



Terms and Conditions of Sale for Zeiss Canada Ltd.

1. General

These terms and conditions shall be deemed to be an integral part of all agreements arising from acceptance by Carl Zeiss Canada Limited ("Seller") of any purchase order of Buyer and shall supersede any conflicting provisions of any purchase order or other communication of Buyer. Prices shown include products as delivered only and do not include any additional fittings, installation, or adjustment unless expressly agreed in writing by Seller. Prices are in Canadian dollars and are subject to increases according to increases in the value of the West German mark against the Canadian dollar from the earlier of the date of any quotation and the date hereof.

2. Taxes

Any tax, fee, levy assessment, imposition or other charge imposed by any local, provincial or federal government now or hereafter levied upon the production, sale, use, import, export, ownership, or shipment of products purchased will be charged and paid for by Buyer.

3. Quotations

Seller reserves the right to change design, price and other terms without notice to Buyer and until acceptance of order by Seller.

4. Claims for Damage in Transit

Seller's responsibility ceases upon delivery of products to the carrier in good order at the point of shipment. Buyer is urged to examine all deliveries carefully immediately upon delivery and before signing receipt. If products are visibly damaged, Buyer must have written confirmation of the damage noted on the freight bill or other receipt by the agent of the carrier. Signing a receipt without notation of damage to products shall constitute conclusive evidence of receipt of the product in satisfactory condition. Any claim of damage in transit should be promptly made by consignee against the transportation company.

5. Interference with Delivery

Seller has no obligation to deliver any products against any order until it has accepted the order. In any event, Seller will not be liable for any delay in shipment or any failure to ship the product against an accepted order or for any damage suffered by reason thereof, when such delay or failure is, directly or indirectly, due to accident (in manufacture or otherwise), fire, flood, seizure, riot, war, embargo, labour stoppages or difficulties, inadequate transportation facilities, shortage of material or supplies, delay or default on the part of its suppliers, regulation or order by government authority, or any other

casualty or cause beyond the reasonable control of Seller, which Seller in its discretion declares to be force majeure resulting in such delay or failure. Seller, at its option, may cancel Buyer's order, or delay performance hereunder for any period reasonably necessary due to any of the foregoing, during which time this agreement shall remain in full force and effect. Seller shall have the further right to then allocate its available materials and products among its customers and for its own use in such manner as Seller may consider fair and equitable.

6. Partial Delivery

Seller may make partial shipments to Buyer and invoice accordingly, and Buyer shall be obligated to pay for such partial shipments when invoiced.

7. Delivery Dates

Shipments of any products are subject to Seller's availability schedule. Subject to Section 5, Seller will make reasonable commercial efforts to meet delivery dates quoted or acknowledged. However, Seller will not be liable for any failure to meet such dates.

8. Installation

If Seller has expressly agreed in writing to do so, Seller shall furnish, and Buyer shall engage at its' expense, competent supervisory personnel to oversee the installation (including starting, testing and adjustment) of the products. Buyer shall furnish all skilled and unskilled labour and all materials and incidentals required to install, start, test and adjust products. Buyer shall be responsible for the payment of all costs not specifically agreed to be borne by Seller and for all other aspects of the work, including compliance with local regulations and making any necessary arrangement with any trade unions. Seller's responsibility under this

Section 8 is limited solely to exercising that degree of skill customary in the trade in supervising installations of the same type.

9. Training

If Seller has expressly agreed in writing to provide operations training to Buyer's personnel, Seller shall furnish, and Buyer shall engage at its' expense, competent training personnel at such times as are mutually agreed to by Buyer and Seller and Buyer without charge shall provide Seller with appropriate premises and all incidental facilities reasonably necessary for the purposes of such training.

10. Warranties, Limitations and Exclusions of Liability

A. Subject to Section 10 B, Seller warrants that (i) products, including all components thereof, are free from defect in materials and workmanship, and, (ii) if a quotation has been provided in respect thereof, are of the kind and nature described therein, except that:

1. Seller gives no warranty with respect to consumable items or parts with a limited lifetime - such as data discs, cassettes, laser tubes, bulbs and fibre optic cables; and

2. components of the products produced by other manufacturers are warranted only to the extent that such components are warranted by the manufacturers supplying such components to Seller and such warranties are assignable by Seller.

B. If any software not supplied by other manufacturers is included, seller warrants that, when properly installed and maintained and operated in accordance with such reasonable instructions as are given by Seller and with standard industry practice, the software will not fail to execute its programming instructions due to defects in materials and workmanship. If

Seller receives written notice of a defect during the applicable warranty period Seller will repair or replace, at Seller's option, software media which do not execute programming instructions due to such defects provided that Seller is satisfied that Buyer's warranty claim is valid and, if required, defective software is returned to Seller at Buyer's expense. Seller does not warrant that the operation of the software will be uninterrupted or error free. Repaired or replaced software is only warranted for the balance of the original warranty period.

C. Upon receipt of prompt written notice within the 12 month warranty period in Section 10 of any failure to conform to Seller's warranties contained in this Section 10, Seller shall have the right, at its option, to repair or replace any defective products, to refund the purchase price upon return of the defective products, or to grant a reasonable allowance on account of such defects, and Seller's liability, and Buyer's exclusive remedy, for defective products shall be limited solely to such repair, replacement, refund, or allowance, as Seller may elect. Seller shall be given a reasonable opportunity to investigate all claims and no products shall be returned to Seller until after approved by Seller and receipt of

written shipping instructions from Seller. Repaired or replaced products are only warranted for the balance of the original warranty period.

D. The effectiveness of the warranties contained in this Section 10, other than warranties given in Section 10B which are governed by that Section, with respect to any particular defect is conditioned upon Seller being satisfied that any warranty claim of Buyer is valid and upon Buyer's substantiation that the products and their components have been stored, maintained and operated in accordance with such reasonable instructions as are given by Seller to Buyer and with standard industry practice. Subject to the foregoing, the warranties contained in this Section 10 shall remain in effect from the date hereof until 12 months after the date that the products are shipped by Seller unless the purchase price includes installation, in which case the 12 month period begins on the date Seller certifies to Buyer that the products are installed and are operating in conformity with Seller's specifications. If Buyer schedules or delays installation more than 30 days after delivery, the warranty period shall begin 31 days after the date of shipment.

E. Supplemental statements setting forth warranty terms different from those provided in this Section 10 may be provided for some product types, and are incorporated herein if applicable. The terms of any such supplemental statements supersede the terms hereof only to the extent that they are inconsistent herewith.

F. The warranties contained in this Section 10 are in lieu of, and there are excluded, any and all other warranties and conditions, express or implied, arising by statute or otherwise in law or from a course of dealing or usage or trade including, without limitation, any implied warranty or condition of merchantable quality or fitness for any particular purpose.

No other warranties or representations are made by Seller.

G. Buyer's remedies contained in this Section 10 are Buyer's sole and exclusive remedies and, except to the extent, if any, provided in this Section 10, Seller shall not be liable in contract, tort, delict or otherwise for any loss, damage or expense or for any injury to person or damage to property of Buyer or others arising out of the possession or the use or the inability to use products or in any way whatsoever related to products or by reason of any breach hereof (fundamental or otherwise) or any failure or delay in performance by, or negligence of, Seller, its employees, agents or servants or otherwise, even if Seller or its employees, agents or servants were advised of the possibility of such loss, damage, expense, injury or damage and in particular (but without limiting the generality of the foregoing) Seller shall not be liable for any special, direct, indirect, consequential or punitive damages or for any loss of use, loss of profits, loss of business revenue, failure to realize expected savings or for any liability to a third party incurred by Buyer or for any other commercial or economic loss of any kind whatsoever.

11. Payments

A. Terms will be strictly enforced on all accounts.

B. Accounts in excess of 30 days will be charged a service charge of the maximum permitted by law.

C. Buyer will be responsible for all costs and expenses incurred in the collection of outstanding amounts, including reasonable collection agency and/or solicitor's fees and expenses.

12. Assignment

No assignment of the rights or obligations under this agreement shall be made by Seller or Buyer without the prior written consent of the other party, not to be unreasonably withheld; provided, however, that Seller may, without consent of Buyer, assign its rights and transfer its obligations under this agreement to any corporation which is a parent, subsidiary or affiliate of Seller.

13. Acceptance of products

Buyer shall test the products within 14 days after (a) receipt of shipment at Buyer's premises, or by (b) receipt of Seller's notice that the products are substantially ready for commercial operation if the products have been sold on the basis that the Seller will supervise the installation thereof. Buyer shall be conclusively deemed to have accepted the products at the end of such 14 day period unless within such period Seller receives written

notice detailing Buyer's reasons for non-acceptance in which event Seller shall have a reasonable period within which to correct, make good, or demonstrate at Buyer's expense that the products are capable of commercial operation. If Seller receives such written notice within such 14 day period and subsequent thereto Buyer places the products in commercial

operation, Buyer shall be deemed to accept the products on the date on which the products are placed in commercial operation.

14. Security Terms

Buyer hereby grants and Seller reserves title and a purchase money security interest in each product purchased hereunder, and in any proceeds thereof, for the full amount now or in the future owing by Buyer to Seller. Buyer agrees that Seller may sign on Buyer's behalf any document required to perfect such security interest. Payment in full of the purchase price of any product purchased hereunder shall release the security interest in that product.

15. Insolvency

In the event that Buyer becomes insolvent or unable to pay its debts as they become due or in the event of voluntary or involuntary bankruptcy proceedings by or against Buyer or the appointment of a receiver or assignee of any of Buyer's property for the benefit of any one or more of Buyer's creditors, Seller may elect to cancel any unfulfilled obligations hereunder.

16. Copyrighted Materials

Unless otherwise expressly agreed to in writing by Seller, copyrighted materials supplied by Seller, including software and printed documentation, may not be copied except for archive purposes, to replace a defective copy or for program error verification.

17. Notices

All notices, consents, request, instructions, approvals, and other communications hereunder shall be in writing and given by personal delivery or by telex or facsimile or registered or certified mail, return receipt requested, to the registered office of Buyer or Seller or to such other address as any party hereto may, from time to time, designate in writing. Notices shall be deemed to effectively given upon receipt by the other party.

18. Patent Indemnity

Seller shall, except as otherwise provided herein, defend or settle any claim made or any suit or proceeding brought against Buyer insofar as it is based on an allegation that any product sold hereunder infringes a patent of the country in which the Buyer takes delivery of that product, provided that Seller is forthwith notified of any such claim, suit or proceeding and is given information, assistance without charge and the sole authority to defend or settle the same at Seller's expense. In the event that the product is in such suit held to infringe a patent and the use of the product is enjoined, or in the event of a settlement by Seller, Seller shall have the option, at its own expense, to produce for Buyer the right to continue the use of the product, or to modify the same so that it becomes non-infringing, or refund the depreciated value of the product and accept return of the product.

Seller shall have no liability for infringement resulting from compliance by Seller with Buyer's designs, specifications or instructions, or in the event of modification of any products by Buyer or use by Buyer of products other than as specified in relevant Seller publications or use by Buyer of the products in conjunction with products not supplied by

Seller. In no event shall Seller have any liability under this Section 18 in excess of the purchase price of the infringing product.

19. Return of Products

No return of any product to Seller will be accepted, whether under warranty or otherwise, unless previously authorized in writing by Seller. Any permitted returns other than under warranty will be subject to a reasonable restocking charge determined by Seller.

20. Order of Precedence

The terms and conditions hereof take precedence over Buyer's additional or different terms and conditions to which notice of objection is hereby given. Neither Seller's commencement of performance nor delivery shall be deemed or construed as acceptance of Buyer's additional or different terms and conditions. The terms and conditions herein constitute the entire understanding between the parties and supersede any previous communications, representations or agreements by either party whether verbal or written.

No change or modification of any of the terms and conditions herein shall be valid or binding on either party unless in writing and signed by an authorized representative of the party to be bound.

21. Severability of Provisions

In case any one or more of the provisions contained in this agreement should be invalid, illegal, or unenforceable in any respect, it or they shall be severed from this agreement and the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

22. Construction and Modification

These terms and conditions are intended by the parties as a final expression of their agreement and as a complete and exclusive statement of the terms and conditions of sale. No representations, understandings or agreements have been given or relied upon other than as specifically set forth herein. These terms and conditions can only be modified by written instrument signed by Seller and Buyer.

23. Forum

Buyer hereby attorns and submits to the jurisdiction of the Province or Ontario for the purposes of enforcement of rights and remedies arising under any agreement between the parties with respect of any products purchased.

24. Governing Law

Any agreement between the parties with respect to any products purchased will be governed by, and construed in accordance with, the laws of the Province of Ontario and the courts of the Province shall have exclusive jurisdiction in the event of any disputes hereunder.