

1.	Scope. These general terms and conditions (Conditions) shall apply to all supplies, services and licenses of any kind provided by Technolas Perfect Vision GmbH of Munich, Germany, (TPV) to its customers. These Conditions shall be deemed incorporated into any agreement between TPV and the Customer (each hereafter referred to as Contract) except if and to the extent that these Conditions contradict individually negotiated provisions of such Contract. These Conditions shall apply, in particular, to the supply of Eye-Surgery Laser Systems made by TPV (Products), associated consumables and other products (collectively: Deliverables) and services.
2.	These Conditions shall apply only if the customer (Customer) enters into the Contract with TPV for purposes within the scope of its trade, business or profession . Potential customers who are not so eligible may not order any supplies or services from TPV except with TPV's prior express written consent.
3.	No Other Terms and Conditions. TPV does not accept any terms and conditions that deviate from these Conditions, except if such terms and conditions have been expressly accepted by TPV. Such acceptance shall only apply to the specific supplies and services at issue.
4.	No quotations that TPV may provide shall be binding on TPV.
5.	Orders to TPV must be submitted in writing. TPV reserves two weeks to confirm orders.
6.	The Customer shall refrain from using, copying or making available to third parties, for any purpose unrelated to the Contract, any technical specifications , drawings, quotations and calculations that the Customer may receive from TPV, in particular in connection with the negotiation or the performance of the Contract. If the Customer violates said obligation, TPV may request immediate release and delivery of such materials. TPV reserves the copyright and other rights in such materials.
7.	Terms of Delivery. All Deliverables shall be delivered ex works Munich, Incoterms 2000. The prices quoted by TPV shall be deemed agreed on the same basis. Unless otherwise agreed, TPV will arrange for shipping, packaging and insurance at the Customer's expense.
8.	No delivery date shall be binding on TPV unless it has been expressly confirmed by TPV and the Customer has notified TPV in text form that it has complied fully with all of its responsibilities regarding the delivery and, where applicable, acceptance and installation of the Deliverables.
9.	Time shall not be regarded to be of the essence except if expressly agreed by TPV.
10.	TPV reserves the right to make partial deliveries .
11.	The obligation to supply any Deliverables shall be subject to the condition precedent that TPV has been supplied correctly and in due time by its suppliers .
12.	If a successor product to a Deliverable has become available prior to delivery, TPV reserves the right to supply such successor product instead of the Deliverable originally ordered if the successor product meets the agreed specifications and is not more expensive than the Deliverable ordered.
13.	If delivery is delayed beyond an agreed delivery date for reasons not imputable to TPV, TPV shall notify the Customer forthwith and either party shall be entitled to withdraw from the Contract unless TPV, within two weeks of the original notice, either delivers the Deliverable or offers a new binding delivery date no more than two weeks after the originally agreed delivery date.
14.	Authorized Suppliers and Authorized Service Providers. The Customer acknowledges that (i) if consumables and spare parts employed to operate the Products are obtained from a supplier other than TPV itself or a supplier specifically authorized by TPV for such purpose (Authorized Supplier) or (ii) the Product is maintained or repaired by a service provider other than TPV or by a service provider specifically authorized by TPV for such purpose (Authorized Service Providers), the Products may be damaged, laws regulating the use of the Products may be violated and hazards for the patients served by the Customer may be created.
15.	Authorized Users. The Customer acknowledges that the Product may be operated only by individuals who (i) have been specifically authorized to do so by the Customer and (ii) are qualified to operate such Product under all relevant laws and regulations prevailing at the site where the Product is installed.
16.	Services. If TPV has so agreed, it will repair and maintain the Products and train and support the Customer in the use of the Products including the Software (Services) upon demand. Repairing the Products, as used herein, shall mean the correction of defects. Maintaining the Products, as used herein, shall mean delivering all improvements of the Software program organization and of the program run and adaptations of the Software to legislative developments or other external events, if any, generally made available by TPV (Im-

	<p>provements). TPV intends to release such Improvements at reasonable intervals, but does not guarantee that particular Improvements will be made at a particular point in time. Adding new hardware or the capacity to perform new procedures or other new functionality shall not be regarded as an Improvement. TPV will provide such Services from its business premises in Munich during local working hours, i.e. Monday through Friday from 9 AM to 5 PM Central European Time, except for local statutory holidays, and it will commence work on each demand for such Services within 24 working hours.</p>
17.	<p>The Customer shall nominate one Dedicated Representative who shall have power to request and accept Services on behalf of the Customer.</p>
18.	<p>Responsibilities of the Customer. It shall be the Customer's responsibility (a) to create the environment needed for installing and operating the Products and accepting Services; (b) to provide TPV with all information and assistance which TPV may reasonably require for delivering and installing the Products and providing the Services; (c) to ensure that the Products are being used and maintained as intended, that they are not tampered with and that all notices attached to the Products, such as instructions and warning notices, are left intact; (d) to record alleged errors in reproducible form; and (e) to use reasonable efforts to implement any advice received from TPV.</p>
19.	<p>Property Rights. The Customer's right to use any Deliverables supplied by TPV that are protected by intellectual property rights, in particular the software integrated into some Products (Software), shall be strictly limited to internal business purposes and otherwise as provided in the Contract. All other rights are reserved. The Customer shall refrain from any use of such Deliverables not specifically permitted under the Contract.</p>
20.	<p>Use of Software. The Customer shall refrain from (a) reverse engineering any Software or reducing it in any other way to a form perceptible to humans; (b) modifying, adapting or translating the Software, combining it with other software, or creating derivative works of the Software; and (c) performing any benchmark tests with the Software and/or publishing the results of any benchmark tests without TPV's prior written consent, except in each case to the extent expressly permitted in the Contract or by mandatory law. Any copies of the Software shall contain genuine copies of all of the trademarks and copyright notices shown on the original. The Customer's right to copy and modify the Software to the extent expressly permitted by applicable mandatory legislation regarding back up or the elimination of errors shall not be deemed restricted hereby, provided that TPV has been given reasonable prior opportunity to eliminate any alleged defect. Likewise, the Customer's right under applicable mandatory legislation regarding reverse engineering in order to obtain certain information shall not be deemed restricted hereby, provided that TPV has been given reasonable prior opportunity to provide such information. The source code of the Software will not be delivered unless expressly agreed. The Customer shall refrain from any use of the Software not specifically permitted under the Contract. The Customer shall refrain from separating the Software from the Product and from selling the Software or generally making the Software available to any third party, except with TPV's prior written consent, which consent will be granted only if the third-party acquirer assumes all obligations regarding the Software under the Contract and the Customer destroys all copies of the Software in its possession.</p>
21.	<p>Confidentiality. The parties mutually agree to keep all technical and commercial information received from the respective other party (Owner) strictly confidential and to refrain from using any such confidential information except as strictly required to perform the Contract. Only information which the respective recipient (Recipient) can show was already published or known to it at the time of disclosure or that was published later without the fault of the Recipient shall be exempted from this clause. The parties represent and warrant that their respective officers, employees, consultants and subcontractors (Representatives) are bound by a secrecy obligation corresponding to or exceeding the standard set by this clause, which secrecy obligation shall remain in force even after the end of the relationship between the Recipient and such Representatives. The Recipient shall notify the Owner if notes or media containing confidential information are lost or if it deems itself legally obligated to provide confidential information to any third party, including courts of law or government entities. This confidentiality clause shall remain in force even after termination of the Contract.</p>
22.	<p>Acceptance. Any Deliverables delivered and installed by TPV shall be accepted by the Customer in the presence of representatives of TPV within two weeks of installation, provided the Deliverable essentially complies with the specifications agreed between the parties. The Customer shall confirm the acceptance in writing. Prior to delivery of the acceptance certificate to TPV, the Customer shall refrain from using the Deliverable. If the Customer uses the Deliverable prior to delivery of the acceptance certificate to TPV (except for testing), such use shall be regarded as acceptance.</p> <p>TPV is entitled to submit individual self-contained components or phases of Deliverables for separate, independent acceptance (acceptance in part). The complete Deliverable will then be deemed accepted after the last acceptance in part has taken place. In that case, no additional final acceptance for the complete Deliverable is required.</p>
23.	<p>Terms of Payment. All invoices shall be paid upon receipt without any deduction unless otherwise agreed. Customer will be deemed in default with a payment two weeks from the due date or receipt of TPV's invoice, whichever is later.</p>
24.	<p>Value Added Tax shall not be deemed included in the prices quoted by TPV. If applicable, it will be shown</p>

	separately in the invoice at the rate prevailing on the date of the invoice.
25.	Compensation. Supplies and Services for which no specific compensation has been agreed shall be compensated based on the price list prevailing at the time of receipt of the order. If no price is quoted in the price list, the customary compensation shall be deemed agreed.
26.	The term Contract Year , if used in a Contract, shall refer to the twelve-months period ending on any anniversary of the entry into force of the Contract.
27.	License Fee. The use of the Software integrated into certain Deliverables is subject to the payment of a fee (License Fee) in addition to the purchase price. Such License Fee shall be paid in advance by purchasing a device (Key) enabling the Customer to unlock the Software and use the Product for a specific number of procedures. Without such Key, the Customer will not be able to perform any procedures with such Product.
28.	Audit: The Customer agrees to keep accurate records relating to its use of the Product. TPV shall be entitled to request at any time that an independent auditor examine Customer's relevant records for the purpose of verifying Customer's compliance with its obligations under the Contract. TPV shall pay the fees and expenses of the auditor for the examination, unless such examination should disclose a breach of contract by the Customer, in which case Customer shall pay the reasonable fees and expenses of the auditor for that examination.
29.	Adjustment of the Purchase Price. If TPV has agreed to deliver the Deliverables more than four months after the date of the signing of the Contract and its provision costs increase after that date and prior to TPV identifying the specific Deliverables for delivery to the Customer, TPV shall have the right to increase the price agreed by an amount equivalent to such increase by giving notice of such increase to the Customer. In such case, the Customer shall have the right to withdraw from the Contract, provided that TPV receives the Customer's notice to that effect within one week from the date on which the Customer received the notice of the price increase.
30.	The Customer shall not be entitled to set off any of its claims against claims of TPV, or to avail itself of a right of retention under civil or commercial law, except where the Customer's claims are undisputed or have been confirmed by a final court judgment. The foregoing shall in particular apply to any deductions from recurrent payments to TPV based on supposed defects of Deliverables and shall not limit Customer's claim for repayment of any amounts paid but not owed to TPV after such payment to TPV shall have been made. TPV reserves the right to retain or suspend any performance under the Contract where Customer has not fulfilled a legal obligation to TPV, in particular where it is late on payments, even where such obligation to TPV is not based on, or related to, the Contract.
31.	Limited Remedies for Defects. The Customers' statutory remedies (Warranty Claims) for defects of a Deliverable, including any deviation from agreed specifications and/or any violation of rights of third parties (collectively Defects), shall be limited as set forth hereinafter. The Customer shall inspect any Deliverables and notify TPV of any defects or deviations thereof immediately after delivery. In the absence of such immediate notice, the Customer shall be deemed to have consented to any deviations of the Deliverables or of the delivery that could have been detected, in particular, without limitation, Defects and/or the delivery of a quantity or a Deliverable other than those agreed. TPV shall be entitled to make at least two attempts to remedy any Defects. Any Warranty Claims shall be excluded unless the Defect in question substantially limits the suitability of the Deliverable for the agreed purpose. Furthermore, any Warranty Claims shall be excluded to the extent that a Defect is due to (a) use of the Deliverable for any purpose other than the contractual purpose or in violation of the relevant statutory requirements and/or any guidelines issued by the manufacturer; or (b) either (i) modification of the Deliverable or (ii) use of the Deliverable in connection with any hardware or software not approved by the manufacturer of the Deliverable for such purpose, unless, in each case, the Customer has obtained TPV's prior written consent. If a Deliverable is replaced, the Customer shall return the defective Deliverable and indemnify TPV for wear and tear. Any Warranty Claims based on a violation of third-party rights shall be excluded unless such third-party rights are valid within the European Economic Area and the Customer enables TPV to conduct the defense alone without any restriction and grants to TPV the necessary powers. TPV reserves the right to decide whether to repair or to replace any Deliverable which should prove to be defective. Upon TPV's default with such repair or replacement, the Customer shall be entitled to decide whether a Deliverable shall be repaired or replaced.
32.	TPV shall not be deemed to have guaranteed certain properties of the Deliverables except if it has expressly confirmed such guarantee. The manufacturer's warranty which may be issued with a Deliverable shall not be deemed to be a guarantee given by TPV.
33.	Liability. TPV shall be liable in damages, whether based on contract or any other legal theory, only to the extent that the damage was caused by gross negligence or willful misconduct imputable to TPV. In the event of death of a natural person or personal injury to the latter, TPV shall also be liable for slight negligence. In addition, TPV shall be liable for a slightly negligent violation of a fundamental duty under the Contract, but such liability shall be limited to such damage as TPV could have reasonably foreseen at the time of signing of

	<p>the Contract. TPV's liability shall cover neither damage caused by the loss of data if such loss could have been avoided by daily, alternating back-up, nor damage caused by using any Deliverables which could have been prevented by examination of the work products of such Deliverable at regular intervals. Any mandatory product liability shall remain unaffected.</p> <p>Limitations on TPV's liability agreed in the Contract shall apply also to the personal liability of TPV's officers, employees or agents.</p> <p>If Deliverables are provided free of cost, for instance for the purpose of demonstration, TPV's liability for financial damage shall be further limited, and TPV shall be liable for damages based on gross negligence or willful misconduct imputable to TPV and/or fraudulent concealment of defects only.</p>
34.	<p>Limitation Period. The Customer's remedies for Defects, including but not limited to the right to withdraw from the Contract and claims for indemnification or damages, shall be subject to a limitation period of twelve months for newly manufactured Deliverables and six months for used Deliverables. However, all remedies for fraudulent concealment of defects and all claims for damages against TPV that are based either on gross negligence or willful misconduct or on the death of, or personal injury to, a natural person caused by negligence or willful misconduct shall be subject to the applicable statutory limitation periods. The limitation periods shall begin on the date specified by the statute.</p>
35.	<p>Indemnification. The Customer shall hold TPV harmless from all claims asserted by third parties claiming that the Customer has violated laws or regulations applicable to the operation of the Products or of its business generally, including, but not limited to, regulatory law, statutes on unfair competition or data protection.</p>
36.	<p>Retention of Title. Until payment in full of all outstanding amounts by the Customer, TPV shall retain title to the Deliverables. The Customer shall advise TPV without delay of any attachments of any such Deliverables, in particular of any judicial execution measures or any other seizures, as well as of any damage suffered by such Deliverables. If any Deliverable is shipped to or used in a country where this Retention of Title Clause is not fully valid and enforceable, the Customer shall provide TPV with equivalent security.</p>
37.	<p>Export. The Customer agrees to refrain from exporting any Deliverables and technical information received from TPV, except in the event that all relevant export regulations in force in its country of residence as well as in the United States of America are observed, and the Customer shall impose this obligation also on its customers, without prejudice to the other provisions of the Contract.</p>
38.	<p>Subcontractors. TPV may make use of subcontractors to perform any of its obligations under the Contract, but the use of such subcontractors shall not limit or restrict TPV's obligations towards the Customer. If, however, the use of such subcontractors affects the legal position of the Customer, the Customer's consent shall be required which consent shall not be unreasonably withheld.</p>
39.	<p>Notices. Any notices, declarations or waivers which may be declared or made pursuant to the Contract shall be valid only if they are in text form.</p>
40.	<p>No Assignment. The Customer shall not be entitled to assign its rights under the Contract – except for claims for payment – to any third party without TPV's prior written consent, which consent shall not be unreasonably withheld.</p>
41.	<p>Severability. Should one or more of the provisions of the Contract be or become invalid or unenforceable, the validity and enforceability of the other provisions hereof shall not be affected.</p>
42.	<p>Governing Law. The Contract shall be subject to the laws of the Federal Republic of Germany.</p>
43.	<p>Place of Performance shall be Munich, Germany.</p>
44.	<p>Arbitration. All disputes arising in connection with this Agreement including its validity shall be finally settled by an arbitral tribunal sitting in Munich according to the Arbitration Rules of the <i>Deutsche Institution für Schiedsgerichtswesen e.V.</i> (DIS) without recourse to the ordinary courts of law.</p>
45.	<p>Data Protection. The Customer is hereby notified that TPV will store and process personal data provided by the Customer in the context of the business relationship.</p>
	<p>Munich, August 2009</p>