



General Terms and Conditions of Purchase

Effective from 25.01.2016

1. Definitions

- “Conditions”**: the terms and conditions set out in this document as amended from time to time.
- “Contract”**: the contract between the Supplier and Zeiss for the sale and purchase of goods and/or services in accordance with these Conditions.
- “Delivery Time”**: shall have the meaning as defined in clause 4.1.
- “Order”**: any order by ZEISS for goods and/or services to be supplied and/or performed by the Supplier.
- “Supplier”**: the person, firm or company from whom Zeiss purchases goods and/or services.
- “Writing”**: a reference to writing or written shall include fax and e-mails but not SMS and/or other means of similar electronic communication.

2. Scope

- 2.1 Any Contract for the sale and delivery of goods and/or services by Supplier to ZEISS shall be subject to these Conditions, which shall apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate or which are implied by trade, custom, practice or course of dealing.
- 2.2 Any Supplier's general terms and conditions shall only be applicable to the extent ZEISS has expressly agreed such terms in Writing.

3. Orders

- 3.1 The Order constitutes an offer by ZEISS to purchase the goods and/or services in accordance with these Conditions.
- 3.2 The Order shall be deemed accepted on the earlier of:
- (a) the Supplier issuing a written acceptance of the Order; and/or
 - (b) the Supplier doing any act consistent with fulfilling the Order, at which point the Contract shall come into existence.
- 3.3 ZEISS shall be entitled at any time to cancel Orders free of charge until such point at which the Contract has come into existence in accordance with clause 3.2.
- 3.4 Any changes or additions to any Orders by the Supplier must be agreed by ZEISS in Writing.
- 3.5 The Supplier waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Supplier that is inconsistent with these Conditions.

4. Time-limits, consequences of delay

- 4.1 Agreed dates and times for deliveries of goods and/or services (**“Delivery Time”**) shall be binding on the Supplier and the Supplier acknowledges and agrees that under the Contract time for deliveries shall be of the essence. If delays are expected or occur Supplier shall immediately notify ZEISS in Writing.
- 4.2 If Supplier fails to deliver or perform the goods and/or services by the Delivery Time, ZEISS shall be entitled (without prejudice to any other remedy available to ZEISS) to exercise one or more of the following remedies:
- (a) reject the goods and/or services,
 - (b) require a full refund of the purchase price for any rejected goods and/or services,
 - (c) terminate the Contract,
 - (d) recover from the Supplier any costs incurred by ZEISS in obtaining substitute goods and/or services from a third party, and
 - (e) claim compensation for any other costs, loss, damage or expense suffered by ZEISS which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract.

5. Prices

- 5.1 Prices shall be fixed prices as set out in the Order, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date the Contract came into existence.
- 5.2 The prices shall include all expenses in connection with the goods and/or services provided by Supplier, including (without limitation) the costs of packaging, insurance, carriage and performance but excluding amounts in respect of value added tax (VAT), which ZEISS shall additionally be liable to pay to the Supplier at the prevailing rate subject to receipt of a valid VAT invoice.
- 5.3 No extra charges for any goods and/or services shall be effective unless agreed in Writing by ZEISS.



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6. Execution, delivery

- 6.1 Supplier may not subcontract any or all of its rights or obligations under the Contract without the prior written consent of ZEISS, except where such obligations merely concern the supply of standard parts related to the goods and/or services. In the event of any permitted subcontracting, the Supplier shall remain responsible for all acts and omissions of its subcontractors as if they were its own.
- 6.2 Any Orders accepted by the Supplier shall be binding with regard to the nature and quantity of the goods and/or services ordered and the Delivery Time. Part-deliveries shall require the prior written consent of ZEISS. However, failure by the Supplier to deliver any one instalment on time or at all or any defects in an instalment shall entitle ZEISS to the remedies set out in clause 12.4.
- 6.3 All deliveries must be accompanied by a delivery note stating the ZEISS Order number as well as details of the nature and quantity of the contents of any delivered consignment.
- 6.4 Deliveries shall generally include customary one-way standard packaging. If reusable packaging is used, the fact shall be clearly stated on the delivery note. Return of the reusable packaging shall be carried out at Supplier's cost and risk. If ZEISS has expressly agreed in Writing to pay for any packaging costs, then these costs shall be calculated on basis of verifiable net costs.
- 6.5 Where required, a technical description and instructions for use shall be included free of charge. Where applicable technical data sheets regarding the energy efficiency shall be included. In case of software products, the delivery obligation shall only have been met once all the (systems and user) documentation has also been delivered. For software that is specifically developed for ZEISS, the source code shall also be delivered and assigned to ZEISS.
- 6.6 When Supplier is delivering goods or providing services on ZEISS' premises, Supplier shall and shall procure that its employees, agents and/or subcontractors at all times adhere to ZEISS' health & safety policy and any other policies, rules and/or directions concerning (without limitation) security, environmental and fire protection and efficient use of energy currently in force at ZEISS' premises from time to time.

7. Invoices, payments

- 7.1 Invoices for the price of the goods and/or service plus VAT at the prevailing rate (if applicable) shall be sent by the Supplier to ZEISS separately on or at any time after completion of delivery. Invoices shall state ZEISS' Order number, the date of the Order, the Supplier's VAT registration number, and shall be accompanied by any supporting documents that ZEISS may reasonably require.
- 7.2 Payments by ZEISS shall be due 60 days after delivery of the goods and/or services and/or receipt of the Supplier's invoice, whichever occurs later. If ZEISS chooses to make payment of an invoice within 14 days from the later date of the delivery of the goods and/or services and/or receipt of the Supplier's invoice, ZEISS shall be entitled to a 3% discount on the purchase price. Payment shall be deemed to have taken place on the day ZEISS' bank has received the transfer order.
- 7.3 Payments shall not be deemed to constitute an acknowledgement by ZEISS that the goods and/or services are in accordance with the Contract. In the event that goods and/or services are delayed, defective or incomplete, ZEISS shall be entitled, without prejudice to ZEISS' other remedies available to it under the Contract, to withhold payment of the purchase price under the Contract until Supplier has delivered the goods or performed the services in accordance with its contractual obligations.

8. Compliance with applicable laws and regulations

- 8.1 Supplier shall be obliged to comply with all applicable laws and regulations, including but not limited to such laws and regulations relating to workplace and consumer safety and environmental protection. Supplier shall indemnify and hold ZEISS harmless from any and all claims or demands by third parties resulting from Supplier's failure to comply with such applicable laws and regulations.
- 8.2 Without prejudice to the generality of clause 8.1, Supplier shall be obliged to comply with all applicable regulations regarding hazardous substances and the Supplier shall not use any banned substances. Supplier shall specify all substances to be avoided and all dangerous substances and submit safety data sheets (in English language) with any Supplier's offers and/or quotations and also with the delivery note of Supplier's delivery of goods or services which contain or require use of such substances. If Supplier has any evidence that its delivery may have violated restrictions on substances or contained banned substances Supplier shall be obliged to immediately notify ZEISS in Writing with a description of such violation and/or content.
- 8.3 With respect to deliveries of goods and performance of services Supplier alone shall be responsible for compliance with regulations for the prevention of accidents. Adequate safety equipment and manufacturer's instructions shall be supplied by Supplier to ZEISS free of charge.



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9. Import and export provisions, conflict minerals

- 9.1 For goods and services from a country (other than the UK) that is within the EU, the EU value added tax identification number shall be quoted on any invoice issued by the Supplier. In case Supplier is located in an EU-member country, imported goods shall be delivered to ZEISS duty paid unless expressly agreed otherwise by ZEISS in Writing.
- 9.2 Supplier shall comply with all export regulations (especially the export control and customs regulations) applicable in the country of destination and at Supplier's place of business and - where applicable - the United States of America. Supplier shall clearly show the corresponding classification (Export Control Classification Number) as well as the applicable statistical product number (HS Code) and the country of origin in the documentation (shipping note, invoice, etc.) provided for all deliverables that are subject to export licenses or US (re-)export regulations. Supplier shall be obliged to provide at its own expense the required declarations and information under Regulation (EC) No. 1207 / 2001, allow checks to be performed by customs officials and furnish the requisite official letters of confirmation.
- 9.3 Where goods or services to be delivered to ZEISS involve technologies and/or technical knowledge, which are subject to US (re-)export regulations (EAE, ITAR), the European Dual Use regulation or to the UK Strategic Export Control List, Supplier shall be obliged to inform ZEISS in Writing about this circumstance.
- 9.4 Supplier has implemented reasonable measures to ensure that its goods and/or services are in compliance with the requirements for use of so-called conflict minerals (e.g. tantalum, tungsten, tin or gold) under Section 1502 of the Dodd-Frank Act; the materials Supplier delivers to ZEISS shall not contain conflict minerals that directly or indirectly finance or benefit armed groups in the Democratic Republic of the Congo or adjoining countries.

10. Passage of risk, acceptance, title

- 10.1 Irrespective of the agreed price terms the risk passes to ZEISS in case of delivery without installation or assembly upon delivery of the goods at the delivery address provided by ZEISS and in the event of delivery with installation or assembly upon successful completion of the acceptance of the installation or assembly of the goods by ZEISS. Commissioning or use of any goods and/or services shall not have as its effect the passing of risk.
- 10.2 ZEISS shall acquire title to any goods and/or services on delivery and/or on payment whichever occurs earlier.

11. Notification of defects, expenses

- 11.1 ZEISS shall not be obliged to examine delivered goods for defects. ZEISS will inform Supplier about defects as soon as reasonably possible after their detection according to the circumstances of the orderly course of business.
- 11.2 If ZEISS returns defective goods to Supplier, ZEISS shall be entitled (without prejudice to any other remedy available to ZEISS in this respect) to debit back to Supplier the invoice amount paid plus a lump sum for expenses of 5% of the price of the defective goods. ZEISS reserves the right to proof higher expenses. Supplier's right to proof lower or no expenses shall be reserved.

12. Warranty relating to defects of quality and title

- 12.1 The Supplier shall ensure that the goods and/or services shall:
 - (a) correspond with their description and the agreed specification,
 - (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by ZEISS expressly or by implication, and in this respect the Customer relies on the Supplier's skill and judgement,
 - (c) be free from defects in design, material and workmanship and remain so for 12 months after delivery,
 - (d) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the goods and/or services, and
 - (e) be performed with all due care, skill and diligence and in accordance with best industry practice relevant to the goods and/or services in question.
- 12.2 Goods and/or services which do not comply with the undertakings in clause 12.1 must be replaced by deliveries that are free from defect immediately on request by and without further cost to ZEISS. This position shall be without prejudice to any other remedy available to Zeiss in respect of the goods and/or services failing to comply with clause 12.1.
- 12.3 Supplier shall require the express consent by ZEISS in order to repair defective goods and/or services instead of replacing them. Supplier shall bear the risk of loss during the time in which the goods and/or services to be repaired are not in the possession or control of ZEISS.



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12.4 If Supplier fails to remedy any defect within a reasonable period granted by ZEISS for this purpose, ZEISS shall be entitled (without prejudice to any other remedy available to ZEISS) to exercise one or more of the following remedies:

- (a) reject the goods and/or services or any part thereof,
- (b) require a full refund of the purchase price for any rejected goods and/or services,
- (c) terminate the Contract,
- (d) recover from the Supplier any costs and expense incurred by ZEISS in obtaining substitute goods and/or services from a third party, and
- (e) claim damages for any other costs, loss or expense suffered by ZEISS which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract.

12.5 In urgent cases (especially where in the reasonable opinion of ZEISS operating safety is in jeopardy or for the purposes of preventing damage or loss), for the removal of insignificant defects and in the event that Supplier is in default of remedying a defect, ZEISS shall be entitled, after notifying Supplier, to immediately remedy the defect and any resultant damage or loss by itself or through third parties at Supplier's expense. This shall also apply if Supplier delivers the goods and/or services late and ZEISS has to remedy defects immediately so that ZEISS does not miss its own delivery deadlines.

12.6 If Supplier has to deliver and/or perform in accordance with ZEISS' specifications, Supplier expressly guarantees the conformity of goods and/or services with such specifications. If delivery and/or performance deviates from such specifications, ZEISS shall have the rights under section 12.4.

13. Repeated default

If Supplier is repeatedly or persistently delivering defective goods and/or services which do not comply with the undertakings in clause 12.1 or any agreed specifications or is repeatedly or persistently delivering goods and/or services after the Delivery Time (each a "**Repeated Default**") ZEISS shall on written notice to the Supplier be entitled to exercise the remedies set out in clause 12.4. In the case of a Repeated Default by the Supplier, ZEISS shall in addition be entitled to rescind and/or terminate any other Contracts that it has with the subject Supplier with regards to delivery of goods and/or services.

14. Indemnification

14.1 The Supplier shall keep ZEISS indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by ZEISS as a result of or in connection with:

- (a) any claim made against ZEISS for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the supply or use of the goods and/or services, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
- (b) any claim made against ZEISS by a third party for death, personal injury or damage to property arising out of or in connection with any defects in goods and/or services, to the extent that the defects are attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors; and
- (c) any claim made against ZEISS by a third party arising out of or in connection with the supply of the goods and/or services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors.

14.2 This clause 14 shall survive termination of the Contract.

15. Technical documentation, tools, means of production

15.1 The Supplier acknowledges that all materials, equipment and tools, drawings, specifications, data and any other materials supplied by ZEISS to the Supplier under and/or in connection with a Contract ("**ZEISS Materials**") and all rights in the ZEISS Materials are and shall remain the exclusive property of ZEISS. The Supplier shall hold the ZEISS Materials on trust as a bailee for ZEISS and shall maintain them in good condition until returned to ZEISS, and not dispose or use the same other than in accordance with ZEISS' written instructions or authorisation.

15.2 In the event that Supplier creates any materials, equipment, tools, drawings, specifications, and/or data in connection with the manufacture of any goods or performance of any services under the Contract ("**Contract Materials**") all rights in such Contract Materials shall be vested in ZEISS and Supplier shall keep these Contract Materials safe for ZEISS free of charge. The Supplier shall do any act and execute any document



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which ZEISS reasonably requires in order to have its rights vested in such Contract Materials from time to time.

15.3 Supplier shall be obliged to service and maintain any ZEISS Materials and Contract Materials and remedy any defects caused by normal wear and tear at the Supplier's expense.

16. Provision of materials

16.1 The Supplier shall ensure that any ZEISS Materials and Contract Materials shall be adequately and safely stored free of charge to ZEISS. Supplier shall keep ZEISS Materials and Contract Materials separate from its and any property of third parties and shall mark them as the property of ZEISS.

16.2 In the event that Supplier processes or transforms the ZEISS Materials or Contract Materials provided, this shall be deemed to have been done on behalf of ZEISS. ZEISS shall become the direct owner of the resulting new objects. If the materials provided only constitute a part of the new objects ZEISS shall be entitled to ownership of the new objects on a pro rata basis according to the value of the materials provided and contained therein.

17. Confidentiality

17.1 The Supplier ("**receiving party**") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by ZEISS ("**disclosing party**"), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.

17.2 This clause 17 shall survive the termination of the Contract.

18. Miscellaneous

18.1 Assignment and other dealings

- (a) ZEISS may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract.
- (b) The Supplier may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of ZEISS.

18.2 Entire agreement

This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

18.3 Variation

Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in Writing and signed by ZEISS.

18.4 Waiver

A waiver of any right or remedy is only effective if given in Writing and shall not be deemed a waiver of any subsequent breach or default.

18.5 Severance

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

18.6 Notices

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in Writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in



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Writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or email.

- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address of the registered office of the recipient party, if sent by pre-paid first class post or other next working day delivery service, at 9:00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or email, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in legal action.

18.7 Third party rights

No one other than a party to this Contract and their permitted assignees shall have any right to enforce any of its terms.

18.8 Governing law

The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.

18.9 Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).