



GENERAL TERMS AND CONDITIONS FOR MAINTENANCE SERVICES Carl Zeiss Philippines Pte. Ltd.

1. Terms and Conditions of the Contract

1.1 All orders placed with Carl Zeiss Philippines Pte. Ltd. (referred to herein as "ZEISS") for the maintenance (in particular the servicing, calibration, machine care and upkeep) of ZEISS instruments are subject to the terms and conditions contained herein (the "General Terms and Conditions for Maintenance Services"), which terms shall override all other terms and conditions of any orders from the customer which may be conflicting. Special terms and conditions for individual instruments/instrument groups that are agreed between the customer and ZEISS, such as framework contracts or other one-off contractual arrangements relating to the performance of maintenance work, shall govern and override the General Terms and Conditions for Maintenance Services in so far as they relate to the same subject matter and only to the extent of the relevant conflict or inconsistency in question.

1.2 If any clause in the General Terms and Conditions for Maintenance Services is declared null, void, or unenforceable by any competent court or authority, in whole or in part, this shall not affect the validity or enforceability of other clauses or the remainder of the clause in question which are capable of severance and which will continue unaffected.

2. Services from ZEISS, place of performance, initial inspection

2.1 Within the context of preventive maintenance, ZEISS will carry out work to check (in particular calibration) and preserve (in particular servicing, machine care and upkeep) the principal functions of the instruments and to eliminate minor damage caused by natural wear and tear.

2.2 Depending on the type of contract selected, the services are derived from the performance description. In particular they cover, to varying extents,

- Performance tests
- Cleaning and maintenance work
- Precision tests and adjustments

The details of the nature and scope of these services are based on the applicable ZEISS work plans for the instrument in question. ZEISS adapts these work plans from time to time at its discretion to ensure that requirements are met.

2.3 ZEISS provides the testing instruments and special tools required to perform the services.

2.4 In principle, only the abovementioned services (including setup time and travel costs) are subject of the maintenance contract. The materials required for performing the services, in particular any substances used to clean and maintain the instruments, along with spare parts, exchanged parts and wearing parts, do not form part of and do not fall within the scope of the maintenance contract, unless they are expressly provided for in writing therein.

2.5 In as far as it is possible and reasonable to do so, ZEISS is authorized to use reconditioned exchanged parts instead of new spare parts. The ownership of old parts exchanged or removed from the premises or equipment of the customer shall vest and be transferred to ZEISS.

2.6 Unless otherwise agreed in writing in the maintenance contract, ZEISS will perform the services at the location where the instrument is being used at the time the contract is concluded. If the customer changes the location where the instrument is being used, it must inform ZEISS of the change in writing at least 60 days in advance. The customer will only be entitled to maintenance services at the new location under the maintenance contract that has been concluded if ZEISS approves the location change. ZEISS reserves the right to demand that amendments be made to the contract before it grants its approval. However, ZEISS will only refuse to grant approval for objectively justifiable reasons.

2.7 For instruments that have not been maintained regularly by ZEISS since they were first commissioned, or for which maintenance by ZEISS has been interrupted for more than 1 maintenance interval according to the general maintenance standards of ZEISS, ZEISS reserves the right to carry out an initial inspection at the customer's expense. All the services required on the basis of this inspection to ensure that the instrument conforms to ZEISS specifications will be charged to the customer at the applicable rates.

3. Services that are not included

The following work on the instruments is not considered as maintenance work within the meaning of the General Terms and Conditions for Maintenance Services and will only be performed by ZEISS on the basis of a separate order and at a separate charge. It is agreed

that ZEISS' "Terms and Conditions for Repair Services" will apply to such orders.

3.1 Repair and maintenance work, in particular the elimination of faults and damage, in as far as this is not included in the performance description for the maintenance contract concluded hereunder.

3.2 The exchanging of parts, not as a result of natural wear and tear but as a result of external influences, such as improper use, willful damage, negligence, abnormal working conditions, failure to follow proper operating instructions (whether oral or written) on use or application of the instruments, misuse, mishandling on the part of the customer or third parties, without the prior written approval of ZEISS.

3.3 Maintenance work that becomes necessary as a result of other unforeseeable circumstances that cannot be attributed to ZEISS, or as a result of force majeure, such as without limitation, fires, acts of terrorism, flood, hurricane, earthquake, or other natural calamities, power or electrical failures, or the occurrence of any other events beyond the control of ZEISS adversely affecting the performance of the instruments.

3.4 Maintenance work that becomes necessary as a result of the repair or modification of the instruments by third parties without the prior written approval of ZEISS.

3.5 All services that can be attributed to the instruments being connected to other installations that were not supplied by ZEISS.

3.6 All services that become necessary as a result of the instruments being operated under conditions (e.g. mains fluctuations, contamination) or using accessories or instrument-specific consumables that do not conform to ZEISS specifications.

3.7 The exchanging of instrument-specific consumables, unless this takes place within the context of maintenance without significant additional expense.

3.8 Work connected with a change in the location where the instrument is being used.

4. Maintenance personnel

4.1 The maintenance work will be performed by trained system specialists or instrument specialists.

4.2 ZEISS is entitled to subcontract the maintenance work to third parties. However, such subcontracting will not in any way release ZEISS from its obligations towards the customer under the contract.

5. Maintenance times

5.1 The maintenance intervals are derived from the performance description, unless other intervals are laid down in the contract. ZEISS undertakes to perform the maintenance work on the instruments at the specified intervals.

5.2 ZEISS will agree with the customer on the time periods and schedules in which the maintenance work will be performed. If one of the parties is unable to keep to the agreed time periods for the maintenance work as a result of unforeseen events outside its control, the parties will agree on another suitable appointed time.

5.3 ZEISS will perform the maintenance work on workdays during normal working hours. If the customer wants the work to be performed at other times, an overtime surcharge will be added. The customer must obtain all the permits that may be required from the relevant authorities for the carrying out by ZEISS of maintenance works. ZEISS will assume that these have been obtained and shall not be liable for any consequences directly or indirectly flowing from the customer's failure to do so.

5.4 On the basis of a separate order, the maintenance personnel may perform services not included in the scope of the maintenance contract (in particular services of the type listed in clause 3) at the same time as the maintenance work or immediately afterwards, in as far as this is permitted by the nature of the service to be performed and the subsequent timetable for the deployment of maintenance personnel.

5.5 If damage is caused to the customer's instruments and this can be proved to be the result of delayed performance on the part of ZEISS, the customer is entitled to demand compensation for delayed performance up to the price of the maintenance work that was not performed on time.



6. Payment

- 6.1 As payment for the services rendered by ZEISS to the customer, ZEISS will charge the customer, depending on the specific type of maintenance contract, a flat maintenance fee for each contract of maintenance work or for a specific maintenance period, as the case may be.
- 6.2 Subject to clause 6.3 below, the flat maintenance fee will include all costs arising in connection with the service due, including travel costs and expenses. If, however, the maintenance personnel are held up in the performance of this work at the customer's premises for reasons that cannot be attributed to ZEISS, these waiting times can also be charged at the applicable hourly rate for maintenance personnel. The customer will also bear any additional costs incurred if, for reasons attributable to the customer, the maintenance work cannot be performed or cannot be performed in full within the agreed time.
- 6.3 Substances or materials used to maintain the instruments, aids, wearing parts, spare parts, exchanged parts and all services performed by ZEISS in addition to the services under this contract will be charged to the customer at the applicable ZEISS rates unless, depending on the specific type of contract they are already expressly included in the contract or supplied free of charge by the customer.
- 6.4 The rate of the flat maintenance fee is derived from the relevant maintenance contract. Goods and services tax, value-added tax and, if applicable, other statutory taxes or duties will also be charged at the rates prevailing at the time the maintenance contract is entered into. If ZEISS performs services abroad, the customer will also refund and reimburse to ZEISS all foreign taxes and duties connected with the services incurred by ZEISS.
- 6.5 All payments are subject to the goods and services and other taxes which may be prevailing at the relevant time, and are due within thirty (30) days from the date of the invoice. In the event of default in payment, ZEISS may demand default interest at an annual rate of four per cent. (4%) above the base lending rate of Deutsche Bank, on any outstanding amounts due and owing by the customer to ZEISS, accruable and calculated on a daily basis from the due date to the date of full repayment (before and after judgment).
- 6.6 The agreed flat maintenance fee is based on costs at the time the maintenance contract is concluded and it is fixed during the contract period. For subsequent renewal of contract, ZEISS is entitled to adjust or review, without prior notice to the customer, the maintenance fee in accordance with and to take into account any operating costs or any other relevant factors.

7. Customer's duties

- 7.1 The customer will make the instruments available to the maintenance personnel and representatives of ZEISS at the agreed time to allow them to perform the maintenance work, and will grant them access to the premises.
- 7.2 The customer will make the following services available free of charge for the duration of the maintenance work:
- 7.2.1 Tools (with the exception of special tools and measuring instruments) that need to be present at the installation concerned in accordance with the relevant accident-prevention regulations.
- 7.2.2 Appropriate support staff to operate the instruments and support the maintenance personnel, along with, if applicable, any aids that are required.
- 7.3 Any special safety and plant regulations in force at the customer's premises that must be observed by ZEISS during the performance of the maintenance work, must be pointed out, and if necessary explained in detail, to the maintenance personnel before the maintenance work begins. If any special instruction, training or, if applicable, tests in connection with the above require a significant amount of time, ZEISS reserves the right to make an additional charge on the basis of time cost.
- 7.4 The information required about the instrument to be maintained must be passed on and the associated documents made available to the maintenance personnel and representatives of ZEISS.
- 7.5 The customer will inform the maintenance personnel of any peculiarities and problems in relation to the instrument to be maintained without the need for ZEISS maintenance personnel to expressly request for such information.
- 7.6 The customer will take the appropriate steps to put in place the necessary security measures to ensure proper backup, protection and/or safeguarding of the data, information, image or any other material stored in the instrument to be maintained and/or the equipment of which the instrument is a part, before the customer makes them

available to ZEISS for purposes of carrying out the maintenance work. ZEISS shall not be liable to the customer in any way for any loss or damage whatsoever which may be suffered by the customer arising from the customer's failure to do so or the inadequacy or ineffectiveness of the measures put in place by the customer.

8. Warranty

- 8.1 The period of warranty for any maintenance work being carried out shall be for a period of three (3) months, starting from the time the maintenance work in question was first carried out. During the said warranty period, ZEISS is under an obligation to complete or rectify free of charge any maintenance work that has not been carried out fully or properly and ZEISS undertakes to eliminate free of charge any defects in the parts used within the scope of the maintenance work by rectifying or exchanging these parts.
- 8.2 If ZEISS fails to comply with the above obligations relating to completion, rectification or exchange, or fails to do so promptly, the customer shall grant to ZEISS a reasonable period of extension of time to enable ZEISS to comply with the same. ZEISS shall if it deems appropriate, extend the original warranty period by such further period as it may determine in its sole discretion.
- 8.3 Save as expressly provided herein, the customer is not entitled to make any other or further warranty claims. In particular, ZEISS provides no guarantee that the instruments subject to the maintenance work will operate free of interruption and faults.
- 8.4 Before the customer is entitled to enforce any warranty claims herein, it must first notify ZEISS of any defects or damage immediately after discovering them and do everything possible to limit the damage caused by the defect.
- 8.5 If the examination of a claim demonstrates that there is no case for a warranty claim, ZEISS is entitled to charge for this examination and the performance of the service at the applicable rates.

9. Limitation of liability

- 9.1 Notwithstanding anything contained herein, ZEISS shall not be liable to the customer nor shall the customer have any claim against ZEISS for loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims of compensation in respect of or arising out of any act, omission, default, misconduct or negligence of any of its employees, independent contractors or agents in the performance or purported performance of its obligations in carrying out the maintenance work, and except for the express warranties set out herein, ZEISS shall not be bound by nor be held liable to the customer for any representation (made innocently or negligently), promises or statements in connection with the maintenance work being carried out.
- 9.2 ZEISS shall not be liable to the customer or be deemed to be in breach of the maintenance contract by reason of any delay in performing, or any failure to perform, any of its obligations in relation to maintenance works, if the delay or failure was due to force majeure. For the purposes of this clause, force majeure shall mean any events which are unforeseeable or beyond the reasonable control of ZEISS, including without limitation, acts of God, fires, strikes, labour disputes, acts of terrorism, war, hostilities between nations, riot, civil disturbances, governmental restrictions, flood, hurricane, earthquake, exceptional adverse weather conditions or events of natural calamities or disasters, epidemics, infectious diseases, insurrections, blockades, changes in law, acts of government, shortages of materials or energy, power or electrical failures, embargoes, unforeseeable business interruption or transportation difficulties, or travel restrictions or travel warnings issued by governmental bodies or other regulatory or international bodies.
- 9.3 The customer acknowledges that it will not be able to use or operate the instrument, material or equipment part(s) delivered or made available to ZEISS for maintenance purposes and/or the equipment of which they are a part, from the date of assignment to ZEISS of the maintenance work up to and inclusive of the date of completion of the maintenance work on site or the date of receipt by the customer of the instrument, material or equipment part (as the case may be) on which the maintenance work was performed. Accordingly, the customer agrees that ZEISS shall not be liable to the customer in any way for any loss of business, sales, revenue or profit which may be suffered by the customer as a result of the non-use or non-operability during the aforesaid maintenance period of the instrument, material, equipment part(s) and/or the equipment of which they are a part.
- ## 10. Duration of the contract
- 10.1 The term of duration for each maintenance contract shall be that expressly stipulated in writing in each individual maintenance contract entered into by ZEISS and the customer.
- 10.2 Notwithstanding clause 10.1 above, ZEISS is entitled to terminate the maintenance contract without any prior written notice to the customer and at any time if:-
- (a) the customer is in default of any payments due and owing to ZEISS for a period of



- (b) more than 30 days; or
- (b) if the instrument has been repaired or maintained by third parties without ZEISS' prior written consent; or
- (c) if the maintenance work is made more difficult by changes to the configuration that have not been approved by ZEISS; or
- (d) if the instrument's specific environmental conditions no longer comply with the installation guidelines of ZEISS.

11. **General**

- 11.1 The customer hereby agrees that ZEISS or any member of the ZEISS international group of companies or its affiliates, shall be entitled to store and keep personal or business data relating to the customer, in its database system, solely for purposes of records of its business dealings or contractual relationship with the customer. ZEISS agrees that it will not use the data for any other collateral purpose.
- 11.2 The terms and conditions of the maintenance contract shall not in any way be amended or varied without the prior written consent of ZEISS.
- 11.3 ZEISS is a member of the ZEISS international group of companies, whose headquarters are in Oberkochen, Germany. Accordingly, ZEISS may perform any of its obligations or exercise any of its rights hereunder by itself, or through, or assign or transfer any of our rights hereunder to, any other member of the ZEISS international group of companies, provided that any act or omission of any such other member shall be deemed to be ZEISS' act or omission. The customer is not entitled to transfer or assign its rights and obligations under the maintenance contract to third parties without the prior written consent of ZEISS.
- 11.4 Save expressly for members of the ZEISS international group of companies, the parties do not intend that any term of the maintenance contract should be enforceable, by virtue thereof or otherwise, by any person who is not a party to the said contract.
- 11.5 The laws of the Republic of the Philippines shall govern and be used to construe the terms of the maintenance contract.
- 11.6 Any dispute arising out of or in connection with the Contract, including any question regarding its existence, validity or termination, shall be referred to arbitration administered by the Singapore International Arbitration Centre ("SIAC") in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules") for the time being in force, which rules are deemed to be incorporated by reference in this clause.

The seat of the arbitration shall be Singapore.

The language of the arbitration shall be English.

Valid from September 2017