



## General Terms and Conditions for Maintenance Contracts

### 1. Scope

1.1 Any orders placed with ZEISS for services (including but not limited to maintenance, calibration, refitting and inspection) of ZEISS-equipment ("equipment") shall be subject to the General Terms and Conditions set forth herein, except where other agreements have been explicitly made. As far as the customer's general terms and conditions are inconsistent with or supplement these General Terms and Conditions, their application shall be subject to the explicit written consent by ZEISS. Without such consent, services by ZEISS shall in any case be based on these Terms and Conditions even if the customer has referred to its own general terms and conditions.

1.2 Special terms and conditions agreed upon for individual equipment or groups of equipment as well as framework contracts or other individual contractual arrangements for the performance of services, shall take precedence over these General Terms and Conditions.

### 2. Scope of service, place of performance, initial inspection

2.1 Scope of the maintenance contract is only the performance of the agreed services including set-up and travel times. Depending on the type of contract selected, the agreed services are primarily defined in the respective service description.

2.2 For the purpose of preventive maintenance ZEISS will in particular carry out services for inspection, testing (in particular calibration) and preservation (in particular maintenance) of the most important functions of the equipment as well as refitting. The services include to varying degrees in particular 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 work plans of ZEISS for the equipment in question.

2.3 The repair of minor damage is only part of the service if the damage has occurred within the scope of natural wear and tear and are repaired within the scope of the other services without considerable expenditure of time, personnel and material; otherwise, damage to the equipment is subject to Section 3.

2.4 ZEISS provides the testing equipment and special tools required to perform the services.

2.5 As far as possible and reasonable, ZEISS shall be authorized to use cheaper, reconditioned exchange parts instead of new spare parts. The ownership of exchanged parts shall be transferred to ZEISS.

2.6 Unless otherwise agreed in the maintenance contract, ZEISS performs the services at the location where the equipment is being used at the time the contract is concluded. If the customer changes the location where the equipment is being used, the customer shall inform ZEISS of the change in writing at least 60 days in advance. The customer shall only be entitled to services at the new location under the concluded maintenance contract if ZEISS has consented to the change of location in advance. ZEISS reserves the right to demand amendments to the maintenance contract as precondition for granting such consent. However, ZEISS shall only refuse consent for objectively justified reasons.

2.7 It is a precondition for the provision of the services that the equipment is in a condition according to ZEISS' specifications. For equipment 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 one maintenance interval, ZEISS reserves the right to carry out an initial inspection at customer's expense. All services required on basis of this inspection in order to ensure that the equipment conforms to ZEISS specifications will be charged to the customer at the applicable rates.

### 3. Scope not included

3.1 The following works (sections 3.2 to 3.8) on the equipment are not considered as services owed in accordance with

these Terms and Conditions and will only be performed by ZEISS based on a separate order and against a separate remuneration:

3.2 Repair and restoration work, in particular the elimination of malfunctions and damage, in as far as these are not included in the performance description of the maintenance contract concluded.

3.3 The materials required for the performance of the services, in particular cleaning and care products, as well as spare-, replacement- and wear parts are only included in the scope of the maintenance contract if they are expressly included.

3.4 The exchange of parts necessary, not as a result of natural wear and tear, but as a result of external influences, such as improper use, operation or other interventions on part of the customer or by third parties, as well as other circumstances that cannot be attributed to ZEISS, or as a result of force majeure (in particular fire, earthquake, flood etc.).

3.5 Repair or restoration work that becomes necessary as a result of repairs or modifications of the equipment by third parties without prior written consent by ZEISS.

3.6 All work necessary because of the connection of the equipment supplied by ZEISS to other installations not supplied by ZEISS.

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

3.8 The exchange of equipment-specific consumables, unless this takes place within the scope of services without significant additional expenditures.

3.9 Additional work and costs connected caused by relocation of the equipment.

### 4. Maintenance personnel

4.1 ZEISS shall perform the services by trained system or equipment specialists.

4.2 ZEISS shall be entitled to subcontract the services to third parties.

### 5. Maintenance times

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

5.2 ZEISS shall make an appointment with the customer for the performance of the services. If one of the parties is unable to keep to the agreed time for the services through no fault of its own as a result of unforeseen events beyond its control (e.g. illness, operational breakdown, industrial action), the parties shall agree on another suitable date.

5.3 ZEISS shall perform the services on workdays during normal working hours. If customer wants the services to be performed at other times, an overtime surcharge will be added. Customer shall obtain all permits required for this purpose from the relevant authorities. ZEISS will assume that these permits have been obtained.

5.4 On the basis of a separate order, the maintenance personnel may perform works not included in the scope of the maintenance contract – in particular works of the type listed in section 3 – at the same time as the services 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 the customer demonstrably suffers damage and proves that the damage is the result of a delayed performance by ZEISS for which ZEISS is responsible due to slight negligence, the customer shall be entitled to demand compensation for delayed performance - subject to the statutory liability requirements - only up to the price of the



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service that was not performed on time; Section 9.3 shall apply. Claims for damages in the case of intent or gross negligence as well as the cases specified under section 9.4 remain unaffected by the aforementioned limitation of liability.

### 6. Payment

- 6.1 As payment for the services, ZEISS shall be entitled to charge the customer, depending on the type of agreement made in the maintenance contract, (a) either a flat maintenance fee for each date or a specific period or (b) a fee in accordance with the applicable prices valid at the time.
- 6.2 The flat maintenance fee shall include all labour costs for the performance of the agreed service, including travel costs and expenses.
- 6.3 If waiting times occur at customer's premises for which ZEISS is not responsible, the waiting times may be charged additionally at the applicable hourly rate for maintenance personnel. Customer shall also bear any additional costs incurred if customer is responsible for the fact that the service cannot be performed or cannot be performed in full within the agreed time.
- 6.4 The flat maintenance fee does not include the costs for substances used to maintain the equipment, care and auxiliary material, wearing parts, spare parts, exchange parts and all services exceeding the agreed services scope. Such costs and services shall be charged at the applicable prices valid.
- 6.5 The level of the flat maintenance fee shall be derived from the relevant maintenance contract. Statutory value-added tax and other applicable statutory duties will be charged in addition. If ZEISS performs services abroad, the customer shall refund all incurring foreign taxes and duties connected to the service.
- 6.6 Payments shall be due without deduction immediately after the completion of the services and upon receipt of the invoice. Immediately upon default of payment – or from the due date if the customer is a businessman within the meaning of the German Commercial Code – ZEISS shall be entitled to demand default interest of 9 (for consumers 5) percentage points above the base lending rate p.a.. ZEISS reserves the right to claim a higher actual damage.
- 6.7 The agreed flat maintenance fee is based on costs at the time the maintenance contract is concluded. ZEISS shall be entitled to adjust the flat fee in accordance with cost developments if ZEISS discloses individual cost elements and their share of the costs. The customer will be notified in writing of any adjustment at least 6 weeks before the start of the accounting period to which the price adjustment applies. The customer shall be entitled, within 4 weeks of receiving such notification, to terminate the maintenance contract as of the moment the price adjustment becomes effective.
- 6.8 The customers may only offset against a counterclaim which is uncontested or has been finally and non-appealably established or is reciprocally linked to the main claim.
- 6.9 An entrepreneur (§ 14 of the German Civil Code) may only withhold its counter-performance because of such counterclaims which are uncontested or have been finally and non-appealably established.

### 7. Cooperation duties

- 7.1 The customer shall make the equipment available to ZEISS' maintenance personnel and third parties subcontracted by ZEISS at the agreed time in order to allow ZEISS to perform the services and the customer shall grant free and unrestricted access to the premises.
- 7.2 The customer shall make the following available free of charge for the duration of the services: (a) Tools – with the exception of special tools and measuring instruments – that need to be present at the system or equipment concerned in accordance with the relevant accident-prevention regulations, and (b) appropriate support staff to

operate the equipment and support the maintenance personnel, along with, if applicable, any aids required.

- 7.3 Any special safety and plant regulations in force at customer's premises that must be observed by ZEISS during the performance of the services shall be pointed out, and if necessary, explained in detail to the maintenance personnel before the maintenance work begins. If such measures require a significant amount of time, ZEISS reserves the right to make an additional charge on basis of that period of time.
- 7.4 The information required about the equipment to be maintained shall be passed on and the associated documents made available to the maintenance personnel and subcontracted third parties.
- 7.5 The customer shall inform the maintenance personnel of any peculiarities and problems that have appeared in relation to the equipment to be maintained without being asked for such information.

### 8. Warranty

- 8.1 ZEISS shall only provide warranty for defective services in accordance with the statutory provisions. The customers' rights in the event of defect of quality or defect of title shall be governed by the statutory provisions, unless otherwise expressly agreed in the maintenance contract or hereinafter.
- 8.2 If ZEISS fails to comply with the statutory obligation of cure or fail to do so in time by means of rectification or replacement, the customer shall be entitled to set a reasonable grace period. If ZEISS culpably allows a reasonable grace period set by the customer to expire, the customer may demand a reduction of the payment or rescind the maintenance contract. The same also applies if the cure performed under the warranty fails.
- 8.3 ZEISS does not warrant that the equipment subject to the maintenance contract will function without interruption or malfunction after completion of the services.
- 8.4 If the customer asserts warranty claims, the customer shall immediately notify ZEISS of any defects or damage after discovering them and do everything possible to limit the damage caused by a defect to a minimum.
- 8.5 Unless otherwise expressly agreed, warranty claims expire by limitation one year after performance of the service, or for consumers after two years. However, claims for damages and reimbursement of expenses by the customer which are based on intent or gross negligence or on injury to life, body or health or on the Product Liability Act shall be time-barred exclusively in accordance with the statutory provisions.
- 8.6 Rectification and replacement of ZEISS due to a notice of defect by the customer shall only lead to a new start of the limitation period if an acknowledgement is expressly declared.
- 8.7 If the examination of a warranty claim demonstrates that there is no case of warranty, ZEISS shall be entitled to charge for the examination and performance of the service at the applicable prices valid at the time.

### 9. Exclusion and limitation of liability

- 9.1 If the customer is unable to use the equipment ZEISS has performed services on in conformity with the contract because of the fault of ZEISS as a result of the omission or improper implementation of suggestions and advice given before or after the conclusion of the contract or through the infringement of other additional contractual obligations – particularly instructions for the operation and maintenance of the delivered equipment – sections 8 and 9.2 to 9.5 shall apply accordingly to the exclusion of any further claims of the customer.
- 9.2 Without prejudice to the statutory liability requirements, ZEISS shall only be liable for damages and reimbursement of expenses regardless of the legal grounds in the event of intent or gross negligence without limitation and in the event of a slightly negligent breach of an essential contractual obligation (a contractual obligation whose



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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.

- 9.3 The exclusions and limitations of liability in sections 9.1 and 9.2 shall also apply in the event of breaches of obligations by persons whose fault ZEISS is responsible for.
- 9.4 The exclusions and limitations of liability in sections 9.1 to 9.3 shall not apply in cases ZEISS fraudulently concealed a defect, or gave a guarantee of quality in the sense of § 444 of the German Civil Code (BGB) (declaration 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 mandatory liability under the laws on product liability.
- 9.5 In all other respects, the liability of ZEISS is excluded. The statutory burden of proof remains unaffected.

### 10. Duration of the contract

- 10.1 The maintenance contract is concluded for an indefinite period.
- 10.2 The maintenance contract ends when the equipment is sold or ultimately taken out of service. The contract shall end no sooner as ZEISS has received written notification about this.
- 10.3 The maintenance contract may be terminated for individual equipment or in its entirety by either party at the end of the calendar year, giving 3 months' notice. It shall not be terminated before the end of the year following the year in which the contract has been concluded.
- 10.4 ZEISS shall be entitled to terminate the maintenance contract without notice at any time if customer is in default of payment for more than 30 days or if the equipment has been repaired or maintained by third parties without the consent of ZEISS or if the maintenance work has been made more difficult by changes to the configuration that have not been approved by ZEISS or if the equipment-specific environmental conditions no longer comply with the installation guidelines.
- 10.5 The maintenance contract may only be terminated in written form.

### 11. Final provisions

- 11.1 ZEISS shall be entitled to process personal data of the customer and to transfer personal data to affiliated companies of the ZEISS Group 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 the ZEISS Group company using these Terms and Conditions and will be handled in accordance with the applicable data protection laws and regulations.
- 11.2 A written contract or written confirmation is decisive for the existence and content of alleged subsequent agreements, amendments and supplements. The possibility of proof to the contrary remains unaffected.
- 11.3 The customer shall not be entitled to transfer its rights and obligations under the maintenance contract to third parties. If the customer hands over the equipment that is subject to a maintenance contract to a third party, customer's payment obligation continues to apply, unless the third party takes over the maintenance contract with the consent of ZEISS.
- 11.4 The place of jurisdiction provided that the customer is a businessman, a legal person under public law or a special fund under public law, shall be the place of business of the ZEISS Group company using these General Terms and Conditions. However, ZEISS may also take legal action against the customer at the customer's place of business.

11.5 Governing law shall be the law of Germany 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).

11.6 Notice according to § 36 of the German Consumer Dispute Resolution Act: (Verbraucherstreitbeilegungsgesetz or VSBG): ZEISS will not take part in a dispute resolution process in front of an alternative dispute resolution entity according to VSBG and is not obliged to do so.