

# Terms and Conditions of Sale

Please Note: Terms on the Front (defined below) will supersede these general terms.

## 1. DEFINITIONS.

"Agreement" refers to these terms, the quote/acknowledgment/invoice.

"Buyer" refers to the person (natural or legal) listed on the Front purchasing the Product(s), including such person's heirs, executors, administrators, successors by merger or consolidation, or assigns.

"Components" refers to parts, spare parts, retrofits, retrofit parts.

"Front" refers to the parts of this Agreement specifying the Products, the Buyer, and specific payment and/or shipment terms.

"Parties" refers to Buyer and Zeiss.

"Product(s)" refers to the Systems, components, parts, accessories and services to be sold by Zeiss to Buyer as stated on the Front.

"System(s)" refers to the complete, functioning measuring system as configured and sold hereunder.

"Zeiss" refers to Carl Zeiss Industrial Metrology, LLC.

**2. ORDER OF PRECEDENCE.** This Agreement is the sole expression of the understanding between the Buyer and Zeiss regarding the Product(s), and will supersede any additional or differing terms stated in any Buyer's purchase order or other communication. Zeiss's acceptance of Buyer's purchase order is limited to these terms and is conditioned on Buyer's acceptance of these terms. Neither Zeiss's performance nor delivery of Product(s) will be construed as Zeiss's acceptance of Buyer's terms or conditions.

## 3. PRICE & PAYMENTS.

**A. Prices** (i) do not include any additional fittings or adjustments, and (ii) are net F.C.A. Zeiss's shipping point, exclusive of delivery and installation charges including, but not limited to rigging, or transit insurance. Buyer is responsible for any tax, fee, levy, assessment, exaction, imposition or other charge imposed by any local, state or federal government levied upon the production, sale, use, import, export, ownership or shipment of the Products, except for taxes on Zeiss's net income.

**B. Payment.** Buyer will pay for the Product(s) within thirty (30) days from shipment. No deductions or offsets are permitted. Amounts past due are subject to a service charge at the maximum rate of interest then-permitted by law until paid. Buyer will pay all of Zeiss's costs and expenses incurred in the collection of past due amounts, including reasonable collection agency or attorney's fees, court filing fees and other costs and disbursements.

**4. RETURN POLICY.** Zeiss will not accept any Product returns, unless it has given its written consent in the form of a Return Authorization (RA). Contact your Zeiss Customer Care Representative to obtain an RA. A restocking fee of twenty percent (20%) will be charged for all Product returns. Buyer is responsible for the risk of loss, shipping and handling fees for returned Product. Unless Zeiss agrees otherwise, returned Product(s) must be in new condition and in the original packaging. Certain electronic parts (e.g. printed circuit boards) are not returnable.

**5. CANCELLATION POLICY.** If Buyer cancels this Agreement, Zeiss will charge Buyer a 20% cancellation fee. If Buyer and Zeiss agree to cancel part of this Agreement, Zeiss may adjust the price of the remaining Product(s) being purchased and discounts offered on the original order may not be available.

## 6. SHIPMENT, SHIPPING DATE.

**A. Shipment.** All shipments are made F.C.A. Zeiss's shipping points. Zeiss will select the carrier. Zeiss may provide substitute Product provided they are of equal or better performance criteria. Zeiss may provide partial shipments.

**B. Shipping Date.** Shipping dates are estimated delivery dates, and not a material term of this Agreement. Zeiss will make all reasonable efforts to meet the delivery date.

## 7. TITLE, RISK OF LOSS, CLAIMS FOR DAMAGE IN TRANSIT.

**A. Title.** Title to the Product(s) passes to the Buyer upon Zeiss's delivery to the designated carrier.

**B. Risk of Loss.** Zeiss's responsibility ends upon delivery of the Products to the carrier, or such other shipping point as designated by Zeiss. Buyer assumes all risk of loss for the Products after Zeiss delivers the Product(s) to the carrier for shipment to Buyer, and Buyer's sole recourse for any loss of or damage to the Products shall be against the carrier.

**C. Claims for Damage in Transit.** Buyer will carefully examine the Product(s) immediately upon delivery and before signing any receipt. Buyer must note on the shipping receipt any visible damage to the Product and send notice of such damage to Zeiss within five (5) days of receipt of delivery. Buyer's signature on a receipt without notation of damage or Buyer's failure to send notice to Zeiss of damage or shortage within such five (5) day period shall constitute conclusive evidence of Buyer's receipt of the Product(s) in satisfactory condition.

**8. FAILURE TO TAKE DELIVERY; DELAYED DELIVERY.** If Zeiss is ready to ship, or has shipped, Product(s) to Buyer pursuant to this Agreement, and Buyer fails to take delivery or notifies Zeiss that delivery will be rejected, Zeiss may elect to treat such failure or notice as Buyer's repudiation of this Agreement and may recover from Buyer Zeiss's costs of manufacture, customization, preparation, shipping and storage of the Product(s), in addition to all other rights and remedies available in law or equity. If Buyer requests a delay in delivery of more than thirty (30) days, Zeiss may, at its discretion, charge Buyer a holding charge of 2% of the net sales price per month.

**9. ACCEPTANCE.** Buyer's acceptance of the Products will occur on the earlier of (a) delivery to Buyer, if installation by Zeiss is not included in the purchase price; or (b) certification by Zeiss, in such form as Zeiss shall prescribe, that the Products have been installed and meet Zeiss's specifications, if installation by Zeiss is included in the purchase price; or (c) Buyer's use of the Product(s). If Buyer engages in a third-party financing relationship, the terms of such agreement will specifically include a provision that incorporates the terms of this Agreement, including a provision that unequivocally obligates Buyer to provide the third-party financing entity with a certification of acceptance in accord with the terms of this paragraph.

**10. FORCE MAJEURE.** Zeiss will make every reasonable effort to complete shipment, but shall not be liable for any loss or damage for delay in delivery, or any other failure to perform due to causes beyond its reasonable control including but not limited to, accident (in manufacture or

otherwise) fire, storm, flood, earthquake, explosion, accident, acts of a public enemy, war, rebellion, insurrection, sabotage, epidemic, quarantine restrictions, labor disputes, labor or material shortages, embargo, failure or delays in transportation, unavailability of components or parts for machinery used for manufacture of its Product(s), acts of God, acts of the Federal Government or any agency thereof, acts of any state or local government or any agency thereof, and judicial action. Should a delay occur, Zeiss may reasonably extend delivery or production schedules or, at its option, cancel the order in whole or part without any liability other than to return any unearned deposit or prepayment. Zeiss may also make partial shipments to Buyer and invoice accordingly, and Buyer shall be obligated to pay for such partial shipments when invoiced.

**11. FINANCIAL INSTABILITY & SECURITY INTEREST.** Buyer warrants that it has established a budget, and has approved financing. Buyer warrants that it is able to: (i) pay its debts as they become due, (ii) is in fact now paying its debts in the ordinary course of business, and (iii) is not insolvent within the meaning of the Federal Bankruptcy Act. Buyer fully understands that Zeiss is relying upon these representations in extending credit under this Agreement. Zeiss may, at any time(s), suspend shipment or cancel its obligations hereunder, require cash payments, payment in advance, satisfactory security for future deliveries, or other adequate assurances of performance satisfactory to Zeiss, when in Zeiss's sole and commercially reasonable opinion, such measures are warranted because of Buyer's financial condition or other grounds for insecurity regarding Buyer's ability to perform under this Agreement. Under this Agreement, until the Products are paid for in full, Buyer gives Zeiss a security interest in the Products, all monies received for the Products, or in any chattel paper regarding the Products (e.g.: lease agreements).

**12. LIMITED WARRANTY. Duration of Warranty:** The effectiveness of this Warranty will be for **(a) Systems:** the earlier of (i) one (1) year from installation by Zeiss or Zeiss's authorized installer or (ii) eighteen (18) months from the shipment date; **(b) Components:** six (6) months from the date of installation if installed by Zeiss; (c) **Labor:** thirty (30) days from the completion of the work ((a), (b) and (c) referred to collectively or individually, as applicable, as the "Warranty Period"). **What Is Covered:** All parts will be free from defects in material and workmanship. Labor will be performed in a workman-like manner. **What Zeiss Will Do:** Zeiss will, at its sole option, repair or replace any parts it reasonably determines to have failed due to defects in material or workmanship during the Warranty Period.

**What is Not Covered:** Warranty does not cover high-wear, consumable items (e.g.: styli, air filters, items in the Zeiss Styli & Accessory Product Catalog) nor the servicing/replacement of other manufacturer's equipment or accessories. These items, and any third-party supplied items (software or hardware) will be covered by their manufacturer's warranty and arrangements for service or replacement must be made through that manufacturer. This Warranty does not cover failure that has resulted from improper third party services, improper or unreasonable use or maintenance, accident, or environmental conditions outside of those prescribed in the Product specifications or industry standards, improper packaging or shipment, electrical failure, or unauthorized tampering, alteration or modification. On-site planned or preventive maintenance activities are not included as a part of this Warranty. **Software.** This Warranty does not apply to Software, which is warranted separately.

**Exclusive Warranty: THE PROVISIONS OF THIS LIMITED WARRANTY ARE IN LIEU OF ANY OTHER WARRANTY, WHETHER EXPRESSED OR IMPLIED, WRITTEN OR ORAL, INCLUDING ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. Exclusive Remedy:** Zeiss's obligation to repair, replace or refund is the only remedy available under this Warranty or for any claim of any kind arising from this Agreement or the Products. **ZEISS WILL NOT BE LIABLE UNDER ANY THEORY OF LAW (e.g.: CONTRACT OR TORT) TO BUYER OR ANY OTHER PERSON FOR ANY PUNITIVE, SPECIAL INCIDENTAL OR CONSEQUENTIAL DAMAGES WITH RESPECT TO ZEISS'S OBLIGATIONS HEREUNDER, SUCH AS, BUT NOT LIMITED TO, DAMAGE TO, LOSS OF, OR LOSS OF THE USE OF OTHER PROPERTY OR EQUIPMENT, LOSS OF PROFITS OR REVENUES OR CLAIMS OF BUYER OR BUYER'S CUSTOMERS, FOR LOSSES OF ANY KIND.** Some jurisdictions do not allow limitations on exclusion of or limitation of remedies so the foregoing limitations and exclusions may not apply.

**13. PATENT INDEMNITY.** Zeiss will defend or settle any claim, suit or proceeding brought against Buyer based on allegations that the Product(s) infringe on a third party patent, provided that: Zeiss is notified timely of such claim, suit or proceeding; Buyer renders all reasonable cooperation to Zeiss; Buyer gives Zeiss the sole authority to defend or settle the same. If the Product(s) are held to infringe on any patent and the use of the Product(s) is enjoined, Zeiss will have the option, at its discretion (i) to procure Buyer the right to use the Product(s) or (ii) to modify the Product(s) so that they no longer infringe or (iii) refund Buyer the depreciated value of the Product(s) and accept the return thereof. This indemnity will not apply to changes made by Zeiss at Buyer's instruction or by Buyer, or by the use of third party items in conjunction with the Product(s) (unless sold or directed by Zeiss). Zeiss's total liability to Buyer will not exceed the depreciated value of the Product(s).

**14. NOTICES.** All notices, consents, requests, instructions, approvals and other communications hereunder shall be in writing and given by personal delivery, or by certified mail, return receipt requested, or by express delivery service to the address of Buyer or Zeiss as shown on the Front or to such other address as any party hereto may, from time to time, designate in writing. Notices shall be deemed to be effective on the date personally delivered, or five (5) days after deposited in the United States mail as certified mail, or one day after deposited with an express delivery service, as the case may be.

**15. APPLICABLE LAW, DISPUTES, JURISDICTION AND VENUE.** This Agreement is governed by and construed under the laws of the New York State applicable to contracts made and to be performed wholly within New York State. The Parties will negotiate in good faith to resolve any dispute arising between them, and those negotiations will be considered as settlement discussions and not subject to discovery. The Parties agree to submit to the personal jurisdiction of the federal courts of Westchester County, New York, and to have their disputes resolved by a trial without a jury.

**16. ENTIRE AGREEMENT.** This Agreement is the complete and exclusive statement of the understanding between the Parties, and the Parties enter into this Agreement solely upon the terms expressly stated herein without relying on any other expressions, verbal or written. This Agreement can only be modified in a writing signed by the Parties.

**17. NO WAIVER.** The failure or delay to enforce any part of this Agreement will not constitute a waiver of the right to enforce such term or condition in the future.

**18. SEVERABILITY.** If a court of competent jurisdiction deems any of the provisions in this Agreement to be invalid, illegal or unenforceable ("Invalid") in any respect, the remainder of the Agreement will remain valid and the Parties will work in good faith to amend such Invalid provision in a manner that lawfully accomplishes the original intent of the Invalid provision. If removing or amending the Invalid provision has a material adverse effect on either party, then either party may terminate this Agreement without further obligation or liability.

**19. ASSIGNMENT.** Neither Zeiss nor Buyer may assign or transfer their rights or obligations under this Agreement, except that Zeiss may, without the Buyer's consent, assign its rights and obligations to its parent, subsidiaries or affiliates.

**20. EXPORT / RE-EXPORT.** The Product(s) may be subject to United States Export Administration Regulations and diversion contrary to U.S. law is prohibited. All transactions are conditioned on compliance with all applicable export control laws and regulations and all other applicable laws and treaties, including without limitation the Foreign Corrupt Practices Act, of the U.S.A., international treaty and/or the Buyer's country. Buyer agrees that it shall not, except as permitted by those laws, regulations or treaties, make any disposition, either by transshipment, re-export, diversion or otherwise, of Products in whole or in part. Buyer warrants that it will not export or re-export any Products with knowledge that they will be used in the design, development, production, or use of chemical, biological, nuclear, or ballistic weapons, or in a facility engaged in such activities, unless Buyer has obtained all required permits and approvals. Buyer further warrants that it will not export or re-export, directly or indirectly, any Products to embargoed countries or sell Products to companies or individuals listed on the Denied Persons List published by the Department of Commerce. All obligations in this paragraph survive any termination of site access, and discharge of any other contract obligations.