

## GENERAL TERMS AND CONDITIONS

Of

**TOPCON EUROPE POSITIONING B.V.**  
(hereinafter referred to as "Topcon")

### ARTICLE 1 – APPLICABILITY

- 1.1 These general terms and conditions (the "**Terms and Conditions**") are applicable to all offer and agreements of Topcon whereby Topcon delivers Topcon products (including Topcon Software) and/or services (hereinafter "**Products**" or "**Services**") of whatever nature and under whatever name to the purchaser (the "**Purchaser**" / "**you**"). In the event that You are purchasing any license/Subscription to a Topcon Software from Topcon that You will use in the capacity of an End-User and You are not supplied with an End User Agreement (in electronic or physical form) the General Terms of Service as displayed on the relevant software site (such as but not limited to [topconpositioning.com](https://www.topconpositioning.com), <https://www.magnetsystems.com/>, <https://www.topnetlive.com/> or <https://www.sitelink3d.net>) shall apply.
- 1.2 If you do not agree to the Terms and Conditions, you should not buy any Products or Services, with Topcon. Topcon is entitled to make changes to the Terms and Conditions, or the policies and conditions that govern the use of the Products and/ or Services at any time. Topcon encourages you to review the Terms and Conditions periodically for any updates or changes. Possible general conditions of the Purchaser are herewith explicitly rejected.
- 1.3 If these Terms and Conditions are contrary to - or incompatible with - the provisions in the specific agreement(s) agreed with Topcon and Purchase, the provisions in the relevant specific Agreement will prevail. Possible arrangements deviating from these Terms and Conditions will not be enforceable, unless Topcon has agreed in writing to such deviations. With respect to future agreements, Purchaser will not be able to derive any rights from any possible deviations in the past.

### ARTICLE 2 - OFFERS AND CONCLUSION OF AGREEMENT

- 2.1 All Topcon's offers or quotations are made without any engagement. An agreement between Topcon and Purchaser will be validly entered into and become binding, upon Topcon's confirmation, in writing or through e-mail, of the Purchaser's order, or upon execution of the order by Topcon. These Terms & Conditions will form an integral part of the agreement between Purchaser and Topcon upon formation of such agreement.
- 2.2 Purchaser guarantees the accuracy and completeness of the information provided to Topcon by or on its behalf, on which Topcon bases its offer.
- 2.3 The signatory signing a purchase or other agreement with Topcon (must) have sufficient authorization to legally bind the company the signatory works for to a purchase agreement. If this is not the case, the signatory is personally bound to the purchase agreement.

### ARTICLE 3 - THE PRICES

- 3.1 Except as agreed otherwise, all prices are based on delivery in accordance with the Incoterms as indicated in Article 4 Delivery and are excluding V.A.T., import and export duties and any other taxes and impositions.
- 3.2 In the event changes occur in cost price factors (such as costs of (raw) materials, government measures, freights, exchange rates, taxes etc.) after the formation of an agreement between Topcon and Purchaser, Topcon is entitled to stipulate that the price will be increased accordingly. Topcon will notify Purchaser in writing of a price increase. If Purchaser has not informed Topcon that it wishes to terminate the agreement within fourteen days after the notice has been sent, Purchaser will be deemed to have accepted the price increase.

### ARTICLE 4 – DELIVERY

- 4.1 The dates quoted for delivery indicate the anticipated delivery time which Topcon will try to meet. Such quoted dates are no fatal periods. The anticipated delivery time is based on applicable labor conditions at the time of conclusion as well as on timely delivery of (raw materials or parts of) products by third parties to Topcon. In the event deliveries are delayed as a result of a change in said labor conditions or because timely ordered (raw materials or parts of) products are not delivered in time or as a result of other circumstances which are not for Topcon's account, including those mentioned in Article 14.4 of these Terms and Conditions, Topcon may extend the delivery time with a reasonable period. Should delivery then still not be made, the Purchaser must put Topcon in default by a written warning.
- 4.2 Unless agreed otherwise, all products and spare parts will be delivered, in accordance with the Incoterms 2020 (each individually the "Delivery"). As far as possible, Topcon adheres to the below Incoterms based upon shipment destination. Incoterms shall be agreed upon by both Topcon and Purchaser.

- DDP (Zoetermeer, the Netherlands) regarding intra-European Union shipments;

- FCA (Topcon warehouse) regarding non – European Union shipments; For Non-EU shipments, C terms may also be used in case all parties agree. DDP may not be used for exports outside the EU.
- DAP (destination) regarding United Kingdom and Switzerland or other EFTA<sup>i</sup> country shipments.

#### **ARTICLE 5 – PAYMENT**

- 5.1 Payment is to be made on the agreed date and in the currency indicated by Topcon. In case no specific date for payment has been agreed upon, payment has to be made within thirty days net after the invoice date.
- 5.2 In case Purchaser fails to meet his payment obligations in time, Topcon shall be entitled immediately and without any written notice being required, to charge, in addition to legal interest, an interest of 1,5% per month over the from time to time outstanding amount(s).
- 5.3 If Purchaser fails to meet his (payment) obligations, Topcon shall be entitled to refuse any further deliveries of Products and/or Services unless full payment is offered in cash or satisfactory security for the payment has been offered. Topcon's right to refuse further deliveries of Products and/or Services shall be notwithstanding any other rights of Topcon to claim immediate fulfilment of any (payment) obligations and irrespective whether any due amounts have already been invoiced or not.
- 5.4 All costs resulting from Purchaser's failure to meet his (payment) obligations shall be for Purchaser's account. These costs include judicial as well as extra judicial costs, including fees of (legal) advisors.
- 5.5 Payments by Purchaser shall be deemed to have been made first to settle accrued interest, and judicial and extra judicial costs, and thereafter they shall be charged to the oldest debt, irrespective of indications made by Purchaser.
- 5.6 Objections to an invoice must be made prior to the payment date of the invoice.

#### **ARTICLE 6 - RESERVATION OF TITLE**

- 6.1 All Products supplied shall remain Topcon's property until the purchase price for the relevant products has been paid in full.
- 6.2 In case Purchaser fails to fulfill any of its (payment) obligations, Topcon has the right, without prior notice being required, to take back the Products or to not deliver the Service. Purchaser is obliged to return the Products to Topcon upon Topcon's first request. Purchaser will enable Topcon to take back the Products. All costs involved shall be for Purchaser's account. Purchaser herewith authorizes Topcon irrevocably to enter those premises of Purchaser where the Products have been stored.
- 6.3 As long as Purchaser has not fulfilled all its (payment) obligations, Purchaser is not entitled to pledge, encumber in any other way or dispose in whole or in part any of the Products, other than in the normal course of business. Upon Topcon's request, Purchaser shall immediately pledge any claims it may have now or will have in the future on third parties with respect to the products to Topcon.
- 6.4 Purchaser shall notify Topcon immediately upon the occurrence of the following events:
  - (i) if Purchaser becomes aware of the fact that third parties exercise rights to the Products;
  - (ii) if Purchaser applies or any of his creditors apply for an adjudication in bankruptcy or a (preliminary) suspension of payments with regard to Purchaser;
  - (iii) if Purchaser is declared bankrupt or granted a (preliminary) suspension of payments;
  - (iv) an attachment is made or execution levied on a substantial part of Purchaser's assets and, in the event of a conservatory attachment, which is not released or discharged within thirty (30) days;
  - (v) any change occurs in the effective control over Purchaser, or if Purchaser is involved in or subject to a merger, split-off or split-up (including a legal merger and a legal split-up referred to in Title 7 of Book 2 of the Dutch Civil Code);
  - (vi) if Purchaser becomes involved in negotiations with one or more of its creditors or takes any step with a view to the general readjustment or rescheduling of its indebtedness;
  - (vii) if Purchaser applies for debt relief under the (Natural Persons) Debt Relief Act; and
  - (viii) Purchaser dies or is dissolved or its business is transferred in whole or in part, liquidated, wound up, discontinued or relocated abroad or a decision is taken in this respect.

#### **ARTICLE 7 – SECURITY**

- 7.1 In case Topcon has good reason to believe that Purchaser will not strictly fulfill its (contractual) obligations towards Topcon, Purchaser is obliged, at Topcon's first request, to provide satisfactory security in the form requested by Topcon.
- 7.2 As long as Purchaser does not fulfill any of its obligations as set forth in Article 7.1 of these Terms and Conditions, Topcon has the right to suspend the fulfillment of its obligations towards Purchaser without any form of compensation being due to Purchaser.
- 7.3 In case Purchaser fails to comply with Topcon's request as mentioned in Article 7.1 of these Terms and Conditions within

14 days after having received a written notification, all obligations of Purchaser shall become due and payable.

#### **ARTICLE 8 – WARRANTY**

Topcon warrants the Products to be free from defects in materials and workmanship for the period as specified and disclosed with or on each product supplied by Topcon. The applicable specific Product Warranty is provided upon purchase and/or request of the Purchaser. (the “**Product Warranty**”).

#### **ARTICLE 9 - OBLIGATIONS PURCHASER**

- 9.1 Purchaser is responsible for his own equipment and software to obtain access to the internet.
- 9.2 In order to guarantee the quality and the integrity of the systems and technical infrastructure required for the provision of services, Purchaser will ensure that:
- (i) only authorized and capable persons shall have access to the systems of Topcon;
  - (ii) Purchaser is not misusing and or acting in breach of the law and/or regulations by using the system of Topcon;
  - (iii) Purchaser has sufficient rights to meet its obligations arising from purchaser agreements, if any;
  - (iv) Purchaser shall comply with any confidentiality obligations regarding any confidential information;
  - (v) the systems, consisting also of the software to which Purchaser is connected to the system of Topcon, are free of defects and/or viruses, which can cause damages to the system of Topcon.
- 9.3 Purchaser shall cooperate and comply with any and all mandates and/or instructions by the competent national authorities and/or Topcon relating to recall of any Topcon products. Topcon will reimburse the Purchaser for costs reasonably made directly in connection with any recall procedures, except where the conduct of the Purchaser, and to the extent applicable, its employees, its contractors and/or any other person(s) engaged by the Purchaser has given rise to the recall of any Topcon products.

#### **ARTICLE 10 – ON SITE SERVICES**

In case, Topcon provide You with any site based services including but not limited to installation, commissioning, training, site assessment activities (together “On-Site Services”), You shall commit that Topcon’s employees (and/or subcontractors’ employees acting on Topcon’s behalf) (hereinafter the “Workers”) shall not be exposed to risks to their health or safety under the meaning of the Applicable Law. You commit to take all necessary precautions to ensure the health and safety of Workers which includes providing the site free from recognized hazards that may cause harm and consistent with and in compliance with Applicable Laws and local Regulations. Should the Workers be of the opinion that the site does not comply to such health and safety conditions, the Workers shall remain entitled not to proceed with the On-Site Services without Topcon to be found liable in any way and Topcon shall be able to charge You any cost incurred (including but not limited to travel costs).

#### **ARTICLE 11 – EXPORT CONTROL**

- 11.1 Purchaser may only export, re-export, sell, transmit, transfer, or otherwise make available, directly or indirectly, any Topcon product received from or owned by Topcon, including any hardware, software and/or technology as well as any corresponding documentation, if and when such complies with any and all applicable national and international (re-)export control laws, rules and regulations. Purchaser will determine and fulfill any and all export and re-export license requirements to export and/or reexport the relevant Topcon products, obtain any export or re-export license or other official authorization, and carry out any customs formalities for the export or re-export of the relevant Topcon products.
- 11.2 Prior to any transfer of Topcon products to a third party, Purchaser will ensure that:
- (i) the transfer will not infringe any embargo imposed by the European Union, by the United States of America, Japan and/or by the United Nations;
  - (ii) the Topcon products to be transferred are not intended for use in connection with armaments, nuclear technology or weapons, if and to the extent such use is subject to prohibition or authorization, unless required authorization is provided; and
  - (iii) the regulations of all applicable Sanctioned Party Lists of the European Union and the United States of America concerning the trading with entities, persons and organizations listed therein, are considered and followed.
- 11.3 Purchaser represents and covenants that it shall not export, re-export, sell, transmit, transfer, or otherwise make available, directly or indirectly, any Topcon product received from or owned by Topcon, including any hardware, software and/or technology, as well as any corresponding documentation, to a particular person or entity, if Purchaser has reason to believe that such person or entity will transfer or sell the Topcon products in violation of this Article 11.
- 11.4 If required to conduct export control checks, Purchaser, upon request by Topcon, shall promptly provide Topcon with all information pertaining to the recipient of the Topcon products, the destination and the intended use of the Topcon products, as well as any applicable export control restrictions.
- 11.5 Topcon shall not be liable for, and Purchaser shall indemnify and hold Topcon harmless for and against, any damages, losses, liabilities, costs and expenses (including advisor’s fees) incurred or to be incurred as a result of any non-compliance by Purchaser with this Article 11 and/or any applicable export control regulations.

#### **ARTICLE 12 - LIMITATION OF LIABILITY**

- 12.1 This Article 12 applies to any liability on the part of Topcon, regardless of the legal basis of such liability.
- 12.2 Topcon shall never be liable for damages, losses and costs incurred or to be incurred as a result of untimely deliveries or deliveries made in part.
- 12.3 For any other damages, losses and costs than those mentioned in Article 12.2 and notwithstanding the provisions of Article 8 of these Terms and Conditions, Topcon shall only be liable for damages which are either accountable to willful misconduct or gross negligence on the part of Topcon, its employees and non-employees or result from circumstances which are at Topcon's risk.
- 12.4 In the event the Topcon is liable, Topcon shall only be liable for damages, losses, liabilities, costs and/or expenses within the meaning of section 6:96 Dutch Civil Code directly resulting from the willful misconduct or gross negligence of Topcon, provided, however, that Topcon shall not be liable for any indirect damages, loss of anticipated profits, loss of contracts, incurred losses, loss of savings and incurred expenses or other consequential damage.
- 12.5 Topcon shall in no circumstances be liable for any indirect damages, loss of earnings, loss of contracts, losses, missed savings, incurred costs or other (consequential) damages. Topcon furthermore shall not be liable for damages where the amount of the damages exceeds the amount paid out to Topcon (and for which reasonable cover is provided) under their commercial liability insurance. If and to the extent that the incurred damage is not covered by a business liability insurance, but Topcon is liable on the basis of this Article 12, such liability is in any case limited to financial damage within the meaning of Article 6:96 of the Dutch Civil Code, which is the direct result of the acts or omissions of Topcon and such liability shall in any event be limited to the purchase price of the products which have caused the damages in question.
- 12.6 Topcon, as well as its employees and non-employees for whose acts Topcon might be held liable by law are each entitled to invoke any and all defenses, whether granted contractually or by law to Topcon, or the relevant employees or non-employees, which Topcon may have in order to defend itself against any liability. The Purchaser is liable for and shall indemnify and hold harmless Topcon (and its respective, employees, officers, directors, agents, and counsel) from and against any and all claims, demands, suits, damages, losses, liabilities, costs and/or expenses (including attorney's fees and court or arbitration costs) of third parties which arise out of or are related to the willful misconduct or gross negligence on the part of Purchaser, its group companies and/or its and their respective employees, agents and/or commissionaires. Purchaser is liable for and shall indemnify and hold harmless Topcon (and its respective, employees, officers, directors, agents, and counsel) from and against any and all claims, demands, suits, damages, losses, liabilities, costs and/or expenses (including attorney's fees and court or arbitration costs) incurred or to be incurred by Topcon (and its respective, employees, officers, directors, agents, and counsel) resulting from a breach by Purchaser, its group companies and/or its and their respective employees, agents and/or commissionaires, of any of its and their (contractual) obligations towards Topcon, except in the event such claims, demands, suits, damages, losses, liabilities, costs and/or expenses are due to willful misconduct or gross negligence on the part of Topcon.
- 12.7 The provisions of this Article 12 do not affect product liability based on mandatory provisions of Dutch law.

#### **ARTICLE 13 – INDEMNIFICATION**

Upon request by Topcon, you agree to defend, indemnify and hold harmless Topcon and its subsidiaries, affiliates, officers, agents, co-branders or other partners and employees from all liabilities, claims and expenses, including reasonable attorneys' fees, made by any third party due to or arising out of your violation of these Terms and Conditions or your violation of any rights of another party.

#### **ARTICLE 14 - NO WAIVER**

The failure of Topcon to enforce any provisions of these Terms and Conditions or respond to a breach by you or other parties shall not in any way constitute a waiver of Topcon's right to enforce subsequently any provisions of these Terms and Conditions or to act with respect to similar breaches.

#### **ARTICLE 15 - NON – PERFORMANCE**

- 15.1 In case Purchaser fails to comply with any of its obligations under the agreement(s) and/or any or more of the events described in Article 6.4 sub (ii) – (viii) of these Terms and Conditions occur, Topcon shall be entitled to terminate the agreement(s) forthwith in whole or in part or rescind or suspend the (further) performance of its obligations under the agreement(s) and to take back the products, all such without prejudice to Topcon's right to compensation of any losses or damages it has incurred as a result thereof and any other rights it may have, and without any compensation being due by Topcon.
- 15.2 In case Topcon terminates or rescinds the agreement(s) in accordance with Article 15.1 of these Terms and Conditions, without prejudice to any other rights Topcon may have, any and all claims Topcon may have vis-à-vis Purchaser shall become immediately due and payable and Topcon shall be entitled to suspend the further performance of any agreement(s) immediately.

- 15.3 In case Topcon cannot properly perform its obligations in whole or in part, whether temporarily or permanently, as a result of circumstances which are not at Topcon's risk, including those circumstances mentioned in Article 15.4 of these Terms and Conditions, Topcon has a right to rescind the agreement(s) with Purchaser.
- 15.4 Circumstances which are in no event at Topcon's risk are: conduct, with the exception of willful misconduct or gross negligence, of persons which Topcon engages for the performance of its obligations towards Purchaser; unsuitability of products which Topcon uses for the performance of its obligations towards Purchaser; exercise by a third party vis-à-vis Purchaser of one or more rights in respect of failure of Purchaser to perform its obligations under an agreement with such third party for the delivery of the products; governmental regulations or orders which prohibit or restrict the use of the delivered products or the products to be delivered; strike or lock-out; illness of personnel; transportation problems; limitations/prohibitions of in- and/or export; non- or untimely performance by Topcon's suppliers; disruption in the production process of the products; nature-/nuclear disasters; war, danger of war; negligence of Topcon except for willfulness or gross negligence, and other circumstances which are beyond Topcon's reasonable control.

## ARTICLE 16 - INTELLECTUAL PROPERTY RIGHTS

- 16.1 For the purpose of these Terms and Conditions, "**IP Rights**" means any patents, trademarks, service marks, trade names, trademark registrations, designs, business names, copyrights, Software (meaning software used in connection with or embodied in the products, which is owned by, licensed to or otherwise used by Topcon, or any of its group companies, including any and all documentation and/or materials thereto), database rights, design rights, domain names, moral rights, inventions, confidential information, knowhow and other intellectual property rights and interests (which may now or in the future subsist), whether registered or unregistered, owned by or licensed by any third party to Topcon or any of its group companies and relating to or embodied in the products or any other materials provided by Topcon. The Purchaser hereby acknowledges that the IP Rights are and shall remain the property of Topcon, any of its group companies or the relevant third parties from which Topcon or its group companies has received a license to use the IP Rights. Topcon reserves the right to modify the IP Rights at any time.
- 16.2 Topcon hereby grants to the Purchaser a revocable, royalty-free, non-exclusive right to use the IP Rights, under the conditions that (i) such is permitted under the license conditions Topcon has agreed upon with third parties, (ii) such third party license validly exists, and/or (iii) Topcon is entitled to these third party IP Rights (the "**IP Rights License**"). The IP Rights License is granted to Purchaser solely in connection with the normal use by Purchaser of the products and/or service purchased by Purchaser from Topcon, to the extent permitted by these Terms and Conditions and/or an additional supply agreement between Topcon and Purchaser. Purchaser may not sub-license any rights under the IP Rights License to any other party without obtaining the prior written consent of Topcon. Topcon reserves the right to amend the terms and content of the IP Rights License at any time.
- 16.3 Purchaser shall use the IP Rights in accordance with the usage guidelines or other written instructions provided by Topcon with the products. Any use of the IP Rights by Purchaser will indicate that Topcon is the owner or licensee of the IP Rights. All uses of the IP Rights and all goodwill associated therewith will inure solely to the benefit of Topcon. Upon request of Topcon, Purchaser shall provide Topcon with a sample of all product packaging and advertising that makes use of the IP Rights for purposes of permitting Topcon to verify that Purchaser's use of the IP Rights is consistent with the provisions the usage guidelines or other written instructions provided by Topcon with the products.
- 16.4 The Purchaser shall refrain from (i) challenging Topcon's, or the relevant third party's interest in the IP Rights, or the validity thereof, (ii) obtaining any right, title or interest in or to the IP Rights and (iii) modifying, adapting, translating, making derivative works or, decompiling, disassembling or otherwise reverse-engineering the Software or any portion thereof except where such restriction is prohibited under applicable law without possibility of contractual waiver,. Purchaser shall at all times recognize, respect, and protect Topcon's right to full ownership in, or the license to use, any and all of the IP Rights. The Purchaser shall not apply for and/or register any of the IP Rights or any symbols that include or are similar to any of the IP Rights.
- 16.5 Purchaser may not infringe any of the IP Rights associated with the manufacturing, design, branding and packaging of any of Topcon's products purchased by the Purchaser or advertised by Topcon, nor introduce any modifications to the products supplied by Topcon, unless the nature of the delivered product dictates otherwise.
- 16.6 Topcon reserves the right to modify the IP Rights or substitute alternative marks for any or all of the IP Rights at any time.
- 16.7 Purchaser may not use any trademarks, service marks, trade names, and trademark registrations in connection with the products (other than the IP Rights) without the prior written consent of Topcon, which consent may be given or withheld by Topcon at its sole discretion.
- 16.8 Purchaser acknowledges and agrees that, in case any license to use any IP Rights granted to Topcon by a third party shall terminate or cease to exist for whatever reason, such termination may result in the (immediate) termination of the IP Rights License granted by Topcon to Purchaser. Topcon shall not be liable for any damages, losses, liabilities, costs and expenses (including advisor's fees) incurred or to be incurred by Purchaser as a result of any termination of the IP Rights License or the Software License.



## ARTICLE 17 - CONFIDENTIALITY

- 17.1 **"Confidential Information"** means any and all non-public information disclosed by one party (the **"Disclosing Party"**) to the other party (the **"Receiving Party"**) in any form or medium, whether oral, written, graphical or electronic, pursuant to this Agreement, that is designated confidential or proprietary, or that a reasonable person should understand is confidential or proprietary. Confidential Information includes, but is not limited to: the terms of this Agreement, information related to either party's technology, products, know-how, trade secrets, whether or not patentable or copyrightable, specifications, Purchasers, business plans, pricing information, promotional and marketing activities, finances and other business affairs, Topcon products and anything else created or developed by Topcon in connection with this Agreement and the Services. Purchaser will not remove or destroy any proprietary markings or restrictive legends placed upon or contained in the Service and/or related materials.
- 17.2 The Receiving Party will not use the Confidential Information of the Disclosing Party for any purpose other than as necessary to fulfill its obligations or to exercise its rights under this Agreement, and by Topcon to improve the Service (the **"Purpose"**). The Receiving Party will not disclose Confidential Information of the Disclosing Party to any third party; provided that the Receiving Party may disclose Confidential Information to its partners, officers, directors, employees, contractors, Affiliates, agents, advisors, or representatives who need access to such Confidential Information for the Purpose and who are subject to written confidentiality obligations at least as stringent as the obligations set forth in this article 17. Each party accepts responsibility for the actions of its partners, officers, directors, employees, contractors, Affiliates, agents, advisors and representatives, and will protect the other party's Confidential Information in the same manner as it protects its own valuable confidential information, but with no less than reasonable care. The Receiving Party will promptly notify the Disclosing Party upon becoming aware of a breach or threatened breach hereunder and will cooperate with any reasonable request of the Disclosing Party in enforcing its rights.
- 17.3 Confidential Information does not include information which: (i) is known by the Receiving Party prior to receipt from the Disclosing Party, without any obligation of confidentiality; (ii) becomes known to the Receiving Party directly or indirectly from a source other than one having an obligation of confidentiality to the Disclosing Party; (iii) lawfully becomes publicly known or otherwise publicly available, except through a breach of this Agreement; or (iv) is independently developed by the Receiving Party without use of or access to the Disclosing Party's Confidential Information. The Receiving Party may disclose Confidential Information pursuant to the requirements of applicable law, legal process or government regulation, but only after it notifies the Disclosing party (if legally permissible) to enable the Disclosing party to seek a protective order or otherwise to contest such required disclosure, at Disclosing Party's expense.

## ARTICLE 18 - DATA PROTECTION AND SECURITY

- 18.1 Topcon as a controller. Each party acts as an independent controller of any personal data it processes in connection with this purchase, whether or not obtained from the other party. Purchaser shall at all times comply with any obligations under the General Data Protection Regulation (EU 2016/679) and any other relevant data protection regulations, each as amended, superseded, replaced or supplemented from time to time (the **"Privacy Laws"**). Purchaser shall (i) take appropriate security measures to protect the confidentiality of the personal data provided by Topcon; (ii) inform Topcon, on Topcon's request, about the security measures taken in respect to the foregoing; (iii) notify Topcon of any personal data breach affecting personal data provided to you by Topcon without undue delay, and any event within 48 hours of discovering such breach; and (iv) provide Topcon with such assistance or information it requests in order to respond to either (a) right requests or complaints made by data subjects; or (b) any enquiry or investigation by a supervisory authority.
- 18.2 Topcon as a processor. Under specific circumstances Topcon may and shall process Personal Data only as a data processor acting on behalf of Purchaser in order to perform its obligations under a specific service agreement (the **"Subscription"**).
- 18.2.1 In connection with the sale of a Product and provision of the Service, Topcon may, from time to time, collect, maintain, process and use Purchaser's company name, User's name, address, email address, credit card information, login credentials (user name, password), IP address, diagnostic, technical, location, usage and related information.
- 18.2.2 Topcon will process Personal Data in accordance with the terms of this Agreement and its Privacy Policies (<https://mytopcon.topconpositioning.com/accounts/communication-preferences/our-commitment>). The parties agree that the Purchaser's complete and final instructions are set out in this Terms and Conditions. Processing outside the scope of these instructions (if any) will require prior written agreement between Purchaser and Topcon with additional instructions for processing. In the event of a conflict between the terms of this Terms and Conditions and the Privacy Policies, the terms of this Terms and Conditions will control with respect to the Subscription being purchased under this Terms and Conditions.
- 18.2.3 Topcon has implemented and will maintain and follow appropriate technical and organizational measures intended to protect Personal Data against accidental, unauthorized or unlawful access, disclosure, damage, alteration, loss, or destruction. Notwithstanding the above, Purchaser is responsible for its secure use of the Products and Services, including securing its account authentication credentials, protecting the security of Personal Data when in transit to and from the Subscription and taking any appropriate steps to securely encrypt or backup any Personal Data uploaded to the Subscription.

- 18.2.4 If Topcon becomes aware of any unlawful access to any Personal Data stored on Topcon equipment or in a Topcon facility, or unauthorized access to such equipment or facilities resulting in loss, disclosure, or alteration of Personal Data (each a “**Data Breach**”), Topcon will (1) promptly notify Terms and Conditions of the Data Breach (provided that such notification may be delayed as required by a law enforcement agency); (2) take reasonable steps to address any Data Breach and prevent any further Data Breach; and (3) at Purchaser's request and cost, take commercially reasonable steps to assist Purchaser in complying with its obligations under Applicable Privacy Laws pertaining to responding to a Data Breach.
- 18.2.5 Notification(s) of Data Breach will be delivered to one or more of Purchaser's administrators by any means Topcon selects including via email. It is Purchaser's sole responsibility to ensure Purchaser's administrators maintain accurate contact information on the online portal or as otherwise required by Topcon in a written notice to Purchaser's administrator(s). Topcon's obligation to report or respond to a Data Breach under this Section is not an acknowledgement by Topcon of any fault or liability with respect to the Data Breach. Purchaser must notify Topcon promptly about any possible misuse of its accounts or authentication credentials or any Data Breach related to the Subscription.
- 18.2.6 Topcon may transfer Purchaser Personal Data to its Affiliates entities in connection with the performance of its obligations under this Agreement. For a list of Topcon locations, please see company locations found at <https://www.topconpositioning.com>. Purchaser expressly acknowledges that Personal Data may be transferred to the United States, and Purchaser authorizes Topcon (where applicable) to transfer Personal Data to and process it in the United States or any other country as set forth above, which may not have the same level of data protection as the country from which the Personal Data originated. Topcon warrants that these sub-processors have adopted the same level of protection as Topcon.
- 18.2.7 Purchaser represents and warrants that it has the authority to provide the Personal Data to Topcon for processing as contemplated by this Terms and Conditions. If any applicable law requires a data subject to receive notice of or to provide consent to the processing and/or transfer of his/her Personal Data, Purchaser will provide such notice and obtain such consent from the applicable data subjects.
- 18.2.8 Topcon will abide by Applicable Privacy Laws pertaining to any relevant individual's exercise of his or her rights to access, correct, or object to the processing of Personal Data. Notwithstanding the foregoing, unless otherwise required by Applicable Privacy Laws, Topcon will promptly notify Purchaser if Topcon receives a request from a data subject to have access to Personal Data or any other complaint or request relating to Purchaser's obligations under Applicable Privacy Laws. Topcon will provide reasonable assistance to Purchaser to facilitate Purchaser's ability to respond to such request or complaint (including, without limitation, by allowing data subjects to have access to their Personal Data if such access is required by the applicable data protection laws, and where the Personal Data is not already available to the Purchaser).
- 18.2.9 Purchaser consents to Topcon engaging third party sub-processors to process the Personal Data for the permitted purpose provided that: (i) Topcon maintains an up-to-date list of its sub-processors which is available upon request; (ii) Topcon imposes data protection terms on any sub-processor it appoints that require it to protect the Data to the standard required by Applicable Privacy Laws; and (iii) Topcon remains liable for any breach of this Section that is caused by an act, error or omission of its sub-processor. Purchaser may object to Topcon's appointment or replacement of a sub-processor prior to its appointment or replacement, provided such objection is based on reasonable grounds relating to data protection. In such event, Topcon will either not appoint or replace the sub-processor or, if this is not possible, Purchaser may suspend or terminate this Agreement (without prejudice to any fees incurred by Purchaser prior to suspension or termination).
- 18.2.10 If Topcon believes or becomes aware that its processing of Personal Data is likely to result in a high risk to the data protection rights and freedoms of data subjects, it shall inform Purchaser and provide reasonable cooperation to Purchaser (at Purchaser's expense) in connection with any data protection impact assessment that may be required under Applicable Privacy Laws.
- 18.2.11 Purchaser only will provide Topcon with the Personal Data necessary for Topcon to perform its obligations under this Agreement. Purchaser acknowledges that the Services do not require the need to process Sensitive Data; therefore, under no circumstances will Purchaser upload or otherwise provide to the Service any Sensitive Data. In the event that Purchaser uploads Sensitive Data inadvertently, it will be treated in the same manner that Personal Data is treated under this Agreement.
- 18.2.12 Following termination or expiry of the Term, Topcon will, where required by Applicable Privacy Laws and at the option of the Purchaser, return to Purchaser or securely delete all Personal Data processed in connection with the subject Subscription. This requirement shall not apply to the extent that Topcon is required by applicable law to retain some or all of the Personal Data, or to Personal Data it has archived on back-up systems, in which event Topcon shall securely isolate and protect from any further processing except to the extent required by such law.

- 18.2.13 If there is new guidance or a change in the Applicable Privacy Laws that renders all or part of the Subscription illegal, Topcon may notify Purchaser of such modifications to this Section 18 as it reasonably deems necessary in light of such new guidance or change in Applicable Privacy Laws. If the Purchaser does not wish to accept the new terms in this Section 18, the Purchaser may terminate this Agreement within 15 days of the date such notice is given.

#### **ARTICLE 19 - APPLICABLE LAW; COMPETENT COURT**

- 19.1 Dutch law shall be applicable to all legal relationships between you and Topcon. The provisions of the Vienna Convention on the International Sale of Goods (1980) shall not apply to the legal relationship between Topcon and the Purchaser.
- 19.2 All disputes arising under or in connection with (the performance of) any agreement between you and Topcon as well as any disputes regarding these Terms and Conditions shall be brought exclusively before the competent court in Rotterdam, the Netherlands.

Topcon Europe Positioning B.V. - Chamber of Commerce no: 24379990, VAT no: NL814458567B01

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<sup>i</sup> EFTA = European Free Trade Agreement