

General Terms of Sale

I. General

1. Any delivery, service, offer, repairs, consultancy or information made or provided in response to inquiries shall be subject to the terms set forth herein. The Customer's terms shall only prevail if and to the extent that we have expressly accepted these in writing.
2. Customer data will be saved and processed in EDP systems where required for the proper handling of business relations.
3. Claims against us may not be assigned to any third party. Section 354 a of the German Commercial Code shall remain unaffected.
4. The resale of goods may be governed by German, EU and US export control regulations. Any resale of goods to embargoed countries or to denied persons or persons using the goods for military purposes, ABC weapons or nuclear technology is subject to a license. The license required must be obtained by the Customer.
5. Our indoor and field operations personnel shall not be authorised to close any agreement that is supplementary to, or conflicts with, the provisions herein, nor may they grant any special conditions.

II. Information, Consultancy

Information and consultancy regarding any of our products 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 their quoted values and areas of application. In cases of liability, section X of these General Terms will apply.

III. Offer & Conclusion of Contract, Demo-Systems

1. Our quotations are non-binding, provided the binding force of a quotation was not expressly stipulated in writing. Any delivery or other contract shall only take place following our written acknowledgement of the Customer's order or upon shipment of ordered goods.
2. Demo-systems are non-binding products made available for evaluation. In the event of a purchase decision following trial operation of a demo-system, we reserve the right to supply a system with performance specs that differ from those of the demo-system by a margin which is customary in the trade or may be due to normal manufacturing tolerances. Demo-systems provided for product evaluation shall not be deemed to have any warranted qualities, unless the particular written order acknowledgement explicitly stipulates anything to the contrary.
3. Demo-systems must be returned to us in a proper technical condition not later than two (2) weeks from the date on which they were made available. Failure to reship a demo-system duly in time will entitle us to charge the normal sales price, based on price list specifications, for that demo-system.
4. Any product-related specifications, notably illustrations, drawings, weight, dimensional and performance data quoted in commercial offers and sales literatures are to be understood as approximate average performance features. They are meant to describe or characterize a given product rather than provide a warranty as to any particular quality of the product. Unless the limits of permissible performance variances have been explicitly stipulated and marked as such in our order acknowledgement, the generally accepted variation margin in the trade shall apply in all cases.

IV. Pricing

1. The prices quoted in our order acknowledgements shall prevail in all cases. Additional services will be charged separately.
2. All prices are quoted as net prices before VAT. VAT is to be paid additionally by the Customer at the current rate.
3. Unless otherwise agreed, our prices are quoted ex works (according to Incoterms 2000) the seat of the company of the Carl Zeiss Group using these General Terms of Sale. The Customer shall bear all additional freight costs, notably packing costs, related expenses, public fees and tax charges which are required in excess of standard packing requirements.

V. Delivery

1. Delivery periods shall not be deemed to be binding, unless they have been agreed in writing. Any turnaround time and delivery date shall begin on the date of our order acknowledgement, however, in no case prior to settlement of all details relating to an order. This shall also include the furnishing of any required official certificates. An order shall be deemed as duly executed on timely notification of readiness to ship if a given goods shipment cannot be dispatched through no fault of our own.
2. In the event of turnaround times and delivery dates not expressly named as firm and binding in our order acknowledgement, the Customer may set us an adequate extension period for delivery or performance of service two weeks after expiry of such turnaround time or delivery date. We may only be considered to be defaulting on expiry of such extension period.
3. Notwithstanding any of our other rights from a Customer default, a turnaround time and delivery date shall be deemed to be extended by the length of the period, during which a Customer fails to comply with his obligations to us. In the event of any default on our part - on whatever legal ground - we shall not assume liability for any other claims of any kind than those stipulated under section X of these General Terms.
4. Should there be any sort of delay by our suppliers, we will not be obliged to meet our delivery deadlines assuming that we have taken all necessary precautions when selecting these particular suppliers.
5. Cases of Force Majeure and any other events beyond our influence, which render the performance of a delivery or service essentially more difficult or even impossible shall relieve us from any obligation under a contract. Examples of this are: operating disturbances (e.g. fire, lack of raw materials or energy failure), delay in transportation, strike, lawful lockout, governmental action and failure to deliver or incorrect or delayed delivery on the part of our suppliers. The Customer shall be entitled to rescind this contract in accordance with its statutory rights, except in cases in which an obstacle is only temporary and the Customer can reasonably be expected to accept the resultant delay in our performance.
6. We may perform partial deliveries and render partial services where these are appropriate for a Customer.
7. Any contractual or statutory right of a Customer to rescind the contract which the Customer fails to exercise within a reasonable period as stipulated by us shall be forfeited.

VI. Shipment & Passing of Risk

1. Shipment and transportation are always at the Customer's own risk. The risk shall pass to the Customer, even with partial deliveries, as soon as a goods consignment has been handed over to the person responsible for its transportation, has left our stock for dispatch or has left our factory for delivery ex works.
2. If a shipment of goods is delayed for reasons to be attributed to the Customer, the risk of accidental deterioration and accidental loss/destruction of sold products shall pass to the Customer on notification of our readiness to ship. Required storage costs after risk passing shall be borne by the Customer. We may, at our discretion, charge 1% of the total ordered sum in monthly storage costs. This shall not affect any other claims.
3. If the Customer defaults in accepting, we shall be entitled to claim the refunding of any expenditure associated therewith. On occurrence of a default in accepting, the risk of accidental deterioration and accidental loss/destruction shall pass to the Customer.

VII. General Orders & Call Orders

1. A general or call order shall commit the Customer to comply with the total purchasing volume specified therein.
2. Unless the particular contract includes a specific call-date schedule, the entire contractual volume due under a general or call order must be called within a time of twelve (12) months.

3. If a Customer fails to comply with call dates we may, at our discretion, deliver and charge the entire contractual volume four weeks after written notification thereof has been given along with a reference to the consequences of such failure. This shall not affect any of our rights in the event of a Customer default.

VIII. Payment

1. Payment shall be made in Euros. Postage and related charges shall be prepaid in all cases. Bills of exchange and cheques shall only qualify as a means of payment if honoured in due course. They will be accepted without any obligation for timely presentation and giving notice of protest.
2. Our invoices shall be payable in full thirty (30) days from the date of invoice.
3. In the event of failure to comply with due dates for payment we may, at our discretion, charge interest of 5 percentage points (8 percentage points in case Customer is an entrepreneur) above the basic interest rate provided by the Deutsche Bundesbank. This shall not affect any claims due to default. A payment shall be considered to have been made on the day the payable sum is received, not when it is dispatched.
4. Where related costs and interest accrue, we shall be entitled to set off due payments against such costs in the first place, then against such interest, and finally against the primary obligation.
5. Customers may only withhold or set due payments off against their own counter-claims if these have been found to be indisputable and lawful.
6. Any of our receivables - including receivables under other contracts with the same Customer - 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 the Customer's payments if other circumstances become known to us, which give rise to justified and serious doubts as to the solvency or creditworthiness of that Customer. Independent of the term of bills of exchange which may have already been accepted. This shall also apply if such circumstances already existed on the Customer's part, but were not known to us or cannot be reasonably expected to have been known to us at the moment of closing a contract. 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 going claims.

IX. Retention of Title

1. Delivered goods shall fully remain our property (goods sold subject to retention of title) until all receivables, on whatever legal grounds, including any future or contingent receivables from the closed and a simultaneously closed contract, have been fully paid up. This shall also apply where payments are made under specifically classified receivables.
2. In accordance with section 950 of the German Civil Code, the reprocessing and reshaping of goods subject to retention of title shall always be regarded as performed on our behalf, but with no obligation on our part. Reprocessed goods shall be deemed to retain our title as provided in clause 1 hereof. If a Customer chooses to reprocess, combine or mix goods under retention of title with other goods, 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 invoiced value of the other involved goods. Where our co-ownership becomes null and void due to combining or mixing with other products, the Customer immediately assigns to us those of his rights of ownership in the new property or compound matter which correspond to the amount of the invoiced value of goods subject to retention of our title. He will also be responsible for holding such rights in safe custody on our behalf and at his own expense. Any rights to co-ownerships created as a result of such combining or mixing shall be subject to the terms of clause 1 above (classify as goods sold with retention of title).

3. The Customer may reprocess, resell, combine with other property, or otherwise integrate (collectively also referred to as reselling hereafter) goods under retention of title in normal business relations, as long as he is not defaulting. He shall be prohibited from taking any other decision regarding goods for which we retain title. We shall be promptly notified about any hypothecation or other seizure of goods under retention of title carried out by a third party. All intervention costs will be charged to the Customer if and to the extent that they cannot be collected from such third party (opponent in third-party action against execution) and such third-party action was filed on a lawful basis. If the Customer grants his buyer additional time for payment of the sales price, he shall reserve the 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. The Customer shall not be required to retain title of ownership in receivables he will have to his buyer in the future. The Customer shall be prohibited from any other kind of resale.
4. The Customer immediately assigns to us any receivables resulting from a resale of goods initially sold with retention of our title. These will be used to substitute the goods under retention of title as collateral of the equivalent amount. The Customer shall only be entitled and authorised to resell such goods if his receivables therefrom are guaranteed to accrue to us.
5. If the Customer resells goods under retention of our title together with goods from other suppliers at a certain total price, he 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.
6. If an assigned receivable is included into a current account, the Customer immediately assigns to us that part of the balance which is equivalent to the amount of such receivable, including the final balance from current account operations.
7. Until we give notice of revocation, the Customer shall be authorised to collect receivables assigned to us. We shall be entitled to such revocation if the Customer fails to meet his obligation for payment under a business relationship with us in due course or if circumstances become known to us, which are likely to considerably diminish his creditworthiness. If the preconditions for exercising a revocation right are fulfilled, the 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 debtor(s) of such assignment. We reserve the right to personally advise the debtor(s) of such assignment.
8. If the value of collateral (nominal value for receivables, estimated value for movable property) deposited in our benefit exceeds the amount of secured claims by a total of more than fifty (50) per cent, we shall be obliged to release as many securities at our own choice as necessary to remedy this relationship if requested to do so by the Customer.
9. If we claim a retention of title, this shall only be understood as a withdrawal from the contract if expressly stated so by us in writing. The Customer's right to own goods under retention of title shall be null and void if he fails to meet his obligations under this or any other contract.

X. Software Rights

1. Software programs will fully remain our property. No program, documentation or subsequent upgrade thereof may be disclosed to any third party, unless our prior written consent has been procured to do so, nor may they be copied or otherwise duplicated, even for the Customer's internal needs apart from a single back-up copy for safety purposes
2. The 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 product, for which such software is intended. For programs and documentation created and delivered at the Customer's request, we shall grant that Customer single end user licences for non-exclusive non-assignable exploitation.

3. Typically, no source programs are provided. This shall require a special written agreement in each particular case.

XI. Warranty & Notice of Defects

1. It is the Customer's responsibility to carefully inspect the goods – even where demo-systems have previously been provided – immediately upon delivery both with regard to the condition of the goods to check whether the delivery is complete. Any defects shall be notified to us by the Customer within a period of 8 days; the relevant date for this purpose is the date of receipt by us of the Customer's written notification of the defect (fax is sufficient). The limitation period for claims for defects is 12 months (in case the Customer is a consumer 24 months).
2. The goods claimed to be defective shall be returned to us for examination in their original or equivalent packaging. If a defect is found which has been notified to us within the relevant period, we shall remedy such a defect. It is at our discretion whether we remedy the defect by repair or replacement. Defects will be repaired at our cost, but we shall not be responsible for any costs arising due to the goods being taken by the Customer to a place other than the place of fulfilment. We shall be entitled to refuse to remedy defects in accordance with our statutory rights. In the event of our refusal to repair a defect, in cases in which the remedy fails or where the Customer cannot reasonably be expected to accept the repair or replacement, the Customer shall be entitled to rescind the contract or reduce the contract price in accordance with the following paragraph 3.

We shall not accept any liability for defects in the goods supplied if they are caused by normal wear and tear.

3. Except in cases in which the requirement to allow a reasonable period for remedying any defects is rendered unnecessary by statute (§ 323(2), § 440 and § 441(1) of the German Civil Code), the Customer shall not be entitled to rescind the contract – providing rescission is not in any case precluded by statute – or to reduce the contract price, unless it has previously given to us a reasonable period to remedy the defect which we have failed to observe. In the event of rescission by the Customer, the Customer shall be liable for any destruction or deterioration of the goods and shall compensate us for benefits it has failed to derive from the goods, regardless of whether it caused such destruction, deterioration or failure intentionally or negligently and even if it exercised the usual level of care with which the customer would treat its own goods.
4. Any rights of the customer to receive damages or compensation shall be governed by the provisions in part XII.
5. If disclosure of a defect is maliciously withheld by us or a warranty is given that the goods will be of a particular quality at the time the risk passes in accordance with § 444 of the German Civil Code (representation by seller that the goods will have certain qualities at the time the risk passes and acceptance by seller of strict liability in the event that they do not), the Customer's rights shall be governed exclusively by the statutory provisions.
6. Notwithstanding any other, statutory rights entitling us to refuse to remedy a defect, we shall be under no obligation to remedy a defect, unless and until the Customer has complied with our request to return the allegedly defective goods to us and our refusal to remedy a defect if the Customer has failed to return the goods shall not entitle the Customer to rescind the contract or to reduce the contract price. The Customer shall have no rights in respect of defective goods that have been tampered with or altered without our consent, unless it is able to show that the defect in question was not caused by such tampering or alteration of the goods.
7. If the final purchaser of the goods is a consumer, the Customer shall be entitled, subject to the conditions in § 377 of the Commercial Code, to have recourse against us in accordance with the relevant statutory provisions (§§ 478 and 479 of the German Civil Code); any rights of the Customer to damages or compensation shall however be subject to the limitations and exclusions in part XII.
8. Goods that vary from their specification in the acknowledgement of the order shall not be deemed defective if such variation is custom-

ary within the trade. The customer shall have no rights against us in respect of defects in goods sold as lower-class or used goods.

9. Any warranty shall be void if operating or maintenance instructions are not observed, if changes are made to deliveries or services, if parts are replaced or materials used that are not in accordance with our original product specifications, unless the Customer can show that the defect in question resulted from another cause.

XII. Limited Liability

1. In the event of a breach by us of any pre-contractual, contractual or non-contractual duty, in the case of deliveries that are not in accordance with the contract – including deliveries of unascertained goods, tortious acts or any breach of our duties as a manufacturer (product liability), we shall – subject to any other contractual or statutory conditions for liability – not be liable to pay damages or compensation, unless such a breach was caused intentionally or by gross negligence on our part 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). In the absence of an intentional breach of duty, our liability shall however be limited to typical losses which are foreseeable at the time the contract is entered into.
2. In the event our product cannot be utilized as contractually provided due to – prior or after conclusion of the contract – failure of or deficiently given advisory or guidance or due to breach of collateral duties on our part, e.g. concerning the manual or operating or service instructions for the device, our liability shall be limited to the extend as set forth in Nos. 1 and 7 of this Provision XII. and as set forth in Provision XI. Any further liability for whatsoever kind of loss related to the aforesaid event in this No. 2 shall be excluded.
3. Our liability for losses caused by late delivery due to minor negligence shall be limited to 5% of the agreed purchase price.
4. We shall have no liability for minor negligence, unless such negligence causes a breach of an essential duty under the contract. In any event, such liability shall be limited to the amount of the purchase price. The foregoing paragraph 2 shall remain unaffected.
5. The exclusions and limitations of liability in paragraphs 1-3 shall not apply in cases in which we have warranted in accordance with § 444 of the German Civil Code that the goods will have certain qualities (see paragraph 5), in cases where we have maliciously failed to disclose a defect, where losses result from death, injury to health and physical injury or where the laws on product liability impose overriding liabilities which cannot be excluded.
6. The limitation period for claims against us – based on whatever legal ground – is 12 months from the date of delivery to the Customer; in the case of tortious claims, 12 months from the date the Customer would have become aware of the grounds giving rise to a claim had he not been grossly negligent in his ignorance of such grounds. The provisions in this clause shall neither apply to intentional breaches of duty – such cases being governed by the statutory provisions – nor shall they apply to the cases referred to in part 5. Where shorter limitation periods are specified by statute, they shall override the periods agreed between the parties.
7. If the 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 the Customer shall be the period specified by statute.
8. Our liability for software supplied by us and the liability of our employees and agents in this regard 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 the Customer's compliance with its duty to secure such data at appropriate intervals and at least once per day.

XIII. Industrial Property & Copyrights

1. In the event of claims on the Customer because of breach of an industrial property right or a copyright in using our deliveries or services, we shall be responsible to obtain justice for the Customer to continue using such deliveries or services, always providing that the Customer gives immediate written notice of such third-party claims.

We reserve our right to take appropriate defensive and out-of-court actions in such cases. If, despite such defensive 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 reship 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.

- No further claims by the Customer, alleging infringement of industrial property or copyrights, shall be accepted on our part, if we have not been shown either to have violated essential contractual commitments (cardinal duties) or to have intentionally or grossly negligently breached another contractual duty. We shall have no liability where breaches of rights are caused by exploiting our deliveries or services in any other way than quoted by us or operating these together with any other than our own deliveries or services.

XIV. Manufacturing to Customer Instructions

- For products manufactured to the customer's drawing documentation, samples and other customer instructions, we shall assume no responsibility or liability as to their fitness for operation or, if containing other defects, if and to the extent that identified circumstances are the result of customer instructions.
- The Customer shall hold us safe and harmless against any claims, including product liability claims, which a third party may have made to us with reference to damage caused by delivered goods, unless we are shown to have deliberately caused such damage or caused it through gross negligence.
- The Customer warrants to us that no goods which are manufactured and delivered to his own instructions will violate any right of a third party. In the event of a claim for infringement of patent rights being made to us, we shall, at our discretion, and without conducting a legal examination of such potential third-party claim be able to cancel the corresponding contract after hearing the Customer's oral statement, unless such third party renounces such patent rights in a written note to us within a time of eight (8) days. The Customer shall compensate any damage we may have suffered as a result of a claim for violation of patent rights. In the event of a withdrawal, all contractual work performed up to that moment shall be refunded. This shall not affect any further going rights under legal regulations.
- All moulds, tools and engineering design documentation that was created for the handling of a custom order shall remain our sole property. The Customer shall have no legal claim to such tools, even though he may have shared in the costs of manufacturing required moulds, tools and engineering design documentation, always provided that nothing to the contrary has been agreed.

XV. Disposal in the European Union

- Customer is obliged to closely observe our goods accompanying documents in case of disposal of the goods. Customer has to ensure the correct disposal of the goods specified in the delivery note in accordance with the applicable law.
- In case Customer is an entrepreneur, Customer is obliged to dispose of the goods at own costs. Customer is obliged to transfer this obligation on the purchaser of the goods or parts thereof in case of a resale of the goods.

XVI. Manufacturing to Customer Instructions

- For products manufactured to the customer's drawing documentation, samples and other customer instructions, we shall assume no responsibility or liability as to their fitness for operation or, if containing other defects, if and to the extent that identified circumstances are the result of customer instructions.
- The Customer shall hold us safe and harmless against any claims, including product liability claims, which a third party may have made to us with reference to damage caused by delivered goods, unless we are shown to have deliberately caused such damage or caused it through gross negligence.

- The Customer warrants to us that no goods which are manufactured and delivered to his own instructions will violate any right of a third party. In the event of a claim for infringement of patent rights being made to us, we shall, at our discretion, and without conducting a legal examination of such potential third-party claim be able to cancel the corresponding contract after hearing the Customer's oral statement, unless such third party renounces such patent rights in a written note to us within a time of eight (8) days. The Customer shall compensate any damage we may have suffered as a result of a claim for violation of patent rights. In the event of a withdrawal, all contractual work performed up to that moment shall be refunded. This shall not affect any further going rights under legal regulations.
- All moulds, tools and engineering design documentation that was created for the handling of a custom order shall remain our sole property. The Customer shall have no legal claim to such tools, even though he may have shared in the costs of manufacturing required moulds, tools and engineering design documentation, always provided that nothing to the contrary has been agreed.

XVII. Secrecy

Unless otherwise expressly stipulated in writing, no information provided to us in connection with orders shall be regarded as confidential, unless their confidential nature is obvious.

XVIII. Place of Fulfilment, Legal Venue & Applicable Law

- The place of fulfilment shall be the supplier's plant for deliveries ex works, and the warehouse for all other types of delivery.
- The legal venue for any disputes arising from this contract shall be, at our discretion, either our principal place of business or the Customer's principal office. The venue for legal action by the Customer shall in any case be the seat of the company of the Carl Zeiss Group using these General Terms of Sale. Any statutory regulations governing exclusive jurisdictional competence shall remain unaffected.
- All legal relations between the Customer and us shall be construed in accordance with the laws of the Federal Republic of Germany without giving effect to its conflict of law provisions. The UN Convention on Contracts for the International Sale of Goods (CISG) shall not apply.
- Should any provision of these General Terms be or become invalid, ineffective or unenforceable, the remaining provisions of this Agreement shall be valid. The Parties agree to replace the invalid, ineffective or unenforceable provision by a valid, effective and enforceable provision which economically best meets the intention of the Parties. The same shall apply in case of an omission.