



TERMS AND CONDITIONS – MAINTENANCE SERVICES

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1. Definitions

In these 'General Terms and Conditions – Maintenance Services', unless the contrary intention appears, the following definitions apply:

- 1.1 **'Agreement'** means the agreement for the provision of the Maintenance Services between ZEISS and the Customer including maintenance orders and these General Terms and Conditions – Maintenance Services.
- 1.2 **'ZEISS'** means Carl Zeiss (NZ) Limited
- 1.3 **'Customer'** means the signatory to the Agreement to which these 'General Terms and Conditions – Maintenance Services' refers.
- 1.4 **'GST'** means the Goods and Services Tax Act 1985.
- 1.5 **'Party'** means either the Customer or ZEISS as the context requires.
- 1.6 **'Maintenance Services'** means Maintenance services supplied by ZEISS under the Agreement.
- 1.7 **'Site'** means the designated location/s as defined within the Agreement at which the Maintenance Services are provided by ZEISS.
- 1.8 **'Specified Interest Rate'** means the interest rate quoted by National Bank of New Zealand as its indicator lending rate from time to time plus a margin of 4%.

2. Scope of Maintenance Services

- 2.1 All maintenance orders placed with ZEISS for the Maintenance Services (in particular the servicing, calibration, machine care and upkeep) of ZEISS goods are subject exclusively to these "General Terms and Conditions – Maintenance Services". Conflicting provisions of the Customer's terms and conditions of order do not apply even if they are not expressly opposed by ZEISS in each individual case.
- 2.2 Special terms and conditions for individual goods that are agreed in writing between the Customer and ZEISS, such as framework contracts or other one-off contractual arrangements relating to the performance of maintenance work, have priority over these "Terms and Conditions – Maintenance Services".
- 2.3 If any individual clauses in these "Terms and Conditions – Maintenance Services" are invalid, either in full or in part, this will have no influence on the effectiveness of the other clauses or the other parts of such clauses.
- 2.4 The Customer is not entitled to transfer its rights and obligations under the Agreement to third parties. If the Customer surrenders the goods that are subject to the Maintenance Services to a third party, its payment obligation continues to apply, unless the third party takes over this Agreement with ZEISS' written consent.

3. Maintenance Services

- 3.1 Within the context of preventive maintenance ZEISS will carry out work to check (in particular calibration) and preserve (in particular servicing, machine care and upkeep) the principal functions of the goods and to minimise minor damage caused by normal wear and tear (overhaul).
- 3.2 The details of the nature and scope of these services are based on the applicable ZEISS work plans for the goods in question. In particular they cover, to varying extents,
 - Performance tests
 - Cleaning and maintenance work
 - Precision tests and adjustmentsZEISS adapts these work plans from time to time as required.
- 3.3 ZEISS provides the testing instruments and special tools required to perform the services.
- 3.4 In principle, only the Maintenance Services including setup time and travel costs concerned are the subject of the Agreement. The materials required to perform the services, in particular any substances used to clean and maintain the goods, along with spare parts, exchanged parts and wearing parts, only form part of the scope of the Agreement if they are explicitly included.
- 3.5 In as far as it is possible and reasonable to do so, ZEISS is authorised to use reconditioned exchanged parts instead of new spare parts. The ownership of exchanged parts is transferred to ZEISS.
- 3.6 Unless otherwise agreed in the Agreement, ZEISS will perform the Maintenance Services at the location where the goods are being used at the time the Agreement is concluded. If the Customer changes the location where the goods are being used, it must inform ZEISS of the transfer in writing at least 60 days in advance. The Customer will only be entitled to Maintenance Services at the new location under the Agreement if ZEISS approves the transfer. ZEISS reserves the right to demand that amendments be made to the Agreement before it grants its approval. However, ZEISS will not unreasonably withhold or refuse to grant its approval.
- 3.7 For goods 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 1 maintenance interval, ZEISS reserves the right to carry out an initial inspection at the Customer's expense. All the services required on the basis of this inspection to ensure that the goods conform to the valid ZEISS specifications will be charged to the Customer at applicable rates.

4. Services that are not included

The following work on the goods are not considered as Maintenance Services in the sense of these terms and conditions and will only be performed by ZEISS on the basis of a separate order and at a separate charge. It is agreed that ZEISS' "Terms and Conditions – Repair Services" will apply to such orders:

- 4.1.1 repairs, in particular the elimination of faults and damage, in as far as this is not included in the performance description for the Agreement.
- 4.1.2 the exchanging of parts, 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 the part of the Customer or 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.).
- 4.1.3 repair work that becomes necessary as a result of the repair or modification of the goods by third parties without the prior written approval of ZEISS.
- 4.1.4 all services that can be attributed to the goods being connected to other installations that were not supplied by ZEISS.
- 4.1.5 all services that become necessary as a result of the goods being operated under conditions (e.g. mains fluctuations, contamination) or using accessories or instrument-specific consumables that do not conform to the ZEISS specification.
- 4.1.6 the exchanging of instrument-specific consumables, unless this takes place within the context of maintenance without significant additional expense.
- 4.1.7 work connected with a change in the location where the goods are being used.

5. Maintenance personnel

- 5.1 ZEISS will have the Maintenance Services performed by trained system specialists or instrument specialists.
- 5.2 ZEISS is entitled to subcontract the Maintenance Services to third parties. However, ZEISS will inform the customer of such, and such subcontracting will not in any way release ZEISS from its obligations towards the Customer under the Agreement.

6. Maintenance times

- 6.1 The maintenance intervals are derived from the performance description, unless other intervals are laid down in the Agreement. ZEISS will perform the Maintenance Services on the goods at the specified intervals.
- 6.2 ZEISS will reach agreement with the Customer on the time when the Maintenance Services will be performed. If one of the Parties is unable to keep to the agreed time for the Maintenance Services as a result of unforeseen events outside its control (e.g. illness, breakdown, industrial action), the Parties will agree on another suitable appointed time.
- 6.3 ZEISS will perform the Maintenance Services on workdays during normal working hours. If the Customer wants the work to be performed at other times, an overtime surcharge will be added. The Customer must obtain all the permits that may be required from the relevant authorities. ZEISS will assume that these have been obtained.
- 6.4 On the basis of a separate order, the maintenance personnel may perform services not included in the scope of the Agreement – in particular services of the type listed in section 4 – at the same time as the Maintenance 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.
- 6.5 If damage is caused to the Customer and this can be proved to be the result of delayed performance on the part of ZEISS, the Customer is entitled to demand compensation for delayed performance up to the price of the Maintenance Services that was not performed on time. The restrictions in section 10 of these General Terms and Conditions apply to other and further claims on the part of the Customer.

7. Payment

- 7.1 As payment for the Maintenance Services, ZEISS will charge the Customer, depending on the type of Agreement:
 - 7.1.1 a flat maintenance fee for each day of the Maintenance Services; or
 - 7.1.2 a flat maintenance fee for a certain period (e.g. annual fee); or
 - 7.1.3 an hourly rate for the Maintenance Services.
- 7.2 The flat maintenance fee will include service fees, including travel costs and expenses. If, however, the maintenance personnel are held up in the performance of the Maintenance Services at the Customer's premises for reasons that cannot be attributed to ZEISS, these waiting times can also be charged at the applicable hourly rate for maintenance personnel. The Customer will also bear any additional costs incurred if, for reasons attributable to the Customer, the Maintenance Services cannot be performed or cannot be performed in full within the agreed timeframe stipulated.

- 7.3 Items or components used to maintain the goods, aids, wearing parts, spare parts, exchanged parts and all services performed by ZEISS in addition to the Maintenance Services under this Agreement will be charged for at the rates that apply at ZEISS, in as far as – depending on the type of Agreement – they are not included in the scope of the Agreement or supplied free of charge by the Customer.
- 7.4 The level of the flat maintenance fee is derived from the relevant Agreement.
- 7.5 Regardless of any other provision in the Agreement, if GST is imposed on any goods or supplies made to the Customer under the Agreement, the amount which the Customer must pay for that good or supply is increased by the amount of that GST.
- 7.6 Payment is due within 30 days of receipt of the invoice, inclusive of GST and without deductions. In the event of default in payment, ZEISS may charge interest on any past due amounts from the due date at the Specified Interest Rate, such interest shall accrue daily.

8. Customer's duty to cooperate

- 8.1 The Customer will make the goods available to the maintenance personnel and representatives of ZEISS at the agreed time to allow them to perform the Maintenance Services and will grant them access to the premises.
- 8.2 The Customer will make the following services available free of charge for the duration of the Maintenance Services:
- 8.2.1 Tools – with the exception of special tools and measuring instruments – that need to be present at the installation concerned in accordance with the relevant accident-prevention regulations; and
- 8.2.2 Appropriate support staff to operate the goods and support the maintenance personnel, along with, if applicable, any aids that are required.
- 8.3 Any special safety and plant regulations in force at the Customer's premises that must be observed by ZEISS during the performance of the Maintenance Services, must be pointed out, and if necessary, explained in detail, to the maintenance personnel before the Maintenance Services begin. If any special instruction, training or, if applicable, tests in connection with the above require a significant amount of time, ZEISS reserves the right to make an additional charge on the basis of time and expenditure.
- 8.4 The information required about the goods to be maintained must be passed on and the associated documents made available to the maintenance personnel and representatives of ZEISS.
- 8.5 The Customer will inform the maintenance personnel of any peculiarities and problems in relation to the goods to be maintained without being asked for such information.

9. Express Warranty

- 9.1 ZEISS guarantees its Maintenance Services for a period of 3 months from the date the relevant Maintenance Services are performed.
- 9.2 If the Maintenance Services fail, the Customer has the right to demand that the defective work be remedied.
- 9.3 If faults occur in the maintained goods which are not caused by the Maintenance Services (i.e. in particular faults due to natural wear and tear, caused by improper handling or other outside influences), then these faults will not be covered by the warranty.
- 9.4 If the Customer asserts warranty claims, the Customer must notify ZEISS of defects which have occurred immediately after they have been discovered and do everything in the Customer's power to mitigate any damage caused by a defect.
- 9.5 If the examination of a complaint in respect of a defect shows that the case does not fall under the warranty, the performance and invoicing of the examination and, where appropriate, elimination of the fault, will be carried out under ZEISS' Terms and Conditions – Repair Services at the then current price.
- 9.6 Where the goods and services are supplied in New Zealand for business use, all of the guarantees and remedies in the Consumer Guarantees Act 1993 are excluded and the provisions of this express warranty applies.

10. Liability, Indemnity and Exclusions

- 10.1 The liability of ZEISS, if any, for a breach of a non-excludable condition or warranty implied by the Consumer Guarantees Act 1993 in relation to the supply of goods or services not of a kind ordinarily acquired for personal, domestic or household use or consumption or in negligence, in tort, in contract or otherwise is limited, at the ZEISS' option, to:
- (a) In the case of goods:
- (i) The replacement of the goods or the supply of equivalent goods;
- (ii) The repair of the goods;
- (iii) The payment of the cost of replacing the goods or acquiring equivalent goods; or
- (iv) The payment of the cost of having the goods repaired; and
- (b) In the case of services:
- (i) Supplying the services again; or
- (ii) Paying the cost of having the services supplied again.
- 10.2 The liability of ZEISS under clause 10.1 is reduced proportionately, to the extent of the Customer's failure to comply with its obligations and responsibilities under the Agreement or the Customer's failure to mitigate its loss.
- 10.3 In no event shall ZEISS be liable for:
- 10.3.1 Any incidental or consequential damages, loss of profits or lost data, or any other indirect damages, even if ZEISS has been informed of the possibility thereof; or
- 10.3.2 Any costs or expenses for the procurement of substitute equipment or services.

10.4 The Customer indemnifies ZEISS against:

- 10.4.1 All losses incurred by ZEISS;
- 10.4.2 All liabilities incurred by ZEISS; and
- 10.4.3 All legal costs (on a solicitor and own client or full indemnity basis, whichever is the greater) and other costs and expenses incurred by ZEISS in connection with the demand, action, arbitration or other proceeding (including mediation, compromise or out of court settlement or appeal);
- arising directly or indirectly as a result of or in connection with a breach or non-performance of any of the obligations or warranties of the Customer under the Agreement whether express or implied.
- 10.5 Unless otherwise stated in the Agreement, ZEISS will not be liable or responsible to the Customer for:
- 10.5.1 Supply and Maintenance of any goods, services or materials outside the Agreement;
- 10.5.2 The preparation of, or additional charges for site facilities or ongoing provisioning of those facilities with respect to but not limited to mains power, security or air conditioning;
- 10.5.3 Maintenance of faults caused by willful damage to and/or improper use of goods;
- 10.5.4 The provision of consumable items;
- 10.5.5 The failure of equipment not covered under the Agreement;
- 10.5.6 Equipment faults or damage existing prior to the commencement date;
- 10.5.7 Damage to goods or its software configuration by the connection of other equipment without the approval of ZEISS; and
- 10.5.8 Damage caused by unforeseen events.

11. Governing Law

- 11.1 The Agreement is governed by the laws of New Zealand.
- 11.2 The parties agree that the courts of New Zealand have jurisdiction to hear any action in respect of, or arising out of, the Agreement and hereby submit themselves to the jurisdiction of those courts.

12. Term and Termination

- 12.1 The term of the Agreement is that period agreed in writing by the Parties.
- 12.2 ZEISS is entitled to terminate the Agreement by notice in writing to the Customer at any time if the Customer is in default with payment for more than 30 days, if the instrument has been maintained by third parties without ZEISS' consent, if the Maintenance Services are made more difficult by changes to the configuration that have not been approved by ZEISS or if the instrument-specific environmental conditions no longer comply with the installation guidelines.