

General Terms and Conditions of Sale

Carl Zeiss GmbH, Vienna



1. General

1.1 Any delivery of goods and services by us shall be subject to the Terms and Conditions set forth herein to the extent no other agreements have been explicitly made. As far as Customers' 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. Insofar as our specific general terms and conditions (such as General Terms and Conditions for Repair or Maintenance Works) have been agreed, they shall take precedence over these General Terms and Conditions of Sale.

1.2 The sale, resale and the disposal of goods and services including any associated technology or documentation may be governed by Austrian, EU, US export control regulations as well as by the export control regulations of further countries. Any resale of goods to embargoed countries or to denied persons or persons that use or may use the goods for military purposes, ABC weapons or nuclear technology is subject to an official license. Customer declares with his order the conformity with such statutes and regulations and that the goods will not directly or indirectly delivered into countries that prohibit or restrict the import of such goods. Customer declares to have obtained all licenses required for export and import.

2. Information, Consultancy, Offer, Conclusion of an Agreement and Demonstration Units

2.1 Information and consultancy in relation to our goods and services is provided as deemed appropriate from existing experience. Any values quoted as part thereof, especially performance data, represent average values which have been determined through experiments under standard laboratory conditions. We cannot assume any commitment for our products to precisely meet the quoted values and areas of application. Section 10 of these Terms and Conditions governs any issues of liability.

2.2 Our offers are binding within the validity period stated in our offer. A supply or other agreement shall only be concluded, once we have confirmed Customer order or have delivered the goods or provided the services ordered.

2.3 Demonstration units are non-committal goods for trial. The sale of such goods may be subject to customary or production-related deviations between the good for trial and the actual good delivered. The characteristics of a demonstration unit delivered shall not be considered as guaranteed characteristics, unless explicitly stated in the order confirmation. Demonstration units shall be returned

3. Prices

3.1 The prices quoted in our order confirmation shall solely apply. Additional services will be invoiced separately.

3.2 All prices are quoted as net prices and do not include value added tax, which is to be paid additionally by Customer in the amount specified by applicable law.

3.3 Unless otherwise expressly agreed, our prices are quoted ex works - Vienna. Customer shall bear all additional freight costs, packing costs in excess of standard packing, public fees (including withholding taxes) and duties.

4. Delivery

4.1 Unless otherwise expressly agreed, we shall deliver ex works (EXW INCOTERMS 2010) - Vienna.

4.2 Delivery periods shall only be binding if expressly agreed in writing. Delivery periods shall begin on the date of our order confirmation, however, in no case prior to settlement of all details relating to an order including the furnishing of any required official certificates. Delivery periods shall be deemed to be met on timely notification of readiness to ship if the goods cannot be dispatched in time through no fault of our own.

4.3 With respect to delivery periods and dates, which are not expressly defined as fixed in the order confirmation, Customer may -two weeks after expiry of such a delivery period or date- set us an adequate grace period for delivery. We may only be deemed to be in default after expiry of such a grace period.

4.4 Without prejudicing our rights from Customer's default, delivery periods and dates shall be deemed to be extended by the period of time during which Customer fails to comply with his obligations to us. In case we do not comply with our obligations we shall only be liable for all types of damages in accordance with Section 10 of these Terms and Conditions.

4.5 We reserve the right to carry out a delivery using our own delivery organisation.

4.6 We may perform partial deliveries and render partial services if such action would not unreasonably affect Customer.

4.7 Customer may rescind the contract after unsuccessful expiry of two grace periods unless the hindrance is merely temporary in nature and a delay would not unreasonably affect Customer.

4.8 Any contractual or statutory right of a Customer to rescind the contract, which Customer fails to exercise within a reasonable period of time set by us, shall be forfeited.

5. Shipment, Passing of Risk

5.1 Unless otherwise expressly agreed, shipment shall always be carried out at Customer's risk. The risk shall pass to Customer as soon as the goods have been handed over to the person executing the shipment.

5.2 If a shipment is delayed for reasons to be attributed to Customer, the risk of accidental deterioration, loss and destruction shall pass to Customer on notification of our readiness to ship. Required storage costs after passing of risk shall be borne by Customer. This shall not affect any other claims.

5.3 If Customer defaults in accepting, we shall be entitled to claim refund of any expenditure associated therewith and the risk of accidental deterioration, loss and destruction shall pass to Customer.

6. Payment

6.1 Payment shall be made in full within 30 days from the date of the invoice, unless otherwise agreed. Payment shall be considered to have been made on the day the payable sum is received. Bills of exchange and cheques shall not be deemed payment until after they have been honoured and will be accepted without any obligation to make timely presentation and timely protest.

6.2 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.

6.3 Customer may only withhold or offset due payments against their own counter-claims if these are uncontested or have been found to be legally binding.

6.4 Any of our receivables shall be immediately payable in the event of a default in payment, a notice given in protest against a bill of exchange or suspension of Customer's payments, independent of the term of the bills of exchange which may have already been accepted. In any of these aforementioned cases, we shall also be able to perform remaining deliveries only against advance payment or provision of security, and, if no such advance payment is made or security provided within a two-week time period, to cancel the contract without fixing another extension term. This shall not affect any further claims.

7. Retention of Title

7.1 All delivered goods shall remain our property (goods sold subject to retention of title) until all receivables out of this contractual relationship, on whatever legal grounds, have been fully paid up.



- 7.2 In case of processing, combining or mixing of goods subject to retention of title with goods of Customer, we shall be entitled to co-ownership of the new property inasmuch as the invoiced value of goods sold with retention of title relates to the value of the other involved goods. Where our co-ownership becomes null and void due to processing, combining or mixing with other goods, Customer undertakes to assign to us those of his rights of ownership in the new property or compound matter which correspond to the amount of the value of goods subject to retention of our title and undertake necessary steps to secure our rights (e.g. label the goods with our property rights). Customer shall also be responsible for holding such rights in safe custody on our behalf and at his own expense. We shall be entitled to review and undertake - where necessary - such steps ourselves. Any rights to co-ownership created as a result of such processing, combining or mixing shall be subject to section 7.1 of these Terms and Conditions.
- 7.3 Customer may resell, process, combine or mix with other property, or otherwise integrate goods under retention of title in normal business operations, as long as Customer is not defaulting. Customer shall be prohibited from taking any other disposition regarding goods for which we retain title. We shall be promptly notified about any hypothecation or other seizure of goods under retention of title through a third party. All intervention costs will be charged to Customer if and to the extent that they cannot be collected from such third party. If Customer grants his buyer additional time for payment of the sales price, Customer shall reserve title in goods resold with retention of our title under the same terms which we have applied when delivering such goods with retention of title. Customer shall be prohibited from any other kind of resale.
- 7.4 Customer undertakes to immediately assign to us any receivables resulting from a resale of goods initially sold with retention of our title as soon as such receivables exist and to undertake necessary steps to secure such rights (notification of debtor or book entries). We shall be entitled to notify the debtor ourselves. Such receivables will be used to substitute the goods under retention of title as collateral of the equivalent amount. Customer shall only be entitled and authorised to resell such goods if his receivables therefrom immediately accrue to us.
- 7.5 If Customer resells goods under retention of our title together with goods from other suppliers at a certain total price, Customer shall assign to us his receivables from such resale in the same amount as stated in our invoice for goods initially sold with retention of title.
- 7.6 If an assigned receivable is included into a current account, Customer undertakes to immediately assign to us that part of the balance which is equivalent to the amount of such receivable, including the final balance from current account operations, and make the necessary steps to secure such rights.
- 7.7 Until we give notice of revocation, Customer shall be authorised to collect receivables assigned to us. We shall be entitled to such revocation if Customer fails to meet his payment obligations under the business relationship with us in due course. If the preconditions for exercising a revocation right are fulfilled, Customer shall promptly notify us of any assigned receivables with respective debtors, furnish all data required for collection of such receivables, hand over all related documentation and advise the debtors of such assignment. We reserve the right to personally advise the debtors of such assignment.
- 7.8 If the value of the collateral deposited in our benefit exceeds the amount of secured claims by a total of more than fifty (50) per cent, Customer shall be entitled to demand that we insofar release securities of our own choice until the securities amount to less than one-hundred-fifty (150) per-cent of the secured claim.
- 7.9 If we claim retention of title, this shall only be understood as rescind of the contract if expressly stated so by us in writing. Customer's right to possess goods under retention of title shall be null and void if he fails to meet his contractual obligations.

8. Software Rights

- 8.1 Software programs will fully remain our property. No program, documentation or subsequent upgrade thereof may be disclosed to any third party, unless with our prior written consent, nor may they be copied or otherwise duplicated, even for Customer's internal needs apart from a single back-up copy for safety purposes.
- 8.2 Customer is granted a non-exclusive, non-assignable right to use the software, including any related documentation and updates, for no other purpose than that of operating the goods, for which such software is intended. For programs and documentation created and delivered at Customer's request, we grant Customer certain single end user licences for non-exclusive non-assignable exploitation.
- 8.3 Unless otherwise explicitly agreed, Customer shall have no right to receive the source code of software delivered.

9. Warranty and Representation

- 9.1 We warrant and represent that all goods delivered are free from defects for a period of 12 months from delivery. After this 12-months-period Customer shall be neither entitled to any warranty claim nor to any claim on grounds of this guarantee. Customer is not entitled to any claims in case a defect is evidently and/or intentionally caused by the Customer.
- 9.2 If Customer makes use of its rights under this warranty and representation clause, goods claimed to be defective shall be returned to us for examination in their original or equivalent packaging. We shall remedy defects if the warranty claim is valid and within the warranty period. It is at our discretion whether we remedy the defect by repair or replacement. We shall only bear costs necessary to remedy the defect.
- 9.3 We shall be entitled to refuse to remedy defects in accordance with our statutory rights. We may refuse to remedy defects if Customer has not complied with our request to return the goods claimed to be defective.
- 9.4 Customer shall be entitled to rescind the contract or reduce the contract price in accordance with statutory rights, however, Customer shall not be entitled to rescind the contract or to reduce the contract price, unless Customer has previously given us twice a reasonable period to remedy the defect which we have failed to observe, unless setting of such a period is dispensable. In the event of rescission, Customer shall be liable for any intentional or negligent actions that cause destruction or loss of the goods as well as for failure to derive benefits from the goods.
- 9.5 If we maliciously withhold disclosure of a defect or explicitly agree on certain qualities in accordance with § 922 ABGB (seller's representation that goods have certain qualities at the time the risk passes and seller's intention of strict liability in the event that they do not), Customer's rights shall be governed exclusively by the statutory provisions.
- 9.6 Any rights of Customer to receive damages or compensation shall be governed by the provisions in section 10 of these Terms and Conditions. Customer shall not be entitled to claim consequential damages.
- 9.7 Specifications of our goods, especially pictures, drawings, data about weight, measure and capacity contained in offers and brochures are to be considered as average data. Such specifications and data shall in no way constitute a quality warranty but merely a description or labelling of the goods.
- 9.8 Unless limits for variations have expressly been agreed in the order confirmation, such variation shall be admissible that are customary within the trade.
- 9.9 We shall not accept any liability for defects in the goods supplied if they are caused by normal wear and tear. Customer shall have no rights against us in respect of defects in goods sold as lower-class or used goods (unless otherwise explicitly agreed with Customer in writing).
- 9.10 Any warranty and representation shall be void if operating or maintenance instructions are not observed, if changes are made to deliveries or services, if parts are replaced or

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materials used that are not in accordance with our original product specifications, unless Customer can show that the defect in question resulted from another cause.

- 9.11 Provided that Customer is an entrepreneur, Customer shall be obliged to immediately notify defects to us in writing or via fax. § 377 UGB is applicable.
- 9.12 If Customer purchases used goods from us, these goods shall not be subject to warranty or any other representation, unless otherwise explicitly agreed in writing.

10. Limited Liability

- 10.1 In case of a breach of contractual obligations, defective deliveries or tortious acts, we shall only be obliged to compensate damages or expenses - subject to any other contractual or statutory conditions for liability - if we acted intentionally or with gross negligence or in cases of minor negligence, if such negligence results in the breach of an essential contractual duty (a duty the breach of which puts the fulfilment of the purpose of the contract at risk). However, in case of minor negligence, our liability shall be limited to typical damages which are foreseeable at the time of the conclusion of the contract.
- 10.2 Our liability for losses caused by late delivery due to minor negligence shall be limited to 5% of the agreed purchase price.
- 10.3 The exclusions and limitations of liability in sections 10.1 – 10.2 shall not apply in cases we explicitly agree on certain qualities in accordance with § 922 ABGB, have maliciously failed to disclose a defect, or in case of damages resulting from death, injury to health or physical injury or where the laws on product liability impose overriding liabilities which cannot be excluded.
- 10.4 The limitation period for claims against us - based on whatever legal ground - is 12 months (24 months in case Customer is a consumer) from receipt of the goods by Customer and in case of tortious claims, 12 months (24 months in case Customer is a consumer) from the date Customer becomes aware or would have become aware of the grounds giving rise to a claim and the liable person, had Customer not been grossly negligent. The provisions in this clause shall neither apply in cases of intentional or gross negligent breaches of duty nor shall they apply in cases referred to in section 10.3 of these Terms and Conditions.
- 10.5 If Customer is an intermediary seller of the goods obtained from us and the final purchaser of the goods is a consumer, the limitation period for any action of recourse against us by Customer shall be the period specified by statute.
- 10.6 Our liability for software supplied by us shall be limited to liability for losses or alteration of data caused by the program; however, we shall not be liable for any losses or alteration of data which could have been avoided by Customer's compliance with its duty to secure such data at appropriate intervals and at least once per day.

11. Industrial Property Rights, Copyrights

- 11.1 In the event of claims against Customer because of breach of an industrial property right or a copyright in using our deliveries or services in accordance with the contractually defined manner, we shall be responsible to obtain the right for Customer to continue using such deliveries or services, provided that Customer gives immediate written notice of such third-party claims and our rights to take all appropriate defensive and out-of-court actions are reserved. If, despite such actions, it proves impossible to continue using our deliveries or services under reasonable economic conditions, it shall be understood as agreed that we may, at our discretion, modify or replace the particular delivery or service for removal of a legal deficiency, or take back such delivery or service with refunding of the sales price previously paid to us less a certain deduction to account for the age of the delivery or service in question.

- 11.2 Customer shall have no further claims alleging infringement of industrial property or copyrights provided we have neither violated essential contractual duties nor intentionally or grossly negligently breached contractual duties. We shall have no obligations in accordance with section 11.1 in case breaches of rights are caused by exploiting our deliveries or services in any other manner than contractually defined or by operating these together with any other than our own deliveries or services.

12. Disposal

- 12.1 Customer is obliged to closely observe our goods accompanying documents and to ensure the correct disposal of the goods in accordance with the applicable law.
- 12.2 In case Customer is an entrepreneur, Customer shall be obliged to dispose the goods at own costs. Customer shall be obliged to transfer this obligation on the purchaser of the goods or parts thereof in case of a resale of the goods. In case Customer is a consumer the statutory provisions regarding disposal of waste shall apply.

13. Confidentiality

- 13.1 Unless otherwise expressly agreed in writing, no information provided to us in connection with orders shall be regarded as confidential, unless their confidential nature is obvious.
- 13.2 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 maintenance works. Customer at any time may withdraw his consent.

14. Miscellaneous

- 14.1 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.
- 14.2 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 United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 14.3 Should any of the clauses of these Terms and Conditions be wholly or partially invalid or void, the validity of the remaining clauses or parts thereof shall not be affected.