



General terms and conditions for sales and delivery Carl Zeiss B.V.

with its registered office and principal place of business in Sliedrecht, The Netherlands

Article 1 Definitions

- 1.1 Carl Zeiss: Carl Zeiss BV, a private company with limited liability.
1.2 Client: any legal entity or natural person acting in connection with operating a business or practising a profession, to which/whom Carl Zeiss directs its offers, as well as those issuing an order to Carl Zeiss and/or those with which/whom Carl Zeiss has any legal relation.
1.3 Products: all products delivered to the Client with the application of these Terms and Conditions, as well as all work and services, including consultancy, maintenance and repairs, which Carl Zeiss performs for the Client.
1.4 Service Contract: a specific agreement to periodically perform preventive or other maintenance work.

Article 2 Applicability of these Terms and Conditions

- 2.1 These Terms and Conditions shall apply to every offer and order and every agreement between Carl Zeiss and a Client.
2.2 These Terms and Conditions shall also apply to all agreements with Carl Zeiss for which Carl Zeiss must engage third parties in order to execute the agreements.
2.3 Any clauses deviating from these Terms and Conditions must be agreed on in writing in all cases.
2.4 Any reference by the Client to its own purchasing terms, or other terms and conditions, shall not be accepted by Carl Zeiss.

Article 3 Quotations and agreement

- 3.1 All of Carl Zeiss' offers and quotations shall be without obligation.
3.2 Before a quotation is issued or an agreement is concluded, Carl Zeiss is obliged to ascertain all information relating to the performance of the work, and the Client must supply this information to Carl Zeiss.
3.3 Unless another period for acceptance is mentioned in the quotation, offers shall remain valid for 14 days after they are issued.
3.4 Data stated in catalogues, illustrations, price lists and suchlike are recommended prices and shall therefore not be binding, except in so far as this data have expressly been included in an agreement signed by the Parties or an order confirmation signed by Carl Zeiss.
3.5 Verbal agreements and/or commitments by Carl Zeiss shall only be binding on Carl Zeiss in so far as Carl Zeiss has confirmed these agreements and/or commitments in writing.
3.6 All documentation and brochures sent with the offer shall remain Carl Zeiss' property. Unless it receives prior written permission from Carl Zeiss, the Client is expressly prohibited from copying such information and/or disclosing it, in any manner whatsoever, to third parties. The use of the information supplied with the offer must remain limited to the Client's own use in connection with the order supplied.
3.7 In the case of a composite quotation, Carl Zeiss shall not be obliged to deliver a part of the items included in the quotation at a corresponding portion of the stated price, nor shall Carl Zeiss' quotation automatically apply to repeat orders.
3.8 The agreement shall be formed when the order is accepted by Carl Zeiss or when the order is actually executed.
3.9 Carl Zeiss shall be entitled to suspend execution of the agreement until the time that the Client has made an advance payment to Carl Zeiss, determined in accordance with the principle of reasonableness and fairness, or has paid Carl Zeiss for executing the agreement.
3.10 Carl Zeiss shall be entitled to cancel the order unilaterally within five working days after receipt and without stating its reasons, in which case no agreement shall have been formed between the Parties. In that case, Carl Zeiss shall pay for any costs already incurred by the Client, in so far as these are reasonable.
3.11 The Client shall be entitled to cancel an agreement before Carl Zeiss has begun executing the agreement, provided it pays Carl Zeiss for any resulting damage.
3.12 This damage shall include the losses and loss of profits suffered by Carl Zeiss and, in any event, the preparatory costs which Carl Zeiss has already incurred, including those relating to reserved production capacity, materials purchased, services enlisted and storage.
3.13 Cancellation shall not be possible for sub-orders for which work has already started.

Article 4 Price/price increases

- 4.1 Unless expressly stated otherwise, the prices published by Carl Zeiss shall be in euros and shall be exclusive of VAT. The prices shall not include any costs for training of, or at, the Client.
4.2 If Carl Zeiss agrees a certain price with the Client, Carl Zeiss shall nevertheless be entitled to increase the price if Carl Zeiss can demonstrate that significant price changes have occurred between the time of offer and delivery with respect to currency exchange rates, wages or otherwise unforeseen circumstances.
4.3 Each year on 1 January, Carl Zeiss shall be entitled to increase the other agreed prices and maintenance tariffs in accordance with, and not less than, the change in the Retail Price Index applicable at the time – to which all Households have been subjected.
4.4 In the case of an agreement by which the Client must pay amounts due periodically, Carl Zeiss shall be entitled to adjust the applicable prices through written notice with a notice period of at least 45 days.
4.5 If the price increase exceeds 10%, the Client shall be entitled to rescind the agreement, unless the price increase is statutorily required. If the Client does not respond in writing within five days after receiving notice of the increase, the right of rescission shall lapse.

Article 5 Payment

- 5.1 Payment must be made in two instalments, 1/3 of the invoice amount at the start of the order and 2/3 of the invoice amount upon delivery, and within 30 days in a manner to be indicated by Carl Zeiss in the currency stated in the invoice.
5.2 Carl Zeiss reserves the right to invoice the Client periodically for work already performed, and, if requested, the Client shall make an advance payment or provide security for the payment.
5.3 After 30 days has expired since the date of invoicing, the Client shall be legally in default; the Client shall owe interest as from the time that it is in default, of 1% per month on the amount that can be claimed, unless the statutory interest rate is higher, in which case the statutory interest rate shall apply.
5.4 If the Client is wound up, involuntarily liquidated or granted a moratorium, Carl Zeiss' claims and the Client's obligations vis-à-vis Carl Zeiss shall become immediately due and payable.
5.5 Complaints about invoices must be made within eight days.
5.6 Payment must be made without discount or settlement.
5.7 Payments made by the Client shall always be applied first to pay all costs and interest owed and, second, to pay the longest outstanding invoices that are due and payable, even if the Client states that the payment pertains to a later invoice.

Article 6 Collection charges

- 6.1 If the Client is in default with respect to fulfilling one or more of its obligations, the Client shall be responsible for all judicial and extrajudicial costs that are incurred to obtain payment, in accordance with the graduated scale of tariffs of the subdistrict courts ('For-Work II').
6.2 If Carl Zeiss can show that it has incurred higher costs, which were reasonable and necessary, these shall also be compensated.

Article 7 Execution of the agreement; guarantee

- 7.1 Carl Zeiss guarantees that the Products delivered shall satisfy the requirements of the agreement and that they are suitable for the use agreed on.
7.2 The work performed by Carl Zeiss shall be in compliance with the agreement and shall be performed skilfully and professionally, using good-quality materials.
7.3 Carl Zeiss guarantees that the final Products sold under the brand name Carl Zeiss shall not exhibit any defects in material and/or construction for a period of one year after delivery.
7.4 The warranty for measuring machines shall last for one year or, if earlier, once two thousand hours of use have elapsed.
7.5 The guarantee scheme shall only apply if the Client returns the Products in the manner indicated by Carl Zeiss.

Article 8 Service Contract

- 8.1 A Service Contract can be concluded after the period of guarantee. An All-in Service Contract can only be concluded with respect to new Products, or Products that have first undergone a service approved by Carl Zeiss.
8.2 Carl Zeiss guarantees that spare parts for the Product concerned shall be available for eight years after manufacturing of the Product has ceased. After this period, Carl Zeiss shall, where possible, endeavour to supply these spare parts.
8.3 A three-month warranty shall be given on repairs made to Products for which the guarantee period has expired.
8.4 Free repair during the guarantee period and under All-in Service Contracts shall not apply to:
(a) incorrect, careless or improper use of the Product;
(b) external causes affecting the Product;
(c) peripheral equipment not supplied by Carl Zeiss to the Client;
(d) repairs, changes or additions to the Product made by employees not authorised by Carl Zeiss, by the Client or by third parties not engaged by Carl Zeiss;
(e) changes or additions to software not authorised by Carl Zeiss.

Article 9 The Client's obligations

- 9.1 The Client shall provide Carl Zeiss with all the cooperation and facilities which are necessary and usual for executing the agreement. The Client shall take appropriate measures to avoid damage/injury to Products, systems, or to other items or persons. The Client shall fully inform Carl Zeiss' employees at the site about safety regulations and other precautionary measures, and about dangerous areas and substances present at the site.
9.2 The Client shall be responsible for any damage/injury that arise as a result of failure to comply with the provisions in the previous paragraph, or for not complying with them in a timely manner.
9.3 If, as a result of some cause that can be attributed to the Client, Carl Zeiss cannot start maintenance or repair work at a time agreed on by the Parties, or cannot continue such work, the resulting waiting times and/or costs incurred to no avail may be charged to the Client.

Article 10 Delivery

- 10.1 Unless otherwise agreed, delivery shall be carriage paid to the Client's address.
10.2 Transport of the Products, from unloading to the place where the Products are set up, shall be at the Client's expense and risk.

Article 11 Delivery time

- 11.1 Delivery times stated by Carl Zeiss shall always be approximate and shall never constitute firm deadlines.
11.2 The delivery time shall be based on the work situation existing at the time the agreement is concluded or the order accepted, and on timely delivery of the information collected by Carl Zeiss to perform the work. If delays occur which are not Carl Zeiss' fault, the delivery time shall be extended for as long as is necessary.
11.3 The Client shall not be entitled to damages if delivery dates or periods are exceeded, regardless of the cause.
11.4 If delivery is not timely, the Client must supply a written notice of default to Carl Zeiss, and give Carl Zeiss a reasonable period of at least 30 days to finally fulfil its obligations.
11.5 The Client shall be obliged to take possession of the goods at the agreed delivery time. If it does not do so, Carl Zeiss shall, without a notice of default, be entitled to demand payment of the agreed purchase price for the item not taken possession of, as well as to charge for the storage costs.
11.6 If delivery is postponed or accelerated at the Client's request, Carl Zeiss shall be entitled to be paid for the costs incurred in doing so, including, in the case of postponement, the statutory interest on the price of the Products outstanding.

Article 12 Partial deliveries

- Carl Zeiss shall be permitted to part-deliver items sold. This shall not apply if a partial delivery does not have any independent value. If the item is delivered in parts, Carl Zeiss shall be entitled to invoice separately for each partial delivery.

Article 13 Defects; complaint periods

- 13.1 The Client must inspect the items purchased (or have them inspected) upon delivery, or as soon as possible afterwards (within 48 hours). The Client must check whether the items delivered are in compliance with the agreement, namely:
(a) whether the correct items have been delivered;
(b) whether the items delivered satisfy the agreed quality requirements or, if there are none, the requirements which may be imposed for normal use and/or commercial objectives.
13.2 If visible defects or shortcomings are observed, the Client must report these in writing to Carl Zeiss within 30 days of delivery.

- 13.3 The Client must report non-visible defects in writing to Carl Zeiss within 30 days of discovery, but no later than within the agreed guarantee period. Claims in this respect must be filed within one year after timely complaint, under penalty of cancellation.
- 13.4 Even if the Client submits a timely complaint, it shall still be obliged to pay and take possession of orders made.
- 13.5 If the complaint is well-founded, Carl Zeiss shall be entitled to choose between adjusting the amount of the invoice or performing the rejected work again. If the defect cannot be repaired, Carl Zeiss shall be entitled to cancel the underlying agreement in whole or in part.
- Article 14 Technical requirements and suchlike**
- 14.1 If the Products to be delivered in the Netherlands are to be used outside the Netherlands, Carl Zeiss shall not be responsible for ensuring that the items to be delivered satisfy the technical requirements, standards and/or regulations imposed by the laws or provisions of the country where the items have to be used. This shall not apply if it is stated at the time that the agreement is concluded, that the Product is to be used in a foreign country, and all the necessary data and specifications are submitted.
- 14.2 All other technical requirements which are imposed by the Client on the items to be delivered and which deviate from the usually applicable requirements, must be expressly stated by the Client at the time the agreement is concluded.
- Article 15 Designs; intellectual property**
- 15.1 If a design, sample or example is displayed or supplied by Carl Zeiss, this shall be assumed to have only been displayed or supplied as an indication: the characteristics of the items to be delivered may deviate from the sample, design or example, unless it was expressly stated that delivery would be in accordance with the sample, design or example displayed or supplied.
- 15.2 The offer issued by Carl Zeiss, as well as the drawings, calculations, software, descriptions, designs and suchlike produced or supplied by it, as well as all information contained within these or forming the basis for them, shall be the property of Carl Zeiss, irrespective of whether these have been charged for.
- 15.3 Unless expressly agreed otherwise in writing, Carl Zeiss shall also retain all intellectual property rights to these.
- 15.4 None of the data and/or intellectual property rights referred to in the previous paragraphs may be copied, displayed to third parties and/or made available or otherwise used, without Carl Zeiss' written permission.
- Article 16 Retention of title**
- 16.1 All items delivered by Carl Zeiss shall remain Carl Zeiss' property until the Client has fulfilled all obligations under all agreements concluded with Carl Zeiss.
- 16.2 All materials made available by Carl Zeiss, such as demonstration material, tools, Products and loaned Products, shall remain Carl Zeiss' property. The Client shall be liable for all damage which may arise to these materials and must insure the materials properly.
- 16.3 Rights shall always be granted to the Client or, where appropriate, transferred, on the condition that the Client pays the agreed compensation in time and in full.
- 16.4 Items provided by Carl Zeiss which, which by virtue of paragraph 1 fall under the retention of title, may never be resold nor used as legal tender.
- 16.5 The Client shall not be entitled to pledge or otherwise encumber the items falling under the retention of title.
- 16.6 In all cases in which Carl Zeiss wishes to exercise its ownership rights, the Client hereby unconditionally and irrevocably grants permission to Carl Zeiss, or to a third party to be designated by it, to enter all those locations where Carl Zeiss' property is located at that time, and to remove the items from those locations.
- 16.7 If third parties attach delivered items that are subject to the retention of title, or wish to create rights on or enforce rights to these, the Client must inform Carl Zeiss as soon as may reasonably be expected.
- Article 17 Liability**
- 17.1 Carl Zeiss shall only be liable vis-à-vis the Client in the following manner:
- Carl Zeiss shall only be liable if damage/injury is caused by intentional acts/omissions or by gross negligence on the part of Carl Zeiss or its subordinates;
 - Carl Zeiss shall never be liable for loss of profits or consequential damage;
 - Carl Zeiss' liability shall be limited to the amount of the benefit to be supplied by Carl Zeiss' insurer in a particular case.
- 17.2 Carl Zeiss and persons used or engaged by Carl Zeiss to execute the order shall not be liable for damage/injury which the Client suffers in applying or using the result of Carl Zeiss' work.
- 17.3 The Client shall be obliged to compensate or indemnify Carl Zeiss with respect to all third-party claims for compensation for damage/injury for which Carl Zeiss' liability towards the Client has been excluded.
- Article 18 Transfer of rights**
- The Client shall not be entitled to transfer any rights or obligations under an agreement to any third party without Carl Zeiss' written permission.
- Article 19 Force majeure**
- 19.1 For purposes of these General Terms and Conditions, 'force majeure' shall mean, in addition to what is understood by the term in law – including case law – all external causes, whether foreseen or unforeseen, that are beyond Carl Zeiss' control, but as a result of which Carl Zeiss is unable to fulfil its obligations, including strikes in Carl Zeiss' business.
- 19.2 During a situation of force majeure, Carl Zeiss' delivery and other obligations shall be suspended. If the period during which it is not possible for Carl Zeiss to fulfil the obligations as a result of force majeure lasts for more than 90 days, both Parties shall be entitled to rescind the agreement, without there being any obligation to pay damages in such a case.
- 19.3 If, when a situation of force majeure commences, Carl Zeiss has already partly performed its obligations, or can only partly perform its obligations, it shall be entitled to separately invoice the part already delivered or the part which can be delivered, and the Client shall be obliged to pay this invoice as if it were a separate contract. This shall not apply, however, if the part already delivered – or the part which can be delivered – does not have any independent value.
- 19.4 If third parties on whom Carl Zeiss depends to execute the order, do not fulfil – or do not timely fulfil – their obligations towards Carl Zeiss, on account of circumstances which, under the first paragraph of this Article, would have constituted force majeure for Carl Zeiss, such nonfulfilment or nontimely fulfilment by those third parties shall also constitute force majeure for Carl Zeiss towards the Client.
- 19.5 Nevertheless, Carl Zeiss shall do everything it can to avoid, eliminate or mitigate such circumstances from constituting force majeure, in order to continue the normal work if this is possible in any way.
- Article 20 Rescinding the agreement, suspension and right of retention**
- 20.1 Each party shall only be entitled to rescind the agreement if the other party, after a proper written notice of default – which is as detailed as possible and in which a reasonable time period has been stated to rectify the breach – fails to fulfil material obligations under the agreement for reasons attributable to that other party.
- 20.2 If an agreement has been entered into for an indefinite period of time, which agreement by its nature and content does not terminate by fulfilment, it can be terminated by either Party through written notice after proper arm's length consultation and after supplying a statement of reasons. If the Parties have not expressly agreed on a term of notice, a reasonable period of two months should be observed when serving the notice to terminate. The Parties shall never be obliged to pay any damages on account of termination.
- 20.3 Carl Zeiss may terminate the agreement in whole or in part with immediate effect through written notice, without notice of default and without judicial intervention, if:
- (a) the Client loses the power to freely dispose of its goods or part of its goods, particularly in the case of involuntary liquidation, an application for a moratorium, or if its goods were to be attached in whole or in part by third parties, but does not include prejudgment attachments;
 - (b) the Client does not strictly comply with the conditions of this agreement or acts contrary to them;
 - (c) the Client is closed down, dissolved or dies;
 - (d) if, after the agreement is concluded, Carl Zeiss becomes aware of circumstances which give Carl Zeiss good grounds for suspecting that the Client will not fulfil its obligations;
 - (e) if Carl Zeiss asked the Client to provide security for performance at the time that the agreement was concluded, and this security has not been given, or is insufficient, despite a written demand.
- 20.4 In the aforementioned cases, Carl Zeiss shall be entitled to suspend further execution of the agreement, or to rescind the agreement, without prejudice to Carl Zeiss' right to claim damages.
- 20.5 The Client shall be entitled to rescind the agreement at law, in the event that Carl Zeiss is put into involuntary liquidation or granted a moratorium.
- 20.6 If, at the time of rescinding of this Agreement as referred to in paragraph 1, the Client has already received goods and/or services in order to execute the agreement, those goods and/or services and the associated obligation to pay for them shall not be cancelled, unless Carl Zeiss is in default with respect to those goods and/or services. Amounts that Carl Zeiss has invoiced before rescission, for what it had already performed or delivered in order to execute the agreement, shall continue to be owed in full, subject to the previous sentence, and shall be immediately due and payable at the time of rescission.
- 20.7 If circumstances arise involving persons and/or materials that Carl Zeiss uses or tends to make use of in the execution of the agreement, are of such nature that execution of the agreement becomes impossible or so onerous and/or disproportionately costly that fulfilment of the agreement can no longer be reasonably demanded, Carl Zeiss shall be entitled to rescind the agreement.
- 20.8 Carl Zeiss may exercise a right of retention on all items to which execution of the agreement pertains and which Carl Zeiss actually has in its possession from the Client in connection with the agreement, if the Client does not partly or fully pay the costs relating to the execution of the agreement.
- Article 21 Settlement of disputes**
- The court where Carl Zeiss is domiciled shall have exclusive jurisdiction to hear disputes. Nevertheless, Carl Zeiss shall be entitled to summon its other party to appear in the court with jurisdiction under the law.
- Article 22 Applicable law**
- Dutch law shall apply to every contract between Carl Zeiss and the Client.
- Article 23 Invalidity and conversion**
- 23.1 The fact that one or more Articles in these General Terms and Conditions are declared invalid by virtue of statutory measures and/or a judicial decision, or are at least considered unreasonably onerous, shall not affect the applicability of the other parts of these Terms and Conditions.
- 23.2 If a provision in these General Terms and Conditions is invalid, or at least unreasonably onerous, then that provision shall be replaced with a valid provision which as much as possible approximates the purpose of the invalid or at least unreasonably onerous provision. In that case, the Parties must consult one another about the wording of this new provision.
- SUPPLEMENTARY TERMS AND CONDITIONS FOR OPTICS**
- Article 24 Amendment and location of the Terms and Conditions**
- 24.1 These Terms and Conditions have been filed at the office of the Chamber of Commerce and Industry in Rotterdam, the Netherlands.
- 24.2 These General Terms and Conditions, including the tariffs, may be amended by Carl Zeiss. Changes shall become effective 30 days after the date on which the changes were announced, unless a later effective date is stated in the announcement.
- 24.3 The amended Terms and Conditions shall apply to agreements not yet executed as from the effective date.