



GENERAL TERMS AND CONDITIONS OF SOFTWARE MAINTENANCE AND HOTLINE AGREEMENT Carl Zeiss Pte. Ltd.

1. Subject matter of contract

1.1 The following provisions are general terms and conditions ("General T&C") of the software maintenance and hotline agreement signed between Carl Zeiss Pte. Ltd. ("ZEISS") and its customer ("Customer"). These General T&C, together with the annexures titled "Descriptions of Service Work 'Software Maintenance' " and "Descriptions of Services 'Hotline-Service' " attached hereto, shall collectively be referred to as "SMA". The SMA governs the provision by ZEISS to Customer of the software maintenance and hotline services relating to the contractual software and coordinate measuring machine(s) in respect of the Customer. A brief description of the contractual software subject of the SMA (hereinafter referred to as the "contractual software") is set out in the cover page of the SMA.

1.2 The terms and conditions of the SMA shall not in any way be amended or varied without the prior written consent of ZEISS.

1.3 In the event that any one or several of the clauses of these General T&C is or are determined to be invalid, unlawful or unenforceable by a court of competent jurisdiction or other competent authority, then such part will be severed from the remainder of the SMA and such severance will not affect the validity of the remaining clauses or the remaining parts thereof which will continue to be valid and enforceable to the fullest extent permitted by law.

2. Services

2.1 The particulars and extent of the services to be provided by ZEISS to the Customer are set out in the "Descriptions of Service Work 'Software Maintenance' " and "Descriptions of Services 'Hotline-Service' " attached hereto. In the event of any inconsistency or conflict between the General T&C and the terms in the respective Annexures relating to the same subject matter, the clauses set out in the said Annexure(s) shall take precedence and prevail over those of the General T&C to the extent of the inconsistency or conflict only.

2.2 ZEISS shall provide the software maintenance services as defined by the SMA only for the last main version of the software which was released by Carl Zeiss Industrielle Meßtechnik GmbH ("ZIMT"). Current revision or version of the contractual software must first be purchased by the Customer in the form of a software upgrade.

ZEISS shall only provide support for earlier program versions at separate charges payable by the Customer. ZEISS shall not be obliged, however, to provide such services.

2.3 The following items are expressly excluded from the scope of work and services to be provided by ZEISS under the SMA and ZEISS may (but is not obliged to) carry out the same upon request by the Customer, subject to separate charges payable by the Customer in accordance with ZEISS' prevailing current standard rates:-

- a) the elimination of individual or specific program errors or faults:-
 - i. arising from, caused by and/or attributable to Customer's own software, hardware or operating systems not included or comprised in the subject matter of the SMA;
 - ii. which are peculiar to the Customer alone or are user-specific; and/or
 - iii. attributable to other equipment and programs of the Customer used in conjunction with the contractual software or to any other reason external to the contractual software;
- b) the elimination of errors or faults arising from, caused by and/or attributable to:
 - i. incorrect use or misuse of the contractual software or operator or user error;
 - ii. Unauthorised Modifications (as defined in clause 5.3) made or permitted by the Customer to be made to the contractual software;
 - iii. Unauthorised Modifications made or permitted by the Customer to be made to the hardware on which the contractual software runs;

- c) the on-site installation of software revisions and updates and firmware supplements on individual coordinate measuring machine computers; and
- d) system and application related support provided on-site by ZEISS at the Customer's request on the Customer's premises.

3. System administrator

3.1 Within 4 weeks of the SMA having become effective, the Customer shall inform ZEISS in writing of the name of a system administrator and a deputy as contacts for the software maintenance and hotline service, both of whom have participated in the training courses for the contractual software provided by ZEISS and additionally in a system specialist course. The Customer shall notify ZEISS immediately in writing if the contact person has changed.

3.2 ZEISS shall send software revisions and updates, documentation, manuals and other correspondence under the scope of the SMA to the system administrator. Only the system administrator and his deputy shall be entitled to make use of the telephone support and advice provided by the hotline service.

3.3 Software installations must only be performed by trained system administrator.

4. Error messages and troubleshooting

4.1 The parties agree that each software revision or version only constitutes a specific development status of the data processing program and cannot, as such, be free from errors.

4.2 Errors of which ZEISS has been informed and which are not irrelevant to the respective program will be taken care of in the revision of the programs under the scope of general software revisions. The time and the manner of error rectification shall be at the discretion of ZEISS. A program error shall only be deemed present if the function of the program fails to coincide with the specifications of the documentation. It must be possible to describe the error and it must be reproducible at any time.

4.3 If ZEISS is unable to reproduce the error itself, it can endeavour to reproduce the error together with the Customer on the latter's premises. The Customer will support ZEISS in this process. If an error of which ZEISS was notified should turn out to be an application-related problem or a software error caused by the Customer, ZEISS shall be entitled to charge the Customer with the costs incurred.

5. Conditions of software maintenance

5.1 The Customer must provide at its own cost and as specified by ZEISS, adequately configured computer hardware and firmware and the necessary input and output units in respect of the current revision or version of the contractual software and operating system which the Customer is using.

5.2 Customer must be a licensed user of the contractual software in accordance with the database records maintained by ZEISS or ZIMT (as the case may be).

5.3 The Customer's right to software maintenance as defined by the SMA shall cease if the Customer itself or third parties make changes to or in the contractual software to be maintained or to the coordinate measuring machine including the computer and peripheral units, software revisions or updates, firmware supplements or documentation provided by ZEISS (or any part thereof), without the prior express written consent of ZEISS ("Unauthorised Modifications"), unless the Customer can prove, to the reasonable satisfaction of ZEISS, that the said changes or modifications have no effect on the software maintenance services provided by ZEISS.

5.4 On agreement with ZEISS, the Customer shall provide all information reasonably required by ZEISS for the due fulfillment of its obligations under the SMA.



5.5 ZEISS shall be entitled to have the software maintenance performed by or sub-contracted to third parties. The Customer agrees that its name, address and the data contained in the SMA can be communicated to the suppliers of operating systems for software, of computers and other instruments or instrument components, and to other third parties which ZEISS may choose for the performance of services to meet its obligations as defined by the SMA.

5.6 The Customer is not entitled to transfer or assign its rights or benefits granted to it or any of its obligations under the SMA to any third party without the prior written consent of ZEISS.

6. Rights to software and documentation

6.1 If the Customer acquires any rights of use in compliance with the specifications under this SMA, ZEISS shall grant the Customer a non-exclusive and non-transferable licence to use the software revisions, the firmware supplements, the relevant documentation and other information supplied by ZEISS under the scope of the SMA for its own internal purposes and for the specific computer of that coordinate measuring machine for which the Customer has concluded the SMA. All other rights in respect of the contractual software shall remain vested in and the absolute property of ZEISS or ZIMT (as the case may be) and the Customer undertakes to do all such acts and things as ZEISS may reasonably require for the purpose of preserving or perfecting such vesting.

6.2 The Customer shall not be entitled to make available to third parties without prior written consent by ZEISS, the contractual software and the operating system, the software revisions and updates, the relevant documentation and other information supplied to it under the scope of the SMA.

6.3 The Customer shall be entitled to produce a copy of the contractual software, the operating system and the software revisions for the sole purpose of back-up and filing, or for replacement or trouble-shooting purposes. The Customer undertakes to provide all copies with the proprietary right, copyright and other notes, labels and explanations contained in the originals, but at least with the following copyright label:

a) on the contractual software:

"Copyright Carl Zeiss, Germany
(or Carl Zeiss Industrielle Meßtechnik GmbH or Metrologic group ©)
All rights reserved.

Reproductions of any kind only with the consent of Carl Zeiss Industrielle Meßtechnik GmbH or Metrologic group ©".

b) on the operating system:

"Copyright of the respective operating system manufacturer.
All rights reserved.

Reproductions of any kind only with the consent of "Name of operating system manufacturer".

6.4 The contractual software and the operating system are protected by copyright. The Customer is not permitted to:-

- a) modify or otherwise change, translate, retro-develop, reverse engineer, decompile or disassemble the software as a whole or in parts;
- b) compile works derived from the software or to reproduce the written material;
- c) copy, duplicate or reproduce in any other way the software as a whole or in part, in its original or in a modified form, or combined with other software or included in other software (excluded from this is the production of copies of the data processing programs for the intended use and for data back-up as per clause 6.3); or
- d) change or remove the labeling and the copyright notices on the software and the data carriers.

7. Software Media Warranty

7.1 ZEISS shall rectify material deficiencies on software media, data carriers, firmware supplements and written documentation supplied by ZEISS under the scope of the SMA, in such a manner as it shall at its discretion deem fit or appropriate, either by delivering replacement software media

free from deficiencies or by subsequent improvement on existing software media or data carriers.

7.2 ZEISS will, at its discretion, decide whether to eliminate deficiencies in the software revisions and updates by indicating (by telephone or in writing) how to avoid or prevent the effects caused by the deficiencies, or by providing patch blocks or a new software revision.

7.3 The warranty in respect of the software media is valid for a period of six (6) months from time of delivery thereof.

7.4 There shall be no warranty in respect of advisory services and services provided by ZEISS, other than the provision of hardware and software expressly provided under the SMA.

8. Intellectual property rights

8.1 Subject always to clauses 8.2, 8.3 and 8.4 below, ZEISS agrees to indemnify the Customer against liability under any final judgement in proceedings brought by a third party against the Customer which rule and conclusively determine that the Customer's use of the contractual software or software revisions provided by ZEISS in the course of performing the software maintenance services under the SMA constitutes an infringement of intellectual property or industrial proprietary right of that third party.

For the avoidance of doubt, the parties acknowledge and agree that the indemnity by ZEISS in clause 8.1 herein shall not in any way apply to nor shall it be in respect of any manufacturing defect of the contractual software released by ZIMT or supplied by ZIMT to ZEISS.

8.2 ZEISS shall however not be required in any way to indemnify the Customer as provided in clause 8.1 above, unless the Customer:-

- a) notifies ZEISS in writing as soon as practicable of any infringement, suspected infringement or alleged infringement upon it becoming aware of it;
- b) gives ZEISS a reasonable opportunity to rectify the relevant breach, replace, modify, alter or substitute the infringing part(s) at its own cost and expense to make it non-infringing or to avoid continuing infringement;
- c) gives ZEISS a reasonable opportunity for and authorises ZEISS to procure for the Customer, at its own cost and expense, the requisite authority to continue the use and possession of the infringing parts;
- d) gives ZEISS the option to conduct the defence of such a claim, including negotiations for settlement or compromise prior to the institution of legal proceedings (whether solely or jointly with ZIMT, as the case may be); and
- e) provides ZEISS with all reasonable information, assistance and co-operation in conducting the defence of such a claim.

8.3 ZEISS shall also not be required in any way to indemnify the Customer as provided in clause 8.1 above to the extent that an infringement, suspected infringement or alleged infringement arises from or is attributable to:-

- a) the Unauthorised Modifications made or permitted by the Customer to be made to the contractual software;
- b) incorrect use or misuse by the Customer of the contractual software;
- c) use of the contractual software in combination by any means and in any form with other goods not specifically approved by ZEISS;
- d) use of the contractual software in a manner or for a purpose not reasonably contemplated or foreseen or not authorised by ZEISS; or
- e) any other transaction entered into by the Customer relating to the contractual software without ZEISS' prior express written consent.

8.4 In the event that proceedings are brought or threatened by a third party against the Customer



alleging that Customer's use of the contractual software or the software revisions provided by ZEISS in the course of performing the software maintenance services under the SMA constitutes an infringement of any intellectual property, ZEISS may at its option and at its own expense conduct the defence of such proceedings (whether solely or jointly with ZIMT, as the case may be), whereby the Customer shall provide ZEISS with all necessary information, assistance and co-operation in the conduct of the defence of such proceedings.

8.5 The Customer shall and agrees to indemnify ZEISS against any loss, costs, expenses, demands or liability, whether direct or indirect, arising out of a claim or proceeding by a third party alleging such infringement if:-

- a. the claim or proceeding arises from any of the events specified in clause 8.3; or
- b. ZEISS' ability to defend the claim has been prejudiced or in any way compromised by the failure by Customer to comply with the requirements set out in clause 8.2 or clause 8.4.

9. Limitation of liability

9.1 The Customer acknowledges and agrees that:-

- a. ZEISS' obligations and liabilities in respect of the software maintenance and hotline services provided under the SMA in respect of the contractual software are exhaustively defined in this SMA;
- b. It is solely responsible for the consequences of any use of the software maintenance and hotline services provided under the SMA in respect of the contractual software and that ZEISS has no control how and for what purpose the Customer utilises the results of the software maintenance and hotline services provided;
- c. It will take the appropriate steps to put in place the necessary security measures to ensure proper backup, protection and/or safeguarding of the data, information, image or any other material stored in the instrument to be maintained and/or the equipment of which the instrument is a part, before carrying out any installation of contractual software. ZEISS shall not be liable to the Customer in any way for any loss or damage whatsoever which may be suffered by the Customer arising from the Customer's failure to do so or the inadequacy or ineffectiveness of the measures put in place by the Customer;
- d. ZEISS shall also not be liable to the Customer in any way for any loss or damage whatsoever which may be suffered by the Customer arising from any down-time or shut-down (whether in whole or in part) in or of the use or operation of the coordinate measuring machines or any part of the operating system of the Customer, due to any unsuccessful, incomplete, incorrect or improper installation of any contractual software by the Customer;
- e. Accordingly, ZEISS shall not be liable to the Customer in any way for any loss of business, sales, revenue or profit which may be suffered by the Customer as a result of any non-use or non-operability of the coordinate measuring machine including the computer and peripheral units, instrument, material, equipment part(s) and/or the equipment of which they are a part, during any installation of the contractual software by the Customer, down-time or shut-down as described in paragraphs (c) and (d) above.

9.2 Notwithstanding anything contained herein (except as expressly provided in this SMA and except in relation to liability for personal injury and death):-

- a. ZEISS shall be under no liability to the Customer nor shall Customer have any claim against ZEISS for or in respect of any loss or damage (whether for loss of profit or otherwise), costs, expenses which may be suffered or incurred or which may arise directly or indirectly in respect of goods or services supplied pursuant to the SMA or other claims of compensation in respect of or arising out of any act, omission, default, misconduct or negligence of ZEISS or any of its employees, independent contractors or agents in the performance or purported performance of the obligations of ZEISS under the SMA; and
- b. ZEISS shall not be bound by nor be held liable to the Customer for any representation (made innocently or negligently), promises or statements in connection with goods or services supplied under the SMA. For the purpose of this sub-clause: (i) Customer warrants that it has not relied on any representation made by ZEISS which has not been expressly stated in the SMA, or upon any descriptions, illustrations or specifications

contained in any document including publicity material or catalogues produced by ZEISS; and (ii) to the extent that ZEISS has made any representation which is not otherwise expressly stated in the SMA, the Customer acknowledges that it has been provided with reasonable opportunities to independently verify the same with ZEISS;

- c. ZEISS shall not be liable to the Customer or be deemed to be in breach of the SMA by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the software maintenance works, if the delay or failure was due to force majeure. For the purposes of this sub-clause, force majeure shall mean any events which are unforeseeable or beyond the reasonable control of ZEISS, 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.

9.3 The Customer shall further at all times indemnify and hold harmless ZEISS and its officers, employees and agents from and against any loss, costs, expenses, demands or liability, whether direct or indirect, suffered by any of those indemnified arising out of any proceedings against those indemnified where such loss or liability was caused by:-

- a. Unauthorised Modifications made or permitted by the Customer to be made to the contractual software;
- b. a breach by the Customer of its obligations under the SMA; or
- c. any wilful, unlawful or negligent act or omission of the Customer.

10. Payment

10.1 The Customer shall pay an annual service lump sum for the software maintenance and hotline service. This is calculated from and/or based on the price list for the contractual software in the Customer's possession valid or prevailing at the beginning of the contractual year. If the term of the SMA is extended pursuant to clause 12, the value of the payment for the subsequent term will be based on the price list valid or prevailing at the time of extension.

10.2 Payment is due without deduction at the beginning of each contractual year within 30 days on receipt of invoice.

10.3 The statutory value-added tax or goods and services tax (where applicable) will be charged in addition, to be borne by the Customer.

11. Function discount

If the Customer concludes software maintenance and hotline agreements for several coordinate measuring machines, ZEISS grants a functional and quantity discount in accordance with the discount graduation of the relevant price list and depending on the number of coordinate measuring machines in question. (This excludes the software maintenance of Metrologic group ®). The discount is granted on condition that the expenditure is reduced by observing the following conditions:-

- a) the Customer appoints only one system administrator for all coordinate measuring machines concerned; and
- b) the Customer agrees to obtaining only one copy of the software revisions and updates for all coordinate measuring machines concerned; and
- c) a single system administrator installs the licensed software revisions and updates on the coordinate measuring machines concerned on the Customer's premises.



12. Term

- 12.1 The SMA is valid for a term of twelve (12) months and effective for the period as set out in the cover page of the SMA ("Effective Period").
- 12.2 The Effective Period shall be automatically extended by successive periods of twelve (12) months each, unless:-
- notice of non-renewal of the SMA is given in writing by either party one (1) month prior to expiration; or
 - the SMA is terminated in accordance with the provisions of clause 13.
- 12.3 If no such software maintenance agreement is concluded on the purchase of a new coordinate measuring machine, the warranty will remain with its hotline support and error correction in the software revision supplied. As a consequence, no software upgrades and thus no function extensions are granted.
- 12.4 If the SMA is concluded more than 6 months after delivery of the contractual software, additional costs in respect of the requisite software upgrades necessary to be purchased by Customer shall be separately borne by the Customer.

13. Termination

- 13.1 ZEISS shall be entitled to terminate the SMA immediately by written notice, upon the occurrence of any of the following events:-
- the Customer is in breach of any term or condition of the SMA and such breach is not rectified or remedied within 30 days of notification by ZEISS to the Customer;
 - Unauthorised Modifications by the Customer and such Unauthorised Modifications are not rectified or remedied within the time period stipulated by ZEISS to the Customer;
 - the Customer loses control custody or possession of the contractual software or destroys or disposes of the same;
 - the Customer goes into liquidation, either compulsory or voluntary (except for the purpose of reconstruction or amalgamation) or has a resolution passed for its winding up or has bankruptcy proceedings filed against it, is dissolved, ceases to carry on business, or if a receiver, administrator or judicial manager is appointed in respect of the whole or any part of its assets, makes an assignment for the benefit of or composition with its creditors generally or threatens to do any of these things or any similar occurrence under any jurisdiction that affects the Customer; or
 - the Customer commits a breach of the terms and conditions of the SMA which makes the continued provision of the software maintenance and hotline services by ZEISS under the SMA unacceptable.

13.2 Effects of termination

Upon termination of the SMA for any reason, ZEISS shall:-

- be discharged from any further obligations for software maintenance and hotline services under the SMA; and
- be entitled to retain any monies paid by the Customer.

Termination of the SMA shall be without prejudice to the rights of ZEISS in respect of any antecedent breaches committed by the Customer and ZEISS shall be entitled to pursue any additional or alternative remedies provided by law or in equity.

14. General provisions

- 14.1 The Customer hereby agrees that ZEISS or any member of the ZEISS international group of companies or its affiliates, shall be entitled to store and keep personal or business data relating to the Customer, in its database system, solely for purposes of records of its business dealings or contractual relationship with the Customer. ZEISS agrees that it will not use the data for any other collateral purpose.
- 14.2 ZEISS is a member of the ZEISS international group of companies, whose headquarters are in Oberkochen, Germany. Accordingly, ZEISS may perform any of its obligations or exercise any of its rights hereunder by itself, or through, or assign or transfer any of our rights hereunder to, any 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 ZEISS' act or omission.
- 14.3 A person who is not a party to the SMA (save expressly for members of the ZEISS international group of companies), has no right under the Contracts (Rights of Third Parties) Act (Chapter 53B of the Statutes of the Republic of Singapore) to enforce any term of, or enjoy any benefit under, the SMA and the parties do not intend that any term of the SMA should be enforceable, by virtue thereof or otherwise, by any person who is not a party to the SMA (save expressly for members of the ZEISS international group of companies).
- 14.4 The laws of the Republic of Singapore shall govern and be used to construe the terms of the SMA. In the event of a dispute, the parties shall submit to the exclusive jurisdiction of the courts of the Republic of Singapore.

Valid from September 2017