

TERMS AND CONDITIONS OF SALE AND DELIVERY –Vitrolife GmbH

These terms and conditions of sale and delivery (the “Terms and Conditions”) apply to all agreements between or on behalf of the contracting Vitrolife company (“Vitrolife”) and a customer (the “Customer”) about Vitrolife’s sale and delivery of **Vitrolife GmbH’s** (the “Products”).

1. Products, 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. Prices do not include VAT, sales-, import, use-, excise- or other taxes and duties. 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, interest shall accrue at a rate of 1% per month commenced.
- 1.4 The Products shall remain the property of Vitrolife until payment has been made in full. If payment is not made in full, Vitrolife – in addition to its other remedies – is entitled to collect the Products from the Customer. The Customer must insure the Products to its full replacement value from the day of receipt.

2. Delivery

- 2.1 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.
- 2.2 Upon delivery of the Products the Customer shall immediately inspect the Products in accordance with Vitrolife’s instructions. Any damage to the Products shall immediately be reported to the carrier and to Vitrolife GmbH (contact information: Roedersteinstrasse 6, 84034 Landshut, germany@vitrolife.com, Tel.: +49 871 430657-0) If no report is received by Vitrolife the Products shall be considered accepted by the Customer.

3. Installation and Training

- 3.1 Vitrolife - or a qualified third party prior approved by Vitrolife - will perform on-site installation of Octax laser & imaging systems, QC systems and Time-lapse instruments
- 3.2 Prior to any on-site installation by Vitrolife, the Customer shall complete and return Vitrolife’s **checklist** of laboratory requirements and specifications. Thereafter 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 The Customer must not under any circumstances start using the Products until installation has been completed.

4. Delay

- 4.1 If Vitrolife anticipates that the agreed time for shipping will be delayed, Vitrolife shall forthwith notify the Customer thereof stating the reason and, if possible, the time when shipping and 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 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 OF THE PRODUCTS.**

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 Products, is carried out by other than Vitrolife authorized personnel. Normal user preventative maintenance is the responsibility of the Customer and is excluded from this warranty.

The warranty does not cover defects caused by circumstances arising after the risk of damage to the Products has transferred to the Customer such as, but not limited to, ordinary wear and tear, accidents, or improper use of the Products.

- 5.2 Vitrolife warrants exclusively to the Customer that for a period of 12 months from date of installation or 13 months from date of shipment, whichever comes first, the Products will be free from defects in materials and workmanship under normal use. The Customer shall notify Vitrolife 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 and maintenance of the Products in accordance with the operating manual.
- 5.4 In case of Products which does not conform to the warranty, Vitrolife’s liability is limited, at Vitrolife’s decision, to (i) remedy of the defect at Vitrolife’s address in which case the cost of transportation and reinstallation of the Products shall be borne by the Customer, or (ii) replacement of the Products with new Products corresponding to the Products, or (iii) return of the Products to Vitrolife and refund of the purchase price. If the Customer wants Vitrolife to remedy a defect at the place of installation, the Customer shall pay all costs connected with such remedy excluding the cost of spare parts and working time spent on the remedy but including without limitation the travel cost and travel time of Vitrolife’s service technician.
- 5.5 The remedy of a defect through replacement of defective parts shall not extend the warranty period for the Products.
- 5.6 **VITROLIFE MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS, AND THE CUSTOMER’S REMEDIES UNDER CLAUSE 5.4 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 unless otherwise provided by mandatory product safety or product liability legislation. Vitrolife's liability under this section is, irrespective of the type, reason and scope of the defect, deficiency or damage limited to 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 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, pandemic, 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, OR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO LOSS OF USE, LOSS OF DATA, 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.

9. Software and Data

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

9.2 Vitrolife grants to the Customer a non-exclusive and non-transferable license to use the software solely on

the Products 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 Products for the agreed time period.

9.4 The Customer undertakes not to install or load any other software on the Products 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. Vitrolife may from time-to-time request that the Customer updates the software with updates supplied by Vitrolife in which case the software update shall be supplied to the Customer at no cost.

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 Products. **The Customer must at all times secure external back-up of all data stored in the Products.**

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. Use, reproduction or representation (in whole or in part) of these logotypes, trademarks, product names or the Products itself regardless of in what form it occurs, require Vitrolife's prior written acceptance. The Customer undertakes not to remove or alter Vitrolife's labeling of the Products.

11. Disputes and Governing Law

11.1 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.

11.2 The Customer acknowledges that the Products may be subject to export / dual-use trade control laws and regulations of various countries.

The Customer will and shall not export, re-export, transfer, or make available, whether directly or indirectly any service, any related technology, or any Products without first complying with all export/dual-use trade control laws and regulations which may be imposed by any country or organization of nations within whose jurisdiction the Customer operates or does business.

It is the Customer's sole responsibility to comply with applicable export/ dual-use trade control and trade sanctions laws and regulations wherever the Customer operates, including the European Union ("EU"), the United Kingdom ("UK"), and the United States ("US").

11.3 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.

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

*Vitrolife GmbH
Adopted: 1st February, 2022*