



General Terms and Conditions of Sale

1. GENERAL

- 1.1 Any delivery of goods and services by Carl Zeiss Canada Limited or Carl Zeiss Vision Canada Inc. ("ZEISS") as the seller to the customer ("Customer") shall be subject to the Terms and Conditions of Sale set forth herein exclusively, except where other agreements have been explicitly made.
- 1.2 Any of the Customer's terms and conditions that are inconsistent with or supplement the Terms and Conditions of Sale set forth herein shall only apply to the extent ZEISS has explicitly consented in writing. Without such consent, delivery of goods and services of or by ZEISS shall be based exclusively on the Terms and Conditions of Sale even if the Customer has referred to its own terms and conditions in its order or otherwise.
- 1.3 Any claims held against ZEISS may not be assigned to third parties.
- 1.4 The sale, resale and the disposal of goods and services including any associated technology or documentation may be governed by Canadian export control regulations as well as by the export control regulations of further countries. Any resale of goods to embargoed or sanctioned countries or persons, or to persons that use or may use the goods for military purposes, ABC weapons or nuclear technology is prohibited or subject to an official license. Customer represents and warrants by its order the conformity with such statutes and regulations and that the goods and services will not directly or indirectly be delivered into or to any such embargoed or sanctioned countries or persons or to countries that prohibit or restrict the import of such goods or services, and that Customer has obtained all licenses required for export and import.

2. INFORMATION, ADVICE

Information and advice in relation to ZEISS' goods and services are based on ZEISS' existing experience. Any values quoted as part thereof, including but not limited to performance data, are average values determined through experiments under standard laboratory conditions. ZEISS does not assume any obligation to precisely meet the quoted values and possible areas of application. Section 10 of these Terms and Conditions of Sale governs any issues of liability.

3. PRICES, COST ALLOCATION

- 3.1 Only the prices quoted in the order confirmation of ZEISS shall apply. Additional services will be invoiced separately.
- 3.2 All prices are quoted as net prices and do not include value added or excise (including GST, HST and QST, as applicable) tax, which is to be paid additionally by the Customer in the amount specified by applicable law.
- 3.3 Unless otherwise expressly agreed in writing upon conclusion of the contract, the prices are quoted ex works ZEISS or the manufacturer specified in the order confirmation of ZEISS, using these Terms and Conditions of Sale. In particular, Customer shall bear all 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 14.4 applies to any other or subsequent agreements.

4. DELIVERY

- 4.1 Unless otherwise expressly agreed, ZEISS shall deliver ex works (EXW INCOTERMS 2010) ZEISS or the manufacturer specified in the order confirmation of ZEISS, using these Terms and Conditions of Sale.
- 4.2 Delivery periods shall only be deemed to have been agreed by ZEISS if they have been expressly confirmed in writing. Delivery periods shall begin on the date of the order confirmation by ZEISS, however, in no case prior to settlement of all details relating to an order including the furnishing of any required official certificates. Delivery periods shall be deemed to be met on delivery of goods to a carrier for shipment to the Customer or on timely notification of readiness to ship if the delivery of goods and services cannot be shipped in time through no fault of ZEISS.
- 4.3 With respect to periods and dates which are not fixed in the order confirmation, the Customer may set a reasonable delivery period for delivery and performance two weeks after the expiry of such period or date. ZEISS shall only be in default after expiry of such delivery period and upon written reminder of the Customer delivered to ZEISS. In all other respects the occurrence of delay in delivery shall be governed by applicable law.



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4.4 Without prejudicing ZEISS' further legal rights including but not limited to rights due to default of Customer, periods and dates shall be extended by the period of time during which the Customer fails to comply with its obligations towards ZEISS.

4.5 ZEISS is entitled to make partial deliveries and provide partial services if these are reasonable for the Customer.

4.6 Due to a failure of performance for which ZEISS is not responsible and which does not consist of a defect (in particular delay in delivery or performance), the Customer is only entitled to rescind the contract after two reasonable grace periods unsuccessfully expired unless the hindrance is merely temporary in nature and a postponement of the delivery is reasonable for the Customer.

4.7 The Customer is not entitled to rescind the contract due to a failure of performance including a defect for which ZEISS is responsible, unless ZEISS fails to remedy such failure of performance in accordance with these Terms and Conditions of Sale or within a reasonable period of time .

4.8 Any contractual or statutory right of a Customer to rescind the contract, which the Customer fails to exercise within a reasonable period of time set by ZEISS, shall be forfeited.

4.9 The rights of the Customer according to section 10 and the legal rights of ZEISS remain unaffected.

5. SHIPMENT, PASSING OF RISK

5.1 ZEISS shall only be responsible to the Customer for the shipment of goods if this has been expressly agreed in writing by ZEISS. Subject to section 5.2 or any other express agreement, shipment and transport of goods shall be at the risk and expense of the Customer.

5.2 If ZEISS, at the request of the Customer, ships goods to another place than the place of intended use or installation, the risk of accidental deterioration and accidental loss shall pass to the Customer as soon as ZEISS has handed the goods over to the person specified to carry out the shipment.

5.3 Unless otherwise agreed in writing with the Customer, ZEISS reserves the right to ship goods through its own shipper.

5.4 If a shipment is delayed for reasons to be attributed to the Customer, the risk of accidental deterioration, loss and destruction shall pass to the Customer upon notification of ZEISS' readiness to ship. Storage costs after

passing of risk shall be borne by the Customer. Further claims remain unaffected.

5.5 If the Customer defaults in accepting goods, ZEISS shall be entitled to claim compensation for the expenses incurred by ZEISS and with default of acceptance the risk of accidental deterioration, loss and destruction shall pass to the Customer.

6. PAYMENT

6.1 Payment by the Customer shall be made in full within 30 days from the date of the invoice. Payment shall be considered to have been made on the day the payable sum is received by ZEISS. Bills of exchange and cheques shall not be deemed payment until after they have been honoured and will be accepted without any obligation to make timely presentation and timely protest.

6.2 Immediately upon default of payment or from the due date, ZEISS shall be entitled to demand interest at the "prime rate" from time to time published by the Bank of Canada plus 9 percent per annum. ZEISS reserves the right to claim a higher actual damage.

6.3 Customers may only offset against a counterclaim which is uncontested by ZEISS or has been determined in favour of Customer by a court of competent jurisdiction in a final and non-appealable judgement.

6.4 Any of ZEISS' receivables shall be immediately payable in the event of a default in payment, a notice given in protest against a bill of exchange or suspension of the Customer's payments, independent of the term of the bills of exchange which may have already been accepted. In all cases mentioned in the prior sentence, ZEISS shall also be required to perform remaining deliveries only against advance payment or provision of security, and, if no such advance payment is made or security provided within a two-week time period, to rescind the contract without another grace period. This shall not affect any further claims of ZEISS.

7. RETENTION OF TITLE

7.1 ZEISS reserves the right of ownership of delivered goods and services ("goods subject to retention of title") until the purchase price of the goods subject to retention of title has been paid in full. ZEISS shall be notified by Customer immediately of any seizure or other access to the goods subject to retention of title by third parties; the same shall apply if an application for the opening of insolvency, bankruptcy or other similar proceedings has been filed.



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- 7.2 If the goods subject to retention of title are processed or transformed, the processing and transforming is carried out in the name of and for ZEISS as manufacturer. In the event of processing, transforming, combining or intermixture of goods subject to retention of title with other goods by the Customer, ZEISS shall be entitled to co-ownership of any new object inasmuch as the invoiced value of goods subject to retention of title relates to the value of the other involved goods. Where ZEISS loses ownership due to processing, transforming, combining or intermixture with other goods, the Customer herewith and without further act or formality transfers ownership of the new object to ZEISS to the extent of the value of the goods subject to retention of title. Customer shall be responsible for holding the new object in safe custody on the behalf of ZEISS and at Customer's own expense. Any rights of ownership or co-ownership resulting from processing, transforming, combining or intermixture shall be deemed to be goods subject to retention of title within the meaning of section 7.1.
- 7.3 The Customer is only entitled to resell goods subject to retention of title or to process, transform or combine such goods or mix them with other property within the scope of proper business operations and as long as the Customer is not in default. The Customer shall be prohibited from taking any other disposition regarding goods subject to retention of title until the purchase price of the goods subject to retention of title has been paid in full. All enforcement costs will be charged to the Customer if and to the extent that they cannot be collected from the Customer or a third party. If the Customer grants its buyer additional time for payment of the sales price, the Customer shall reserve title to the goods subject to retention of title for itself on the same conditions upon which ZEISS has reserved its title when delivering goods subject to retention of title. Otherwise the Customer is not authorised to resell and is prohibited from reselling the goods subject to retention of title.
- 7.4 The Customer herewith assigns to ZEISS any claims against third parties resulting from a resale of goods subject to retention of title. They serve as collateral to the same extent as the goods subject to retention of title. The Customer shall only be entitled and authorised to resell goods subject to retention of title if it is ensured that Customer's claims against third parties resulting from the resale are transferred to ZEISS.
- 7.5 If the Customer resells goods subject to retention of title together with goods from other suppliers at a certain total price, Customer assigns to ZEISS its claim against third parties arising from such resale to the extent of the invoice value of the goods subject to retention of title initially sold by ZEISS.
- 7.6 If an assigned claim is included into a current account, the Customer herewith assigns to ZEISS that part of the balance which is equivalent to the amount of this claim, including the final balance from the current account operations.
- 7.7 Until ZEISS gives notice of revocation, the Customer shall be authorised to collect claims assigned to ZEISS. ZEISS shall be entitled to such revocation, if the Customer fails to meet its payment obligations under the business relationship with ZEISS in due course. Upon such revocation, the Customer shall, upon ZEISS' request, immediately notify ZEISS of any assigned claims with the respective debtors, furnish all data required for collection of such claims, hand over all related documentation and notify the debtors of the assignment. ZEISS reserves the right to notify the debtors of the assignment itself.
- 7.8 If the value of the collateral deposited for the benefit of ZEISS exceeds the secured claims by a total of more than fifty (50) per cent, the Customer shall be entitled to demand that ZEISS release collateral of the choice of ZEISS having a value equal to such excess.
- 7.9 If ZEISS asserts the retention of title against the Customer, this action shall only be deemed as rescission of the contract if ZEISS expressly declares this in writing.
- 7.10 The Customer's right to possess goods subject to retention of title shall be null and void, if the Customer fails to meet its contractual obligations.
- 8. SOFTWARE RIGHTS**
- 8.1 For all delivered programs the respective underlying license terms (EULA) apply.
- 8.2 The Customer is granted a non-exclusive, non-assignable right to use related documentation and updates for no other purpose than the internal operation of the delivered goods and services for which such software is intended. For documentation created and delivered at the Customer's request, ZEISS shall grant that Customer single end user licences in a reasonable quantity to the extent of a non-exclusive and non-transferable right of use.
- 8.3 Source programs shall only be provided based on a separate written agreement.



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9. WARRANTY

- 9.1 If there is a defect in quality or title ("defect") in delivered goods and services, the following provisions shall apply.
- 9.2 Cure shall be carried out at ZEISS' discretion either by remedying the defect or by providing a defect-free delivery of goods and services.
- 9.3 The delivery of goods and services claimed to be defective shall be returned to ZEISS for examination in their original or equivalent packaging.
- 9.4 The Customer shall inspect goods upon receipt and shall give prompt notice of defects immediately in writing to ZEISS.
- 9.5 ZEISS shall be entitled to refuse cure if the Customer has not sent the delivery of goods and services claimed to be defective to ZEISS for examination at ZEISS' request.
- 9.6 ZEISS shall not have any liability for any defects unless the Customer has set a reasonable grace period to cure the defect which ZEISS has failed to observe. The Customer shall be liable for any intentional or negligent actions that result in destruction, loss of the goods or undrawn benefits.
- 9.7 All information about ZEISS' products, including but not limited to pictures, drawings, data about weight, about measure and about performance, contained in offers and brochures are approximate average values. Such information shall in no way constitute a guarantee, representation, warranty or condition with respect to quality, merchantability, durability, fitness for the purpose, description or otherwise, but they are rather approximate descriptions or labelling of the offered goods and services.
- 9.8 Unless limits for deviations have been expressly agreed in the order confirmation, deviations shall be admissible if they are customary within the trade.
- 9.9 Normal wear and tear of the delivered goods and services are not subject to warranty.
- 9.10 The description of a delivery of goods and services as used is an agreement on quality. Flaws or restrictions which are identifiable, or which typically result from being used shall not be deemed to be defects.
- 9.11 Any warranty shall be void, if ZEISS' operating or maintenance instructions are not observed, if changes are made to delivered goods or services, if parts are replaced or materials used that are not in accordance with the original product specifications by ZEISS, unless the

Customer proves that the defect in question resulted from another cause

- 9.12 Remedy of defects and providing a defect-free delivery by ZEISS based on a notification of a defect by the Customer shall not extend the warranty.
- 9.13 Section 10 shall apply to any claims for damages and reimbursement of expenses by the Customer due to defects, including all cases of liability for damages caused intentionally or by gross negligence or breaches of duty by persons whose fault ZEISS is responsible for.
- 9.14 The limitation period for claims arising from defects shall be one year.

10. EXCLUSION AND LIMITATION OF LIABILITY

- 10.1 ZEISS shall only be liable for damages and reimbursement of expenses regardless of the legal grounds in the event of intent, gross negligence or negligent breach of an essential contractual obligation (a contractual obligation whose breach endangers the proper execution of the contract and the achievement of the purpose of the contract) limited to the typical contractual damage foreseeable at the time of conclusion of the contract.
- 10.2 For damages caused by delay in negligent violation of an essential contractual obligation, ZEISS is liable for only up to 5% of the agreed purchase price.
- 10.3 The exclusions and limitations of liability in sections 10.1 and 10.2 shall also apply in the event of breaches of duty by persons whose fault ZEISS is responsible for.
- 10.4 The exclusions and limitations of liability in sections 10.1 to 10.3 shall not apply in cases ZEISS fraudulently concealed a defect, or gave a guarantee of quality (representation by ZEISS that the object of purchase has a certain characteristic at the time of passing of risk and that ZEISS will be liable for all consequences of its absence irrespective of fault), or for damages based on injury to life, body or health, or in the case of strict liability under the laws on product liability.
- 10.5 The limitation period for claims for damages against ZEISS regardless of the legal basis shall be one year (whether the Customer is the end user or an intermediate seller of the goods) from the date of delivery to the Customer or, in case of tortious claims, from the date the Customer knew or ought to have known of the circumstances justifying the claim and of the person liable to pay compensation.



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10.6 The liability of ZEISS for software delivered by ZEISS shall be limited to liability for losses or alteration of data caused by the program; however, ZEISS shall not be liable for any losses or alteration of data which could have been avoided by the Customer's compliance with its duty to secure such data at appropriate intervals and at least once per day.

10.7 In all other respects, the liability of ZEISS is excluded. The burden of proof of liability remains with the Customer.

11. INDUSTRIAL PROPERTY RIGHTS, COPYRIGHTS

11.1 In the event of claims against the Customer because of breach of an industrial property right or a copyright in using delivered goods or services in accordance with the contractually defined manner, ZEISS shall be responsible to obtain the right for the Customer to continue using such goods or services, provided that the Customer gives immediate written notice of such third-party claims and ZEISS' rights to take all appropriate defensive and out-of-court actions are reserved. If, despite such actions, it proves impossible under reasonable economic conditions to continue using the deliveries or services supplied by ZEISS, it is agreed that ZEISS may, at the discretion of ZEISS, modify or replace the particular good or service to remedy such breach, or take back such delivery or service with refunding of the sales price previously paid to ZEISS less a certain deduction to account for the age of the delivery or service in question.

11.2 Subject to section 10, the Customer shall have no further claims for infringements of industrial property rights. ZEISS shall have no obligations in accordance with section 11.1 in case infringement of rights are caused by not using the delivered goods or services in the contractually defined manner or by using them together with deliveries or services other than those of ZEISS.

12. DISPOSAL

12.1 Customer is obliged to closely observe the documents accompanying the goods and to ensure the correct disposal of the goods in accordance with the applicable law.

12.2 The Customer shall be obliged to dispose the goods at its own costs. The Customer shall be obliged to transfer this obligation on the purchaser of the goods or parts thereof in case of a resale of the goods.

13. CONFIDENTIALITY AND DATA PROTECTION

13.1 Unless otherwise expressly stipulated in writing, no information provided to ZEISS in connection with orders shall be regarded as confidential, unless their confidential

nature is expressly marked as confidential by the Customer.

13.2 ZEISS shall be entitled to process personal data of the Customer and to transfer personal data to affiliated companies of ZEISS to the extent this is necessary for the execution of the contract or provided that the Customer has acknowledged the processing and transfer of personal data. 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 ZEISS using these Terms and Conditions of Sale and will be handled in accordance with the applicable data protection laws and regulations. Without limitation, ZEISS shall comply with all applicable laws with respect to the collection, storage, use and disclosure of all personal information to which ZEISS has access in connection with the provision of goods and services to the Customer.

14. MISCELLANEOUS

14.1 The Courts of the Province of Ontario shall have non-exclusive jurisdiction with respect to any suit, action or other proceeding between the parties relating to the sale of goods and services subject to these Terms and Conditions of Sale. Each party hereby attorns and submits to the jurisdiction of such Courts for the purposes of enforcement of rights and remedies arising hereunder. ZEISS may also take legal action against Customer in the jurisdiction of Customer's place of business.

14.2 ZEISS will not take part in a dispute resolution process in front of an alternative dispute resolution entity and is not obliged to do so.

14.3 The governing law of these Terms and Conditions of Sale shall be the law of the Province of Ontario with the exclusion of the international conflict of laws provisions thereof and with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

14.4 A written contract or written confirmation is decisive for the existence and content of other subsequent agreements, amendments and supplements. The possibility of proof to the contrary remains unaffected.