

## **TERMS & CONDITIONS OF SALE & DELIVERY**

### **1. Definitions**

“Oertli” refers herein to Oertli Instruments Inc., a Delaware corporation; “Buyer” herein refers to any person or entity purchasing or offering to purchase goods and/or services from Oertli. The goods and services delivered or to be delivered by Oertli to Buyer are herein referred to as the “Products.”

### **2. Applicable Terms**

The following terms, together with (i) such terms as are set forth on the face of Oertli’s offer and/or order acknowledgment or order confirmation, (ii) such plans, specifications or other documents as are incorporated by reference on the face of Oertli’s offer and/or order acknowledgment or order confirmation and (iii) such additional terms as are approved in writing by an authorized representative of Oertli, shall constitute the entire contract with respect to any transaction between Oertli and Buyer. **THE CONDITIONS CONTAINED HEREIN SHALL TAKE PRECEDENCE OVER ANY OTHER CONDITIONS AND NO CONTRARY, ADDITIONAL OR DIFFERENT PROVISIONS OR CONDITIONS SHALL BE BINDING ON OERTLI UNLESS EXPRESSLY ACCEPTED BY OERTLI IN WRITING.** Mere issuance of a form by or on behalf of Buyer containing different or additional provisions shall not constitute a specific objection. An order shall not be effective until Oertli shall have accepted it in writing. Oertli’s acceptance of Buyer’s order shall not constitute an acceptance of printed provisions on any form supplied by Buyer which are different from or additional to any term hereof, unless specifically accepted in writing by an authorized representative of Oertli, and such different or additional provisions are hereby expressly rejected.

### **3. Orders**

A contract shall not be established except upon Oertli’s written confirmation of an order. Oertli shall be entitled to assume (a) acceptance of these Terms and Conditions (b) any additional terms and conditions set forth in Oertli’s offer and/or order acknowledgment or confirmation, upon delivery of Products to Buyer or Buyer’s compliance with Oertli’s request for payment in advance. Should Buyer require amendments to be made to its order subsequent to Oertli’s confirmation of the same, no such amendment shall be effective unless Oertli agrees to such amendment in writing; Oertli may, at its discretion, refuse to accept all or part of any such request.

### **4. Suspension and Cancellation**

Upon doubt of Buyer’s financial solvency or creditworthiness, Oertli shall be entitled to suspend performing Oertli’s contractual obligations. If Buyer does not provide adequate assurance and/or adequate security to support the payment of any outstanding order within the time specified by Oertli, Oertli may thereupon cancel any open order and, without limiting the generality of the foregoing, shall not be obligated to deliver any of the ordered Products and shall be entitled promptly to be indemnified and held harmless by Buyer from and against any losses, damages, liabilities, costs and expenses incurred and suffered by Oertli in connection with the suspension and/or cancellation of any order (including without limitation lost profits and costs incurred to manufacture the Products ordered from Oertli and otherwise

fill the order).

### **5. Prices and Delivery**

Written price quotations issued by Oertli expire thirty (30) days from the date of issuance and may be withdrawn by written notice at any time during this period, unless the relevant offer shall have been accepted in writing by Buyer. If Products are shipped from outside the U.S. (e.g. Switzerland), unless specified otherwise by Oertli in writing, prices shall be FCA (as defined by incoterms 2010) (Oertli’s factory in Berneck, Switzerland). If Products are shipped from within the U.S., unless specified otherwise by Oertli, prices shall be FOB Oertli’s or Oertli’s agent’s warehouse. Whenever possible, Oertli shall ship in accordance with Buyer’s instructions. If a carrier and/or a method of shipment and/or routing are not specified, Oertli shall exercise its professional judgment in selecting a carrier, the method of shipment and/or routing, as the case may be, in order to deliver the Products to Buyer’s address indicated by Buyer.

### **6. Price**

Except as may be specifically provided on the face of Oertli’s offer and/or order acknowledgment or order confirmation or as may be otherwise agreed upon in writing by Oertli and Buyer, the price stated on the face of Oertli’s offer and/or order acknowledgment or order confirmation is net without any deductions whatsoever. All additional costs, including (but not limited to) charges for freight, packing, carriage, insurance, customs duties, fees for export, transit, import and such other permits and certificates as may be necessary, shall be borne by Buyer. If charges for packing, freight, carriage, insurance, customs duties or other additional costs are separately stated on the face of Oertli’s offer and/or order acknowledgment or order confirmation and included in the price stated thereon, Oertli reserves the right to adjust its price should the costs on which such additional charges are based be modified. In addition, an appropriate price adjustment shall apply in case the delivery time has been subsequently extended due to any reasons stated in Section 8.

### **7. Taxes**

Unless otherwise agreed in writing, Oertli’s prices are exclusive of any federal, state or local property, sales, use, excise, gross receipts or other like taxes which may now or hereafter be applicable to the transaction and/or the sale of, value of or use of the Products or any services performed in connection therewith, and Buyer agrees to pay or reimburse any such taxes which Oertli or Oertli’s agents are required to pay. To the extent required by law, Oertli shall collect and remit such sales, use, excise, gross receipts or other like taxes. If Buyer claims an exemption from any tax, Buyer shall submit the relevant exception certificate to Oertli with the written order acknowledgement.

### **8. Terms of Payment**

Except as otherwise provided on the face of Oertli’s offer and/or acknowledgment or order confirmation, payment shall be due Oertli thirty (30) days after Buyer’s receipt of invoice. All banking and other charges in connection with any payment shall be paid by Buyer. If Buyer does not observe the agreed dates of payment, Buyer shall, without any requirement of formal notice from Oertli, pay interest to Oertli on overdue amounts from the date due at a rate of seven and one half percent (7.5%) per annum or the maximum legally permissible rate, whichever shall be lower. Payment

of such interest does not release Buyer from its obligations hereunder, including to make payments when due.

In the event that any payment or payments are not made by Buyer in accordance with the terms of the offer and/or order acknowledgement or order confirmation or as may be otherwise agreed upon, Oertli at its option, may suspend or terminate the agreement and shall be entitled to claim damages.

## 9. Delivery Times

Oertli reserves the right to make partial shipments and to submit separate invoices to Buyer for each such partial shipment. If Buyer defaults in its obligations in regard to any partial shipment, Oertli may suspend any additional shipments unless and until Buyer cures such default, and shall have such other remedies set forth herein. The date(s) specified for delivery on Oertli's offer and/or order acknowledgement or order confirmation are approximate and shall be reasonably extended if: (a) information required by Oertli from Buyer to execute the order is not received in a timely manner or if changes which delay delivery are agreed upon by Oertli and Buyer, (b) Oertli is not able to make timely delivery by reason of hindrances which, despite due care, Oertli cannot avoid (inclusive of those occurring at any of its suppliers or third parties involved in the design, manufacture, packaging, transportation, importation or other significant aspect of the Product or any relevant transaction), such as epidemics, act of civil or military authority, mobilization of armed services, war, riots, strikes, boycotts, picketing, lock-outs or other disturbances, breakdowns, accidents, labor conflicts, delayed or deficient delivery of necessary raw materials or semi-manufactured and manufactured products, the need to scrap important components due to defective casting, official or other measures of whatever kind, transport difficulties, natural catastrophes or other force majeure events (i.e., events beyond Oertli's reasonable control); or (c) if Buyer or a third party is behind schedule with work which it must carry out, or late in fulfilling its contractual obligations (including, but not limited to failure by Buyer to observe the terms of payment or any other obligation hereunder).

If Oertli fails to comply with designated, binding or other delivery dates, makes partial shipments, or fails to perform its obligations in accordance with any time limits, Oertli shall not incur any liability whatsoever for any direct, indirect, consequential, incidental, special, exemplary or punitive damages (including claims for loss of profits, revenue, time, ingredients or products) which may be incurred by Buyer or any other person or entity.

Upon the occurrence of a force majeure event, Oertli may, at its sole discretion, elect, by a written notice to Buyer, to cancel the order and determine not to ship some or all of the Products.

Should Buyer fail to accept Products upon delivery by Oertli or Oertli's agents on or about the delivery date set forth in the offer and/or order acknowledgement or order confirmation or as otherwise agreed in writing, Buyer shall be entitled to make arrangements for the storage of the Products and be entitled to charge Buyer for all storage, insurance and other costs and expenses incurred by Oertli, plus a handling and administration charges of up to one thousand U.S. Dollars (\$1,000).

## 10. Inspection

Buyer shall diligently examine the delivered Products and shall notify Oertli of any damage to the Products without delay upon Buyer's receipt of Products (but no later than

within ten (10) business days of receipt). The specifications contained in Oertli's offer and/or order acknowledgment or order confirmation shall be authoritative in determining Oertli's obligations regarding the quality of Products. Insofar as the order specifications make reference to specifications contained in brochures or other printed or other materials or Oertli's website(s), such specifications shall be deemed merely to be examples, and shall not be binding upon Oertli.

## 11. Termination/Cancellation

In the event of Buyer's bankruptcy or insolvency or in the event any proceeding is brought against Buyer, voluntarily or involuntarily, under the bankruptcy or any insolvency laws, Oertli shall be entitled to cancel any order then outstanding at any time during the period allowed for filing claims against the estate and shall receive reimbursement for its proper cancellation charges and expenses. Oertli's rights under this paragraph are in addition to all rights available to it at law or in equity.

## 12. Risk of Loss

Risk of loss of or damage to the Products shall pass from Oertli to Buyer upon delivery of the Products at (i) Oertli's factory in Berneck, Switzerland, (ii) Oertli's warehouse, or (iii) its agent's warehouse, (if shipped therefrom) to the carrier (incoterms 2010), regardless of whether title has passed to Buyer or transport is arranged or supervised by Oertli.

Upon such passage, the Products shall be stored and insured for the account of and at the risk of the Buyer.

## 13. Confidentiality; No Reverse Engineering

Buyer agrees that all specifications, data and other technical, financial or other non-public information furnished by Oertli to Buyer constitute the sole and exclusive property of Oertli, are furnished solely for the purpose of Oertli's performance hereunder, shall be held in strict confidence by Buyer and may not be copied, made accessible to third parties or used without Oertli's prior written consent. Buyer shall promptly return all such information and all copies thereof (in whatever format, including electronic, digital, hard copy or other medium) to Oertli upon Oertli's request or, if such delivery is impossible, destroy such information and certify such destruction to Oertli in writing. Such request may be made at any time prior to or after delivery of any Products. The obligations of Buyer hereinabove set forth shall survive cancellation or completion of any order.

Technical documents, furnished by Oertli to Buyer, such as drawings, descriptions, illustrations, designs and the like, shall be deemed provided to Buyer on a confidential basis, shall remain Oertli's exclusive property and shall be neither copied nor reproduced nor communicated to a third party in any way whatever nor used by Buyer for any purpose other than operation and maintenance. Technical documents submitted in connection with an offer and/or order acknowledgement or order confirmation which does not result in an order shall be returned to Oertli and/or destroyed upon Oertli's request. Information in technical documents shall serve as an approximate indicator only unless otherwise agreed in writing. Oertli shall retain the sole and exclusive right, title and interest, copyright and any other intellectual property right in and to all documentation and information delivered to or shared with Buyer, including but not limited to all illustrations, designs and the like, which are to be promptly returned to Oertli upon request and all copies which cannot be returned shall be destroyed and, upon

request, Buyer shall certify such destruction. Oertli shall also have all rights relating to forms, prototypes and technical solutions relating to the Products. All trademarks, copyrights, patents or other rights in or relating to any Products (including any rights in any trademarks, derivative works, or patent improvements relating thereto) by operation of law, or otherwise, such rights are deemed and are hereby irrevocably assigned to Oertli or its licensors, as the case may be, without further action by either of the parties. Buyer shall not be entitled to make or have made Products by reverse engineering or otherwise using Oertli's Products, or parts thereof, as a prototype or model. This prohibition includes the manufacture of such reverse engineered Products, whether independently or with or through an agent or a third party, as well as the direct or indirect participation in the distribution of such reverse engineered Products. ANY VIOLATION OF ANY PART OF THIS SECTION SHALL BE A WILLFUL VIOLATION OF COPYRIGHT AND OTHER LAWS which the Buyer acknowledge and agrees shall entitle Oertli to collect statutory and other damages as well expenses, including attorneys' fees, from Buyer.

**14. Indemnity**

Buyer shall indemnify, defend, reimburse and hold Oertli harmless from and against all costs, losses, liabilities, damages and expenses (including attorneys' fees and expenses), arising out of or resulting from (i) any breach by Buyer of any of its obligations hereunder or (ii) any actual or threatened claim, demand, action or proceeding initiated by any third party arising out of or resulting from any act or omission of Buyer.

**15. Limited Warranty**

Oertli warrants that the Products shall have the characteristics specified in, and shall perform substantially in accordance with, Oertli's specifications published by it from time to time for such Products and that the Products shall be merchantable and free from defects in workmanship and materials under normal use and wear in accordance with Oertli's instructions and specifications. THE WARRANTY SET FORTH IN THIS SECTION 15 SHALL BE IN LIEU OF ALL OTHER WARRANTIES, AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF FITNESS FOR PURPOSE, ARE EXCLUDED.

Unless otherwise specified by Oertli in the Order Confirmation, the following terms and conditions for warranty shall apply:

Oertli warrants the below Products categories for the following periods, commencing with the date of invoice:

<i>Product</i>	<i>through and including</i>
Control units (machines)	second (2 <sup>nd</sup> ) anniversary
Microsurgery instruments*	first (1 <sup>st</sup> ) anniversary
Consumables	not applicable

\*if traceable with serial numbers

IN NO EVENT SHALL OERTLI BE LIABLE, EITHER DIRECTLY OR BY WAY OF INDEMNIFICATION, FOR (A) AN AMOUNT EXCEEDING THE PURCHASE PRICE OF THE PRODUCT IN QUESTION AND (B) ANY PUNITIVE, EXEMPLARY, SPECIAL, INDIRECT OR CONSEQUENTIAL LOSSES, DAMAGES OR INJURIES OF Oertli or its affiliates or any of their direct or indirect shareholders, directors, officers, employees or other agents (collectively, the "Oertli Parties"), regardless of whether

such claim is based upon delays in delivery or payment, breach of warranty, breach of contract, strict liability, negligence, or any theory now known or hereinafter adopted by legislation or by any court. Neither Oertli or its affiliates shall be liable for any damage or loss to exposure of Products and/or their packaging to the elements (including but not limited to rain, snow, sleet, sun, wind, floods, etc.); chemicals, corrosive solvents or soils; unauthorized or improper use, maintenance, storage or repair; due to any failure to follow Oertli's manuals, warnings, notices or instructions; or due to any malfeasance, recklessness or negligence by Buyer, any customer or any third party. The parties further agree that if any portion of the foregoing exclusion of damages is held to be voidable or void by reason of public policy or unenforceable for any other reason whatsoever, all remaining portions of the foregoing exclusion shall continue in effect.

During the warranty period, Oertli shall at its sole election either replace defective materials free of charge, repair defective Products free of charge at its facilities or, if in Oertli's sole judgment neither a replacement or repair is feasible, shall issue a credit to be applied to the purchase of another Product. This warranty covers the cost and expense of return-freight from Oertli to Buyer, but not the cost of transportation and expense from Buyer to Oertli.

Oertli shall not accept return shipment for credit, unless Oertli shall have agreed thereto in advance and the Products in question shall be in their original packaging and subject to the following deductions: for sterile/single use products: minus thirty percent (-30%); and for reusable items: fifteen percent (-15%), in either case, from the invoice price of the relevant Product. Sterile products with an expiry date less than eighteen (18) months may not be returned.

All Products returned to Oertli must be decontaminated by or on behalf of Buyer. Oertli shall not accept or treat any material arriving at its facilities without decontamination.

The warranty contained in this section shall terminate immediately if Buyer or a third party undertakes inappropriate or improper modification or repairs or if the Buyer, in case of a defect, does not immediately take all appropriate steps to mitigate damages and notify Oertli in writing of its obligations to remedy such defect. Correction of nonconformities in the manner and for the period of time provided above shall constitute fulfillment of all liabilities of Oertli to the Buyer, whether based on contract, negligence or otherwise, with respect to such Products. The warranty provided for in this Section 15 shall not be available if Buyer is in arrears with any payments due to Oertli.

**16. Demonstration Items**

If and when display or demonstration Products are supplied to Buyer, Buyer shall preserve and maintain them and shall, upon request or as otherwise required by Oertli, return them in the amount and state, and in the original packaging, in which they were delivered to Buyer, reasonable wear and tear excepted, at Buyer's cost and expense, to Oertli or such other address as Oertli or any of its agents shall identify. If Buyer fails to return all display or demonstration Products in accordance with Oertli's instructions, and/or if one or more of them are damaged beyond reasonable wear and tear, and/or incomplete, and/or not in the original packaging, Buyer shall compensate Oertli therefor.

**17. Governing Law; Dispute Resolution**

The Terms & Conditions shall be governed by and construed in accordance with the laws of the State of New

Jersey, without any regard to this state's or any other jurisdiction's conflicts of law principles. Buyer and Oertli expressly agree that the provisions of the U. N. Convention on the Sale of Goods (C.I.S.G.) are herewith excluded.

Any dispute, controversy or claim arising from or in connection with this Agreement (a "Dispute") shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Such arbitration shall be held before one arbitrator in Fort Lee, NJ. The arbitrator shall be an attorney who shall have practiced commercial law admitted to the New Jersey bar for at least fifteen (15) years and an office within twenty-five (25) miles of the site of arbitration. The decision of the arbitrator(s) shall be rendered in writing and shall award the costs and expenses of the arbitration, including attorneys' fees, disbursements, arbitration expenses, arbitrator's fees and administrative fees of the AAA to the prevailing party. Judgment upon the award may be entered in any court having jurisdiction thereof. The foregoing provisions shall not preclude any party hereto from seeking permanent or temporary injunctive or other equitable relief.

EACH OF OERTLI AND BUYER HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO ANY TRANSACTION HEREUNDER.

#### **18. Notices**

Any notices given hereunder shall be in writing and shall be deemed given: (i) upon delivery, if by hand; or (ii) after one (1) business day, if sent between destinations within the continental United States of America, or two (2) business days, if sent between the continental United States of America and any other jurisdiction, if sent by tracked air courier (e.g., UPS, DHL, Airborne or FedEx). All notices to Oertli hereunder shall be given to 2125 Center Ave., Suite 507 Fort Lee, NJ 07024 USA, and all notices to Buyer shall be given to such address as indicated in the relevant offer and/or order acknowledgment or order confirmation, or at such other address (or to such other person's attention), as shall be specified by like notice by the relevant party.

#### **19. Miscellaneous**

The invalidity or unenforceability of any one or more of the terms and conditions of this form shall not affect the validity or enforceability of the remaining provisions hereof. The failure or omission of Oertli to insist upon strict performance of any term or condition hereof or to exercise any right hereunder shall not be deemed to be a modification of any term or condition hereof or a waiver or relinquishment of the future performance of any such term or condition, nor shall such failure or omission constitute a waiver of the right of such party to insist upon future performance by the other party of any such term or condition. This document may be amended from time to time by Oertli upon notice to Buyer, and any such amended version shall supersede any and all prior versions thereof. Buyer acknowledges and agrees that (i) it shall be a "merchant" within the meaning of the Uniform Commercial Code, as in effect from time to time in the State of New Jersey (the "UCC") and (ii) any transaction between Oertli and Buyer shall be deemed to be "between merchants" within the meaning of the UCC. Buyer further acknowledges and agrees that it has the skill and

knowledge of a merchant in the Products, particularly in that it has a legal and/or purchasing department, business personnel or other agents who are familiar with the business practices involved in that transaction contemplated hereby or otherwise equipped to handle such a transaction.

Status: June 29, 2021