

TERMS AND CONDITIONS OF SALE AND DELIVERY

Vitrolife Group

These terms and conditions of sale and delivery (the “Terms and Conditions”) apply to all agreements between the contracting Vitrolife Group company¹ (such contracting company is referred to as “Vitrolife”) and a customer (the “Customer”) about Vitrolife’s sale and delivery of media, labware and disposable devices (the “Consumables”) and incubator systems, laser and imaging systems and other equipment (the “Equipment”). The Consumables and the Equipment are collectively referred to as the “Products”. **These Terms and Conditions do not apply to services offered by the Vitrolife Group such as genetic testing or maintenance services.**

1. Scope, Price and Payment

1.1 These Terms and Conditions supersede all prior representations, warranties, communications, and agreements regarding the Products between Vitrolife and the Customer. Any conditions contrary to the content of these Terms and Conditions such as the Customer’s purchase terms or other terms attached to or referred to in the Customer’s order, 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.

1.2 Vitrolife may at any time change these Terms and Conditions with effect for orders confirmed after such change.

1.3 The Customer purchases from Vitrolife the Products specified in Vitrolife’s order confirmation at the price stated in the order confirmation or, if no price is stated in the order confirmation, at the prices set out in the Vitrolife Group’s price list on the day of order. Prices do not include VAT, sales-, import, use-, excise- or other taxes and duties. Unless otherwise agreed between the Parties in writing, terms of payment are 30 days from date of invoice, provided however that Vitrolife may request prepayment in full or in part. In case of late payment, Vitrolife will add a fee for reminders and interest shall accrue at a rate of 1% per month commenced. If prepayment is delayed by more than 15 days, Vitrolife may also cancel the order.

1.4 The Customer acknowledges and agrees that Vitrolife retains the title of all Equipment until payment in full has been made by the Customer. If payment is not made in full, Vitrolife – in addition to its other remedies – is entitled to collect the Equipment from the Customer. The Customer must insure the Equipment to their full replacement value from the day of receipt.

1.5. Suspension of Deliveries

If the Customer fails to pay any invoice by its due date, then Vitrolife, in addition to any other remedies it may have, shall be entitled to cancel or suspend any further deliveries to the Customer under any order, and/or request payment in advance for new orders from the Customer. The same right for Vitrolife shall apply if the Customer fails to pay any invoice of any other Vitrolife Group company by its due date.

2. Orders and Delivery

2.1 An order from the Customer is not binding until Vitrolife has issued an order confirmation in writing. Changes to or cancellations of orders confirmed by Vitrolife may be made only with Vitrolife’s consent.

2.2 It is the Customer’s responsibility to immediately revert to Vitrolife with any comments or objections it may have to the order confirmation.

2.3 Unless otherwise agreed between the Parties in writing terms of delivery are DAP (Incoterms 2020) the destination specified in Vitrolife’s order confirmation, exclusive, however, of freight costs which costs shall be paid by the Customer. Customs clearance is the Customer’s responsibility.

2.4 Estimated shipping date for the order will be stated in the order confirmation. For Consumables an order received on workdays before 12:00 CET/ MST +1h will be shipped the same or the next workday provided the Consumables are available in stock.

2.5 Partial deliveries are permitted. Vitrolife shall inform the Customer of an estimated shipping date for any back orders.

2.6 Upon delivery of the Products the Customer shall immediately inspect the Products. Any shortage in or

damage to the Products on delivery shall immediately be reported to Vitrolife through www.vitrolife.com or by email to order@vitrolife.com. Shortage and visible damage must also be noted on the carrier’s receipt on delivery. Vitrolife does not assume any liability for complaints made later than specified above.

3. Installation of Equipment

3.1 Vitrolife - or its approved subcontractor - will perform on-site installation of the Equipment where it is indicated in Vitrolife’s order confirmation.

3.2 Prior to any on-site installation by Vitrolife, the Customer shall complete and return Vitrolife’s checklist of laboratory requirements and specifications. Vitrolife and the Customer shall agree in writing on an installation date which will be minimum 14 days after Vitrolife’s receipt of the completed checklist. If the Customer subsequently wants to change the agreed installation date, the Customer shall pay Vitrolife’s extra costs resulting from such change. The Customer must ensure that all laboratory requirements and specifications, including suitable IT and internet connections, as specified in the checklist are complied with at the date of installation.

3.3 For Equipment that is to be installed by Vitrolife, the Customer must not under any circumstances start using the Equipment until installation has been completed.

4. Delay

4.1 If Vitrolife anticipates that the agreed time for shipping will be delayed by more than ten days, Vitrolife shall forthwith notify the Customer thereof stating the reason and, if possible, the time when shipping and, where applicable, installation can be expected.

4.2 If the delay in shipping extends to more than 3 months, the Customer may in writing demand shipping within a final reasonable period of

¹ List of Vitrolife Group companies are available at: <https://www.vitrolifegroup.com/en/contact-us>

minimum 10 days. If Vitrolife does not ship the Products within such final period, the Customer may by notice in writing to Vitrolife cancel the purchase of the Products. THE CUSTOMER'S EXCLUSIVE REMEDY AND VITROLIFE'S SOLE OBLIGATION RESULTING FROM A DELAY IN DELIVERY SHALL BE A REFUND OF ANY AMOUNTS PAID BY THE CUSTOMER TO VITROLIFE FOR THE PRODUCTS IF THE CUSTOMER CANCELS THE PURCHASE.

5. Warranty

5.1 The warranty given hereunder shall terminate immediately if, in Vitrolife's sole judgment, maintenance, repair or attempt to repair, replace, or modify the Products, including without limitation the software installed in the Equipment, is carried out by other than Vitrolife authorized personnel. Normal user preventative maintenance of the Equipment is the responsibility of the Customer and is excluded from the warranty. The warranty does not cover defects caused by circumstances arising after the risk in the Products has transferred to the Customer such as, but not limited to, ordinary wear and tear, accidents, or improper storage or use of the Products.

5.2 Vitrolife warrants exclusively to the Customer that the Products will be free from defects in materials and workmanship under normal use and correct storage. For *Equipment* this warranty is valid for a period of 12 months from the date of installation by Vitrolife or 13 months from date of shipment, whichever comes first. For *Consumables* the warranty is valid for the period to and including the last day stated on the packaging of the Consumables, or during the warranty period stated in the product specifications or, if no such dates are stated, during the normal lifetime of the Consumable. The Customer shall notify Vitrolife in writing of any defect that occurs during this period immediately after having discovered the defect and in any case not later than 5 days thereafter.

5.3 Vitrolife is only liable for defects which appear under usual conditions of operation and under proper use, storage and maintenance of the Products in accordance with their intended use, labeling, product inserts, operating manuals or other documents accompanying the Products.

5.4 In case of breach of the warranty stated in section 5.2, Vitrolife shall, free of charge and at its sole discretion (i) for Equipment where the defect is capable of remedy, remedy the defect at Vitrolife's address in which case the cost of transportation

and potential reinstallation of the Equipment shall be borne by the Customer, or (ii) replace the defective Product, or (iii) refund the purchase price against the return to Vitrolife of the defective Product. If the Customer wants Vitrolife to remedy a defect in the Equipment at the place of installation, the Customer shall pay the travel cost and travel time of Vitrolife's service technician.

5.5 It is a condition for Vitrolife's obligations under section 5.4 that:

- (i) the Customer notifies Vitrolife by email to the support email address available on www.vitrolife.com immediately upon the defect becoming apparent and not later than within two (2) working days after the defect in the Product could possibly have been detected; and
- (ii) the Customer completes Vitrolife's complaint form if required by Vitrolife; and
- (iii) the Customer stores the Consumables under quarantine during ongoing non-conformity investigation in accordance with specifications.

5.6 The remedy of a defect through replacement of defective parts in Equipment shall not extend the warranty period for the Equipment in question.

5.7 VITROLIFE MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS, AND THE CUSTOMER'S REMEDIES UNDER SECTION 5.5 CONSTITUTE VITROLIFE'S SOLE LIABILITY AND THE CUSTOMER'S EXCLUSIVE REMEDY FOR ANY BREACH OF WARRANTY OR OTHERWISE NON-CONFORMING PRODUCTS. Without limiting the generality of the foregoing, Vitrolife expressly disclaims any implied warranty of merchantability or fitness for a particular purpose.

6. Product Liability

6.1 Vitrolife shall not have any obligations to the Customer or any third party, for damage caused by any Product except to the extent provided by mandatory product liability legislation applicable to Vitrolife. Vitrolife's liability under this section is, irrespective of the type, reason and scope of the defect, deficiency or damage limited in accordance with section 8.1 hereof and to an amount of five million (5 000 000) USD for each occasion and aggregated liability for one year.

7. Force Majeure

7.1 If the performance of an undertaking of Vitrolife or the Customer, other than the undertaking to make payments, is prevented or affected due to circumstances beyond the control of the prevented party, such as, but not limited to, changes in legislation, labor disputes, military mobilization, government regulations, fire, power failure, earthquake, flood, pandemics, acts or threats of terrorism, then this shall constitute a ground for relief of obligations and exemption from sanctions provided that the prevented party immediately notifies the other party thereof. If the fulfilment of an order is prevented for more than three (3) months due to such circumstances, either party may cancel such order.

8. Limitation of Liability

8.1 NOTWITHSTANDING ANYTHING IN ANY ORDER, PURCHASE ORDER OR DOCUMENT TO THE CONTRARY, VITROLIFE SHALL UNDER NO CIRCUMSTANCES, WHETHER AS A RESULT OF BREACH OF CONTRACT, BREACH OF WARRANTY, TORT, NEGLIGENCE OR OTHERWISE, BE LIABLE TO THE CUSTOMER OR ANY THIRD PARTY FOR ANY LOSS OF PROFIT, LOSS OF REVENUE, OPERATING LOSS, LOSS OF DATA, OR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO LOSS OF USE, DOWNTIME COSTS OR CLAIMS FROM CUSTOMER'S OWN CUSTOMERS.

8.2 Vitrolife's total liability whether in contract, tort (including negligence), or otherwise shall never exceed an amount corresponding to the amount paid by the Customer for the Products giving rise to the liability.

9. Software and Data

9.1 All rights, title and interest in any software provided with the Equipment belong to Vitrolife.

9.2 Vitrolife grants to the Customer a non-exclusive and non-transferable license to use the software solely on the Equipment supplied by Vitrolife for the agreed time period.

9.3 The Customer undertakes not to copy, modify, reverse engineer, disassemble or decompile all or any part of the software or rent, lease, distribute or sell the software. The Customer shall, however, be entitled to make one copy of the software for back-up and recovery purposes for use solely on the Equipment for the agreed time period.

9.4 The Customer undertakes not to install or load any other software on the Equipment except for any updates to the software supplied by Vitrolife or software which has been approved in writing by Vitrolife prior to its installation.

9.5 Nothing in these Terms and Conditions shall be construed as an obligation for Vitrolife to provide to the Customer updates of the software.

9.6 Vitrolife shall be entitled to terminate the license granted under this section 9 if the Customer violates the terms of the license. In case of termination of the license the Customer shall immediately destroy the software and any copy thereof.

9.7 Vitrolife assumes no liability with regard to any loss of data stored by the Customer in the Equipment. **The Customer is solely responsible for securing external back-up of all data stored in the Equipment.**

9.8 This section 9 shall apply in addition to any end-user license agreement between Vitrolife and the Customer ("EULA"), provided however, that in case of conflict the terms and conditions of the EULA take precedence over these Terms and Conditions.

10. Intellectual Property

10.1 Vitrolife expressly excludes any and all written or verbal, explicit or implied warranties of freedom from infringement of third party intellectual property rights arising from the Customer's use or purchase of the Products.

10.2 All logotypes, trademarks or product names set out on the Products and any design of the Products constitute Vitrolife's intellectual property. The Customer undertakes not to remove or alter Vitrolife's labeling of the Products.

11. Personal Data

11.1 Each party shall (i) comply with any obligations that it may have under applicable data protection legislation in connection with its performance of its obligations under these Terms and Conditions and (ii) take all reasonable precautions to ensure that personal data is processed in a secure and proper manner.

11.2. In the event that Vitrolife engages in the processing of personal data pertaining to the Equipment sold, a data processing agreement shall be implemented to regulate and govern the handling of such data.

11.2. Vitrolife's privacy policy is available at <https://www.vitrolife.com/customer-service/privacy-policy/>

12. Compliance

12.1. The Customer acknowledges that the Products supplied under these General Terms and Conditions may be subject to export control laws and regulations. The Customer agrees not to export, re-export, or transfer the Products to any prohibited destination, entity, or individual without the necessary government authorization.

13. Disputes and Governing Law

13.1 These Terms and Conditions shall be governed and constructed in accordance with the laws applicable at the contracting Vitrolife company's domicile with disregard to its conflicts of law principles. The United Nations Convention for the International Sale of Goods (CISG) shall not apply.

13.2 All disputes arising from or in connection with agreements to which these Terms and Conditions apply shall be finally settled in the courts having jurisdiction at the contracting Vitrolife company's domicile. Vitrolife may also bring proceedings against the Customer before any competent court having jurisdiction over the Customer.

13.3 If these Terms and Conditions are translated to another language, the English version shall prevail in case of discrepancies.

*Vitrolife Group
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