

General Terms for the Vitrolife GmbH Octax Laser and Log & Guard System Services

between Vitrolife GmbH (Roedersteinstr. 6, D-84034 Landshut, hereinafter referred to as “Vitrolife GmbH”) and the Customer (hereinafter referred to as “Customer”)

1. Scope

All maintenance and repair (the “**Services**”) of Octax Laser and Log & Guard systems carried out by or on behalf of the contracting Vitrolife company (“**Vitrolife**”) shall be subject to these General Terms (the “**General Terms**”). Opposing or deviating conditions to these General Terms are only applicable if explicitly accepted by Vitrolife in writing.

Vitrolife’s obligation to provide the Services shall apply only to the device (the “**Device**”) for which the Customer has paid the annual service fee (the “**Service Fee**”), and only for the period of time for which the Service Fee has been paid.

These Terms and Conditions supersede all prior representations, warranties, communications and agreements regarding the Octax Laser and Log & Guard systems services between Vitrolife and the Customer. Any conditions contrary to the content of these Terms and Conditions shall be excluded and of no force or effect. In the event of discrepancy between Vitrolife's order confirmation and these Terms and Conditions, the wording in the order confirmation shall take precedence. Vitrolife may at any time change these Terms and Conditions with effect for orders confirmed after such change.

2. Services

2.1. The services shall include:

- a. Regular on-site customer service appointments, consisting of one regular customer service visit per year, which includes an inspection of the devices according to the applicable regulations. The electrical and physical parameters of the devices shall be measured, assessed and recorded. A functional test shall be carried out.
- b. Maintenance works on the devices, such as cleaning, calibration and adjustment
- c. Exchange of wear parts that are invoiced separately from the maintenance fee (item 3). Vitrolife GmbH shall replace wear parts by identical or equivalent parts.
- d. Repair of defective devices, where possible on site; replacement of faulty parts that are not wear parts (these parts are invoiced separately). Repair requests may be put forward by calling +49 871 4306570 on working days between 8:00 am and 4:30 pm (GMT+1).
- e. The Customer shall have the option to borrow (subject to charge) substitute devices if it is necessary to send the existing devices to the manufacturer for repair. This option shall only apply if Vitrolife GmbH has substitute devices available. The costs for transporting the loan devices to the Customer and back shall be borne by the Customer.
- f. Technical support by phone: +49 871 430657288 (or another number stated by Vitrolife GmbH), on working days from 8:00 am to 4:00 pm (GMT+1).
- g. Technical support by e-mail: support.de@vitrolife.com. 48 hours response time (excluding weekends and public holidays).
- h. Software upgrades, e.g. improvements or modifications to the existing functionality of the software that has been delivered with the devices, where this is deemed sufficiently necessary by Vitrolife GmbH. Software upgrades introducing new functionalities into the original software shall not be part of these General Terms.

Vitrolife GmbH shall be obliged to carry out customer service and maintenance works on the devices according to the requirements and regulations of the market. Therefore, Vitrolife GmbH may change the works and services – without reducing their quality – if this is deemed sufficiently necessary by Vitrolife GmbH. The Customer shall be informed about any such modifications by e-mail.

2.2. The services shall not include:

- a. Repair of damaged or faulty parts or defective devices caused by:
 - i) accident, misuse, operating error, incorrect use of the devices or their parts by the Customer or third parties
 - ii) customer service or repair provided and/or carried out by personnel not authorised by Vitrolife GmbH
 - iii) use in combination with devices, parts or systems that are not manufactured or supplied by Vitrolife GmbH or that have not been approved in writing
 - iv) use and operation that is not in compliance with the operating manual
 - v) events of force majeure, including, but not limited to fire, overvoltage, lightning, flood, accidents, embargo, labour dispute, strike, lock-out, war, terrorism, riots or other disasters

- vi) causes not related to the device, such as power failure or defects of devices that are connected to the devices stated in item 1.
- b. Transmission or recovery of lost data. The Customer shall be solely responsible for ensuring external data back-up for all data that are stored by the Customer in device software.
- c. Internal cleaning of incubators and liquid nitrogen storage tanks
- d. Services connected with the relocation of the devices.

If Vitrolife GmbH finds that works carried out were not included in the services, they shall be invoiced to the Customer. The basis shall be the costs actually incurred by Vitrolife GmbH, including the full labour and travel costs.

2.3. To enable Vitrolife GmbH to carry out the services, the Customer shall undertake:

- a. to provide access to the devices via Internet remote access and directly, as required by Vitrolife GmbH.
- b. to inform Vitrolife GmbH immediately about any problems or potential problems with the devices.
- c. to carry out a data transfer of device data as and to the extent required by Vitrolife GmbH in order to support the evaluation of the devices via remote diagnoses (subject to the following clause 6).
- d. to provide full information on the circumstances in the environment of the fault or failure of the devices.
- e. to ensure that the devices are only operated by adequately trained persons.
- f. to ensure that human gametes and embryos have been removed from the relevant devices before the maintenance works are started. Vitrolife GmbH shall not accept any liability for damage caused due to the non-compliance with this obligation.

3. Remuneration

The annual fee and payment method for the services shall be agreed between the Vitrolife GmbH and the Customer in writing. Payment shall become due after each invoicing. Payment shall be received without deduction within 30 days from invoicing by Vitrolife GmbH. A 2% cash discount shall be granted if the payment is made within 10 days from invoicing.

Vitrolife GmbH shall reserve the right to adjust the aforementioned fee in line with the general price development. The fee increase shall be notified in writing to the Customer at least 80 days prior to the anniversary of the Service Contract effective date.

4. Use of data

To the extent the Customer transmits information on patients and treatments to Vitrolife GmbH or Vitrolife GmbH obtains remote access or on-site access to data, including (but not limited to) pictures, year of birth, date and time of treatment (any of such data hereinafter jointly referred to as “Data”), the following agreements regarding such Data shall apply:

- a. As data processor, Vitrolife GmbH shall use the Data to check the operating characteristics of the devices for optimising service and maintenance of the devices.
- b. Data processing by Vitrolife GmbH shall be made following an order issued by the Customer, and Vitrolife GmbH shall keep itself up to date about the latest legal provisions for data processing.
- c. Vitrolife GmbH shall take all necessary technical and organisational safety measures, including additional measures, that are required to prevent Data being accidentally or unlawfully destroyed, lost or modified or becoming known to unauthorised third parties, being abused or otherwise processed in a form that does not comply with the current legal provisions. Therefore, Vitrolife GmbH shall:
 - use log-in and password steps as well as a firewall and anti-virus software;
 - make sure that only employees entrusted with data processing have access to the Data;
 - carefully store data storage media so that they cannot be accessed by third parties;
 - make sure that buildings and systems used for data processing are secure, and that only regularly updated quality hardware and software is used;
 - make sure that waste materials are destroyed in compliance with the data protection requirements on the Customer’s instruction.
- d. If the Data are not already anonymised upon receipt, Vitrolife GmbH shall be entitled to anonymise such Data at any time after receipt so that they do not have any connection to a known or identifiable natural person and they cannot be subsequently restored as such Data (such anonymised Data shall hereinafter be referred as “Anonymised Data”). The Customer shall remain the exclusive owner of the Data.
- e. Vitrolife GmbH shall be entitled to use the Anonymised Data and/or results and conclusions that are based on the Anonymised Data for any other lawful purpose, including without limitation for research purposes, improvement and development of existing and new products, alone or in cooperation with third parties, and for patent applications. The Customer shall not receive any commission rates or other kind of remuneration for the use of Anonymised Data by Vitrolife GmbH.

- f. The Customer shall guarantee the compliance with the local legislation, individually and in total, or with legal obligations that apply to the processing of personal data, including data processing in the health sector, in connection with, amongst others, the transmission of the Data and the order to Vitrolife GmbH as data processor
- g. This agreement shall also refer to any and all Data of the Customer that had already been received by Vitrolife GmbH before this data processing agreement was concluded.

5. Term, termination and exclusion of liability

These General Terms shall take effect on the day Vitrolife GmbH and the Customer has agreed on the annual fee and payment method in writing.

Within the term, the Services may be terminated by either party in writing with at least 60 days' period of notice to the anniversary of these General Terms effective date.

If one party fails to cure a serious violation of these General Terms within 30 days after the receipt of the other party's written request, the latter party may terminate these General Terms with immediate effect. The Customer shall not be entitled to assert any other legal remedies against Vitrolife GmbH.

Under no circumstances shall Vitrolife GmbH be liable for any indirect, specific, incidental and consequential damage or other damage, including, without limitation, lost profit, loss of data, loss of goodwill or loss of contract. Without limiting the generality of the foregoing, Vitrolife GmbH shall not be liable for any additional treatments offered by the Customer to its patients following delay in delivery or defects or alleged defects of the devices.

In no event may the liability of Vitrolife GmbH exceed an amount corresponding to the average annual fee paid by the Customer to Vitrolife GmbH according to these General Terms. Only applicable to merchandise sold by the company Vitrolife GmbH: if the business relations between the manufacturer of the merchandise and Vitrolife GmbH end for whatever reason, these General Terms shall automatically be transferred to the manufacturer, so that future maintenance and customer services are carried out by the manufacturer as ordered.

6. Subcontractors

Vitrolife GmbH may engage subcontractors with the provision of the services. Vitrolife GmbH shall be responsible for the transactions or omissions of its subcontractor to the same extent it is responsible for its own services.

7. FORCE MAJEURE

Neither Party shall be responsible to the other for any failure or delay in performing any of its obligations under this Agreement or for other non-performance hereof, except payment of Services ordered, if such delay or non-performance is caused by strike, stoppage of labour, lockout or other labour trouble, fire, flood, riot, civil commotion, accident, act of any governmental or local authority, pandemic or terrorism or of the public enemy, or by any other cause beyond the reasonable control of that Party.

The Party that is prevented to perform under due to force majeure shall immediately inform the other Party.

Should hindrance due to a force majeure situation continue for more than ninety (90) days, the other Party as its sole remedy shall have the right to terminate the Services with immediate effect.

8. Governing law and Jurisdiction

These General Terms shall be subject to German law. Place of jurisdiction for any and all disputes shall be Landshut, Germany.

*Vitrolife GmbH
Adopted: 1st February, 2022*