

TERMS AND CONDITIONS OF SALE AND DELIVERY – MEDIA AND DISPOSABLE DEVICES
Vitrolife Inc.

These general terms and conditions of sale and delivery (the “Terms and Conditions”) apply to all agreements between Vitrolife Inc. and a customer (the “Customer”) about Vitrolife Inc.’s sale and delivery of **media and disposable devices** (the “Products”). *For the sale of other Vitrolife Inc. products such as time-lapse equipment, monitoring and alarm systems and laser and imaging systems other terms and conditions apply.*

1. General

1.1 “Vitrolife” means Vitrolife Inc. 3601 S. Inca, St. Englewood, CO 80110.

1.2 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 discrepancies between Vitrolife’s order confirmation and these Terms and Conditions the wording in the order confirmation shall take precedence.

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

2. Order and Delivery

2.1 Placing and acceptance of order

2.1.1 Products shall be ordered and delivered in accordance with Vitrolife’s order and delivery procedures in force at the time of the order.

2.1.2 An order 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 written acceptance.

2.1.3 It is the Customer’s responsibility to immediately control Vitrolife’s order confirmation and revert with comments or objections if any.

2.2 Delivery

2.2.1 Estimated shipping date for the order will be confirmed in the order confirmation. An order received on work days before 12:00 MST will be shipped the same or the next work day provided that the Products are available in stock. If not, the Products will be delivered within from time to time applicable lead times for the ordered Products.

2.2.2 Partial deliveries are permitted. Vitrolife shall give the Customer an estimated shipping date for a back order.

2.2.3 Terms of delivery are DAP (Incoterms 2010) the destination specified in Vitrolife’s order confirmation, exclusive however of freight costs which costs shall be paid by the Customer.

2.2.4 The Customer is responsible for immediately informing Vitrolife of any

changes within its organization that could affect deliveries.

2.3 Retention of Title

2.3.1 All Products shall remain the property of Vitrolife until payment in full has been made. If payment is not made in full, Vitrolife – in addition to its other remedies – is entitled to collect the Products from the Customer.

2.4 Customer’s inspection upon delivery

2.4.1 Upon delivery of the Products, the Customer shall immediately inspect the Products in order to determine the Products’ conformity with the order confirmation and whether the Products have been damaged during transportation. In the event of shortage or if any portion of the Products fails to conform to the order confirmation or has been damaged during transportation, the Customer must immediately upon delivery notify Vitrolife and specify the non-conformity or damage. Notification must be made through www.vitrolife.com, by telephone, or by e-mail to order@vitrolife.com. Shortage and visible damage must be noted on the carrier’s receipt upon delivery and communicated to Vitrolife immediately and in no case later than three (3) working days after delivery. Vitrolife does not assume any liability for complaints made later than specified above.

2.4.2 The Customer is responsible for storing the Products under quarantine during ongoing non-conformity investigation. Products must be stored in accordance with specifications.

2.4.3 In case of non-conforming Products or Products that are damaged during such part of the transportation where Vitrolife bears the risk of damage to the Products, and which have been communicated to Vitrolife in accordance with section 2.4.1, Vitrolife will free of charge and at its sole discretion either replace the non-conforming or damaged Products or issue a credit note to the Customer for their purchase price.

2.5 Returns

2.5.1 The Customer has no right to return Products in case of incorrect order from the Customer, and Vitrolife is under no obligation to accept returns or compensate for costs associated with such delivery. All returns that are authorized by Vitrolife must be accompanied by a valid Return Number from Vitrolife. Vitrolife accepts no responsibility for Products returned without prior authorization. All Prod-

ucts authorized for return must be returned in saleable condition.

3. Warranty

3.1 Vitrolife warrants exclusively to the Customer that the Products are free from defects in material and workmanship to and including the last day of consumption stated on the packaging of the relevant Product or, if no such day is stated, during the normal lifetime of the Product. For Products that have an express warranty period stated in the product specifications, only such warranty period shall apply. The warranty period is then calculated from the invoice date. The above warranty applies solely under normal use and correct storage of the Products in accordance with their labeling and intended use, according to product inserts or other documents accompanying the Product. Save as expressly stated above, Vitrolife makes no other representations or warranties, whether express or implied, with respect to the Products or otherwise and without prejudice to the generality of the foregoing Vitrolife expressly disclaims any implied warranty of merchantability or fitness for a particular purpose.

3.2 Non-conformity of Products

3.2.1 In case of a breach of the warranty stated in section 3.1 Vitrolife shall, free of charge and at its sole discretion, replace the defective Products or issue a credit note to the Customer for their purchase price, subject to the following conditions:

- (i) the Customer notifying Vitrolife by telephone or email to the support email address stated 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 completing Vitrolife’s customer complaint form if required by Vitrolife; and
- (iii) the Customer having stored the Products under quarantine during ongoing non-conformity investigation in accordance with the specifications.

THIS SECTION 3.2.1 CONSTITUTES VITROLIFE’S SOLE OBLIGATION AND THE CUSTOMER’S EXCLUSIVE REMEDY FOR ANY BREACH OF THE WARRANTY OR OTHERWISE NON-CONFORMING PRODUCTS.

Vitrolife has the right to inspect any Product claimed by the Customer to be defective.

- 3.2.2 Products may only be returned after a complaint made by the Customer in accordance with section 3.2.1. If the Product is found not to be defective, Vitrolife is not responsible for replacing or crediting the Product.
- 3.2.3 The warranty stated in section 3.1 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, wear and tear, accidents, improper use or storage, failure to comply with the instructions issued by Vitrolife, or excessive use of the Products.
- 3.2.4 In the event that the Customer or any third party has modified or attempted to modify the Products in any way without the prior written consent from Vitrolife, the warranty and all rights and obligations indicated in this section 3 shall immediately become null and void.

4. **Price and Payment**

- 4.1 The Products are sold at the prices set out in Vitrolife's price list on the day of order.
- 4.2 Unless otherwise agreed in writing, the price does not include customs duties, VAT, sales-, import-, use-, excise- or other taxes. All such duties and taxes are added as separate items to the invoices and paid by the Customer. Vitrolife reserves the right to add taxes if appropriate exemption certificates are not on file at Vitrolife. Vitrolife reserves the right to charge the Customer for back taxes if an exemption was improperly used. Whether or not such taxes appear from the invoice, the Customer is responsible for payment of all taxes imposed on the sale of the Products.
- 4.3 Orders will be invoiced upon order shipment and payment shall be made thirty (30) calendar days from the date of invoice, unless otherwise stated in the invoice.
- 4.4 Vitrolife may require prepayment for an order. In that event payment must be made within five (5) working days after the Customer's receipt of the order confirmation. If Vitrolife has not received the prepayment on day 10 from the Customer's receipt of the order confirmation, Vitrolife reserves the right to cancel the Customer's order. Shipment from Vitrolife will be made within three (3) working days after prepayment is received by Vitrolife.
- 4.5 In case of late payment interest shall accrue at a rate of 1% per month commenced. Furthermore Vitrolife is entitled to charge for costs related to reminders and collection of late payments.

5. **Limitation of Liability**

- 5.1 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, COST OF SUBSTITUTE PRODUCTS OR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO LOSS OF USE OR DAMAGE TO ANY ASSOCIATED EQUIPMENT OR FACILITIES, DOWNTIME COSTS OR CLAIMS FROM CUSTOMER'S OWN CUSTOMERS.
- 5.2 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.

5.3 **Product Liability**

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 during one year.

6. **Intellectual Property**

- 6.1 Vitrolife expressly excludes any and all written or verbal, explicit or implied warranties of freedom from direct or indirect infringement of third party intellectual property rights arising from the Customer's use or purchase of the Products.
- 6.2 All logotypes, trademarks or product names set out on the Products and any design of the Products constitute Vitrolife's protected intellectual property. Use, reproduction or representation (in whole or in part) of these logotypes, trademarks, product names or the Products themselves regardless of in what form it occurs, is prohibited unless such use is approved in writing in advance by Vitrolife. The Customer undertakes not to remove or alter Vitrolife's labeling of the Products.

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 mobiliza-

tion, government regulations, fire, power failure, earthquake, flood, 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. **Disputes and Governing Law**

- 8.1 These Terms and Conditions and any dispute arising out of these Terms and Conditions, or out of the Customer's purchase of the Products, shall be governed by and construed and interpreted in accordance with the laws of the State of Colorado with disregard to its conflicts of law principles. The United Nations Convention for the International Sale of Goods (CISG) shall not apply.
- 8.2 Any suit, action or other legal proceeding arising out of agreements to which these Terms and Conditions apply shall be brought in the state or federal courts having jurisdiction in Denver, Colorado. Each of Vitrolife and the Customer consents to the exclusive jurisdiction of any such court in any such suit, action or proceeding. Vitrolife may also bring proceedings against the Customer before any competent court having jurisdiction over the Customer.

Vitrolife Inc.
April 2018