

General Terms and Conditions for Maintenance Contracts 2009

1. Scope

1.1 Any orders placed with us for the maintenance (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 the client's general terms and conditions are inconsistent with ours, their application shall be subject to our explicit written approval.

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 maintenance work, 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 maintenance 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 maintenance 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 exchange parts shall be transferred to us.

2.6 Unless otherwise agreed in the maintenance contract, we perform the services at the location where the instrument is being used at the time the contract is concluded. If you change the location where the instrument is being used, you shall inform us of the change in writing at least 60 days in advance. You shall only be entitled to maintenance services at the new location under the maintenance 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 maintenance by us has been interrupted for more than one maintenance interval, we reserve the right to carry out an initial inspection at your 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 you at the applicable rates.

3. Services not included

The following work on the instruments (sections 3.1 to 3.7) is not considered as maintenance work in 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 restoration 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 on your part or by 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 Restoration 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 services necessary because of the connection of the instruments supplied by us to other installations not supplied by us.

3.5 All services that become 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 maintenance without significant additional expense.

3.7 Work connected with a change in the location where the instrument is being used.

4. Maintenance personnel

4.1 We shall perform the maintenance work by trained system or instrument specialists.

4.2 We are entitled to subcontract the maintenance work to third parties.

5. Maintenance times

5.1 The maintenance intervals are derived from the performance description, unless other intervals are laid down in the contract. We undertake to perform the maintenance work on the instruments at the specified intervals.

5.2 The time when the maintenance work will be performed shall be agreed upon by the parties. If one of the parties is unable to keep to the agreed time for the maintenance work 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 maintenance work on workdays during normal working hours. If you want the work to be performed at other times, an overtime surcharge will be added. You shall obtain all permits required for this purpose from the relevant authorities. We will assume that these have been obtained.

5.4 On the basis of a separate order, the maintenance personnel may perform services not included in the scope of the maintenance contract –in particular services of the type listed in section 3– at the same time as the maintenance work 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.

5.5 If you suffer damage and prove that the damage is the result of our delayed performance, you shall be entitled to demand compensation for delayed performance only up to the price of the maintenance work 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 you may have.

General Terms and Conditions for Maintenance Contracts 2009**6. Payment**

- 6.1 As payment for the services, we are entitled to charge you, depending on the type of agreement, a flat maintenance fee for each date or specific period of maintenance work or a fee in accordance with the applicable rates.
- 6.2 The flat maintenance fee shall include all labour costs for the performance of the agreed service, including travel costs and expenses. If, however, at your premises, the maintenance personnel are held up in the performance of this work, the waiting times may also be charged at the applicable hourly rate for maintenance personnel. You shall also bear any additional costs incurred if, for reasons attributable to you, the maintenance work cannot be performed or cannot be performed in full within the agreed time.
- 6.3 The flat maintenance 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 maintenance fee shall be derived from the relevant maintenance agreement. Statutory value-added tax and other applicable statutory duties will be charged in addition. If we perform services abroad, you shall refund all incurring foreign taxes and duties connected to the service.
- 6.5 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 the client is a businessman within the meaning of the German Commercial Code– we are entitled to demand default interest of 8 (for consumers 5) percentage points above the base lending rate p.a.. We reserve the right to claim a higher actual damage.
- 6.6 The agreed flat maintenance fee is based on costs at the time the maintenance 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. You 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. You shall be entitled, within 4 weeks of receiving such notification, to terminate the maintenance contract as of the moment the price adjustment becomes effective.
- 6.7 You may only offset claims that are uncontested or legally binding. You may only enforce a right of retention if this is based on the same contractual relationship and if you are not a businessman.

7. Cooperation duties

- 7.1 You shall make the instruments available to our maintenance personnel and subcontracted third parties at the agreed time in order to allow us to perform the maintenance work, and you shall grant access to the premises.
- 7.2 You shall make the following services (sections 7.2.1 and 7.2.2) available free of charge for the duration of the maintenance work:
- 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 maintenance personnel, along with, if applicable, any aids required.
- 7.3 Any special safety and plant regulations in force at your premises that must be observed by us during the performance of the maintenance work shall be pointed out, and if necessary, explained in detail to the maintenance personnel before the maintenance 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 maintenance personnel and subcontracted third parties.

7.5 You shall inform the maintenance 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 maintenance work by 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, you shall be entitled to set a reasonable grace period. If we culpably allow a reasonable grace period set to expire, you may demand a reduction in the maintenance payment or terminate the contract without notice. The same also applies if the work performed under the warranty is defective.
- 8.4 You are not entitled to make any other or further warranty claims. In particular, we provide no guarantee that the instruments subject to the maintenance work will operate free of interruption and faults.
- 8.5 If you assert warranty claims, you shall immediately notify us of any defects or damage after discovering them and do everything possible to limit the damage caused by a defect.
- 8.6 Unless otherwise agreed, the period of warranty shall be 12 months. The restart of the period of warranty shall be excluded except in cases of intent or gross negligence.
- 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 you are unable to use the instrument we performed services on in conformity with the contract because of our fault as a result of the omission or improper implementation of suggestions and advice given before or after the conclusion of the contract or through the infringement of other additional contractual obligations –particularly instructions for the operation and maintenance of the delivered instrument– sections 8, 9.2, 9.3 and 9.4 shall apply accordingly.
- 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 injury of life, body and health,
 - defects we have concealed fraudulently or 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 going beyond the scope of sections 9.1 to 9.3 shall be excluded.

10. Duration of the contract

- 10.1 The maintenance contract is concluded for an indefinite period.
- 10.2 The maintenance contract ends when the instrument is sold or ultimately taken out of service. The contract shall

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end no sooner as we have received written notification about this.

- 10.3 The maintenance 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 maintenance contract without notice at any time if you 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 maintenance work 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 contract may only be terminated in writing.

11. Final provisions

- 11.1 We point out that personal data in relation to our contractual relationship may be stored by us and may be transferred to companies associated with us in the Carl Zeiss group, too.
- 11.2 Subsidiary agreements, amendments and additions to maintenance contracts must be in writing in order to be effective. Oral agreements on the suspension of the requirement of written form are void.
- 11.3 You shall not be entitled to transfer your rights and obligations under the contract to third parties. If you surrender the instrument that is subject to the maintenance work to a third party, your payment obligation continues to apply, unless the third party takes over this contract with our consent.
- 11.4 The place of jurisdiction, provided that you are a businessman, a legal person under public law or a special fund under public law, shall be Jena/Germany. However, we may also take legal action against you at your place of business.
- 11.5 Governing law shall be the law of Germany 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).
- 11.6 Should any of the clauses of these General Terms and Conditions be wholly or partially invalid, the validity of the remaining clauses or parts thereof shall not be affected.