



## GENERAL TERMS AND CONDITIONS OF SALE

### Carl Zeiss Philippines Pte. Ltd.

#### 1. General Terms and Conditions of Sale

- 1.1 The legal and contractual relationship between you the purchaser and us the seller Carl Zeiss Philippines Pte. Ltd. (referred to herein as "ZEISS") shall be governed by the General Terms and Conditions of Sale set out herein (the "**Terms and Conditions**"). The INCOTERMS 2010 published by the International Chamber of Commerce (Paris) ("**INCOTERMS 2010**") shall also apply but in the event of a conflict of terms the INCOTERMS 2010 shall override and govern the Terms and Conditions but only to the extent of the relevant conflict or inconsistency in question. Any variations or amendments to the Terms and Conditions (including any special terms and conditions) shall be inapplicable and not binding unless agreed expressly in writing by us.
- 1.2 Subject to clause 1.3, we ZEISS shall sell and you the customer shall purchase the goods (including any instalment of the goods or any parts for them) (the "**Goods**") subject of this contract in accordance with (a) any of our written quotation which is accepted by you or (b) any of your orders which is accepted by us, subject in either case to the Terms and Conditions (and such stipulated applicable INCOTERMS 2010), which shall govern the contract for the purchase and sale of the Goods (the "**Contract**") to the exclusion of all other terms and conditions including any terms or conditions which you may purport to apply under any purchase order, confirmation of order or similar document.
- 1.3 If an official licence or regulatory approval is required for the export of our goods and services and if an application for such a licence is not granted or the requisite approval not obtained, the Contract shall be deemed automatically terminated or cancelled.
- 1.4 If any one or more provisions of the Terms and Conditions is held by any competent court or authority to be null, void, or unenforceable, in whole or in part, this shall not affect the validity or enforceability of other clauses or the remainder of the clause in question which are capable of severance and which will continue unaffected.
- 1.5 Our employees or agents are not authorized to make any representations concerning the Goods unless confirmed by us in writing. In entering into the Contract, you acknowledge that you do not rely on any such representations which are not so confirmed and accordingly, we shall not be liable for any such representation.
- 1.6 The headings in the Terms and Conditions are for convenience only and shall not affect their interpretation.

#### 2. Basis of the Contract, Quotations, Orders and Price

- 2.1 Unless otherwise agreed in writing, the Contract shall be based, depending on the appropriate means or mode of transportation in each case, on either (a) FOB (named Republic of the Philippines port of shipment) or (b) FCA (named Republic of the Philippines airport/railway station/place of delivery to the carrier) or (c) DAP (named place of destination) or any other INCOTERMS 2010 as shall be expressly indicated in writing in our quotation accepted by you.
- 2.2 Without prejudice to our rights in clause 2.3 below, no order from you for any Goods shall be deemed to be accepted by us unless and until it is confirmed in writing by our authorized representative. In placing any order with us, you shall be responsible for (a) ensuring the accuracy of the terms or specifications of any order submitted to us and (b) furnishing to us any necessary information relating to the Goods to enable us to perform the Contract in accordance with the Terms and Conditions.
- 2.3 If the Goods are to be manufactured or any process is to be applied to the Goods by us in accordance with any specification submitted by you in the order form, you shall indemnify us and hold us free from and against all actions, proceedings, claims, demands, obligations, liabilities, loss, damage, costs and expenses which may have accrued or awarded against us or suffered by us in respect of any claim for infringement of any patent, copyright, design, trade mark or other industrial, proprietary or intellectual property rights of any third parties which result from our use of the specifications submitted by you.

- 2.4 The prices quoted by us shall be valid for 30 days from the date of the quotation. We may however, at any time, up to 7 days before delivery, and upon giving notice to you, increase the price of the Goods to reflect the increase in the cost to us which is due to factors occurring after the making of the Contract which are beyond our reasonable control (including without limitation, foreign exchange fluctuations, taxes and duties and the cost of labour, materials and other manufacturing costs).
- 2.5 The prices quoted by us do not include any applicable sales, value added or goods and services tax (GST) or any other tax, government duty or charge of a similar nature and you shall be liable to pay any such applicable taxes, charges or duties, as the case may be, at the rates prevailing at the time you enter into the Contract with us. You shall assist us in a suitable manner in any proceedings concerning the collection of any taxes, duties, fees or other charges, and provide us with the necessary documentation. Costs arising from any necessary certification or legalization of commercial documents, as well as customs duties and other charges, fees and taxes levied outside the Republic of the Philippines shall be borne by you.

#### 3. Terms of Payment

- 3.1 Unless otherwise agreed in writing, payment shall be made by irrevocable letter of credit ("**L/C**") to be opened in our favour and confirmed by a bank in the Republic of the Philippines. The L/C must be issued in the currency of the Republic of the Philippines or such other currency as may be stated in our quotation, as the case may be. The "Uniform Customs and Practice for Documentary Credits" of the International Chamber of Commerce (Paris), 2007 Revision, shall govern the opening and maintenance of the L/C and all costs and charges arising therefrom shall be borne by you. All payments shall be made within thirty (30) days from the date of the invoice issued.
- 3.2 Deductions for any taxes or fees shall not be permitted.
- 3.3 For purposes of determining its timeliness, a payment shall be deemed to have been made on the day the payment is credited to our account, or, in the case of cheques and bank drafts, on the day on which they are cleared upon presentment for payment.
- 3.4 If you fail to make any payment on the due date, then without prejudice to any other right or remedy available to us, we shall be entitled to charge you interest on the amount unpaid, at a rate of four per cent (4%) per annum above the base lending rate of the Deutsche Bank on any outstanding amounts due and owing by you to us, accruable and calculated on a daily basis from the due date to the date of full repayment (both before and after judgment).
- 3.5 We may set off any claims (whether arising under this Contract or otherwise) we may have against you against claims for payment which you may have against us.
- 3.6 In the event that:-
  - 3.6.1 you fail to make payment for the Goods in accordance with this Contract or commits any other breach of this Contract; or
  - 3.6.2 if any distress or execution shall be levied upon any of your goods; or
  - 3.6.3 if you make any voluntary arrangement with your creditors or (being an individual or firm) any bankruptcy application is filed against you or (being a company) you are unable to pay your debts as and when they fall due or any resolution or application to wind you up (otherwise than for the purposes of a solvent amalgamation or solvent reconstruction) shall be passed or made or if an administrative receiver, receiver, judicial manager, manager or equivalent officer shall be appointed over the whole or any part of your business or assets or if you shall suffer from any analogous proceedings or go into liquidation under foreign law; or
  - 3.6.4 you cease or threaten to cease to carry on business; or
  - 3.6.5 we have reasonable doubt as to your solvency, credit standing or credit worthiness, and reasonably apprehend that any of the events above is occurring or is about to occur in relation to you and we notify you accordingly, we shall then be entitled without any liability to you to (a) terminate or cancel the Contract or suspend all future deliveries or production of the Goods to you, or (b) if the Goods have been delivered but not paid for, demand and accelerate our claim for the price which price shall become immediately due and payable notwithstanding any previous agreement or arrangements to the contrary, or (c) retain any security given or monies paid by you and apply the said security or monies against the assessed loss and damages, if any, suffered by us, or (d) exercise any of our rights pursuant to clause 7 below.



#### 4. Terms of Delivery

- 4.1 Our compliance with the terms of delivery is subject to the following conditions precedent:-
- the prompt receipt of all data information or specifications (if any) to be supplied by you;
  - the granting of all necessary permits and approvals for delivery of the Goods;
  - your compliance with the agreed terms of payment and the performance of all of your obligations under the Contract. If these conditions precedent are not fulfilled or satisfied in whole or in part, we shall not be liable for any loss or damage whatsoever due to failure by us to deliver to you the Goods or any of them promptly or at all and we shall be entitled to extend the terms of delivery in a manner and to an extent reasonably deemed by us to be appropriate.
- 4.2 Unless otherwise agreed in writing or stipulated by the applicable INCOTERMS 2010, we shall deem to have complied with the terms of delivery of the Contract when the Goods leave our factory or premises.
- 4.3 If you cause interruption or delay of our contractual performance, or refuse to or are unable for whatever reason to accept delivery of the Goods duly delivered by us to you in accordance with the terms of the Contract, you shall be liable to bear all consequential costs and expenses incurred thereby, including but not limited to costs and expenses of warehouse storage and insurance and the term of delivery shall be extended in a manner and to an extent reasonably deemed by us to be appropriate.
- 4.4 We shall not be liable to you or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform or comply with the terms of delivery of the Goods if the delay or failure was due to force majeure. In the event of a force majeure, the term of delivery shall be extended appropriately. For the purposes of this clause, force majeure shall mean any events which are unforeseeable or beyond our reasonable control, including without limitation, acts of God, fires, strikes, labour disputes, acts of terrorism, war, hostilities between nations, riot, civil disturbances, governmental restrictions, flood, hurricane, earthquake, exceptional adverse weather conditions or events of natural calamities or disasters, epidemics, infectious diseases, insurrections, blockades, changes in law, acts of government, shortages of materials or energy, power or electrical failures, embargoes, unforeseeable business interruption or transportation difficulties, or travel restrictions or travel warnings issued by governmental bodies or other regulatory or international bodies.
- 4.5 If we are responsible for any delay in delivery, you agree, upon our request, to provide us with an extension of time of such period(s) as may be reasonably determined by us as sufficient to complete the delivery of the Goods in question, and we shall use our best endeavours to perform the same. You hereby agree that you shall not claim against us for any loss, damage, costs or expenses which you may have incurred in consequence of the delay, unless the amount (if any) has been agreed by both parties in writing.
- 4.6 Delivery may be made in partial shipments or installments.

#### 5. Shipment, Risk of Loss

- 5.1 Unless otherwise agreed in writing, we shall determine the route, mode and means of transportation.
- 5.2 Unless otherwise agreed in writing or as stipulated by the applicable INCOTERMS 2010, you shall bear all risks of loss of or damage to the Goods when the Goods leave our factory or premises.
- 5.3 If the dispatch, collection or delivery is delayed or becomes impossible for reasons beyond our control, we shall notify you accordingly and store the Goods in our warehouse or elsewhere, at your cost and at your risk and upon such storage, our contractual obligation to deliver shall be deemed to be fulfilled, and the risk of loss of or damage to the Goods shall pass to you.

#### 6. Notice of Defects and Damage in Transit

- 6.1 You shall inspect the Goods on delivery and shall notify us in writing immediately and in any event not later than 7 days after receipt of the Goods, of any alleged defect, shortage in quantity or damage.

6.2 If delivered by carrier, you may accept goods with externally visible damage or loss caused by transport only if you note such damage or loss on the freight documents, and this note is countersigned by the carrier. This also applies when internal or latent damage or loss can be assumed on the basis of the external condition of the shipment (e.g. damaged packing). Damage or loss caused by transport which is not externally visible shall be reported to the carrier immediately after discovery. In both cases you shall notify us immediately in writing.

6.3 If you do not act in accordance with clauses 6.1 and 6.2, the Goods shall be conclusively deemed to be complete and in conformity with the Contract and free from any defect or damage which would be apparent on a reasonable examination of the Goods and you shall be deemed to have accepted the Goods.

#### 7. Retention of Title

- 7.1 In spite of delivery of the Goods or any part thereof having been made, property in the Goods shall not pass from us as seller to you as purchaser, until you have made to us full payment of the total purchase price of the Goods and no other sums whatsoever shall be due from you to us.
- 7.2 We shall not be deemed to have knowledge nor notice of nor to have assented to any resale or resale by you (if any) to a third party in the ordinary course of business. For the avoidance of doubt, no conduct or any action whatsoever on our part shall be deemed in any way to be an assent to any sale or other disposition of the Goods by you, within the meaning prescribed by the applicable law and shall not defeat or prejudice our lawful rights of lien or retention or stoppage in transit as unpaid seller (in the event you fail to pay the total purchase price or any other payments due to us) and shall not amount to any renunciation whatsoever of our rights thereof against the Goods in question. Until such time as title in the Goods passes to you (and provided the Goods are still in existence and have not been resold), we shall be entitled at any time to require you to forthwith deliver up the Goods to us.
- 7.3 If you fail to deliver up the Goods forthwith as requested by us, or payment is overdue in whole or in part, or any of the events of insolvency or lack of creditworthiness as set out in clause 3.6 above occur, we may forthwith (without prejudice to any of our other rights) enter upon your premises or the premises of any third party where the Goods are stored, for the purpose of removing, recovering, recalling or retaking possession of the Goods or any of them or any new products manufactured with such Goods from the premises. These conditions constitute authority for any third party authorized by us to enter upon your or any other premises wheresoever the Goods are situated for the purpose of recovering the Goods or any of them.
- 7.4 At our request, you shall furnish us with all relevant information about the location of the Goods and support us and reimburse us for any costs and expenses incurred by us in securing our title thereto.
- 7.5 If for any reason reservation or retention of title is not permitted by the applicable law, we may demand from you to provide or furnish to us, any other form(s) of security available at law to us, and you shall be obligated to collaborate in and undertake all measures necessary and legally permissible to secure our claims to the Goods, and to notify us immediately if third parties assert claims, liens or charges which endanger our title thereto.

#### 8. Acceptance

- 8.1 Acceptance tests shall be conducted only if previously agreed in writing between the parties. In any event you will bear such costs of testing.
- 8.2 If you request for an acceptance test which we had agreed to conduct on your behalf and at your cost, but subsequently waive the requirement of such a test, or you fail to attend the test in spite of timely notice of the same having been given to you, you shall be deemed to have accepted the Goods upon successful and complete testing carried out by us. Additional costs resulting from the delay of such tests for reasons beyond our control shall be borne by you. In any event, the Goods will be deemed accepted when you first place them in service.
- 8.3 Acceptance may not be refused because of minor defects, although such acceptance does not relieve us from our obligation to remedy the said defects.



## 9. Warranty and Liability

- 9.1 We warrant that the Goods will be free from defects in material, design and workmanship for a period of 12 months from the date of delivery or in the event there is an installation and/or acceptance test, from the date of completion of the installation and/or acceptance test, provided that you notify us in writing immediately after discovery of any alleged defect in material, design and workmanship same and in any event, before the expiry of the 12-month warranty period.
- 9.2 Subject to the provisions of clause 6 above, if you report any such defect to us, we will, at our option, either replace or repair the Goods or any defective part thereof free of charge. We shall decide whether defects will be repaired at the facility where the Goods are used, or at the facilities of one of our representatives or subsidiaries or at our factory. If we decide not to repair the defects at the facility where the Goods are used, you shall, at your expense, pack the defective Goods properly and safely for shipment and send them to the address designated by us.
- 9.3 If we do not, within the aforesaid 12-month warranty period, remedy the defect after the expiration of a reasonable period after you had duly notified us in writing of the alleged defect in material, design and workmanship, or if several attempts at repair or replacement have failed, you shall be entitled either to request for a reduction of the purchase price of the Goods, or for a return of the Goods and correspondingly a refund of the purchase price thereof. The amount of deduction shall be determined solely by us after taking into account any reasonable request made by you.
- 9.4 Upon discovery of any alleged defect in material, design and workmanship, you shall use best endeavours and do all things necessary within your power to keep the damage to a minimum.
- 9.5 We shall be obligated to remedy defects only if you comply with your contractual obligations. In particular, any payments agreed and due to be paid by you must be made in accordance with the payment terms. In consideration of us undertaking to use our best endeavours to promptly remedy the defects in question, you agree that you shall not withhold any payments to us.
- 9.6 Notwithstanding clause 9.1 above, we shall be under no liability whatsoever for any warranty of our Goods or any parts thereof:-
- 9.6.1 in respect of any defect in the Goods arising from any drawing, design or specification supplied by you;
- 9.6.2 in respect of any defect arising from fair wear and tear;
- 9.6.3 in respect of any defect arising from wilful damage, negligence, abnormal working conditions, failure to follow our instructions (whether oral or written) on use or application of the Goods, misuse, mishandling, alteration, modification or repair of the Goods by you or other third parties without our prior written approval;
- 9.6.4 if the Goods have been used in a manner or under a circumstance or for a purpose not reasonably to be inferred by us or disclosed to us prior to making the Contract;
- 9.6.5 if the total purchase price for the Goods has not been paid by the due date for payment.
- 9.7 The following provisions shall apply to software:
- 9.7.1 We warrant that the software delivered to you corresponds to our program specifications, provided it has been installed in our corresponding systems and in accordance with our instructions.
- 9.7.2 We shall not be liable nor shall we provide any warranty for software, interfaces, operational systems or the like manufactured or produced by other manufacturers and merely supplied by us.
- 9.7.3 Only software defects which occur or recur in a persistent and repeated manner over a prolonged period of time, which recurrences are reasonably determined by us to be abnormal or unusual, shall be regarded as defects covered by our warranty obligation.
- 9.7.4 We shall remedy software defects which substantially impair the use in accordance with the Contract, at our option and depending on the extent of the defect, either by installation of an improved version of the software or by advice as to how to eliminate such defects or to avoid their effects. We do not warrant that the software will function without error in each configuration you select, unless such configuration has been specified by us.
- 9.7.5 We shall not be liable in any way for any claims based on data loss. You agree to perform a data backup in a machine-readable form at intervals adequate to the application concerned, but not later than at the end of the day on which the software was used.
- 9.8 All terms, conditions and warranties (whether implied or made expressly) whether by us, our servants, employees or agents or otherwise (other than those express warranties set out herein) relating

to the merchantable quality and/or fitness for purpose of the Goods or any of the Goods, are excluded from the Contract to the extent permitted by law. Notwithstanding anything contained herein, we shall not be liable to you nor shall you have any claim against us for loss or damage (whether direct, indirect or consequential and whether for loss of profit or otherwise), costs, expenses or other claims of compensation in respect of or arising out of any act, omission, default, misconduct or negligence of any of our employees, independent contractors or agents in the performance or purported performance of our obligations in the sale and delivery of the Goods, and except for the express warranties set out herein, we shall not be bound by nor be held liable to you for any representation (made innocently or negligently), promises or statements in connection with the sale and delivery of the Goods. You agree that you shall rely on your own skill or judgment and no reliance has been made or been placed by you on our skill or judgment, in connection with your entry into the Contract to purchase the Goods. In the event of any breach of the Contract by us, your remedies as the purchaser shall be limited to damages. Under no circumstances shall our liability in damages exceed the price of the Goods.

## 10. Intellectual / Industrial Property Rights

- 10.1 We shall not be liable for any claims of third parties relating to infringement of any intellectual or industrial property rights arising out of any unauthorised modification by you of any Goods supplied by us, or improper use or use by you of such Goods in a manner other than as specified in our publications or use by you of such Goods in combination with other products not supplied by us. In such event, you shall indemnify us and hold us harmless against such claims.
- 10.2 We shall not be liable for infringement of any intellectual or industrial property rights based on any Goods manufactured by us in accordance with your drawings, designs and specifications. In such case you shall indemnify us and hold us harmless against claims of third parties.
- 10.3 You may not change the exterior or packaging of any Goods to allow you or a third party to appear to be the manufacturer, or remove our trademarks or proprietary marks from, or affix your trademarks or proprietary marks to, the Goods.
- 10.4 We reserve title and copyright to cost estimates, drawings and other documents supplied by us. They may be made available to third parties only with our prior written consent. Drawings and other documents relating to quotations shall be returned to us immediately upon request if no order is placed with us. The preceding sentences shall also apply to your documents. However, you agree that we may make available your documents to such third parties whom we commission, or intend to commission, supplies or services.

## 11. Rights to software

- 11.1 You shall be granted a non-exclusive, non-transferable licence to use programs, documentation related thereto (including any amendments made thereto) in connection with the Goods (including without limitation hardware or software) supplied by us to you. Save as aforesaid, you shall have no further rights to the programs, related documentation or subsequent amendments made thereto. We shall at all times remain the sole owner of all copyright and other proprietary and intellectual property rights contained therein. You shall neither make these programs, related documentation and subsequent amendments available to third parties, nor make copies of the same for collateral or improper purposes without our prior written consent. Source programs shall be made available by us to you solely upon terms and conditions contained in separate agreements.

## 12. General

- 12.1 We may sub-contract to third parties or perform any of our obligations or exercise any of our rights hereunder by ourselves, or through, or assign or transfer any of our rights hereunder to any third parties or other member of the ZEISS international group of companies, provided that any act or omission of any such other member shall be deemed to be our act or omission. You shall not assign or transfer any of your rights or obligations under the Contract without our prior written consent.



12.2 Save expressly for members of the ZEISS international group of companies, the parties do not intend that any term of the Contract should be enforceable, by virtue thereof or otherwise, by any person who is not a party to the Contract.

12.3 The laws of the Philippines with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG), shall govern and be used to construe the terms of the Contract.

12.4 Any dispute arising out of or in connection with the Contract, including any question regarding its existence, validity or termination, shall be referred to arbitration administered by the Singapore International Arbitration Centre ("SIAC") in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules") for the time being in force, which rules are deemed to be incorporated by reference in this clause.

The seat of the arbitration shall be Singapore.

The language of the arbitration shall be English.

**Valid from September 2017**