



Carl Zeiss Microscopy GmbH

Software License Agreement

Version EN 3.00

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(2) In the event of an infringement of property rights, the Licensor may - without prejudice to any claims for damages by the Licensee - at its own discretion and at its own expense with regard to the performance concerned

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(4) Subsequent performance shall be affected at the option of the Licensor by remedying the defect or delivering an item free of defects. Delivery can also be made in such a way that the Licensor provides the Licensee with a newer Software version that has more than all the qualities owed under this Agreement and does not unreasonably impair the Licensee with regard to the use of the Software compared to the quality owed under this Agreement.

(5) As long as the Licensee has not yet paid the remuneration due according to this Agreement in full and he has no legitimate interest in retaining the outstanding remuneration, the Licensor is entitled to refuse subsequent performance.

(6) The Licensor shall not be liable in cases where the Licensee has made changes to the services provided by the Licensor, unless these changes had no influence on the origin of the defect.

(7) The Licensee shall support the Licensor in identifying and remedying the defect and shall grant immediate access to the documents which show the detailed circumstances of the occurrence of the defect.

(8) Before asserting claims for supplementary performance, Licensee shall examine with due diligence whether a defect subject to supplementary performance exists. To this end, he shall in particular observe the instructions in the user manual. If an alleged defect is not subject to the obligation of subsequent performance (apparent defect), the Licensee may be charged for the services provided by the Licensor for verification and error correction at the Licensor's currently valid remuneration rates plus expenses incurred, unless the Licensee could not have recognized the apparent defect even if he had exercised due care.

(9) The Licensee shall only be entitled to terminate the license agreement for non-performance by the Licensor if the Licensor has failed to provide subsequent performance or rectification in respect of a defect which should have been rectified in accordance with these Terms and Conditions. The Licensee is not entitled to reduce the price by deducting certain amounts from the price agreed between the parties, unless the defects are undisputed or have been legally established.

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§ 7 Liability

(1) The Licensor is liable for intent and gross negligence. In the case of slight negligence, the Licensor shall only be liable in the event of a breach of an essential contractual obligation (cardinal obligation), the fulfilment of which is essential for the proper execution of the contract and on the observance of which the Licensee may regularly rely, as well as in the event of damages resulting from injury to life, body or health.

(2) The Licensor shall owe the care customary in the industry. In determining whether the Licensor is at fault, it must be taken into account that software cannot be created without technical errors.

(3) In case of slight negligence, liability is limited to the amount of the foreseeable damage that can typically be expected to occur; however, this liability is limited to a maximum of EUR 1,000 per case of damage and to a total of EUR 5,000.

(4) The Licensor shall not be liable for the loss of data and/or programs, misuse to the extent that the damage is due to the Licensee's failure to carry out data backups and thereby ensure that lost data can be restored with reasonable effort.

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(1) The Licensor is entitled to terminate this license agreement with an immediate effect if the Licensee violates the terms of this agreement. In this case the Licensee is obliged to destroy all copies of the computer program and the accompanying documentation or to return them to the Licensor. In addition, Licensee shall return to Licensor a corresponding copyright protection license and a dongle, if any received. If a payment has been made for the dongle, this payment will not be refunded by ZEISS.

(2) The limitation period for claims against the Licensor based on whatever legal ground shall be 12 months (24 months in case the Licensee is a consumer) from the date the service was provided to the Licensee and in case of tortious claims, 12 months (24 months in case the Licensee is a consumer) from the date the Licensee becomes aware or could have become aware of the grounds giving rise to a claim and the liable person, had the Licensee not been grossly negligent. The provisions in this clause shall not apply in one of the cases described in Section 7.3 above and in case of a breach of a legal duty resulting from the applicable privacy laws.

§ 9 End of Support

Insofar as a terminal device or hardware or software used by the licensee no longer qualifies for corresponding support services (so-called "End of Support"), the following shall apply:

The Licensor assumes no liability for the continued functioning of this software (including in conjunction with hardware) that has reached the End of Support. The acquisition of a software upgrade or a software update is at the licensee's own responsibility.

The Licensor is not obliged to check whether the Licensee obtains, installs and / or uses a software upgrade despite the End of Support of one or more hardware components, the software via a software upgrade.

The respective End of Support can be found in the official list: Product Discontinuation (<https://www.zeiss.com/microscopy/en/service-support/support/discontinued-products.html>)

§ 10 Changes and Feedback

(1) At Licensee's request, ZEISS can also develop individual services, adapt standard services and make such software available to them. This requires the conclusion of a supplementary agreement in addition to this license agreement.

(2) If ZEISS has worked for Licensee within the framework of such a supplementary agreement, ZEISS shall generally receive a non-exclusive, transferable, worldwide, temporally and substantively unrestricted back license to the work results, including the right to duplication, distribution, processing and public reproduction.

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§ 11 Data Acquisition

Upon installation of the software, product diagnostic as well as technical, usage-relevant and related information is recorded locally on the Licensee's computer. This includes unique system and hardware identifiers, as well as information on the system software used, software license and modules and furthermore all devices and communications controlled by the software (collectively referred to as "system data").

Depending on the application and configuration case, this data may also be stored in a local network location or on remote servers in order to enable further products or services of the Licensor.

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The Licensor is entitled to use this systemic data for diagnostic purposes or for Licensor services and to collect the data, provided that it is collected and stored for the purposes described above.

The Licensor will not transfer at any time personal data or data created from experiments such as images or protocols that identify any individual. The licensor might receive data that identifies an instrument (e.g., through the instrument's serial number), which in combination with other data available to the Licensor could reveal the identity of the instrument owner. The Licensor will not use such information for any other means than to provide service for the Licensee and to improve its service and products.

The Licensor will use the data in line with the ZEISS Data privacy notice (<https://www.zeiss.com/data-protection/en/home.html>).

Depending on the software product, data collection can be prevented by uninstalling or disabling the connected software product components.

A detailed overview of the data collected from the Licensee's Software and stored at the remote location will be provided by the Licensor within 30 days of receiving such a request from the Licensee in writing. The Licensee may at any time demand in writing from the Licensor the deletion of the data submitted by the Software. In such case Licensor will delete the received data in due time and inform the Licensee upon the deletion. The Licensee acknowledges and agrees that in such case the Licensor will be unable and not obligated to continue to provide some of the agreed services.

§ 12 Security

The Licensor may from time to time provide security updates for the software installed on the Licensee's products. Such security updates might be installed automatically unless the Licensee has explicitly rejected their consent by disabling the connected services. The Licensee acknowledges that in this case, the Licensor will be unable and not obligated to provide some of the services. Both parties will take all commercially reasonable steps in accordance with the state of the art to prevent virus spreading in the parties' software. The other party will be immediately advised in writing should either party detect viruses, malware or security breaches that may jeopardize Software or that may be transferred to the other party's systems.

§ 13 Export control

Licensee assumes responsibility for compliance with all applicable rules and regulations, including but not limited to the export control and sanctions regulations of the Federal Republic of Germany, the European Union and the United States of America. In particular, Licensee agrees not to provide the software or any related technology or documentation or any part thereof, directly or indirectly, to any sanctioned country or to any sanctioned person or entity in violation of the foregoing.

Licensee warrants to Licensor that it will not use the software or any related technology or documentation or any portion thereof in violation of any applicable law or regulation. Licensee further agrees to indemnify and hold harmless licensor from and against any and all claims resulting from Licensee's failure to comply with any of the foregoing applicable provisions.

§ 14 Final provisions

(1) General terms and conditions of the parties shall otherwise not apply to this agreement. This shall also apply if such terms and conditions are not expressly contradicted.

(2) Should individual provisions of this contract be or become invalid in whole or in part, the validity of the remaining provisions shall not be affected. The parties hereby agree that the invalid provision shall be replaced by a valid provision which comes as close as possible to the economic purpose of the invalid provision. The same applies to any gaps or inconsistencies in the agreement.

(3) In the event of a dispute arising out of this contract, the parties shall, prior to any legal proceedings (lawsuit), conduct arbitration in accordance with the arbitration rules of the Hamburg Arbitration Board for IT Disputes in the version valid at the time of initiating arbitration proceedings. The arbitration procedure shall serve to settle the dispute in whole or in part, provisionally or finally. If no agreement can be reached before the arbitration board, legal action will be taken to the ordinary courts.

(4) Notice according to § 36 of the 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.

(5) The assignment of claims which are not monetary claims is only permitted with the prior written consent of the other party to the contract. Such consent may not be unreasonably withheld.

(6) A right of retention can only be asserted due to counterclaims from the respective contractual relationship.

(7) The parties to the agreement may only set off claims which have been legally established or are undisputed.

(8) There are no subsidiary agreements to this contract. Changes and amendments to this contract must be made in writing. This formal requirement can only be waived by written agreement.

(9) The law of the Federal Republic of Germany shall apply, excluding the UN Convention on Contracts for the International Sale of Goods.

(10) Exclusive place of jurisdiction for all legal disputes arising from or in connection with this contract is the registered office of the Licensor. However, the Licensor is also entitled to sue at the general place of jurisdiction of the Licensee.