



General Terms and Conditions of Sale

1. Scope

- 1.1 These general terms and conditions of sale (hereinafter "**General Terms and Conditions**") shall apply exclusively to all deliveries of goods and services (hereinafter "**Deliveries**") of a company of the ZEISS Group (hereinafter "**ZEISS**") to a customer, unless expressly agreed otherwise.
- 1.2 "**Customers**" and thus contractual partners are entrepreneurs within the meaning of § 14 German Civil Code (hereinafter "**Entrepreneurs**") or consumers within the meaning of § 13 German Civil Code (hereinafter "**Consumers**"). Insofar as provisions of the General Terms and Conditions are addressed to Entrepreneurs, these provisions shall only apply to Entrepreneurs. For Consumers, the law shall apply insofar as nothing to the contrary is expressly regulated in these General Terms and Conditions.
- 1.3 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' Deliveries 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.
- 1.4 References herein to the applicability of the law and statutory provisions shall only have a clarifying meaning. Even without an express reference, the law and statutory provisions shall apply unless they are amended or excluded herein.

2. Performance data

- 2.1 Data, information, and advice in connection with ZEISS' Deliveries are based on ZEISS' experience. The values stated, including but not limited to performance data, are average values determined in tests under standard laboratory conditions and are not guaranteed specifications.
- 2.2 All information about ZEISS' goods and services, including but not limited to illustrations, drawings, weights, dimensions and performance specifications contained in offers and printed materials, are approximate average values. They are not a guarantee of quality or durability, but approximate descriptions or markings. Deviations customary in the industry shall be allowed.
- 2.3 Goods are subject to normal wear and tear, which do not constitute any warranty rights.
- 2.4 The description of goods as "used" is a quality agreement. Signs of wear and tear, quality flaws or other limitations that are visible or typically result from the characteristic of being used are no defects in quality.

3. Delivery

- 3.1 Unless expressly agreed otherwise, ZEISS shall deliver ex works (EXW INCOTERMS 2020) of the company of the ZEISS Group using these General Terms and Conditions.
- 3.2 ZEISS owes the shipment of the Deliveries only if shipment has been expressly agreed. If ZEISS at the request and expense of the Customer ships goods to another place than the place of performance (hereinafter "**Sales Shipment**"), ZEISS reserves the right to delivery by its own delivery organization.
- 3.3 Deadlines and dates are only binding delivery periods (hereinafter "**Delivery Periods**") if ZEISS has expressly confirmed them as binding. Without express written confirmation they are non-binding target dates.
- 3.4 Delivery Periods begin with the date of the order confirmation by ZEISS (hereinafter "**Order Confirmation**").
- 3.5 In case of expiry of a deadline and date which has not been expressly confirmed as "firm", "fixed" or "binding" in the Order Confirmation, the Customer may set ZEISS a reasonable Delivery Period two weeks after expiry. Upon expiry of this Delivery Period Customer may cause ZEISS to be in default by sending a reminder. In all other respects the occurrence of default in delivery shall be governed by the statutory provisions.

- 3.6 If the Customer does not fulfil its obligations towards ZEISS, including but not limited to default in acceptance and/or payment, Delivery Periods are extended by this period of default. Further legal or contractual claims and rights remain unaffected.
- 3.7 ZEISS is entitled to partial Deliveries if these are reasonable for the Customer. Partial Deliveries are reasonable for the Customer, if a partial Deliveries is usable within the scope of the contractually intended purpose, the delivery of the remaining goods and services is ensured, and the Customer does not incur any significant additional expenses or costs as a result (unless ZEISS agrees to bear the costs).
- 3.8 Without prejudice to the Customer's right to withdraw from the contract in case of a culpable breach of contract by ZEISS or due to a defect, a free right of termination by the Entrepreneur is excluded. In all other respects the statutory requirements and legal consequences apply.
- 3.9 Customer's contractual or statutory right of withdrawal shall expire if the Customer is requested to exercise the right of withdrawal by ZEISS within a reasonable period of time and does not declare withdrawal before the expiry of this period.

4. Export control

- 4.1 The sale, resale and disposal of Deliveries as well as any associated technology or documentation may be governed by German, EU, US export control regulations and, if applicable, the export control law of other countries. A resale to embargoed countries, to denied persons or to persons who use or may use the Deliveries for military purposes, for ABC weapons or for nuclear technology is subject to an official license. With its order, the Customer declares conformity with such laws and regulations and that the Deliveries will not be delivered directly or indirectly to countries that prohibit or restrict the import of these Deliveries. Customer declares to obtain all necessary licenses required for an export and/or import.
- 4.2 If the fulfilment of an obligation is delayed due to licensing or approval requirements or other requirements or procedures under the applicable export control laws or regulations, the performance time shall be extended accordingly by the duration of such delay.
- 4.3 ZEISS and Customer have a right to refuse performance of the contract to the extent that such performance is prohibited by applicable export control laws or regulations. The reason for a refusal to perform must be communicated immediately.
- 4.4 The Customer shall not sell, export or re-export, directly or indirectly, to the Russian Federation or for use in the Russian Federation any goods supplied under or in connection with the contract that fall under the scope of Article 12g of Council Regulation (EU) No 833/2014.
- 4.5 The Customer shall undertake its best efforts to ensure that the purpose of section 4.4 is not frustrated by any third parties further down the commercial chain, including by possible resellers.
- 4.6 The Customer shall set up and maintain an adequate monitoring mechanism to detect conduct by any third parties further down the commercial chain, including by possible resellers, that would frustrate the purpose of section 4.4.
- 4.7 Any violation of sections 4.4, 4.5 or 4.6 shall constitute a material breach of an essential obligation of the contract, and ZEISS shall be entitled to seek appropriate remedies, including, but not limited to:
 - (i) termination of the contract; and
 - (ii) a penalty of 50% of the total value of the contract or price of the goods exported, whichever is higher, but minimum 50.000 EUR.
- 4.8 The Customer shall immediately inform ZEISS about any problems in applying sections 4.4, 4.5 or 4.6, including any relevant activities by third parties that could frustrate the purpose of section 4.4. The Customer shall make available to ZEISS information concerning compliance with the obligations under sections 4.4, 4.5 and 4.6 within two weeks following ZEISS' request of such information.



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5. Transfer of risk

- 5.1 The transfer of risk shall be governed by the statutory provisions.
- 5.2 If, in case of a Sales Shipment, the shipment is delayed for reasons for which the Customer is responsible, including but not limited to a delay in acceptance, the risk of accidental deterioration and accidental loss shall pass to the Customer upon ZEISS' notification of readiness for shipment. Further contractual or statutory claims and rights, including but not limited to damages and additional expenses (e.g. for storage costs), shall remain unaffected.

6. Payment

- 6.1 Only the prices stated in ZEISS' Order Confirmation apply. Additional Deliveries will be charged separately.
- 6.2 All prices are net prices excluding value added tax, which the Customer must pay in addition at the respective statutory rate.
- 6.3 Unless otherwise expressly agreed in writing at the time of conclusion of the contract, ZEISS' prices shall apply ex works of the company of the ZEISS Group using these General Terms and Conditions. The Customer shall in particular but without limitation bear additional costs for freight, transport, shipping and insurance, public charges (including withholding tax), official permits and customs duties as well as packaging costs exceeding the customary packaging. Section 15.4 applies to alleged subsequent agreements.
- 6.4 The price is due and payable within 30 days from the date of the invoice and the performance of the Deliveries. Decisive for the timeliness of the payment is the receipt of the payment by ZEISS.
- 6.5 Upon expiry of the payment deadline, the Customer is in default of payment. 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).
- 6.6 ZEISS reserves the right to provide Deliveries in whole or in part only against advance payment. Such reservation will be declared at the latest with the Order Confirmation.
- 6.7 The Customer may only offset such claims that are undisputed or have been finally legally established without possibility to appeal or that are reciprocally linked to the main claim (e.g. claims of the Customer due to defects in performance).
- 6.8 An entrepreneur may only withhold its counter-performance if such counter-performance is undisputed or has been finally legally established without possibility to appeal.
- 6.9 In the event of default or non-performance of payments by the Customer, ZEISS is entitled to perform outstanding Deliveries only against advance payment or provision of security and, if the advance payment or security is not provided within two weeks, to withdraw from the contract without setting a new deadline. Further legal or contractual claims and rights remain unaffected.

7. Retention of title vis-à-vis Consumers

- 7.1 ZEISS retains title to goods delivered to a Consumer until the purchase price of these goods has been paid in full (hereinafter "**Reserved Goods**" in section 7).
- 7.2 The Consumer must inform ZEISS immediately of any seizure of the Reserved Goods or the opening of insolvency proceedings against the Consumer's assets.

8. Retention of title vis-à-vis Entrepreneurs

- 8.1 ZEISS retains title to goods delivered to Entrepreneurs until full payment of all present and future claims, irrespective of the legal grounds, arising from the legal and business relationship underlying the delivery (hereinafter "**Reserved Goods**" in section 8).
- 8.2 The Entrepreneur is entitled to use the Reserved Goods and to sell them in the ordinary course of business only under the

conditions of the following sections and until revoked by ZEISS, and until it is not in default with its payment obligations.

- 8.3 The Reserved Goods are processed or transformed in the name of and for ZEISS as manufacturer. If ZEISS cannot acquire sole ownership in the event of processing, transformation, combination and intermixture of the Reserved Goods with other goods, ZEISS acquires co-ownership of the newly created movable thing in the ratio of the invoice value of the Reserved Goods to the value of the other goods. If ZEISS suffers a loss of rights as a result of processing, transformation, combination or intermixture, the Entrepreneur hereby already transfers to ZEISS its ownership or share in co-ownership to the new item to the extent of the value of the Reserved Goods and shall hold in custody the new item carefully and free of charge for ZEISS. The retention of title extends to the new item, to which the same applies as to the Reserved Goods.
- 8.4 The Entrepreneur hereby assigns to ZEISS any claims against third parties arising from the resale of the Reserved Goods or the new item in their entirety or in the amount of any co-ownership share. If Reserved Goods are sold by the Entrepreneur together with other goods not supplied by ZEISS at a total price, the assignment is made in the amount of the invoice value of the respective Reserved Goods sold by ZEISS. If the assigned claim is included in a current account, the Entrepreneur hereby assigns to ZEISS a part of the balance corresponding to the amount of its claim, including the final balance from the current account. The assignment of the claim serves as collateral to the same extent as the Reserved Goods. ZEISS hereby accepts this assignment.
- 8.5 Until revoked by ZEISS, the Entrepreneur is authorized to collect the claims assigned to ZEISS.
- 8.6 The Entrepreneur shall retain title to the Reserved Goods vis-à-vis its customers on the same terms or, if the customer is a consumer, to the extent permitted.
- 8.7 ZEISS is entitled to revocation, if the Entrepreneur does not properly fulfil its payment obligations arising from the business relationship with ZEISS or due to a breach of contract by the Entrepreneur. If ZEISS exercises its right to revocation, the Entrepreneur must, at ZEISS' request, immediately disclose the assigned claims and their debtors, provide all information necessary for the collection of the claims, hand over to ZEISS the relevant documents and notify the debtor of the assignment. ZEISS is also entitled to notify the debtor of the assignment itself.
- 8.8 Any other use of the Reserved Goods is not permitted, including but not limited to pledging or chattel mortgage (German: "*Sicherungsübereignung*"). The Entrepreneur must inform ZEISS immediately of any impact on or danger to ZEISS' Reserved Goods or collateral, including but not limited to seizure, foreclosure or insolvency actions. Furthermore, the Entrepreneur must immediately notify the third party of the existing retention of title or collateral granted to the benefit of ZEISS. If the Entrepreneur violates these obligations, ZEISS reserves the right to demand compensation from the Entrepreneur for the judicial and extrajudicial costs of legal defense and damages.
- 8.9 ZEISS will release the existing collateral insofar as the realizable value of the collateral exceeds 110 % of the secured claims not only temporarily.
- 8.10 If ZEISS asserts the retention of title, this shall only be deemed to be a rescission of the contract if ZEISS expressly declares the rescission in writing.
- 8.11 In the event of a breach of contract by the Entrepreneur, ZEISS is entitled to withdraw from the contract in accordance with the statutory provisions and/or to demand the return of the Reserved Goods. In this respect, the Entrepreneur may not assert any right of possession against ZEISS.

9. Rights to software

- 9.1 The respective underlying license conditions (End User License Agreements or "EULA") shall apply to all software delivered to the Customer.



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- 9.2 For documentations and subsequent supplements to delivered software, ZEISS grants a non-exclusive and non-transferable right of use for the internal operation of the Deliveries for which the software was delivered. For documentation produced on behalf of the Customer and as ZEISS' Deliveries, the Customer will be granted individual licenses for end customers in the desired number to the extent of a non-exclusive and non-transferable right of use.
- 9.3 Source programs shall only be provided based on a separate written agreement.
- 10. Warranty**
- 10.1 If there is a defect in quality or defect of title (hereinafter "**Defect**") in Deliveries, the statutory provisions shall apply unless otherwise expressly specified hereafter.
- 10.2 Cure shall be carried out at ZEISS' discretion either by remedying the defect or by providing a defect-free delivery ("**Cure**"). Such cure shall not include the dismantling, removal or disassembly of the delivered good or fitting or assembly of a defect-free good, if ZEISS was not originally obliged to perform these performances; claims of the Customer for reimbursement of corresponding costs shall remain unaffected.
- 10.3 The Customer shall give ZEISS the time and opportunity necessary for remedying the defect or providing a defect-free delivery of goods and services. The delivery of goods and services claimed to be defective shall be returned to ZEISS for examination in their original or equivalent packaging. 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.
- 10.4 An Entrepreneur who is also a merchant within the meaning of the German Commercial Code (HGB) shall comply with its statutory obligation to inspect and give notice of defects immediately in writing or in text form (§§ 377, 381 HGB). In case of goods intended for installation or other further processing, an inspection must in any case take place immediately before processing.
- 10.5 ZEISS is entitled to refuse Cure in accordance with the statutory provisions. Cure may also be refused if the Customer has not sent ZEISS the respective goods for inspection.
- 10.6 The Customer may declare withdrawal from the contract or demand a reduction of the remuneration in accordance with the statutory provisions, however at the earliest after the unsuccessful expiry of a reasonable deadline set by the Customer for Cure, unless the setting of a deadline for Cure is dispensable in accordance with the statutory provisions. In the event of withdrawal, the Customer shall be liable for deterioration, destruction, and unrealized benefits in the event of intent and any negligence.
- 10.7 If ZEISS' operating or maintenance instructions are not adhered to, changes are made to the Deliveries, parts are replaced or consumables not complying with the original specifications are used, no warranty exists unless the Customer proves that the defect is not due to this. For a Consumer, § 477 German Commercial Code remains unaffected.
- 10.8 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.
- 10.9 Section 11 shall apply to any claims for damages and reimbursement of expenses of the Customer due to actual defects. However, in the cases of sections 11.5 as well as in case of liability for damages based on intent or gross negligence, the rights of the Customer shall be governed exclusively by the statutory provisions.
- 10.10 The limitation period for claims arising from defects is one year for Entrepreneurs and two years for Consumers. However, in cases of section 11.5 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.
- 11. Limitation of liability**
- 11.1 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.
- 11.2 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.
- 11.3 In all other respects ZEISS' liability is excluded. The distribution of the burden of proof remains unaffected.
- 11.4 The exclusions and limitations of liability contained in sections 11.1 to 11.3 also apply if a person for whom ZEISS is responsible breaches a duty.
- 11.5 The exclusions and limitations of liability contained in sections 11.1 to 11.4 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.
- 11.6 The limitation period for claims for damages against ZEISS is one year for an Entrepreneur and two years for a Consumer, beginning with the delivery of the item to the Customer. In the case of tortious liability, the limitation period shall commence upon knowledge or grossly negligent ignorance of the circumstances giving rise to the claim and of the person liable to pay compensation. However, in case of section 11.5 as well as in the case of liability for damages based on intent or gross negligence, the limitation period shall be governed exclusively by the statutory provisions.
- 11.7 If the Customer is an intermediary seller for the goods delivered to it and the end buyer of the goods is a consumer, the limitation period for any action of recourse against ZEISS by the Customer shall be the limitation period specified by statute.
- 11.8 When supplying software, ZEISS is only liable for the loss or alteration of data caused by the software to the extent that such loss or alteration would have been unavoidable even if the Customer had fulfilled its data backup obligation at adequate intervals, however, at least daily.
- 11.9 The unlimited liability under sections 11.1 and 11.5 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 11.1 and 11.5.
- 12. Force majeure**
- ZEISS shall not be liable for impossibility of delivery or for delays in delivery 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 delivery or service 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, the delivery



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or service 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 Deliveries as a result of the delay, Customer may rescind from the contract by means of an immediate written declaration to ZEISS.

13. Industrial property rights, copyrights

13.1 If claims are made against the Customer for infringement of an industrial property right or a copyright because the Customer uses the Deliveries of ZEISS in the contractually specified manner, ZEISS shall be responsible to obtain the right to continue to use them. Precondition is that the Customer notifies ZEISS immediately in writing of such third-party claims and that ZEISS' rights to take all appropriate defensive and out-of-court actions are reserved. If, under these preconditions, further use of the Deliveries is not possible under economically justifiable conditions, it is agreed that ZEISS shall, at its discretion, either modify or replace the Deliveries to remedy the defect of title or take back the Deliveries and refund the purchase price less an amount taking into account the age of the Deliveries and the period of use.

13.2 The Customer is only entitled to further legal claims for infringement of industrial property rights or copyrights within the limits of section 11. ZEISS has no obligations under section 12.1 if the infringement is caused by the fact that ZEISS' Deliveries are not used in the contractually specified manner or are used together with third-party components.

14. Disposal

14.1 The Customer shall observe the information accompanying the goods from ZEISS when disposing of the Deliveries, in particular the goods, and ensure the correct disposal or reuse of Deliveries in accordance with the statutory regulations.

14.2 If the Customer is an Entrepreneur, it is obliged to carry out the disposal at its own expense. In the event of resale of the Deliveries, in particular the goods or their components, the Customer shall transfer its obligation to the next buyer. If the next customer is a consumer, the statutory provisions regarding disposal shall apply.

15. Confidentiality, data protection

15.1 Unless expressly agreed otherwise in writing, information provided to ZEISS in connection with orders shall not be considered confidential unless confidentiality is evident or expressly marked by the Customer.

15.2 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 the 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.

16. Final provisions

16.1 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. This section 15.1 does not apply to Consumers.

16.2 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.

16.3 Provided that the Customer is a merchant, a legal entity under public law or a special fund under public law. 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).

16.4 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.