

Terms and Conditions of Sale

1. DEFINITIONS. For the purpose of this Agreement, the following definitions shall apply:

- (a) Zeiss: Carl Zeiss de México, S.A. de C.V.
(b) Products: The equipment, parts, accessories and services to be sold by Zeiss to Buyer and listed on the face hereof;
(c) Buyer: The person or entity listed on the face hereof who is purchasing the Products and such person's or entity's heirs, executors, administrators, successors by merger or consolidation, or permitted assigns.
(d) Collateral: The products and their proceeds, together with any additions, accessions, increases, substitutions and replacements which are subject to Zeiss's security interest pursuant to this Agreement.

2. ORDER OF PRECEDENCE. These terms and conditions of sale take precedence over and supersede any additional or different terms and conditions set forth in any purchase order or other communication of Buyer, to which notice of objection is hereby given by Zeiss. Zeiss's acceptance of such purchase order is limited to these terms and conditions and is expressly made conditional on Buyer's assent to these terms and conditions. Acceptance by Buyer of the Products or any portion thereof shall be deemed to constitute Buyer's assent to all of the terms and conditions set forth herein. Neither Zeiss's commencement of performance nor delivery shall be deemed or construed as acceptance by Zeiss of Buyer's additional or different terms and conditions.

3. PRICE. Unless otherwise indicated on the face hereof, prices shown (i) do not include any additional fittings or adjustments, and (ii) are net prices Ex-Works origin plant in USA or Germany or such other shipping point as designated by Zeiss, exclusive of delivery and installation charges including, without limitation, rigging and transportation charges, the cost of any transit insurance and the cost of installation. Any tax, fee, levy, assessment, excation, imposition or other charge imposed by any local, state or federal government now or hereafter levied upon the production, sale, use, import, export, ownership or shipment of the Products, shall be paid for by Buyer, except for taxes on Zeiss's net income.

4. CLAIMS FOR DAMAGE IN TRANSIT. Zeiss's responsibility shall cease upon delivery of the Products to the carrier Ex-Works origin plant in USA or Germany or such other shipping point as designated by Zeiss. Buyer shall examine all Products carefully immediately upon delivery and before signing any receipt. If the Products are visibly damaged or there is any shortage, Buyer shall note same on the shipping receipt and send notice of such damage or shortage to Zeiss within three (3) natural days of receipt of delivery. Buyer's signature on a receipt without notation of damage or shortage or Buyer's failure to send notice to Zeiss of damage or shortage within such three (3) day period shall constitute conclusive evidence of Buyer's receipt of the Products in satisfactory condition. All risk of loss of or damage to the Products is assumed by Buyer after Zeiss has made delivery of the Products to the carrier for shipment to Buyer, and Buyer's sole recourse for any loss of or damage to the Products shall be against the carrier.

5. DELIVERY DATES. Delivery dates quoted or acknowledged by Zeiss are not an agreement as to delivery by a specific date but, rather, are an estimate of the delivery date. Shipments of Products purchased hereunder are subject to Zeiss's determination of availability. Zeiss shall use reasonable efforts to meet delivery dates stated in the acknowledgment. However, Zeiss shall not be liable for any delay in shipment or any failure to ship Products against an accepted order or for any damages suffered thereby. Buyer's sole remedy in the event that any delivery of Products is delayed shall be to cancel this Agreement by notice received by Zeiss prior to shipment. Said remedy may only be exercised in the event that delivery of Products is delayed more than sixty (60) natural days beyond the delivery date stated in the acknowledgment.

6. FAILURE TO TAKE DELIVERY. In the event that Zeiss is ready to ship, or has shipped, Products conforming to this Agreement to Buyer in accordance with the delivery terms stated herein, and Buyer fails to take delivery or delays delivery or notifies Zeiss that delivery will be delayed or rejected, Zeiss may at its election, treat such failure, delay or notice of delay or rejection as a repudiation of this Agreement by Buyer and pursue all remedies available to it at law, including, without limitation, storage of the Products for the account of Buyer at Buyer's sole cost and expense, in which event all risk of loss or damage to the Products shall be assumed by Buyer, and/or cancellation of this Agreement. In the event of cancellation of this Agreement by Zeiss, Buyer shall be liable to Zeiss for its damages, including loss of profits and Zeiss's reasonable attorneys' fees, court filing fees and other disbursements incurred in collecting such damages.

7. FORCE MAJEURE. Zeiss shall not be liable to Buyer for any delay or failure by Zeiss to perform its obligations hereunder when such delay or failure is directly or indirectly due to accident (in manufacture or otherwise), fire, flood, seizure, riot, war, embargo, labor shortages or difficulties, inadequate transportation facilities, shortage of material or supplies, delay or default on the part of Zeiss's suppliers, regulation or order by government authority, or any other casualty or cause beyond the control of Zeiss. Zeiss may, at its option, cancel this Agreement or delay performance hereunder for any period reasonably necessary due to any of the foregoing, during which time this Agreement shall remain in full force and effect. Zeiss shall have the further right to allocate its available materials and products between its own uses and its customers in such manner as Zeiss may consider fair and reasonable. Zeiss shall have the right to make partial shipments to Buyer and invoice accordingly, and Buyer shall be obligated to pay for such partial shipments when invoiced.

8. ACCEPTANCE. Buyer shall be deemed to have accepted the Products upon the earlier of (a) delivery to Buyer, if installation by Zeiss is not included in the purchase price; (b) certification by Zeiss in such form as Zeiss shall prescribe that the Products have been installed and meet Zeiss's specifications, if installation by Zeiss is included in the purchase price; (c) utilization of the Products or any portion thereof by Buyer for any purpose.

9. PAYMENTS. Payment as stated on quotation.

10. SECURITY AGREEMENT. This is a security agreement to secure payment of the purchase price of the Products. Buyer, by its signature on the face hereof, hereby grants, and Zeiss reserves, a purchase money security interest, for the full amount of the purchase price, in the Collateral. A description of the Collateral appears on the face hereof. Buyer hereby authorizes Zeiss or its assignee to sign any document required to perfect Zeiss's security interest in the Collateral including, without limitation, financing statements under the Uniform Commercial Code. Payment in full of the purchase price for the Products shall release the security interest. At Buyer's expense, the Collateral shall be insured by Buyer in favor of Zeiss against loss or damage from fire and other casualty. Buyer shall be in default under this security agreement, and Zeiss shall be entitled to enforce all of its rights and remedies, including all rights and remedies of a secured party under the Uniform Commercial Code, if (a) Buyer fails to insure the Collateral in favor of Zeiss as required by this security agreement, or (b) Buyer, without Zeiss's express prior written consent, sells, leases, disposes of or permits the Collateral to be encumbered in any way, or (c) Buyer fails to maintain the Collateral in good order and repair, or (d) Buyer fails to pay Zeiss the purchase price for the Collateral when due.

11. INSOLVENCY. Except as may otherwise be prohibited by law, in the event that Buyer becomes insolvent or unable to pay its debts as they become due, or in the event of any voluntary or involuntary bankruptcy proceedings by or against Buyer, or appointment of a receiver or assignment by Buyer for the benefit of its creditors, Zeiss may elect to cancel any of its obligations hereunder and all obligations of Buyer to Zeiss, whether arising out of this Agreement or otherwise, shall immediately become due and payable in full.

12. LIMITED WARRANTY.

12.1. Zeiss warrants that the Products are free from defects in material and workmanship. Upon notice of any defect in material and workmanship, Zeiss shall have the right to inspect the Products and to investigate all claims for the purpose of determining whether the Products are defective. If Zeiss determines that the Products are defective and covered by this limited warranty, then Zeiss shall, at its option, have the right either to repair or replace any defective Products. Zeiss's liability, and Buyer's exclusive remedy, for defective Products shall be limited solely to such repair or replacement. No Products shall be returned to Zeiss without Zeiss's prior written consent.

12.2 The effectiveness of the warranty contained herein shall, with respect to any particular defect, be conditional upon (i) Buyer's substantiation that the Products have been stored, maintained and operated in accordance with such instructions as are given by Zeiss to Buyer and with standard industry practice and have not been damaged as a result of negligence, improper handling or accident on the part of any person other than Zeiss, and (ii) Buyer's payment of all invoices for the Products or other charges to which Zeiss may be entitled, and (iii) Buyer's exclusive use of persons approved or authorized by Zeiss to effect any repairs to the Products, and (iv) Buyer's substantiation that no modification or alteration of the Products have been made without the prior written consent of Zeiss. Subject to the foregoing, the warranty contained herein shall remain in effect for 12 months from the date that the Products are shipped by Zeiss, unless a different warranty period shall be stated on the face hereof.

12.3 Different warranty terms are available for some product types, and are incorporated herein if noted on the face hereof. Such different warranty terms supersede the terms hereof only to the extent that they are inconsistent herewith.

12.4 THE WARRANTY CONTAINED IN THIS SECTION IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. BUYER'S SOLE AND EXCLUSIVE REMEDY ON ANY CLAIM OF ANY KIND FOR ANY LOSS OR DAMAGE ARISING OUT OF OR IN ANY WAY RELATED TO THE MANUFACTURE, SALE, DELIVERY OR USE OF THE PRODUCTS SHALL BE AS PROVIDED HEREIN AND SHALL IN NO CASE EXCEED THE LESSER OF THE COST OF REPAIR OR REPLACEMENT. ZEISS SHALL NOT BE LIABLE IN CONTRACT OR IN TORT TO BUYER OR ANY OTHER PERSON FOR ANY SPECIAL INCIDENTAL OR CONSEQUENTIAL DAMAGES WITH RESPECT TO ZEISS'S OBLIGATIONS HEREUNDER, SUCH AS, BUT NOT LIMITED TO, DAMAGE TO, LOSS OF, OR LOSS OF THE USE OF OTHER PROPERTY OR EQUIPMENT, LOSS OF PROFITS OR REVENUES OR CLAIMS OF BUYER OR OF CUSTOMERS OF BUYER FOR LOSSES OF ANY KIND.

12.5 This warranty is non-transferable and non-assignable and may be enforced only by Buyer.

12.6 Zeiss gives no warranty whatsoever with respect to parts with a limited technical lifetime such as data discs and cassettes. Components of products produced by other manufacturers are warranted by Zeiss only to the extent that such components are warranted by the manufacturer supplying such components to Zeiss and to the extent that such warranties may be assigned by Zeiss to Buyer. If Zeiss's software is included in this Agreement, Zeiss warrants that its software, which is designed for use with a particular hardware product, where properly installed, will not fail to execute its programming instructions due to defects in materials and workmanship. If Zeiss receives notice of a defect during the applicable warranty period, Zeiss will repair or replace software media which do not warrant that the operation of the software will be uninterrupted or error-free.

13. RETURN OF MERCHANDISE. Zeiss shall not accept any return of the Products unless previously authorized by Zeiss in writing, whether under warranty or otherwise. Any returns other than under warranty will be subject to a reasonable restocking charge.

14. PATENT INDEMNITY. Zeiss shall defend or settle any claim made or any suit or proceeding brought against Buyer which is based on an allegation that any Products infringe a third-party patent, provided that Zeiss is timely notified of any such claim, suit or proceeding and is given, by Buyer, all necessary information, cooperation, and the sole authority to defend or settle the same at Zeiss's expense. In the event that the Products are, in such suit or proceeding, held to infringe any patent and the use of such Products is enjoined, or in the case of a settlement of such suit or proceeding, Zeiss shall have the option, at its own expense, (i) to procure for Buyer the right to continue the use of the Products, or (ii) to modify the same so that the Products become non-infringing, or (iii) refund the depreciated value of the Products and accept return thereof. Zeiss shall have no liability for claim of infringement resulting from compliance by Zeiss with Buyer's designs, specifications or instructions, or in the event of modification of the Products by Buyer, or use by Buyer of the Products other than as specified in Zeiss's publications, or use by Buyer of the Products together with products not supplied by Zeiss. In no event shall Zeiss have any liability for any infringement in excess of the purchase price of the infringing Products.

15. NOTICES. All notices, consents, requests, instructions, approvals and other communications hereunder shall be in writing and given by personal delivery, or by certified mail, return receipt requested, or by express delivery service to the address of Buyer or Zeiss as shown on the face hereof or to such other address as any party hereto may, from time to time, designate in writing. Notices shall be deemed to be effective on the date personally delivered, or three (3) natural days after deposited in the United States mail as certified mail, or one day after deposited with an express delivery service, as the case may be.

16. APPLICABLE LAW. This Agreement shall be governed by and construed under the laws of the "Código de Comercio de la Ciudad de México" under the jurisdiction of the city of México, D.F.

17. JURISDICTION AND VENUE. Buyer hereby submits to the jurisdiction of the city of México, D.F. courts for the resolution of any dispute arising directly or indirectly from this Agreement. The exclusive venue of any action, proceeding or dispute resolution procedure arising directly or indirectly from this Agreement shall be the city of México, D.F. Buyer waives any objection to venue in México, D.F. and waives any right to assert that México, D.F. is an inconvenient forum.

18. ENTIRE AGREEMENT. This writing is intended by the parties as a final expression of their agreement and as a complete and exclusive statement of its terms. This writing supersedes any previous or contemporaneous communications, representations or agreements by either party whether verbal or written. No representations, understanding or agreements have been relied upon in making this Agreement other than as specifically set forth herein. This agreement can only be modified in a writing signed by the parties hereto.

19. NO WAIVER. Failure or delay by Zeiss in seeking enforcement of any term or condition hereof at one time shall not constitute a waiver of the right to enforce such term or condition in the future, nor of Zeiss's right to enforce any other term or condition hereof.

20. SEVERABILITY OF PROVISIONS. In the event that any one or more of the provisions contained in this Agreement are determined to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

21. ASSIGNMENT. No assignment of rights or transfer of obligations under this Agreement shall be made by Zeiss or Buyer without the prior written consent of the other party, provided however, that Zeiss may, without the consent of Buyer, assign its rights and transfer its obligations under this Agreement to any corporation which is a parent, subsidiary or affiliate of Zeiss.