



## TERMS AND CONDITIONS – REPAIR SERVICES

Carl Zeiss Pty. Limited ACN 008 410 704

Tenancy Office 4/ Level 1, 40-52 Talavera Rd, North Ryde, 2113 NSW (+61 2 9020 1333)

### 1. Definitions

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

- 1.1.1 **'Agreement'** means the agreement for the provision of the Repair Services between ZEISS and the Customer on the terms contained in these General Terms and Conditions – Repair Services.
- 1.1.2 **'ZEISS'** means Carl Zeiss Pty. Ltd. ACN 008 410 704
- 1.1.3 **'Customer'** means the signatory to the Agreement
- 1.1.4 **'GST'** means GST as defined under *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.
- 1.1.5 **'Party'** means either the Customer or ZEISS as the context requires.
- 1.1.6 **'Repair Services'** means repair services supplied by ZEISS under the Agreement.
- 1.1.7 **'Site'** means the designated location/s as defined within the Agreement at which the Repair Services are provided by ZEISS.
- 1.1.8 **'Specified Interest Rate'** means the interest rate quoted by Westpac Banking Corporation as its base lending rate from time to time plus a margin of 4%.

### 2. Scope of Repair Services

- 2.1 All Repair Services undertaken by ZEISS are subject exclusively to these 'Terms and Conditions – Repair Services'.
- 2.2 If individual clauses in these Terms and Conditions – Repair 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 the Agreement.

### 3. Repair Services from ZEISS and Place of Performance

- 3.1 ZEISS will carry out the Repair Services that the Customer requests ZEISS to perform in relation to goods that ZEISS has manufactured. Unless a different scope for the Repair Services has been agreed upon in writing, the Repair Services will cover the performance of services that are identified as necessary on the basis of the details provided by the Customer to ZEISS, and ZEISS' examination of the goods to be repaired and during the course of the Repair Services. The aim of the Repair Services is to restore the operability of the goods.
- 3.2 ZEISS is entitled to engage third-party contractors to carry out repair work and will inform the Customer if it elects to do so, however use of such third-party contractors does not release ZEISS from its obligations to the Customer.
- 3.3 The customer acknowledges that the Repair Services may be conducted remotely. In such cases, ZEISS will align with the customer for a suitable time so that equipment downtime is minimized, and the Customer shall arrange remote access for ZEISS in order to perform the Repair Services.
- 3.4 The Customer acknowledges that during such Repair Services, ZEISS cannot guarantee the functionality of the Goods.
- 3.5 If the Repair Services are expected to result in any downtime or limit the Customer's access to their system, ZEISS will notify the Customer of the expected timeframe for this disruption.

### 4. Payment and Delivery

- 4.1 **Payment**
  - 4.1.1 The amount of the payment made to ZEISS for the Repair Services is calculated from the individual Repair Services performed in accordance with the Agreement. The rates applying at ZEISS at the time of the Repair Services will be charged.
  - 4.1.2 Hours worked will be rounded up to the next half hour and charged at the applicable hourly rates for the ZEISS Repair Services, in accordance with the relevant class of goods, plus setup time, and travel time.
  - 4.1.3 Any material required to be used in the Repair Services will be invoiced separately. If ZEISS uses small parts such as screws, washers etc. during the Repair Services, ZEISS is entitled to charge a flat fee for small parts to simplify invoicing.
  - 4.1.4 ZEISS' prices are quoted to the Customer exclusive of GST.
  - 4.1.5 Regardless of any other provision in the Agreement, if GST is imposed on any good or supply 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 the GST.
  - 4.1.6 Where a variation in an existing or new government tax, duty or charge affects the costs of repairs, ZEISS may vary the repair price from the date of the government impost.
- 4.2 **Delivery**
  - 4.2.1 Delivery and shipping costs (packing, transport and insurance) will be borne by the Customer. ZEISS may charge a flat fee for delivery and shipping costs.
  - 4.2.2 Unless ZEISS receives instructions to the contrary, ZEISS will choose the route and type of transportation for the return of repaired goods. Transportation will be charged to the customer even if ZEISS uses its own means of transport. The packaging required for transportation may be charged at cost.
  - 4.2.3 ZEISS will insure the goods at the Customer's expense against normal transportation risks from door to door. The Customer must notify the

- transport company, or, if ZEISS uses its own means of transport, the Customer must notify ZEISS immediately in writing of any transport damage.
- 4.2.4 The Customer bears the risk of the goods as soon as the repaired goods have left ZEISS' Site or have been handed over to the transport company.

### 5. Terms of payment

- 5.1 ZEISS' invoices are payable within 30 days of the Repair Services being performed and the invoice being raised, without deductions. In the event that payment is not received within the stipulated timeframe, ZEISS will be entitled to apply interest to the overdue amount from the due date at the Specified Interest Rate, such interest shall accrue daily.
- 5.2 ZEISS reserves the right to return repaired goods cash on delivery.

### 6. Cost estimate and Quotes

- 6.1 The anticipated repair costs stated in any cost estimate are guidelines only, estimated on the basis of the information provided by the Customer and following the examination of the goods by ZEISS. ZEISS cannot guarantee the accuracy of the estimated figures. Quotes are not binding on ZEISS.
- 6.2 If whilst repairing the goods, it becomes clear that more extensive Repair Services are necessary, ZEISS is deemed authorised to complete the Repair Services without seeking confirmation from the Customer, provided this does not cause the overall repair costs to exceed the suggested price by more than 15%. In the event that the price will be exceeded by higher than the stipulated amount, ZEISS will inform the Customer that it expects the cost estimate to be exceeded and provide a new cost estimate.
- 6.3 If on the basis of a cost estimate the Customer decides not to proceed with the Repair Services or continuation of the Repair Services, ZEISS is entitled to charge for the cost of preparing the cost estimate and for any Repair Services performed up to that point.

### 7. Repair Services times

- 7.1 The Customer will provide ZEISS with a reasonable period within which to carrying out the Repair Services.
- 7.2 Unless a binding deadline is explicitly agreed in writing, completion deadlines of which the Customer is notified are non-binding upon ZEISS.
- 7.3 In the event that ZEISS is delayed or impeded from providing the Repair Services by circumstances out of ZEISS' control or cannot be prevented with reasonable care, including (but not limited to) by force majeure, strikes, terrorism, war, rebellions, lockouts, stoppages, scarcity of materials and energy, incorrect or late delivery, or other precluding circumstances or events, the Customer will grant ZEISS a reasonable extension of time within which to complete the Repair Services.

### 8. Duties of the customer to co-operate

- 8.1 The Customer will provide ZEISS with the goods to carry out the Repair Services - in the case of on-site repairs, at the agreed time - and will inform ZEISS' service staff (without their solicitation) of problems that have occurred and of peculiarities in respect of the goods to be repaired.
- 8.2 The Customer will ensure that ZEISS' service staff have free and unimpeded access to the goods to be repaired.
- 8.3 According to circumstances, the Customer will provide electricity, water and other utilities, including telephones, common rooms, washing facilities etc. and will provide the support appropriate in the circumstances to enable prompt performance of the Repair Services.
- 8.4 The Customer will inform ZEISS' service staff of any special safety and factory regulations and particular sources of danger that the ZEISS service staff may encounter at the Customer's site.

### 9. Acceptance

- 9.1 After the Repair Services have been completed on site or the repaired goods have been received by the Customer, the Customer is obliged to accept the duly performed Repair Services immediately and may not refuse acceptance on the grounds of insignificant defects which will not affect the operation of the goods.
- 9.2 If the Customer does not state its refusal to accept the repaired goods within 3 days of handover, it will be deemed that the Repair Services have been accepted upon handover.

### 10. Express Warranty

- 10.1 ZEISS guarantees its Repair Services for a period of 3 months from the date of the relevant Repair Services are performed.
- 10.2 If the Repair Services fail during the warranty period, the Customer has the right to demand that the defective work be remedied.
- 10.3 If faults occur in the repaired goods which are not caused by the Repair Services (i.e. in particular faults due to natural wear and tear, caused by improper handling or other outside influences), then these repairs will not be covered by the warranty.
- 10.4 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.

10.5 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.

#### **11. Liability for damages**

- 11.1 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.
- 11.2 The liability of ZEISS under clause 11.1 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.
- 11.3 In no event shall ZEISS be liable for:
- 11.3.1 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
  - 11.3.2 Any costs or expenses for the procurement of substitute equipment or services.
- 11.4 The Customer indemnifies ZEISS against:
- 11.4.1 All losses incurred by ZEISS;
  - 11.4.2 All liabilities incurred by ZEISS; and
  - 11.4.3 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.
- 11.5 Unless otherwise stated in the Agreement, ZEISS will not be liable or responsible to the Customer for:
- 11.5.1 Supply and Maintenance of any goods, services or materials outside the Agreement;
  - 11.5.2 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;
  - 11.5.3 Maintenance of faults caused by wilful damage to and/or improper use of goods;
  - 11.5.4 The provision of consumable items;
  - 11.5.5 The failure of equipment not covered under the Agreement;
  - 11.5.6 Equipment faults or damage existing prior to the commencement date;
  - 11.5.7 Damage to goods or its software configuration by the connection of other equipment without the approval of ZEISS; and
  - 11.5.8 Damage caused by unforeseen events.

#### **12. Governing Law**

- 12.1 The Agreement is governed by the laws of New South Wales, Australia.
- 12.2 The parties agree that the courts of that state 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. The provisions of the United Nations Convention on Contracts for the International Sale of Goods are expressly excluded from this Agreement.