



Software Maintenance Agreements

General Conditions

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General Conditions

Software Maintenance Agreements

1. Subject Of The Agreement

These terms and conditions for software maintenance agreement form the exclusive basis for the services provided by Carl Zeiss Microscopy GmbH (hereinafter referred to as ZEISS) under the software maintenance agreement with the customer in accordance with the scope of services specified therein and in the agreed service descriptions. Software maintenance requires the conclusion of the software maintenance agreement in accordance with the service description valid for it.

Deviating or supplementary agreements – in particular also conflicting terms and conditions of purchase of the customer – shall only apply if ZEISS confirms them expressly and in writing with reference to the fact that they constitute a change or supplement to the software maintenance agreement; this shall also apply if ZEISS does not expressly object to conflicting terms and conditions of purchase in individual cases. The written form for changes and additions can only be waived on the basis of a written agreement.

2. Services

2.1 The services to be rendered by ZEISS to the customer under the software maintenance agreement are defined in content and scope with this section 2. Software maintenance includes the provision of corrected and further developed program versions of the contractual software and comprises in detail:

ZEISS regularly revises the contractual software and provides the customer with at least one revised version of the entire contractual software in a calendar year, on a suitable data carrier or through a download link.

Together with a new version of the contractual software, ZEISS shall provide the customer with a revised operating manual with an overview of all product and extension changes compared to the previous version.

Each new version of the contractual software may also require a new revision level of the operating system software, which must be provided by the customer.

2.2 ZEISS shall provide software maintenance within the

scope of this agreement only for the latest software version released by ZEISS. ZEISS shall provide additional support services within the scope of this agreement for earlier program versions only against separate invoicing; ZEISS shall not be obliged to provide such services, however.

2.3 The scope of services according to the Software Maintenance Agreement shall not include support services:

- a) installation of the software versions,
- b) delivery and installation of operating systems,
- c) any necessary hardware or control addons and their installation,
- d) the elimination of individual program errors in the contractual software located at the customer's premises in individual cases only for the customer,
- e) the installation of the contractual software versions and updates as well as firmware supplements on the respective computer at the customer's premises and
- f) onsite system and application engineering support.

2.4 At the request of the customer, ZEISS shall provide onsite services as well as on site product and application support at a separate charge.

3. Person Responsible For The System

3.1 The customer shall nominate to ZEISS at least via email within 4 weeks after the start of the contract a person responsible for the software and the instrument covered by this contract, as contact person for the software maintenance agreement. The customer shall immediately notify ZEISS in writing of any changes of the contact person.

3.2 ZEISS shall provide contractual software and updates, upgrades, documentation, instructions and other correspondence within the scope of this Maintenance Agreement to the person responsible for the system. Only this person is entitled to preferred customer support service.

3.3 The software installation may only be performed by a trained system administrator.

4. Errors and Troubleshooting

4.1 The parties agree that the software only represents a

certain stage of development of the data processing program and cannot be errorfree by its very nature.

4.2 ZEISS shall take reported errors which are not significant for the respective program into account when revising the programs within the scope of general software revisions; the time and manner of error elimination shall be reserved to ZEISS. A program error in this sense shall only exist if the function of the program does not comply with the specifications of the documentation. An error must be documented and reproducible at any time.

4.3 If ZEISS does not succeed in reproducing an error itself, ZEISS may attempt to reproduce the error on site together with the customer. The customer shall support ZEISS in this. If a software problem reported by the customer turns out to be an applicationtechnical problem or a software error caused by the customer, ZEISS shall be entitled to charge the customer for the expenses incurred to a reasonable extent.

5. Prerequisites for Software Maintenance

5.1 The customer must own the most current version of the contractual software on the day of the contract commencement. If the customer owns an older version of the software, the most current version must be acquired through a software upgrade.

5.2 The customer shall, at his own expense and in accordance with the information provided by ZEISS,

- a) provide adequately configured and compatible hardware and the necessary input and output devices; and
- b) have acquired the rights to use the software in accordance with section 3 of the separate Software License Agreement.

5.3 The customer shall not be entitled to software maintenance under this agreement if the customer itself or third parties have made changes to the software to be maintained or to the connected instrument, including computers and peripheral devices, unless the customer proves that the changes have no effect on the software maintenance services. However, the aforementioned exclusion shall not apply as long as ZEISS has expressly agreed to changes to the

software by the customer or a third party in advance.

5.4 Duty to cooperate: The Customer shall provide ZEISS with all information required for the dutiful fulfillment of the software maintenance contract without being requested to do so. This includes, in particular, information regarding the maintenance service to be provided by ZEISS.

5.5 If the contractual software is part of a ZEISS instrument, the customer is required to connect it to the ZEISS Predictive Service remote monitoring and maintenance system, or if this technology is not available, to facilitate the application of standard remote maintenance solutions (such as TeamViewer). In this regard, the customer is required to acquire and provide the necessary network infrastructure as well as obtain the necessary operating licenses.

5.6 ZEISS is entitled to have the software maintenance performed by third parties. The customer agrees that his name, address and the data contained in the software maintenance agreement may be disclosed to the suppliers of operating systems, software, computers and other devices or parts of devices and other third parties used by ZEISS to perform services for the purpose of fulfilling its obligations under this agreement.

5.7 The assignment of claims of the customer arising from this agreement to third parties is excluded. This shall also apply to claims of ZEISS against the customer.

6. Warranty

6.1 ZEISS shall remedy material defects in data carriers, firmware supplements and documents provided in writing within the scope of software maintenance at its own discretion by delivering goods free of defects or by rectification. If the defect relates to a document (in particular a printed work), the customer shall grant ZEISS a reasonable longer period of time to provide a revised version.

6.2 ZEISS shall remedy defects in software versions and updates at its own choice by giving instructions (by telephone or in writing) to avoid or circumvent the effects or by providing an update of the existing versions (hotfixes) or a new software version.

6.3 The customer may only assert other and further warranty claims, in particular claims for withdrawal or reduction of the remuneration, if ZEISS has culpably not complied with its warranty obligation even after expiry of a reasonable period of time set by the customer under threat of refusal or if at least two attempts at warranty have failed.

6.4 The limitation period for warranty claims shall be 12 months (24 months in case the customer is a consumer).

6.5 There is no warranty claim for consulting services and other services that do not consist of the provision of hardware or software.

7. Industrial Property Rights and Copyrights

With regard to copyright infringements, the provisions of Section 4 of the Software License Agreement apply accordingly.

8. Liability

8.1 The liability of ZEISS, its employees and vicarious agents for compensation of damages, regardless of the legal ground including culpa in contrahendo, positive breach of contract, delay, impossibility and tort shall be limited, subject to the further limitations in the following sections, to cases in which

- a) the damage is due to intent or gross negligence or the absence of a warranted characteristic, or
- b) an essential contractual obligation has been violated through slight negligence, whereby in this case the liability is limited to the foreseeable damage and the amount is limited to 100,000.00 EURO for property damage and financial loss and to 1 million EURO for personal injury.

8.2 If the customer is a registered trader, a legal entity under public law or a special fund under public law, any claims for damages shall be limited in addition to the limitations contained in the above section 8.1 in such a way that ZEISS shall not be liable for indirect damage, consequential damage due to defects in the form of financial loss or loss of profit in the case of slight negligence. In case of gross negligence ZEISS's liability for these types of damage is limited to 1.000 EURO.

8.3 ZEISS shall only be liable for the loss or modification of data caused by software defects in accordance with the preceding sections if the customer has backed up these data in machinereadable form and at intervals appropriate to the application and if it is guaranteed that the data can be restored with reasonable effort.

8.4 The liability of ZEISS according to the Product Liability Act for personal injury or damage to privately used objects in case of defects of the delivered object shall remain unaffected.

9. Remuneration

9.1 The customer pays an annual fee for the software maintenance service. If the Software Maintenance Agreement is extended in accordance with Section 9, the amount of the fee for the following contractual year shall be based on the price list valid at the time of the extension. An increase compared to the current contractual year which exceeds 5% in EURO entitles the customer to terminate the contract in writing within 30 days of receipt of the written notification with effect from the end of the previous contractual year.

9.2 Payment is due at the beginning of each contractual year within 30 days of receipt of the invoice without deduction.

9.3 If the customer makes payments for several years in advance, ZEISS will not demand subsequent increases in remuneration within the contract period. If this software maintenance agreement ends earlier, ZEISS will not refund any unused or excess amounts.

10. Term

10.1 The maintenance agreement has a term of 12 months. If it is not terminated in writing by one of the two parties 90 days before its expiry, it shall be extended by a further 12 months.

Start of the term:

10.2 In the case of a delivery of a new instrument, the contract period shall begin on the date of installation.

10.3 In case of a purchase of a new software license without a new instrument, the contract period shall begin on the date

of delivery of software license.

10.4 If the purchase of a new software license is made without the conclusion of this agreement, the warranty remains with the error correction in the delivered software version. Software upgrades and thus functional expansions are thus not granted free of charge.

10.5 If the agreement is concluded later than 6 months after delivery, additional costs might be incurred due to required software upgrades as stipulated in the §5.1 of this agreement.

10.6 The right to extraordinary termination for good cause remains unaffected. Good cause shall be deemed to be in particular any breach of contract which makes it unreasonable for the other party to continue to adhere to the contract. This also includes any unauthorized use of the software.

10.7 Longterm exit clause for ZEISS: If ZEISS determines during a (multiyear) maintenance period that further maintenance is no longer possible with economic means, it is entitled to terminate the contract unilaterally with a preliminary notice period of 180 days. In this case, any excess remuneration will be refunded to the customer.

11. Final Provisions

11.1 Should individual clauses of this software maintenance agreement be invalid in whole or in part, this shall not affect the validity of the remaining clauses or the remaining parts of such clauses.

11.2 ZEISS is entitled to assign this agreement, parts of this agreement or rights and obligations of this agreement to its affiliated companies.

11.3 The written form for changes and additions can only be waived on the basis of a written agreement.

11.4 This agreement is governed by the law of the Federal Republic of Germany. The place of jurisdiction for all claims in connection with this agreement shall be exclusively Stuttgart or, at the discretion of ZEISS, the customer's place of residence.

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