



## 1 Scope

- 1.1 Any orders placed with us for service (in particular major and minor maintenance, calibration, refitting and inspection) of our instruments shall be subject to the General Terms and Conditions set forth herein to the extent no other agreements have been explicitly made. As far as Customer's general terms and conditions are inconsistent with ours, they shall only apply with our explicit written approval or if they are part of tender documentation in public tenders.
- 1.2 Special terms and conditions for individual instruments/instrument groups that have been agreed, such as framework contracts or other one-off contractual arrangements relating to the performance of services, have priority over these General Terms and Conditions.

## 2 Services, place of performance, initial inspection

- 2.1 Within the context of preventive maintenance we will carry out work to check (in particular calibration) and preserve (in particular servicing) the principal functions of the instruments and to eliminate minor damages caused by natural wear and tear (maintenance) as well as refitting.
- 2.2 Depending on the type of contract selected, the services are derived from the service description. In particular they cover, to varying extents,
- performance tests,
  - cleaning and maintenance work,
  - precision tests and adjustments.

The details of the nature and scope of these services are based on our applicable work plans for the instrument in question.

- 2.3 We provide the testing instruments and special tools required to perform the services.
- 2.4 In general, only the services concerned (incl. set-up and travel times) are the subject of the service contract. The materials required to perform the services, in particular any substances used to clean and maintain the instruments, along with spare parts, exchange parts and wearing parts, only form part of the scope of the service contract if they are explicitly included.
- 2.5 As far as possible and reasonable, we shall be authorized to use cheaper, reconditioned exchange parts instead of new spare parts. The ownership of exchanged parts shall be transferred to us.
- 2.6 Unless otherwise agreed in the service contract, we perform the services at the location where the instrument is being used at the time the contract is concluded. If Customer change the location where the instrument is being used, Customer shall inform us of the change in writing at least 60 days in advance. Customer shall only be entitled to services at the new location under the service contract that has been concluded if we approve the change. We reserve the right to demand amendments to the contract before we approve. However, we shall only refuse approval for objectively justified reasons.
- 2.7 For instruments that have not been maintained regularly by us since they were first commissioned, or for which service by us has been interrupted for more than one service interval, we reserve the right to carry out an initial inspection at Customer's expense. All the services required in order to ensure, on basis of this inspection, that the instrument conforms to our specifications will be charged to Customer at the applicable rates.

## 3 Services not included

The following work on the instruments (sections 3.1 to 3.7) is not considered as service accordance with these terms and conditions and will only be performed by us on the basis of a separate order and at a separate charge:

- 3.1 Repair and overhauling work, in particular the elimination of faults and damage, in as far as this is not included in the performance description of the contract concluded.
- 3.2 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 through Customer or third parties, as well as other circumstances that cannot be attributed to us, or as a result of force majeure (in particular fire, earthquake, flood etc.).
- 3.3 Overhauling work that becomes necessary as a result of the repair or modification of the instruments by third parties without our prior written approval.
- 3.4 All work necessary because of the connection of the instruments supplied by us to other installations not supplied by us.
- 3.5 All work that becomes necessary as a result of the instruments being operated under conditions (e.g. mains fluctuations, contamination) or using accessories or instrument-specific consumables that do not conform to our specifications.
- 3.6 The exchange of instrument-specific consumables, unless this takes place within the context of the service without significant additional expense.
- 3.7 Work connected with a change in the location where the instrument is being used.

## 4 Service personnel

- 4.1 We shall perform the services by trained system or instrument specialists.
- 4.2 We are entitled to subcontract the services to third parties.

## 5 Service times

- 5.1 Service intervals are derived from the performance description, unless other intervals are laid down in the contract. We undertake to perform the service on the instruments at the specified intervals.
- 5.2 The time when the service will be performed shall be agreed upon by the parties. If one of the parties is unable to keep to the agreed time as a result of unforeseen events outside its control (e.g. illness, breakdown, industrial action), the parties shall agree on another suitable time.
- 5.3 We shall perform the service on workdays during normal working hours. If Customer wants the work 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. We will assume that these have been obtained.
- 5.4 Our service personnel may conduct separately ordered work not included in the scope of the service contract - in particular services of the type listed in section 3 - at the same time as the service 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 service personnel.
- 5.5 If Customer suffers damage and proves that the damage is the result of our delayed performance, Customer shall be entitled to demand compensation for delayed performance only up to the price of the service that was not performed on time. The restrictions in section 9 of these General Terms and Conditions shall apply to any other and further claims Customer may have.

## 6 Payment

- 6.1 As payment for the services, we are entitled to charge Customer, depending on the type of agreement, a flat fee for each date or specific period of service work or a fee in accordance with the applicable rates.



- 6.2 The flat fee shall include all labour costs for the performance of the agreed service, including travel costs and expenses. If, however, at Customer's premises, the service personnel are held up in the performance of the services, the waiting times may also be charged at the applicable hourly rate for service personnel. Customer shall also bear any additional costs incurred if, for reasons attributable to Customer, the service work cannot be performed or cannot be performed in full within the agreed time.
- 6.3 The flat fee does not include the costs for substances used to maintain the instruments, aids, wearing parts, spare parts, exchange parts and all those services performed by us in addition to the services agreed. Such costs and services will be charged at our applicable rates.
- 6.4 The level of the flat fee shall be derived from the relevant service agreement. Statutory value-added tax and other applicable statutory duties will be charged in addition. If we perform services abroad, Customer shall refund all incurring foreign taxes and duties connected to the service.
- 6.5 Unless otherwise agreed, payments shall be due without deduction immediately after the completion of our services and upon receipt of the invoice. Immediately upon default of payment –or from the due date if Customer is an entrepreneur– we are entitled to demand default interest of 10 % p.a. or the statutory default interest if higher. Furthermore Customer shall be obliged to pay our collection costs and expenses, in so far as these are adequate for the prosecution of our rights. This ad minimum covers the fixed collection amounts as defined in § 1333 (2) ABGB and § 458 UGB (in the applicable form) and the costs of payment reminder letters of a mandated external counsel in accordance with the law (AHK 2005 or other applicable statutes). This foregoing shall not limit other claims and rights we may have. If partial payments have been agreed, we may immediate demand payment of the full amount in case of the non- or untimely payment of partial amounts or subsidiary claims.
- 6.6 The agreed flat fee is based on costs at the time the service contract is concluded. We shall be entitled to adjust the flat fee in accordance with cost developments provided we disclose individual cost elements and their share of the costs. 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. Customer shall be entitled, within 4 weeks of receiving such notification, to terminate the service contract as of the moment the price adjustment becomes effective.
- 6.7 Customer may only offset claims that are uncontested or legally binding.
- 6.8 Customer may only enforce a right of retention if this is based on the same contractual relationship and if Customer is not an entrepreneur.
- 7 Customer's cooperation obligations**
- 7.1 For the performance of the service, Customer shall make the instruments available to our service personnel and subcontracted third parties at the agreed time, and grant access to the premises.
- 7.2 Customer shall make the following (sections 7.2.1 and 7.2.2) available free of charge for the duration of the services:
- 7.2.1 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.
- 7.2.2 Appropriate support staff to operate the instruments and support the service 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 us during the performance of the services shall be pointed out, and if necessary, explained in detail to the service personnel before the service work begins. If such measures require a significant amount of time, we reserve the right to make an additional charge on basis of that period of time.
- 7.4 The information required about the instrument to be maintained shall be passed on and the associated documents made available to our service personnel and subcontracted third parties.
- 7.5 Customer shall inform the service personnel of any peculiarities and problems that have appeared in relation to the instrument to be maintained without being asked for such information.
- 8 Warranty**
- 8.1 We shall be obliged to complete or rectify free of charge any work that has been performed defectively.
- 8.2 We undertake to eliminate free of charge any defects in the parts used within the context of the service by at our choice wither rectifying or exchanging these parts.
- 8.3 If we fail to comply with the above obligations relating to completion, rectification or exchange, or fail to do so in time, Customer shall be entitled to set a reasonable grace period. If we culpably allow a reasonable grace period set to expire, Customer may demand a reduction in the service payment or terminate the contract after having set another reasonable grace period. The same also applies if the work performed under the warranty is defective.
- 8.4 Customer is not entitled to make any other or further warranty claims. In particular, we provide no guarantee that the instruments subject to the service will operate free of interruption and faults. Customer shall not be entitled to claim consequential damages.
- 8.5 If Customer assert warranty claims, Customer shall immediately notify us of any defects or damage after discovering them and do everything possible to limit the damage caused by a defect. Provided that Customer is an entrepreneur, Customer - in order to preserve its warranty rights - shall be obliged to examine the serviced instrument within 14 days after the service has been performed. In relation to defects Customer should have detected with this examination, Customer cannot claim warranty rights after expiry of these 14 days.
- 8.6 Unless otherwise agreed, the limitation period for claims for defects shall be 12 months after the services have been performed. The restart of the warranty period after remedial works have been undertaken shall be excluded except in cases where the defects had been caused by our intent or gross negligence. In deviation of statutory warranty provisions, Customer shall also within the first six months after the services have been performed bear the burden of proof for defects.
- 8.7 If the examination of a warranty claim demonstrates that there is no case for a claim, we shall be entitled to charge for the examination and performance of the service at the applicable rates.
- 9 Limitation of liability**
- 9.1 If Customer is unable to use the serviced instrument in conformity with the contract through our fault, as a result of improper service works or advice given to the Customer before or after the conclusion of the contract or through our infringement of other additional contractual obligations, the terms of sections 8, 9.2, 9.3 and 9.4 will apply accordingly to the exclusion of any further claims of the Customer.

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9.2 We shall only be liable - on any legal grounds whatsoever - for damage which is not caused to the instrument we performed services on itself in the following cases:

- intention,
- gross negligence,
- culpable damage of life, body and health,
- defects we have concealed fraudulently, or
- defects of which we have guaranteed the absence.

9.3 In the event of the culpable violation of substantial contractual obligations (obligations the breach of which puts the fulfilment of the purpose of the contract at risk), we shall also be liable for ordinary negligence; however, this liability shall in terms of the amount be limited to damage that could reasonably have been foreseen and that is typical for a contract of this nature.

9.4 Any claims of the Customer going beyond the scope of sections 9.1 to 9.3 shall be excluded.

### 10 Duration of the contract

10.1 Unless otherwise agreed, the service contract shall be concluded for an indefinite period.

10.2 The service contract ends when the instrument is sold or ultimately taken out of service. The contract shall end no sooner as we have received written notification about this.

10.3 The service contract may be terminated for individual instruments 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 We shall be entitled to terminate the service contract without notice at any time if Customer are in default of payment for more than 30 days or if the instrument has been repaired or maintained by third parties without our consent or if the service has been made more difficult by changes to the configuration that have not been approved by us or if the instrument-specific environmental conditions no longer comply with the installation guidelines.

10.5 The service contract may only be terminated in writing.

### 11 Final provisions

11.1 Customer hereby consents that we store his personal data in relation to our contractual relationship, transfer such data to affiliated companies of the ZEISS group and may use such data for the purposes of informing customer about ZEISS products and services and conducting repair and service works. Customer at any time may withdraw his consent.

11.2 Subsidiary agreements, amendments and additions to service contracts must be in writing in order to be effective. Agreements on the suspension of the requirement of written also require the written form.

11.3 Customer shall not be entitled to transfer Customer's rights and obligations under the contract to third parties. If Customer surrenders the instrument that is subject to the service to a third party, Customer's payment obligation continue to apply, unless the third party takes over this contract with our consent.

11.4 The exclusive place of jurisdiction, provided that Customer is an entrepreneur, a legal person under public law or other institution under public law, shall be the competent court at the current seta of Carl Zeiss GmbH (Vienna). However, we may also take legal action against Customer at his place of business.

11.5 Governing law shall be the law of Austria with the exclusion of the international conflict of laws provisions thereof and with the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

11.6 Should any of the clauses of these General Terms and Conditions for Repair Contracts be wholly or partially invalid or void, the validity of the remaining clauses or parts thereof shall not be affected.