



General Terms and Conditions for Maintenance Contracts

1. Scope

- 1.1 These general terms and conditions for maintenance contracts (hereinafter "**General Terms and Conditions**") shall apply exclusively to all maintenance and services (hereinafter "**Services**") undertaken by a company of the ZEISS Group (hereinafter "**ZEISS**") on devices whose manufacturer ZEISS is (hereinafter "**Devices**"), unless expressly agreed otherwise.
- 1.2 The general terms and conditions of sale of ZEISS (available under legal notices and general terms and conditions (Legal Notice (zeiss.com))) shall apply to the delivery of materials and parts required for the Service, in particular spare and wear parts, unless expressly agreed otherwise.
- 1.3 The general terms and conditions for repair contracts of ZEISS (available under legal notices and general terms and conditions (Legal Notice (zeiss.com))) shall apply to the performance of repair on Devices by ZEISS, unless expressly agreed otherwise.
- 1.4 General terms and conditions of the customer contradicting or supplementing these General Terms and Conditions shall only apply to the extent that ZEISS has expressly agreed to them in writing. Without such express agreement, ZEISS' performance of Services shall in any case be provided exclusively based on these General Terms and Conditions, even if ZEISS is aware of customer's general terms and conditions and executes customer's order without their express rejection.
- 1.5 To the extent special conditions, framework agreements or other individual contractual agreements on the performance of Services have been agreed for individual Devices or Device groups (hereinafter "**Special Agreements**"), the Special Agreements shall take precedence over these General Terms and Conditions.

2. Scope, place of performance, initial inspection

- 2.1 Details of the service obligation assumed by ZEISS as a "Service" are primarily defined in the respective service description. Special Agreements or the service description shall define the Devices covered by the Service.
- 2.2 "Services" hereunder means preventive and control measures excluding repairs. For example, the following performance obligations may be assumed as a Service: Inspection, verification, calibration and maintenance of the main functions of the Device as well as retrofitting, functional tests, cleaning and care work, accuracy tests and adjustments.
- 2.3 The details of the type and scope of the possible Services are primarily defined in the respective valid work plans issued by ZEISS for the Device subject to the Service.
- 2.4 ZEISS will provide test equipment and special tools required to perform the Services.
- 2.5 Materials and parts required for the Service, including but not limited to cleaning and care products, wear and spare parts, shall be paid separately.
- 2.6 To the extent possible and reasonable, ZEISS shall be entitled to use remanufactured less expensive replacement parts instead of new spare parts.
- 2.7 If ZEISS takes possession of replaced parts with the customer's consent, ownership of the replaced parts shall pass to ZEISS.
- 2.8 Unless expressly agreed otherwise, ZEISS performs the Services at the location where the Device was located at the time of contract formation. If customer changes the location of the Device, customer shall inform ZEISS of the relocation in writing at least 60 days in advance. Customer shall only be entitled to demand performance of the Services at the new location if ZEISS has consented to the relocation in advance. ZEISS shall be entitled to make the granting of consent dependent on a reasonable adjustment of the contract, in particular the remuneration, or to refuse consent for justified reasons.

- 2.9 It is a precondition for the provision of Service that the Device is in a condition according to ZEISS' specifications. A Device that has not been maintained regularly by ZEISS since its first commission or for which maintenance by ZEISS has been interrupted for more than one maintenance interval, ZEISS reserves the right to carry out an initial inspection at customer's expense and to restore the Device to a condition according to ZEISS' specifications. Any work required for such initial inspection and to ensure that the Device conforms to ZEISS' specifications shall be paid by customer at the respective applicable prices.

3. Services not included

- 3.1 The following actions are not "Services" within the meaning of these General Terms and Conditions and shall be provided by ZEISS only on the basis of a separate order and against separate remuneration:

a) repairs and troubleshooting, in particular the rectification of impairments and damage, and

b) the replacement of parts necessary due to external influences, such as improper handling or other actions or omissions by the customer or third parties, as well as by other circumstances beyond ZEISS' control, including force majeure (in particular fire, earthquake, flood, etc.); and

c) work necessary due to repairs or modifications carried out by third parties without ZEISS' prior written consent; and

d) work necessary due to connection of the Device to other equipment not supplied by ZEISS; and

e) work necessary due to the Device being operated under conditions (e.g. mains fluctuations, contamination) or using accessories or equipment-specific consumables that do not comply with ZEISS' specifications; and

(f) rectification of minor wear and tear or the replacement of equipment-specific consumables, unless such work can be carried out without significant expenditure of time, labour and materials as part of the Services; and

g) additional costs and work caused by relocation of the Device.

- 3.2 ZEISS will assume the actions referred to in section 3.1 only against separate remuneration on the basis of a separate agreement, provided that the nature of the Service to be performed and the further deployment schedule of the service personnel permits it.

4. Service Personnel

- 4.1 ZEISS will have the Services performed by trained system or Device specialists.

- 4.2 ZEISS shall be entitled to subcontract the Service to third parties.

5. Maintenance Times

- 5.1 ZEISS shall perform the Services on the Device at the agreed intervals. The maintenance intervals are primarily defined in the service description unless they are specified otherwise in Special Conditions.

- 5.2 ZEISS will agree a date with the customer for the performance of the Services. If ZEISS or customer fail to meet the agreed date through no fault of its own as a result of unforeseen events beyond its control (e.g. operational disruptions, illness, labor dispute), ZEISS and customer shall agree on a reasonable new date.

- 5.3 ZEISS shall perform the Services on working days during normal working hours. If the customer requests performance at other times, an overtime surcharge shall be paid. Customer shall obtain any official permits that may be required for this; ZEISS will assume that they have been granted.



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6. Remuneration

6.1 As remuneration for the Services, ZEISS shall charge the customer, depending on the type of Special Agreement reached, either

a) a flat rate per service call or for a certain period of time in the respective agreed amount or

b) remuneration according to actual expenditure and material consumption in accordance with the respective valid prices and costs.

6.2 Unless expressly agreed otherwise, the flat rate shall include all labour costs incurred for the performance of the agreed scope of Services, travel costs and travel expenses. Excluded and to be paid separately shall be the statutory value added tax and, if applicable, other statutory charges as well as labour, travel or material and parts costs incurred outside the agreed scope of Services. If ZEISS provides Services abroad, customer shall additionally reimburse ZEISS for all foreign taxes and duties incurred by ZEISS in relation to the Services.

6.3 If through no fault of ZEISS waiting times occur at the place of performance, customer shall pay these waiting times at hourly rate for the service personnel. Customer shall also bear any additional costs incurred if ZEISS fails to perform or complete Services during the agreed date provided customer is responsible for such failure.

6.4 Customer shall be in default of payment upon expiry of the aforementioned payment deadline. During default, ZEISS is entitled to demand default interest at the applicable statutory default interest rate (§§ 288, 247 German Civil Code), whereby ZEISS reserves the right to claim further damages. In case of a merchant, ZEISS reserves the right to claim interest as of the due date (§ 353 German Commercial Code).

6.5 ZEISS reserves the right to adjust the remuneration to be paid at its reasonable discretion in accordance with the development of the costs decisive for the price calculation. A price increase shall be considered, and a price reduction shall be made if, for example, the costs for travel, expenses or the procurement of the materials or parts required to perform the Services increase or decrease or in case other changes in the legal framework conditions lead to a changed cost situation (e.g. due to statutory social costs or charges). Cost increases regarding a price component shall be offset against cost reductions regarding the same or other price components. ZEISS shall exercise its reasonable discretion in such a way that cost reductions have the same effect on prices as cost increases. Customer shall be notified in writing of any adjustment of remuneration no later than 6 weeks before the change applies. Customer shall then be entitled to terminate the contract with effect at the time the change applies within 4 weeks of receipt of the notification.

6.6 Customer may only offset such claims that are undisputed or have been finally legally established at court of law without possibility to appeal or that are reciprocally linked to the main claim (e.g. claims of the Customer due to defects in performance).

6.7 An entrepreneur (as defined by § 14 German Civil Code) may only withhold its counter-performance if such counter-performance is undisputed or has been finally legally established at court of law without possibility to appeal.

7. Duties of cooperation

7.1 Customer is obliged to make the Device available to ZEISS or subcontracted third parties for the performance of the Service at the agreed date and shall ensure that the repair personnel have free and unimpeded access.

7.2 For the duration of the Services, customer shall provide the following free of charge:

a) work equipment which must be present at the respective Device in accordance with the relevant accident prevention regulations, except for special tools and measuring instruments; and

b) suitable auxiliary personnel to operate the Device and to support the service personnel, as well as any auxiliary equipment that may be required.

7.3 Customer shall notify the service personnel of any special safety or works regulations existing at the customer's premises which the service personnel must observe when carrying out the Service and explain them in detail before the Service begins. ZEISS shall be entitled to additional remuneration according to time and effort insofar as this requires significant time.

7.4 Customer shall provide to ZEISS' service personnel and subcontracted third parties all requested information about the Device to be maintained and the associated documents.

7.5 Customer shall inform ZEISS' service personnel and subcontracted third parties without being asked to about any special features and problems relating to the Device to be repaired.

8. Liability for defects (warranty)

8.1 ZEISS shall not warrant that the Device will function without interruption or malfunction after performance of the Services.

8.2 ZEISS shall only assume warranty in accordance with the statutory provisions. The statutory provisions shall apply to the customer's rights in the event of a material defect or defect of title, unless otherwise expressly agreed in the Special Conditions or hereinafter.

8.3 If ZEISS does not comply with the statutory obligation of cure or does not comply with it in time, customer shall set a reasonable grace period. If ZEISS fails to cure the defect within such reasonable grace period set, customer has the right to demand a reduction of the remuneration or to rescind from the contract. The same shall apply if cure fails.

8.4 If customer asserts warranty rights, it shall notify ZEISS of any defects immediately after discovery and shall do everything to minimize any damage caused by such defect.

8.5 The limitation period for claims arising from defects is one year for entrepreneurs (as defined by § 14 German Civil Code) and two years for consumers (as defined by § 13 German Civil Code). However, in cases of section 9.6 as well as in case of liability for damages based on intent or gross negligence, the limitation period shall be governed exclusively by the statutory provisions.

8.6 Rectifications and replacement deliveries by ZEISS based on a notification of defects by the customer are carried out without prejudice and only lead to a new start of the limitation period if ZEISS expressly declares an acknowledgement.

8.7 ZEISS shall bear or reimburse the expenses necessary for the purpose of inspection and cure, in particular transport, travel, labor and material costs and, if applicable, removal and installation costs, in accordance with the statutory provisions and these Terms and Conditions, if a defect actually exists. Otherwise, ZEISS may demand reimbursement from the customer of the costs incurred as a result of the unjustified request to remedy the defect if the customer knew or was negligent in not knowing that there was actually no defect.

9. Limitation of Liability

9.1 If customer is unable to contractually use the maintained Device due to ZEISS' fault as a result of the omission or improper performance of suggestions and advice given before or after the conclusion of the contract or through the infringement of other ancillary contractual obligations, the provisions of section 8 and section 9.2 to 9.7 shall apply mutatis mutandis under exclusion of any further claims of the customer.

9.2 Subject to the statutory liability requirements, ZEISS shall only be liable without limitation for damages and reimbursement of expenses, irrespective of the legal grounds, in the event of intent or gross negligence.



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- 9.3 However, in the event of a slightly negligent breach of an essential contractual obligation, i.e. a contractual obligation whose breach jeopardizes the proper performance of the contract and the achievement of the purpose of the contract, ZEISS' liability shall be limited to the amount of the damage typical for the contract and foreseeable at the time of conclusion of the contract.
- 9.4 In all other respects ZEISS' liability is excluded. The distribution of the burden of proof remains unaffected.
- 9.5 The exclusions and limitations of liability contained in sections 9.1 to 9.4 also apply if a person for whom ZEISS is responsible breaches a duty.
- 9.6 The exclusions and limitations of liability contained in sections 9.1 to 9.5 do not apply if ZEISS has fraudulently concealed the defect, or if ZEISS has given a guarantee of quality within the meaning of § 444 of the German Civil Code (declaration by ZEISS that the object of purchase has a certain quality at the time of the transfer of risk and that ZEISS intends to be responsible for all consequences of its absence irrespective of fault), or for damage resulting from injury to life, body or health, as well as in the case of mandatory liability under the laws on product liability.
- 9.7 The unlimited liability under sections 9.2 and 9.6 shall prevail over any limitation or exclusion of liability within these General Terms and Conditions, even if no express reference is made to the priority of sections 9.2 and 9.6.
- 10. Force majeure**
- ZEISS shall not be liable for impossibility of Service or for delays in Service insofar as these are caused by force majeure or other events that were not foreseeable at the time the contract was concluded (e.g. operational disruptions of any kind, difficulties in the procurement of materials or energy, transport delays, strikes, lawful lockouts, shortages of labor, energy or raw materials, difficulties in obtaining necessary official permits, pandemics or epidemics, official measures or the failure of suppliers to deliver, to deliver correctly or to deliver on time despite a congruent hedging transaction concluded by the ZEISS) for which ZEISS is not responsible. Insofar as such events make it substantially more difficult or impossible for ZEISS to provide the repair and the hindrance is not only of temporary duration, ZEISS shall be entitled to rescind from the contract. In the event of hindrances of temporary duration, deadlines shall be postponed by the period of the hindrance plus a reasonable start-up period. Insofar as the customer cannot reasonably be expected to accept the repair as a result of the delay, customer may rescind from the contract by means of an immediate written declaration to ZEISS.
- 11. Term**
- 11.1 Services shall be provided for the period agreed in the Special Conditions (hereinafter "**Term**").
- 11.2 Services may be terminated in writing before the end of the Term with respect to individual Devices or as a whole by either party with three months' notice to the end of a calendar year, however, not before the end of the calendar year following the year in which the contract was concluded (hereinafter "**Minimum Term**").
- 11.3 Notwithstanding the Minimum Term, Services may be terminated before the end of the Term with immediate effect with respect to individual Devices or as a whole if a Device is permanently taken out of operation. The time of termination shall be determined by ZEISS' receipt of the written notice of termination.
- 11.4 Notwithstanding the Minimum Term, ZEISS shall further be entitled to terminate the Services at any time before the end of the Term with immediate effect if a) customer is more than thirty (30) days in default with a payment, or b) the Device has been repaired or maintained by third parties without ZEISS' prior consent, or c) Service is impeded by configuration changes not approved by ZEISS, or d) the Device-specific environmental conditions no longer comply with the installation guidelines.
- 11.5 Notice of termination must be given in writing.
- 11.6 Any sale of a Device by customer to a third party shall not affect the Term. If customer transfers a Device subject to Service to a third party, customer's obligation to pay ZEISS shall remain in force unless the third party enters into the respective contract with ZEISS' consent.
- 12. Final Provisions**
- 12.1 ZEISS is entitled to process personal data of the customer and to transmit it to affiliated companies of the ZEISS Group, provided that this is necessary for the performance of the contract or data subjects have consented. Any data subject is entitled to request information regarding the content and use of the personal data processed by ZEISS. Any request by a data subject shall be addressed to the ZEISS Group company using these Terms and Conditions and will be handled in accordance with the applicable data protection laws and regulations. ZEISS and customer shall comply with the applicable data protection regulations, in particular the European General Data Protection Regulation (GDPR) as well as additional contractual requirements pursuant to Art. 28 (3) of the GDPR.
- 12.2 A written contract or written confirmation shall be decisive for the proof of existence and content of subsequent agreements, amendments, and supplements. The possibility to prove to the contrary remains unaffected.
- 12.3 If the customer is a merchant, a legal entity under public law or a special fund under public law, the place of jurisdiction shall be the registered office of the company of the ZEISS Group using these General Terms and Conditions. ZEISS is nevertheless entitled to assert claims against the customer at the place of jurisdiction responsible for the customer's registered office.
- 12.4 German law shall apply under exclusion of the international conflict of laws provisions thereof and under exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 12.5 Notice pursuant to § 36 German Consumer Dispute Resolution Act: (Verbraucherstreitbeilegungsgesetz or VSBG): ZEISS will not participate in any dispute resolution proceedings before a consumer arbitration board within the meaning of the VSBG and is not obliged to do so.