

Software Maintenance Agreement

1. Subject Matter of the Contract

These Terms and Conditions for Software Maintenance and Software Support Service form the exclusive basis for the services provided by ZEISS under the Software Maintenance Agreement with the customer, in accordance with the scope of services set forth therein and in the agreed service descriptions. Deviating or supplementary agreements - in particular also conflicting terms and conditions of purchase of the customer - shall only apply if ZEISS expressly confirms them in writing with reference to the fact that they constitute an amendment or supplement to the software maintenance agreement; this shall also apply if ZEISS does not expressly object to conflicting terms and conditions of purchase in individual cases. The written form requirement for amendments and supplements may only be waived on the basis of a written agreement.

2. Services

2.1 The services to be provided by ZEISS to the customer under the Software Maintenance Agreement are defined in terms of content and scope in the service descriptions for Software Maintenance and Software Support Service.

2.2 ZEISS shall provide Software Maintenance within the scope of this Agreement only for the respective latest major revision that ZEISS has released. ZEISS may provide support services for earlier program versions for a separate charge; however, ZEISS is not obligated to provide such services.

2.3 Service description Software Maintenance

(1) The Software Maintenance includes the provision of corrected and further developed program versions of the contractual software and comprises in detail:

- ZEISS regularly revises the contractual software and, depending on the respective software product, typically provides the customer with a revised version (main revision) of the entire contractual software per calendar year, on a suitable data carrier or for download on demand.
- The annual Software Maintenance includes adaptations, improvements and further developments of individual or several measurement and evaluation programs of the contractual software.
- An up-to-date version of the respective operating instructions is available on the ZEISS portal of the customer's respective contractual partner.

(2) Special Requirements

- The Software Maintenance requires the conclusion of the Software Maintenance with the services of the Software –Support-Service in accordance with the service description valid for it.

- Each major revision may also require a new revision level of the operating system software, which must be provided by the Client.

(3) Services not included in the Software Maintenance

- The elimination of individual program errors in the contractual software located at the customer's premises in individual cases only for the customer.
- Installing the main revision and error correction patch sets.
- Installation and delivery of operating systems.
- Any firmware, hardware or control supplements required and their installation.
- Viewing or installing third-party programs and interfaces, database queries, form changes, reports, quick changes, server configuration or system administration, training, familiarization, scripting support or similar.
- Updating of project templates, scripts not written by ZEISS or similar by the customer. Problems and malfunctions caused by a software product not supplied by ZEISS.
- Rectification of errors and damage caused by incorrect operation, improper use by the customer, acts of third parties or force majeure. Such work may be agreed on a case-by-case basis against additional remuneration.
- Damage and malfunctions caused by environmental conditions at the installation site, malfunctions in the power supply or lack of power supply, faulty hardware or other influences for which ZEISS is not responsible.
- The installation of software revisions and updates as well as firmware supplements on the respective computer or controller for the ZEISS device at the customer's premises.
- On-site systems engineering and application engineering support. At the customer's request, ZEISS shall provide installation services as well as systems engineering and application engineering support on site at a separate charge.

2.4 Service description software support service

(1) The software support service includes telephone advice and support for the contract software, also includes support by e-mail and includes in detail:

- Telephone advice and support is provided to the customer's system manager and/or their deputy.
- Telephone consultation and support in the analysis of problems that have occurred, especially to clarify program and operating errors.
- Telephone advice and support to eliminate the effects of operating errors and answer questions about the application, operation and documentation.
- Telephone advice and support with hints on how to work around program errors that have occurred, as far as this is possible.
- Telephone advice and support is provided on the operational working days of the respective ZEISS company.

- Telephone consultation and support is provided only for the latest and next-to-last version of a software program. Older software versions must be updated to the latest available version to receive software support services.
- Telephone consultation in the area of "Application Technical Support" (ATU) for operation, is limited to 10 call authorizations per year. Additional call authorizations can also be purchased at a later date.

(2) ZEISS provides the customer with the following services:

- Access to the ZEISS communication network
- Information on training programs, online knowledge base, FAQ
- Application information with discussion forum
- Announcement of new products
- Notes on metrology training.
- Links to ZEISS Business Partners.

(3) Software problems that cannot be solved by telephone advice and support shall be notified to ZEISS by the customer in the form of a written error message or via email with relevant information.

(4) In addition, the software support service offers the option of using remote maintenance for detailed analysis of the device and software status. The prerequisite for this is direct data access to the ZEISS device, the use of the tools offered by ZEISS and, if necessary, a separate service contract.

3. System Manager

Upon request, the customer shall name a contact person for the software maintenance and software support service to ZEISS within 4 weeks after the start of the agreement. The customer shall notify ZEISS immediately of any changes in the person of the contact person. -ZEISS shall send software revisions and updates, documentation, instructions and other correspondence within the scope of this maintenance agreement to the person responsible for the system. Only the person responsible for the system and his deputy are entitled to make use of the telephone advice and support from the software support service.

The software installation may only be performed by a trained system administrator.

4. Troubleshooting

4.1 Upon request, ZEISS shall provide services to remedy defects in the software products (significant errors) and, within reason, other errors (non-significant errors) that occur during use of the software products and/or become apparent in the associated application documentation.

A defect is a lack of conformity of the software with the performance description issued by ZEISS as well as defects that make the use of the software impossible or significantly impair it.

4.2 An insignificant error exists if this error has no or only insignificant influence on the use of the software or if the function of the program does not comply with the specifications of the documentation.

4.3 An error must be describable and reproducible at any time.

The rectification of defects includes the delimitation of the cause of the defect, the diagnosis of the defect, as well as the correction of the defect or, if this is not possible with reasonable effort, the establishment of the operational readiness of the software products by means of a workaround of the defect. The correction of a defect in the software shall also include the correction of the associated application documentation.

Reported errors that are not significant for the respective program will be taken into account by ZEISS when revising the programs as part of the general software revisions; ZEISS reserves the right to determine the time and manner of error elimination.

4.4 If ZEISS is unable to reproduce a defect itself, ZEISS may attempt to reproduce the defect on site together with the customer. The customer shall support ZEISS in this. If a software problem reported by the customer turns out to be an application-related problem or a software error caused by the customer, ZEISS shall be entitled to charge the customer for the effort involved.

5. Cooperation obligations of the customer

5.1 When detecting, isolating and reporting errors or other defects, the customer must observe the application documentation belonging to the software product and any instructions from ZEISS. The customer shall take the necessary measures within the bounds of what is reasonable to determine, isolate and document the errors or other defects. This includes the preparation of a defect report, system logs and memory dumps, the provision of the affected input and output data, interim and test results and other documents suitable for illustrating the errors or other defects.

5.2 The customer shall permit ZEISS direct remote access to the software product. He shall also maintain the technical facilities required for the implementation (power supply, telecommunication connections and data connections ready for operation and shall provide these to a reasonable extent free of charge).

5.3 ZEISS shall be released from its obligations under Clause 4 insofar as the customer fails to comply with its cooperation obligations and the obligations under Clauses 6.1 to 6.4.

ZEISS shall also be released from its obligations under Clause 4 if the customer fails to fulfill its obligation to pay the remuneration pursuant to Clause 9.

6. Prerequisites of software maintenance

6.1 Current revision of the contract software.

A software maintenance agreement can only be concluded on the basis of the software version of the contractual software specified by ZEISS. If this is not available to the customer, it must first be acquired by means of a software upgrade. ZEISS is entitled to invoice its additional expenses. The customer must provide, at its own expense, adequately configured computer hardware/firmware and the required input and output devices in accordance with ZEISS's specifications for the revision of the contractual software and the operating system in use at the customer.

6.2 The Customer's claim to software maintenance under this Agreement shall not exist if the Customer itself or third parties have made changes to the software to be maintained or to the ZEISS device, including computers and peripheral devices, unless the Customer proves that the change does not affect the software maintenance services.

The customer shall, after consultation with ZEISS, provide all information necessary for dutiful performance of the Software Maintenance Agreement.

ZEISS is entitled to have the software maintenance performed by third parties. In the event of remote maintenance or the involvement of third parties, suitable measures for the protection of personal data shall be agreed separately between the parties.

6.3 The assignment of claims of the Customer arising from this Agreement to third parties is excluded. This also applies to claims of ZEISS against the customer.

7. Warranty

7.1 ZEISS shall remedy defects in software products, data carriers, firmware supplements and documents provided in writing within the scope of software maintenance at its own discretion by delivering defect-free goods or by rectifying the defect.

7.2 ZEISS shall remedy defects in the software revisions and updates at its own discretion by providing instructions (by telephone or in writing) on how to avoid or circumvent the effects or by sending patch sets or a new software revision.

7.3 The Customer may only assert other and more extensive warranty claims, in particular claims for rescission or reduction of the remuneration, if ZEISS has culpably failed to comply with its warranty obligation even after expiry of a reasonable deadline set by the Customer under threat of rejection or if at least two attempts at warranty have failed.

7.4 The limitation period for warranty claims is generally 12 months and may vary in individual cases depending on the software version in use.

7.5 There shall be no warranty claim for consulting services and other services that do not consist of the provision of hardware or software.

8. Exclusion and Limitation of Liability

8.1 Notwithstanding the statutory liability requirements, ZEISS shall be liable without limitation for damages, irrespective of the legal grounds, only in the event of intent or gross negligence.

reimbursement of expenses and in the event of a slightly negligent breach of a material contractual obligation (i.e. a contractual obligation whose breach jeopardizes the proper performance of the contract and the achievement of the purpose of the contract) shall be limited to the typical damage foreseeable at the time of conclusion of the contract.

8.2 The exclusions and limitations of liability contained in Clause 8.1 shall also apply in the event of breaches of duty by persons for whose fault ZEISS is responsible.

8.3 The exclusions and limitations of liability contained in Sections 8.1 to 8.2 shall not apply if ZEISS has fraudulently concealed the defect, or ZEISS has assumed a written guarantee of quality within the meaning of Section 444 of the German Civil Code (declaration by ZEISS that the object of purchase has a certain quality at the time of the transfer of risk and that ZEISS intends to be liable for all consequences of its absence irrespective of fault), or for damages based on injury to life, limb or health, as well as in the case of mandatory liability under the Product Liability Act.

8.4 ZEISS shall be liable for the loss of data and its recovery in accordance with 8.1 and 8.2 only to the extent that such loss would not have been avoidable by reasonable data backup measures of the customer.

8.5 Otherwise, ZEISS's liability is excluded. The burden of proof provided for by law shall remain unaffected.

9. Remuneration

9.1 The customer shall pay an annual fee for the software maintenance and software support service. This fee shall be calculated in accordance with the price list valid at the beginning of the contractual year for the contractual software available at the customer. If the software maintenance agreement is extended in accordance with Section 11, the amount of the fee for the following contractual year shall be based on the price list valid at the time of the extension. An increase compared to the current contract year that exceeds 10% entitles the customer to terminate the contract within 30 days after receipt of the notification with effect from the end of the expired contract year.

9.2 The remuneration shall be due for payment without deduction at the beginning of each contractual year within 30 days of receipt of the invoice. The statutory value added tax shall be charged additionally.

10. Function discount and quantity discount

10.1 If the customer concludes a software maintenance agreement for several ZEISS devices or for several contract years (offered depending on the respective ZEISS company), ZEISS shall grant a function and quantity discount in accordance with the discount scale in the respectively valid price list. Software from third-party suppliers that can be obtained via ZEISS is excluded from this provision.

10.2 The prerequisite for granting a discount for several ZEISS devices is the reduction of expenses by complying with the following conditions:

- the customer names only one system administrator for all affected ZEISS devices and the customer agrees to the delivery of the software revisions and updates in only one copy for all affected ZEISS devices and a single system administrator installs the respective licensed software revisions and updates on each affected ZEISS device at the customer's premises.

11. Term

11.1 This Agreement shall have a term of at least 12 months. It shall be automatically extended by a further 12 months at the currently valid list price, unless otherwise agreed or terminated by either party one month before the expiry of the respective term.

11.2 In the event of new delivery of the ZEISS device, the contract term shall commence on the date of installation of the ZEISS device at the customer's premises.

11.3 If this agreement is not concluded when a new ZEISS device is purchased, the warranty remains with the software support and error correction in the delivered software revision. Software upgrades and thus function extensions are therefore not granted.

11.4 If the agreement is concluded later than 6 months after delivery of the ZEISS software product, additional costs may be incurred due to software upgrades.

11.5 The right to extraordinary termination for good cause shall remain unaffected. Any breach of contract that makes further adherence to the contract unreasonable for the other party shall be considered good cause. This also includes any unauthorized use of the software.

12. Final Provisions

12.1 ZEISS is entitled to assign this Agreement, parts of this Agreement, or rights and obligations under this Agreement to its affiliates.

12.2 This Agreement shall be governed by the laws of the Federal Republic of Germany. The exclusive place of jurisdiction for all claims in connection with this Agreement shall be Oberkochen or, at the discretion of ZEISS, the place of residence or business of the Customer.

12.3 If individual clauses of this Software Maintenance Agreement are invalid in whole or in part, this shall not affect the validity of the remaining clauses or the remaining parts of such clauses.