefore, covered under the ZEISS Limited Warranty, ZEISS will either: (i) replace the non-conforming Product with a conforming Product; (ii) repair the non-conforming Product; or (iii) credit or refund any amounts paid for the Product back to the Buyer. **FOR DEMO, CERTIFIED PRE-OWNED, AND USED SYSTEMS, THE SOLE REMEDY WILL BE REPAIR OR REFUND. TO AVOID ANY DOUBT, ZEISS WILL NOT REPLACE AS A REMEDY FOR DEMO, CERTIFIED PRE-OWNED, OR USED SYSTEMS. THE SOLE REMEDIES ESTABLISHED IN THIS SECTION ARE THE BUYER'S EXCLUSIVE REMEDY, AND ZEISS' ENTIRE LIABILITY, FOR THE DELIVERY OF NON-CONFORMING PRODUCTS.** When applicable, if Buyer is not ready for a System to be installed when ZEISS employees arrive for the installation, Buyer may be charged a fee in connection with ZEISS' site visit.
8. **CANCELLATION & RETURN POLICY.** ZEISS' prior written consent is required for Order cancellations, modifications, and returns. Contact your ZEISS Customer Care Representative to obtain a return authorization. Buyer must pay ZEISS a 20% (of the Order) fee for cancelled or returned Orders. Buyer is responsible for the risk of loss, shipping and handling fees for returned Product(s). ZEISS may adjust the price and/or discounts for a modified Order. Original discounts may no longer apply. Returned Products must be new, unused and in the original packaging. Software, electronic parts (e.g. printed circuit boards) and consumable items are not returnable. No returns will be accepted after **90** days from acceptance (as defined in section 5 of these Terms).
9. **LIMITED WARRANTY.**
- A. **Duration of Limited Warranty and Coverages.** ZEISS warrants to Buyer that:
- i. **For New Systems:**
For 12 months from the date of the ZEISS installation of the System, or from the delivery date of the Product if installation is not included in the Price or scheduled with ZEISS prior to delivery, the System will conform to ZEISS' published specifications, and will be free from defects in material and workmanship.
 - ii. **For Demo & Certified Pre-Owned Systems:**
For 12 months from the date ZEISS installs the System, or from the delivery date of the Product if installation is not included in the Price or scheduled with ZEISS prior to delivery, the System will conform to ZEISS' published specifications, and will be free from defects in material and workmanship, with the exception of scratches, chips, and/or repaired chips on the working table and body of the System that are not detrimental to the System's performance, which are not warranted or covered under this Limited Warranty.
 - iii. **For Used Systems:**
For 90 days from the date ZEISS installs the System, or from the delivery date of the Product if installation is not included in the Price or scheduled with ZEISS prior to delivery, the System will conform to ZEISS' published specifications, and will be free from defects in material and workmanship, with the exception of scratches and/or chips on the working table and body of the System that are not detrimental to the System's performance, which are not warranted or covered under this Limited Warranty.
 - iv. **For Components:**
 - For 6 months from the date of delivery of the Component, or from ZEISS' installation of the Component, that the Component will be free from defects in material.
 - For Microscopy Components, for 12 months from the date of delivery of the Component, or from ZEISS' installation of the Component, that the Component will be free from defects in material.
- B. **For Services:** For 30 days from the completion of the work, that labor will be free from defect in workmanship, and will be performed in a workman-like manner.
- C. **Non-Covered Items.** This Warranty does not cover: high-wear, consumable items (e.g.: styli, air filters, etc.) or the servicing/replacement of other manufacturer's equipment or accessories. These items, and any third-party supplied items (software or hardware) are covered by their manufacturer's warranty and arrangements for service or replacement must be made through that manufacturer. This Warranty does not cover failure that has resulted from improper third-party services, improper or unreasonable use or maintenance, accident, or environmental conditions outside of those prescribed in the Product specifications or industry standards, improper packaging or shipment, electrical failure, or unauthorized tampering, alteration or modification. On-site planned or preventive maintenance activities are not included as a part of this Warranty. This Warranty does not apply to Software, which is warranted separately. **IF A SYSTEM OR PART IS**

INSTALLED BY A NON-ZEISS-CERTIFIED THIRD-PARTY VENDOR, THE ZEISS LIMITED WARRANTY MAY BEVOID.

D. EXCLUSIVE WARRANTY. THIS LIMITED WARRANTY IS IN LIEU OF ANY OTHER WARRANTY, EXPRESSED OR IMPLIED, WRITTEN OR ORAL, INCLUDING ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. THIS WARRANTY DOES NOT APPLY TO SOFTWARE, WHICH IS WARRANTED SEPARATELY.

E. Exclusive Remedies.

- i. **For New Systems:** ZEISS will, at its sole option, repair or replace any parts it reasonably determines to have failed due to defects in material or workmanship during the applicable warranty period. If it is not possible to repair or replace such items, then ZEISS will refund the prorated value of the item. Although it may provide support for a longer period, unless noted otherwise, ZEISS warrants the availability of service for System(s) for 7 years from the date of sale. The obligation to repair, replace, or refund described in this section is the only remedy for a breach of this limited warranty.
- ii. **For Demo, Certified Pre-Owned, & Used Systems:** ZEISS will, at its sole option, repair or replace any parts it reasonably determines to have failed due to defects in material or workmanship during the applicable warranty period. The obligation to repair, replace is the only remedy for a breach of this limited warranty.

10. LICENSE FOR USE OF SOFTWARE. Carl Zeiss Industrielle Messtechnik GmbH ("**Licensors**") independently grants to Buyer, in a separate End- User Licensing Agreement (the "**EULA**"), a non-exclusive, non-transferable license to use the software, solely for Buyer's internal uses in association with the Product(s), which will commence on the date stated on the Order. The EULA does not include the right to make copies of Software, extract, modify, or incorporate any part of the Software, nor reverse engineer, decompile, or disassemble the Software. ZEISS and Licensors do not have any obligation to supply software upgrades (i.e., new versions, or new, or in-line releases). The EULA may be supplemented

or modified by specific licenses incorporated with or attached to the software. Please refer to the EULA at for further details:

<http://www.zeiss.com/content/dam/Industrial%20Metrology/PDF/zeiss-imt-eula-en.pdf>.

11. CONFIDENTIAL INFORMATION. All non-public information that relates to the existing or reasonably foreseeable business of a disclosing party, whether disclosed directly or indirectly, which has been expressly or implicitly protected by a disclosing party, or which, from all of the circumstances, a receiving party knows or has reason to know that the disclosing party intends or expects the secrecy of such information to be maintained, will be considered "**Confidential Information**", and may not be used, disclosed, or copied unless authorized in advance, in writing, by the other party. This Section does not apply to information that is: (i) in the public domain; (ii) is known to the other party at the time of the disclosure; (iii) is rightfully obtained by a party on a non-confidential basis from a third party; (iv) developed independent of Confidential Information it receives from the other party; or (v) is compelled to be disclosed by a judicial or governmental decree, demand, or order.

12. INDEMNIFICATION. During the applicable Warranty Period and for 2 years thereafter, ZEISS will indemnify Buyer against judgments on claims ("**Judgments**") for:

- i. bodily injury or death, to the extent that Judgment(s) are caused by, or based on the strict products liability or gross negligence of, ZEISS; and for
- ii. damage to Buyer's real property, to the extent that Judgment(s) are caused by the strict products liability or gross negligence of ZEISS.

Buyer must notify ZEISS timely of any claims for which Buyer is seeking this indemnity. ZEISS may elect to assume the defense of claims for bodily injury or death to the extent as described above. If ZEISS assumes defense, it will seek Buyer's consent to settlement, which will not be unreasonably withheld or delayed, only if to Buyer's consent is necessary to protect the Buyer's interests.

13. PATENT INDEMNITY. During the applicable Warranty Period and for 2 years thereafter, ZEISS will defend or settle any claim, suit, or proceeding (a "**Claim**") brought against Buyer based on allegations that the Product(s) infringe on a third party patent, provided that Buyer:

- i. promptly notifies ZEISS of such Claim;
- ii. reasonably cooperates with ZEISS' efforts to defend or settle the Claim; and
- iii. grants ZEISS the sole authority to defend or settle the Claim. If the Product(s) are held to infringe on any patent, and the use of the Product(s) is enjoined, ZEISS, in its sole discretion, may either: (i) acquire Buyer the right to use the Product(s); (ii) modify the Product(s) so that they no longer infringe; or (iii) refund Buyer the depreciated value of the Product(s) and accept the return thereof. This indemnity 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). ZEISS' total liability to Buyer will not exceed the depreciated value of the Product(s).

14. LIMITATION OF LIABILITY. NEITHER PARTY WILL BE LIABLE TO THE OTHER OR TO ANY THIRD PARTY FOR ANY LOSS OF: USE, REVENUE,

BUSINESS OPPORTUNITY, PROFIT(S), PROSPECTIVE PROFIT(S), LOSS OF DATA, VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, NONPERFORMANCE, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. A PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, WILL NOT EXCEED THE TOTAL OF THE AMOUNTS PAID TO ZEISS FOR THE PRODUCT(S) SOLD. SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS ON EXCLUSION OF OR LIMITATION OF REMEDIES SO THE FOREGOING LIMITATIONS AND EXCLUSIONS MAY NOT APPLY.

- 15. FORCE MAJEURE.** Neither party will be liable to the other, or deemed to be in breach of these Terms, for any failure or delay in performance of any Terms if it is caused by or results from acts or circumstances beyond the (relevant) parties' reasonable control, including, without limitation: acts of nature, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, third party labor strikes, or other third party labor disputes. Should a delay occur, ZEISS may reasonably extend delivery or production schedules or, at its option, cancel the order in whole or part without any liability other than to return any unearned deposit or prepayment. ZEISS may also make partial shipments to Buyer and invoice accordingly, and Buyer shall be obligated to pay for such partial shipments when invoiced. The party experiencing the force majeure must inform the other party promptly of the delay.
- 16. EQUAL OPPORTUNITY EMPLOYER.** ZEISS is an equal opportunity employer. ZEISS celebrates and thrives on diversity, and is committed to fostering and preserving an environment where all employees feel respected and welcome. ZEISS does not discriminate on the basis of: race, religion, color, national origin, gender, familial status, pregnancy, sexual orientation, gender identity, gender expression, age, family medical history or genetic information, protected veterans status, physical or mental disability, or any other legally protected characteristics. ZEISS does not tolerate discrimination or harassment based on any of these characteristics. ZEISS fulfills its obligations for EEO-1 reporting.
- 17. DEBARMENT AND EXCLUSION.** Buyer represents and warrants that neither Buyer, nor any of its employees or agents have ever been, are currently, or are the subject of a proceeding that could lead to Buyer or such employees or agents becoming, as applicable, a Debarred Entity or Individual, an Excluded Entity or Individual or a Convicted Entity or Individual. Buyer further covenants, represents, and warrants that if, during the term of this Agreement, Buyer, or any of its employees or agents performing acting in accordance with this Agreement, become or are the subject of a proceeding that could lead to that party becoming, as applicable, a Debarred Entity or Individual, an Excluded Entity or Individual or a Convicted Entity or Individual, Buyer must immediately notify ZEISS, and ZEISS will have the right to immediately terminate this Agreement. This provision will survive termination or expiration of this Agreement. For purposes of this provision, the following definitions will apply:
- i. A **"Debarred Individual"** is an individual who has been debarred by the FDA pursuant to 21 U.S.C. §335a (a) or (b) from providing services in any capacity to a person that has an approved or pending drug product application.
 - ii. A **"Debarred Entity"** is a corporation, partnership or association that has been debarred by the FDA pursuant to 21 U.S.C. §335a (a) or (b) from submitting or assisting in the submission of any abbreviated drug application, or a subsidiary or affiliate of a Debarred Entity.
 - iii. An **"Excluded Individual"** or **"Excluded Entity"** is (i) an individual or entity, as applicable, who has been excluded, debarred, suspended or is otherwise ineligible to participate in federal health care programs such as Medicare or Medicaid by the Office of the Inspector General (OIG/HHS) of the U.S. Department of Health and Human Services, or (ii) an individual or entity, as applicable, who has been excluded, debarred, suspended or is otherwise ineligible to participate in federal procurement and non-procurement programs, including those produced by the U.S. General Services Administration (GSA).
 - iv. A **"Convicted Individual"** or **"Convicted Entity"** is an individual or entity, as applicable, who has been convicted of a criminal offense that falls within the ambit of 21 U.S.C. §335a (a) or 42 U.S.C. §1320a - 7(a), but has not yet been excluded, debarred, suspended or otherwise declared ineligible.
- 18. DATA PROTECTION.** Data protection is a high priority issue at ZEISS, and we invest time, energy, and money into ensuring that our systems are secure and monitored. Every ZEISS company complies with the data protection laws which are applicable in its own particular case. In addition, the handling of personal information is specified in a company directive for all ZEISS companies within the Group. This ZEISS company directive serves to ensure that your data is processed properly and in compliance with the applicable laws at the ZEISS companies which handle personal information. For more on how ZEISS safeguards your information, visit <https://www.zeiss.com/corporate/int/legal-information/data-protection.html>. ZEISS uses Salesforce as a Customer Relationship Management platform. By submitting this form, Buyer acknowledges that the information it provides will be transferred to Salesforce for processing in accordance with their Privacy Policy.

- 19. ASSIGNMENT.** Neither party may assign or transfer their rights or obligations under these Terms, except to its parent, subsidiaries, or affiliates. Any other assignment or delegation violates this Section and is invalid. No assignment or delegation relieves either party of any of its obligation under these Terms.
- 20. RELATIONSHIP.** The parties are independent contractors, and these Terms do not create any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship.
- 21. THIRD PARTY BENEFICIARIES.** This Agreement is for the sole benefit of the parties, and their respective successors and permitted assigns, and not for any other third party.
- 22. SURVIVAL.** The rights and obligations established in this Agreement will survive the termination or expiration of the Terms, unless otherwise limited by a provision in this Agreement.
- 23. SEVERABILITY.** If a court of competent jurisdiction deems any of the provisions in this Agreement to be invalid, illegal, or unenforceable, the remainder of the Agreement will remain valid and the parties will work in good faith to amend such invalid provision in a manner that lawfully accomplishes the original intent of the invalid provision. If removing or amending the invalid provision has a material adverse effect on either party, the affected party may terminate these Terms without further obligation or liability.
- 24. WAIVER.** The failure of a party to enforce this Agreement, or any provision of it, will not constitute a waiver of this Agreement or that provision.
- 25. NOTICE.** All notices, requests, consents, claims, demands, waivers, and other communications (a **"Notice"**) must be in writing and addressed to the parties indicated on the face of the Order. All Notices must be delivered by hand, nationally recognized overnight courier (with all fees pre-paid), fax (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). A Notice only is effective upon its receipt by the receiving party, and if the party giving the Notice has complied with the requirements in this section.
- 26. EXPORT/RE-EXPORT.** The Product(s) may be subject to United States Export Administration Regulations and diversion contrary to U.S. law is prohibited. All transactions are conditioned on compliance with all applicable export control laws and regulations and all other applicable laws and treaties, including without limitation the Foreign Corrupt Practices Act, of the U.S.A., international treaty and/or the Buyer's country. Buyer agrees that it must not, except as permitted by those laws, regulations or treaties, make any disposition, either by transshipment, re-export, diversion or otherwise, of Products in whole or in part. Buyer warrants that it will not export or re-export any Products with knowledge that they will be used in the design, development, production, or use of chemical, biological, nuclear, or ballistic weapons, or in a facility engaged in such activities, unless Buyer has obtained all required permits and approvals. Buyer further warrants that it will not export or re-export, directly or indirectly, any Products to embargoed countries or sell Products to companies or individuals listed on the Denied Persons List published by the Department of Commerce. All obligations in this paragraph survive any termination of site access, discharge of any other contract obligations, and termination of this Agreement.
- 27. TRADE COMPLIANCE.** Please be advised that the products, technical data/technology and services included in this quotation, order confirmation or contract may be subject to European Union, U.S., or other export control regulations. This document will only be effective if not prohibited by sales ban (embargo) and/or if necessary licenses are granted. An export license or other government authorization may be required to complete this transaction. Your assistance may be required to complete export licensing requirements. Neither party will be responsible for performance or liable for damages if this transaction is determined to be restricted by regulation and/or denied a license or permission by applicable export controls authorities.
- 28. INSURANCE.** ZEISS will maintain commercially reasonable insurance coverages, including but not limited to: Commercial General Liability, Products Liability, and Worker's Compensation coverages.
- 29. GOVERNING LAW AND VENUE.** These Terms are governed by New York law, without use of any of its conflict-of-laws provisions. The parties will resolve any disputes between them in the courts in New York, and waive the right to a trial by jury, to the extent permitted by law. The venue for any disputes will be in the State of New York, and the parties consent to the exclusive jurisdiction of the federal and state courts located in Westchester County, New York, U.S.A.
- 30. ENTIRE AGREEMENT; MODIFICATIONS.** These Terms contains the entire understanding of the parties related hereto, and supersedes all prior

and contemporaneous discussions, whether written or oral, and may not be amended except by a writing signed by both parties.

- 31. COUNTERPARTS.** This Agreement and any amendment to it may be executed in several counterparts, each of which, when executed and delivered will be an original, and all together will constitute the same instrument. A faxed signature, or a signature delivered as an imaged attachment to an e-mail message is deemed equivalent to an original ink signature.