



TERMS AND CONDITIONS

ZEISS UVCLEAN

PLEASE READ THIS AGREEMENT CAREFULLY TO UNDERSTAND YOUR RIGHTS AND OBLIGATIONS.

[GENERAL TERMS](#)
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This Agreement is between Buyer and Carl Zeiss Vision Inc. ("Zeiss") and fully incorporates these Terms and Conditions together with the information on the order form ("Order Form") constitute an agreement in which the purchaser named on the Face Sheet ("Buyer", "You", "Your" "Customer") will purchase the Products described on the Order Form ("Product(s)") ("Agreement"). All purchases of Products are expressly conditioned upon your acceptance of this Agreement. Zeiss reserves the right, from time to time, with or without notice to you, to change these Terms and Conditions. The most current version of this Agreement will supersede all previous versions. Terms on the Face Sheet will supersede the terms below.

ALL PURCHASES ARE EXPRESSLY CONDITIONED UPON YOUR ACCEPTANCE OF THIS AGREEMENT'S TERMS. BY USING YOUR PRODUCTS, YOU REPRESENT THAT YOU ARE CAPABLE OF ENTERING INTO A CONTRACT UNDER THE LAWS OF YOUR JURISDICTION AND AGREE TO BE BOUND BY THIS AGREEMENT'S TERMS.

GENERAL TERMS

1. Prices and Taxes. All prices in this Agreement ("Price(s)") are in U.S. dollars. The Price does not include applicable sales, excise, use, or other taxes in effect or later levied. Carl Zeiss Vision Inc. is licensed 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 Products, including (but not limited to) sales or excise taxes, duties, or property taxes.
2. No Trade-Ins. Zeiss does not accept trade-ins for this device.
3. Returns and Refunds. You may return the Product in the same condition as you received it and in the original packaging at any time within thirty (30) days from the original date of purchase upon receipt of a return authorization issued by Zeiss. You will receive a refund of your purchase price, less the original shipping and handling cost. All returns are subject to a restocking fee of __%, which will be deducted from the refund. Your refund will be credited back to the same payment method used to make the original purchase. If a Product is returned damaged in any way, no refund will be issued. To return products, you must call **1-800-201-4143** to obtain a Return Merchandise Authorization ("RMA") number before returning your product. No returns of any type will be accepted without an RMA number.
4. You are responsible for all shipping and handling charges on returned items. You bear the risk of loss during shipment. [We therefore strongly recommend that you fully insure your return shipment against loss or damage and that you use a carrier that can provide you with proof of delivery for your protection.] All returns are subject to a [NUMBER]% restocking fee..
5. Payment Terms. Unless stated otherwise on the Order Form, payment in full will be due thirty (30) days from the date of invoice. Zeiss may require a deposit upon placement of the order, with the balance due on delivery (including applicable sales tax, freight, insurance, etc.). 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 one-and-one-half percent (1½%) per month, or the highest rate permitted by law, whichever is less. For Zeiss to extend tax exempt status to Buyer, Buyer must provide a tax-exemption certificate based upon the jurisdiction of the installation location prior to acceptance of the order.
6. Shipment; Risk of Loss; Shipping Date. All shipments will be made FCA-Zeiss's shipping points. Absent specific agreement, Zeiss will select the carrier. Title and risk of loss to the Products passes to the Buyer upon Zeiss' delivery to the designated carrier or delivery service. Buyer shall reimburse Zeiss for any insurance proceeds obtained covering losses

associated with delivering the Products to the carrier. If a shipment date is indicated on this Agreement, such date is only an estimated delivery date, and not a material term of this Agreement. Zeiss will make all reasonable efforts to meet the delivery date. If Zeiss does not deliver the Products within sixty (60) days of the delivery date, then Buyer may terminate this Agreement and neither Buyer nor Zeiss will have any further obligations.

7. Acceptance. Buyer will be deemed to have accepted the Products on the earlier of (i) delivery of the Products to the Buyer (if installation is not priced separately on the Face Sheet or (ii) confirmation by Zeiss that the Products have been installed and conform to Zeiss' specifications and requirements for operation or (iii) Buyer's use of the Products.
8. 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, or in any chattel paper regarding the Products (e.g. lease agreements).
9. Training. Zeiss may provide training related to certain Products, the form, duration and content of which will be at Zeiss' discretion. Training commitments expire 6 months after the Products are shipped.
10. 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 twenty percent (20%) restocking fee for all Zeiss authorized Products returns. Risk of Loss, and Shipping and Handling fees for returned Product are the Buyer's responsibility. Unless Zeiss agrees otherwise, returned Products must be in new condition and packaged in the original packaging. Consumable Products, such as bulbs, lamps, fuses, fiber optic cables, etc., are not returnable.
11. Cancellation Policy. This Agreement can only be cancelled prior to shipment by written agreement of Buyer and Zeiss. If Buyer cancels this Agreement, Buyer may be charged a 20% cancellation fee. If Buyer only cancels part of Buyer's order under this Agreement, Zeiss may adjust the Price of the remaining Products being purchased, which may mean discounts offered on the original order will not be available.
12. Force Majeure. Zeiss will make every reasonable effort 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 its reasonable control including but not limited to, fire, storm, flood, earthquake, explosion, accident, acts of a public enemy, war, rebellion, insurrection, sabotage, epidemic, 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 Products, acts of God, acts of the Federal Government or any agency thereof, acts of any state or local government or any agency thereof, and judicial action. Should such 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.
13. Assignment. Buyer shall not assign or transfer any rights, duties, or obligations under this Agreement without Zeiss' prior written consent.
14. Governing Law and Venue. This Agreement shall be construed in accordance with the laws of the State of California, without giving effect to the conflict of laws provisions thereof. Venue of any action brought to enforce or relating to this Agreement shall be brought exclusively in the State of California, San Diego County. Both Parties agree to waive any right to a trial by jury.
15. Disputes. All conferences and discussions which occur in connection with the negotiations, mediation or arbitration conducted pursuant to this Agreement shall be deemed settlement discussions, and nothing said or disclosed, nor any document produced, which is not otherwise independently discoverable shall be offered or received as evidence or used for impeachment or for any other purpose in any current or future arbitration or litigation.
 - 13.1 Negotiation. The Parties shall attempt in good faith to resolve any controversy, claim or dispute arising out of or relating to this Agreement or the construction, interpretation, performance, breach, termination, enforceability or validity thereof, promptly by negotiation between executives who have authority to settle the dispute and who are at a higher level of management than the persons who have direct responsibility for the administration of this Agreement.
 - 13.2 Mediation. If the Dispute has not been resolved by negotiation as herein above provided, the Parties shall make a good faith attempt to settle the dispute by mediation before resorting to arbitration, litigation or any other dispute resolution procedure. Unless otherwise agreed, the mediation shall be conducted in accordance with the Commercial Mediation Rules of the American Arbitration Association (the AAA) in effect on the date of this Agreement, by a mediator who shall be a neutral and impartial lawyer with excellent academic and professional credentials (i) who is or has been practicing law for at least ten (10) years, specializing in either general commercial litigation or general corporate and commercial matters, and (ii) who has had both training and experience as a mediator. The costs of the mediation shall be shared equally between the Parties.

- 13.3 Arbitration. At the request of either Party, any dispute arising out of this Agreement shall be settled by arbitration in accordance with the Commercial Arbitration Rules of American Arbitration Association (“AAA”) in effect at the time of the arbitration (the “Rules”), except as such Rules may be modified herein. If there is any inconsistency between the Rules and this Section, this Section shall govern. Awards from arbitration shall be binding and enforceable in any court of competent jurisdiction. All proceedings under this Section shall be held in San Diego, California. Each Party shall be given at least fifteen (15) days advance notice of the time and place of arbitration.
- 13.4 No Class Action. The Parties agree that (i) no arbitration proceeding hereunder whether a consumer dispute or a business dispute shall be certified as a class action or proceed as a class action, or on a basis involving claims brought in a purported representative capacity on behalf of the general public, other customers or potential customers or persons similarly situated, and (ii) no arbitration proceeding hereunder shall be consolidated with, or joined in any way with, any other arbitration proceeding. The tribunal shall have the power to rule on any challenge to its own jurisdiction or to the validity or enforceability of any portion of the agreement to arbitrate. The Parties agree to arbitrate solely on an individual basis, and that this agreement does not permit class arbitration, or any claims brought as a plaintiff or class member in any class or representative arbitration proceeding.
16. Limitation of Liability. Notwithstanding anything contained in this or any other agreement between Zeiss and Buyer, neither Party will be liable to the other for any loss, damage, cost of repairs, incidental, punitive, exemplary, indirect or consequential damages of any kind, including (without limitation) loss of profit, revenues or business opportunity, (all of which each Party expressly waive to the fullest extent permitted by law) even if either Party has been advised of the possibility of such damages, whether or not based upon express warranty or implied warranty (except for the obligations assumed by Zeiss under the Limited Warranty Clause), contract, tort, negligence, strict liability or other cause of action arising in connection this Agreement or with the design, manufacture, sale, use or repair of the Products. This provision may not affect third Party claims for bodily injury or death arising in products liability or from Zeiss' gross negligence. Some states do not allow the exclusion or limitation of consequential or incidental damages, so the above limitation or exclusion may not apply.
17. Patent Indemnity. Zeiss will defend or settle any claim, suit or proceeding brought against Buyer based on allegations that the Products infringe on a third-Party patent, provided that: Zeiss is notified timely of such claim, suit or proceeding; Buyer renders all reasonable cooperation to Zeiss; Buyer gives Zeiss the sole authority to defend or settle the same. If the Products are held to infringe on any patent and the use of the Products is enjoined, Zeiss will have the option, at its discretion (i) to procure Buyer the right to use the Products or (ii) to modify the Products so that they no longer infringe or (iii) upon the return of the Products, refund Buyer the depreciated value of the Products 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 Products (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 Products.
18. Export / Re-Export. The Products and Software may be subject to United States Export Administration Regulations, and diversion contrary to U.S. law is prohibited.
19. 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 Products. 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 Products, 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. Modification. You are bound by this Agreement's most current version. Zeiss may modify this Terms and Conditions at any time. You can print and save this document located at www.zeiss.com/uvcleantermsconditions at any time. Please check this URL from time to time for changes to this Agreement. Your continued access to or use of the Products will signify your acceptance of the latest version of this Agreement.
21. Severability. If any provision of this Agreement is held invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of this Agreement are not affected or impaired in any way. You acknowledge that your breach of this Agreement would cause irreparable injury to Zeiss for which monetary damages would not be an adequate remedy and that Zeiss is entitled to equitable relief in addition to any other remedies it may have under law.

LIMITED WARRANTY

22. Limited Warranty. Zeiss warrants to the original purchaser (“you”) that the ZEISS UVClean hardware, which includes components contained in the retail box with this Product hardware will be free from material defects in material and workmanship for a period of one year from the original date of purchase (the “Warranty Period”). This warranty is valid only

in the United States and Canada. IF THIS PRODUCT IS DETERMINED TO BE MATERIALLY DEFECTIVE DURING THE WARRANTY PERIOD, YOUR SOLE REMEDY AND ZEISS'S SOLE AND EXCLUSIVE LIABILITY IS LIMITED TO: (A) REPLACEMENT OF THIS PRODUCT WITH A FACTORY-RECERTIFIED PRODUCT AT NO CHARGE TO YOU; AND (B) RETURN SHIPPING TO THE ZEISS-AUTHORIZED SERVICE FACILITY, VIA A SHIPPING BOX WITH A PREPAID SHIPPING LABEL PROVIDED BY ZEISS, AND SHIPPING OF THE FACTORY-RECERTIFIED REPLACEMENT TO YOU, AT NO CHARGE TO YOU. For purposes of this Limited Hardware Warranty and Liability, "factory recertified" means a product that has been returned to its original specifications.

23. Items Not Covered by Warranty. THIS WARRANTY DOES NOT APPLY: (A) TO DAMAGE CAUSED BY USE OF THIS PRODUCT WITH PRODUCTS THAT ARE NOT COMPATIBLE WITH THIS PRODUCT; (B) TO DAMAGE CAUSED BY USE OF THIS PRODUCT WITH ANY PERIPHERAL(S) THAT ZEISS DOES NOT LICENSE OR SELL, INCLUDING NON-LICENSED ENHANCEMENT DEVICES, CONTROLLERS, ADAPTORS AND POWER SUPPLY DEVICES; (C) IF THIS PRODUCT IS MODIFIED TO ALTER CAPABILITY OR FUNCTIONALITY WITHOUT ZEISS'S WRITTEN PERMISSION; (D) TO DAMAGE CAUSED BY ACTS OF GOD, MISUSE, ABUSE, NEGLIGENCE, ACCIDENT, UNREASONABLE USE, OR BY CAUSES UNRELATED TO DEFECTIVE MATERIALS OR WORKMANSHIP; (E) IF THIS PRODUCT HAS HAD THE SERIAL NUMBER ALTERED, DEFACED OR REMOVED; OR (F) TO DAMAGE CAUSED BY (1) SERVICE (INCLUDING UPGRADES AND EXPANSIONS) PERFORMED BY ANYONE WHO IS NOT A REPRESENTATIVE OF ZEISS OR AN ZEISS-AUTHORIZED SERVICE PROVIDER, OR (2) OPENING THE PRODUCT OR ANY ACTION TAKEN WITHIN IT BY ANYONE WHO IS NOT A REPRESENTATIVE OF ZEISS OR AN ZEISS-AUTHORIZED SERVICE PROVIDER. THIS WARRANTY DOES NOT COVER PRODUCTS SOLD AND CLEARLY MARKED "AS IS" OR WITH FAULTS. ZEISS MAY VOID THIS WARRANTY IF ZEISS REASONABLY BELIEVES THAT THE PRODUCT HAS BEEN USED IN A MANNER THAT VIOLATES THE TERMS OF THIS AGREEMENT.
24. Warranty Disclaimer. THIS WARRANTY IS PROVIDED TO YOU IN LIEU OF ALL OTHER EXPRESS OR IMPLIED WARRANTIES INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE FOR THIS PRODUCT, WHICH ZEISS DISCLAIMS UNDER THESE TERMS. HOWEVER, IF APPLICABLE LAW REQUIRES ANY OF THESE WARRANTIES, THEN THEY ARE LIMITED IN DURATION TO THE WARRANTY PERIOD.
25. Warranty Rights. This warranty gives you specific legal rights. You may also have other rights which vary from state to state or province to province. The warranty offered by ZEISS on this Product is the same whether or not you register your product.
26. Warranty Service. Call **1-800-201-4143** for warranty service, to receive a return authorization if applicable, and shipping instructions. A VALID PROOF OF PURCHASE IN THE FORM OF A RECEIPT ISSUED BY ZEISS WITH THE DATE OF THE ORIGINAL PURCHASE MUST BE PRESENTED TO OBTAIN WARRANTY SERVICE. You understand and acknowledge that any time Zeiss services this Product (either within the Warranty Period or under a separate service arrangement), Zeiss may need to provide certain services to ensure this Product functions properly and according to Zeiss guidelines and specifications. These services may include the replacement of the Product with a new or factory recertified product. Zeiss is not liable for damages resulting from your failure to comply with the foregoing, or any instructions that Zeiss provides to you. After Zeiss returns a factory-recertified product to you under this warranty, this warranty applies to the returned product for the longer of (i) 90 days from the date that ZEISS ships the Product or the factory-recertified product or (ii) the original Warranty Period. Except as this Limited Hardware Warranty and Liability provides, Zeiss is not be liable for any direct and indirect, consequential, or special damages, including any damages that may arise from loss functionality. The foregoing limitation applies to the extent permitted by law.

EQUIPMENT SERVICE AGREEMENT EXTENDED WARRANTY

1. Equipment. The Equipment considered in this Agreement includes only Zeiss brand equipment as set forth and more detailed the VTS Quote, incorporated herein and made a part hereof by reference (hereinafter individually or collectively referred to as the "Equipment").
2. Service Level. Zeiss shall provide technical level support and preventive maintenance services for the Equipment ("Services"). Services shall include, but not necessarily be limited to, inspection of Equipment, verification that Equipment is in proper operating condition, lubrication, and calibration of Equipment according to manufacturer's recommendations and specifications, including applicable preventive maintenance and repairs as necessary to ensure the proper operating condition of the Equipment. Service shall be performed at the Customer's facilities at the address

specified above at mutually agreed upon hours. Compensation for the Service shall be the amount set forth in the VTS Quote.

3. Parts. Except for bulbs which are included in this extended warranty, Zeiss will provide and Customer shall be responsible for the cost of all replacement parts, which are required to maintain the Equipment. Customer shall pay all applicable taxes and shipping charges for parts. Such replacement parts, when furnished, will be new parts or rebuilt parts that are equivalent, in the reasonable judgment of Zeiss, to the new parts when used in connection with the Equipment. All replaced parts, except for those obtained by the Customer, shall become the property of Zeiss.
 - 3.1 Parts for Discontinued or Obsolete Equipment. Zeiss does not stock parts for Equipment that has been discontinued or is obsolete and, although Zeiss may have a limited number of such parts on hand, it makes no guarantee that parts for such Equipment will be available. Zeiss will use compatible replacement parts whenever possible. In the event a replacement part is required for such Equipment but is unavailable, Zeiss will make commercially reasonable efforts to locate such parts and if successful, Customer, at its sole cost and expense shall purchase and obtain the parts. Zeiss makes no warranty whatsoever regarding the performance of such replacement parts obtained by the Customer.
4. Additional Services. Upon Customer's request, Zeiss may, at its option, provide services other than those described in Section 2 above ("Additional Services"). Additional Services may include, among others, conducting additional safety tests, performing emergency repairs that are not part of the scheduled preventive maintenance visits, performing factory modifications, or installing attachments or optional features on the Equipment.
 - 4.1 All labor and parts costs associated with performing Additional Services shall be at Zeiss's then-current rates for parts and labor.
 - 4.2 Additional Services shall be performed only in conjunction with a scheduled service call unless requested otherwise by Customer, in which case Customer agrees to additionally reimburse Zeiss for all travel related expenses.
5. Training. Zeiss shall provide training to cover Equipment daily maintenance, operation and testing when on-site or by phone.
6. Scheduling; Access; Acceptance of Services. Zeiss shall provide the Services annually to Customer and use reasonable commercial efforts in scheduling the Services. Customer shall ensure that the Equipment is available for all such scheduled Services. Customer shall provide Zeiss reasonable access to the Equipment for the purposes of performing the Service. Customer shall provide a knowledgeable representative on site with signature authority to accept satisfactory completion of Services performed hereunder.
7. Exclusions to Services. Services hereunder shall not include, and Zeiss shall have no obligation to provide, service or parts on Equipment in connection with:
 - 7.1 Electrical work external to the Equipment.
 - 7.2 Maintenance, repair, or replacement of accessories (including, but not limited to, batteries, pressure transducers, flow sensors, air sensors, transducers, fuel cells, or safety chambers), attachments, machines, or any other devices not originally included by the Equipment manufacturer.
 - 7.3 Repair of damage resulting from accident, neglect, misuse, failure of electrical power, air conditioning, deionized water supply, or any other cause other than ordinary use.
 - 7.4 Any service, which, in the sole opinion of Zeiss, is impractical to perform due to alterations in the Equipment or its connections.
 - 7.5 Repair, replacement or maintenance arising from any intentional acts or commissions, or negligence of Customer, its employees, agents or invitees;
 - 7.6 Attempts to repair or service the Equipment made by persons other than Zeiss, without the prior written approval of Zeiss;
 - 7.7 Use of special attachments or devices not provided by Zeiss, or the use of process and consumables other than those specified herein;
 - 7.8 Use of accessories, attachments, supplies, machines or other devices not furnished by Zeiss
 - 7.9 Misuse of the Equipment, including, without limitation, use of the Equipment for any application or function for which it is was not designed or intended;

- 7.10 Maintenance required due to damage of the Equipment resulting from transportation by the Customer, caused (other than ordinary use) within the reasonable control of the Customer, or any other exclusion as listed in this section.
8. Equipment Upgrades. Systems upgrades applicable to the Equipment will be performed by Zeiss, upon the written request of the Customer, at fair and reasonable market prices including travel expenses and shipping charges.
 9. Excused Performance. Zeiss shall not be liable for any failure to perform or delayed performance of any part of this Agreement if such performance is prevented, hindered, or delayed by reason of any cause beyond the reasonable control of Zeiss ("Excusing Event") including, without limitation, labor disputes, strikes, other industrial disturbance, Acts of God, floods, shortages of materials, earthquakes, casualty, war, acts of the public enemy, riots, insurrections, embargoes, laws, blockages, actions, restrictions and regulations or orders of any government, government agency or subdivision.
 10. Payment Terms. Unless stated otherwise on the face sheet, payment in full will be due thirty (30) days from the date of invoice. Zeiss may require a deposit upon placement of the order, with the balance due on delivery (including applicable sales tax, freight, insurance, etc.). 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 one-and-one-half percent (1½%) per month, or the highest rate permitted by law, whichever is less. For Zeiss to extend tax exempt status to Buyer, Buyer must provide a tax-exemption certificate based upon the jurisdiction of the installation location prior to acceptance of the order.
 11. Term of Agreement. This Agreement shall be valid for a period of one (1) year from the date of invoice of the VTS Quote after which this Agreement shall automatically terminate.
 12. Termination without Cause. At any point in time, this Agreement may be terminated by either Party without cause, on no less than ninety (90) days prior written notice to the other Party.
 13. Immediate Termination. This Agreement may be terminated by either Party with immediate effect upon the material breach of any provision hereof if such breach is not cured within ten (10) days after prior written notice thereof; or by Zeiss with immediate effect in the event of (i) Customer failure to perform or adhere to the terms of this Agreement (ii) the substantial deterioration of Customer's financial position (iii) Customer ceases to do business, terminates its existence, dissolves or liquidates (vi) Customer becomes insolvent or fails to pay its obligations (including its obligations to Zeiss or Zeiss' representatives hereunder) when they become due (v) a receiver is appointed to hold, manage or operate Customer's property or business (vi) there is a general assignment of Customer's property or business for the benefit of its creditors or (vii) proceedings are instituted by or against Customer under any bankruptcy or insolvency law (viii) Customer changes ownership in any manner without written notice and the express written consent of Zeiss.
 14. Termination Rights. Upon termination of this Agreement, all rights granted to Customer under this Agreement shall automatically revert to Zeiss and Customer shall execute any and all documents evidencing the automatic reversion. Customer shall, at Zeiss's discretion, either deliver to Zeiss all documents, specifications, manuals, and all other confidential materials, or give to Zeiss satisfactory proof of their destruction. Customer shall, at Zeiss's discretion, either deliver to Zeiss all patterns, proofs, and any other material that reproduce the Trademark or give to Zeiss satisfactory proof of their destruction.
 15. Warranty; Disclaimer of Warranty. Except for repairs and replacement parts for discontinued or obsolete Equipment pursuant to Section 7.1, Zeiss warrants that the Services will be free from defects in material and workmanship at the time of installation. EXCEPT AS SET FORTH HEREIN, Zeiss MAKES NO OTHER WARRANTIES, CONDITIONS OR REPRESENTATIONS, WRITTEN, ORAL, EXPRESS OR IMPLIED, IN FACT OR IN LAW, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES, CONDITIONS OR REPRESENTATIONS OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, ALL OF WHICH ARE, TO THE EXTENT PERMISSIBLE BY LAW, HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED, WITH RESPECT TO SERVICE OR PARTS PROVIDED BY Zeiss PURSUANT TO THIS AGREEMENT.
 16. Remedy; Limitation of Liability. In the event of Zeiss' breach of any warranty or obligation under this Agreement, Zeiss' sole obligation shall be to make all necessary adjustments, repairs and replacements in accordance with the terms of this Agreement and to replace any parts installed pursuant to this Agreement, which are defective at the time of installation. Zeiss shall have no liability for damages under this Agreement in connection with any non-functioning or malfunctioning unit of Equipment unless such Equipment fails to function properly for a period of three (3) consecutive months. In that event, Zeiss' total liability under this Agreement shall be limited to general money damages in an amount not to exceed three (3) months of the Service Fee Payments paid by Customer. Zeiss SHALL IN NO EVENT

BE LIABLE TO CUSTOMER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, CONSEQUENTIAL, PUNITIVE, RELIANCE LOSSES OR DAMAGES OF ANY NATURE WHATSOEVER INCLUDING, BUT NOT LIMITED TO LOSS OF USE OF EQUIPMENT, LOSS OF PROFITS OR BUSINESS OPPORTUNITIES, REGARDLESS OF THE FORM OF ACTION WHETHER IN CONTRACT OR TORT OR ANY OTHER THEORY OF LIABILITY.

17. Indemnification. Customer agrees to indemnify, defend and hold Zeiss harmless from and against all claims, expenses, liabilities, losses and damages (collectively "Damages"), which are asserted against Zeiss, resulting from or arising out of a Customer's (a) performance of or failure to perform any of its obligations pursuant to the terms of this Agreement; (b) misrepresentation (c) negligent actions, provided that Damages are not attributable to the negligence or willful misconduct of Zeiss; (d) breach of any representation, warranty, covenant or agreement contained in this Agreement; or (e) conduct, omission or commission of any unlawful act, regardless whether resulting Damages arise in tort (including negligence), contract, or otherwise. Customer shall pay any and all reasonable costs and damages, including reasonable attorneys' fees, incurred in the defense of any such claims.
18. Location of Equipment. All Equipment is located at Customer's address as set forth in the VTS Quote. Any subsequent resale or removal to a new location, without prior written approval from Zeiss, may result in automatic cancellation of this Agreement.
19. Confidential Information. Any specifications, drawings, sketches, models, samples, data, computer programs, documentation, or technical or business information furnished or disclosed between the Parties hereunder shall be deemed Confidential Information and, when in tangible form, shall be returned to the disclosing Party upon completion or termination of authorized work unless otherwise indicated by the disclosing Party. Unless such Confidential Information was previously known to the Parties free of any obligation to keep it confidential, or has been or is subsequently formally made public by the disclosing Party, it shall be held in confidence by the Parties, and shall be used only for the purposes hereunder, and may be used for other purposes only upon such terms and conditions as may be mutually agreed upon in writing. Neither Party shall advertise, market or otherwise make known to others any Confidential Information relating to the work performed under this Agreement, including mentioning or implying the name of either Party, their subsidiaries or affiliates, without written authorization from the other Party.
20. Infringement of Patents, Trademarks, or Copyrights. Customer agrees to report promptly to Zeiss any infringement or attempted infringement of Zeiss patents, trade secrets or trademarks which come to Customer's attention. Customer shall not take any action against persons making such infringement without prior written authority from Zeiss in each instance. Customer agrees to report promptly to Zeiss any suit, action, or claim against Customer alleging that the sale of the products or use of Equipment under this Agreement infringes any patent, trade secret, or trademark, and Zeiss shall, at its discretion, assume control of and pay the expenses incident to any such litigation.
21. Relationship of the Parties; Assignment. The Parties are independent contractors. The relationship between the Parties shall not be construed to be that of a partnership, joint venture, or agency of any kind. Neither Party may enter into any contracts or promises for the other Party. No rights or interest in this Agreement shall be assigned by Customer without the prior written consent of Zeiss.
22. Notices and Communications. All notices given under this Agreement must be in writing. Notice may be given by hand, by mail, or by courier service. Notices will be effective as follows (a) immediately, if delivered personally; (b) when transmitted by facsimile or electronic mail to an authorized representative of the respective Party, with confirmed receipt; (c) five (5) days after being sent by registered or certified mail, return receipt requested, postage pre-paid; or (d) one (1) day if sent via nationally recognized overnight courier service. The following addresses must be used:

If to Customer:	As set forth on the VTS Quote
If to Zeiss:	Carl Zeiss Vision, Inc. 12121 Scripps Summit Drive, Suite 400 San Diego, CA 92131 Attn: Jens Boy, President North America Attn: Legal

23. Governing Law and Venue. This Agreement shall be construed in accordance with the laws of the State of California, without giving effect to the conflict of laws provisions thereof. Venue of any action brought to enforce or relating to this Agreement shall be brought exclusively in the State of California, San Diego County. Both Parties agree to waive any right to a trial by jury.
24. Disputes. All conferences and discussions which occur in connection with the negotiations, mediation or arbitration conducted pursuant to this Agreement shall be deemed settlement discussions, and nothing said or disclosed, nor any document produced, which is not otherwise independently discoverable shall be offered or received as evidence or used for impeachment or for any other purpose in any current or future arbitration or litigation.

- 24.1 Negotiation. The Parties shall attempt in good faith to resolve any controversy, claim or dispute arising out of or relating to this Agreement or the construction, interpretation, performance, breach, termination, enforceability or validity thereof, promptly by negotiation between executives who have authority to settle the dispute and who are at a higher level of management than the persons who have direct responsibility for the administration of this Agreement.
- 24.2 Mediation. If the Dispute has not been resolved by negotiation as herein above provided, the Parties shall make a good faith attempt to settle the dispute by mediation before resorting to arbitration, litigation or any other dispute resolution procedure. Unless otherwise agreed, the mediation shall be conducted in accordance with the Commercial Mediation Rules of the American Arbitration Association (the AAA) in effect on the date of this Agreement, by a mediator who shall be a neutral and impartial lawyer with excellent academic and professional credentials (i) who is or has been practicing law for at least ten (10) years, specializing in either general commercial litigation or general corporate and commercial matters, and (ii) who has had both training and experience as a mediator. The costs of the mediation shall be shared equally between the Parties.
- 24.3 Arbitration. At the request of either Party, any dispute arising out of this Agreement shall be settled by arbitration in accordance with the Commercial Arbitration Rules of American Arbitration Association (“AAA”) in effect at the time of the arbitration (the “Rules”), except as such Rules may be modified herein. If there is any inconsistency between the Rules and this Section, this Section shall govern. Awards from arbitration shall be binding and enforceable in any court of competent jurisdiction. All proceedings under this Section shall be held in San Diego, California. Each Party shall be given at least fifteen (15) days advance notice of the time and place of arbitration.
- 24.4 No Class Action. The Parties agree that (i) no arbitration proceeding hereunder whether a consumer dispute or a business dispute shall be certified as a class action or proceed as a class action, or on a basis involving claims brought in a purported representative capacity on behalf of the general public, other customers or potential customers or persons similarly situated, and (ii) no arbitration proceeding hereunder shall be consolidated with, or joined in any way with, any other arbitration proceeding. The tribunal shall have the power to rule on any challenge to its own jurisdiction or to the validity or enforceability of any portion of the agreement to arbitrate. The Parties agree to arbitrate solely on an individual basis, and that this agreement does not permit class arbitration, or any claims brought as a plaintiff or class member in any class or representative arbitration proceeding.
25. No Waiver. A failure or omission of either Party hereto to insist, in any instance, upon strict performance by the other Party of any term or provision of this Agreement, or to exercise any of its rights hereunder, shall not be deemed a modification of any term or provision hereof, or a waiver or relinquishment of the right to insist upon future performance or enforcement of any such term or provision by such Party, nor shall such failure or omission constitute a waiver of the right of such Party to insist upon the performance by the other Party of any term or provision or any other term or provision of this Agreement. No waiver or modification of any provision of this Agreement shall be valid unless in writing and signed by the Party against whom the same is sought to be enforced.
26. Headings. The headings in this Agreement are for convenience only and used for ease of reference and shall not be used to interpret or limit the scope or intent of any clause.
27. Severability. If any part of this Agreement is held invalid or unenforceable, the remainder of this Agreement will still be considered valid and enforceable, and the Parties will work in good faith to modify the invalid provision, to the extent permitted by law, to best achieve the goals of that provision.
28. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same Agreement.
29. Entire Agreement. This Agreement and its Exhibit(s) which is attached hereto and incorporated herein by reference, and any additional agreements executed by the Parties, constitute the entire agreement between the Parties in connection with the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions of the Parties. Any modification or amendment to this Agreement must be in writing and signed by both Parties to be effective.
30. Construction. This Agreement or any uncertainty or ambiguity that may be found herein shall not be construed against any one Party but shall be construed as if all Parties to this Agreement jointly prepared this Agreement.
31. Electronic Signatures. Signatures transmitted by facsimile transmission, by electronic mail in portable document format (“.pdf”) form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same force and effect as physical execution and delivery of the paper document bearing the original signature.