



## GENERAL TERMS AND CONDITIONS

Of

### TOPCON POSITIONING GREAT BRITAIN LTD.

(hereinafter referred to as "Topcon")

#### ARTICLE 1 – APPLICABILITY

- 1.1 These general terms and conditions (the “**Terms and Conditions**”) are applicable to all offers and agreements of Topcon whereby Topcon delivers the products (including Topcon software) and/or services as specified in the Order (as defined below) (hereinafter “**Products**” or “**Services**”) of whatever nature and under whatever name to the purchaser (the “**Purchaser**”/“**you**”). For the purposes of these Terms and Conditions, “**Order**” means Topcon’s quotation (“**Quotation**”) and the Purchaser’s written acceptance of such Quotation.
- 1.2 If you do not agree to the Terms and Conditions, you should not buy any Products or Services, with Topcon. Topcon will notify you of any changes to these Terms and Conditions that are required by any applicable laws or regulations or due to any cost price factors outside of its control as stated in Article 3.2 below. Topcon encourages you to review the Terms and Conditions on its website periodically for notice of any such updates or changes.
- 1.3 These Terms and Conditions shall:
  - a. apply to and be incorporated into any agreement between Topcon and a Purchaser and
  - b. prevail over (i) any inconsistent terms and conditions contained in or referred to in an Order, acceptance, correspondence, or elsewhere or (ii) any other terms and conditions contained in or referred to in any documentation provided by the Purchaser or (iii) implied by law, trade custom, practice or course of dealing.
- 1.4 Except as set out in Article 1.2 above and 3.2 below, no variation of an Order or these Terms and Conditions shall be binding on the Purchaser unless in writing and signed by a director of the Purchaser.
- 1.5 In the event the parties agree in writing a specific agreement(s) these Terms and Conditions will still apply. However, in the event of a conflict the provisions in the relevant specific agreement will prevail. Possible arrangements amending these Terms and Conditions will not be enforceable, unless Topcon has agreed in writing to such amendments.

#### ARTICLE 2 – OFFERS AND CONCLUSION OF AGREEMENT

- 2.1 All Topcon's offers or quotations are made without any engagement. A Quotation shall only be valid for a period of 30 days from its date of issue.
- 2.2 The Quotation constitutes an offer by Topcon to sell the Products in accordance with these Terms and Conditions. The Quotation shall only be deemed to be accepted upon the Purchaser’s written acceptance of a Quotation and at this point an agreement between Topcon and Purchaser shall come into existence. An agreement consists of an Order, these Terms and Conditions and (if applicable) any separate agreement agreed in writing between the parties (the “**Agreement**”).
- 2.3 Any samples, drawing or advertising produced by Topcon and any descriptions or illustrations contained in Topcon’s catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Products referred to in them. They shall not form part of the Agreement nor have any contractual force.
- 2.4 The Purchaser guarantees the accuracy and completeness of the information provided to Topcon by or on its behalf, on which Topcon bases its offer.
- 2.5 The signatory signing an Agreement must have sufficient authorization to legally bind the company the signatory works for to an Agreement. If this is not the case, the signatory is personally bound to the Agreement.

#### ARTICLE 3 – THE PRICES

- 3.1 Except as agreed otherwise, all prices set out in in the Quotation are based on delivery EX WORKS (Topcon’s warehouse place 2, Sandy Hill Business Park, Sandy Way, Tamworth B77 4DU and Essebaan 11. Capelle aan den IJssel Netherlands (as such term is defined in the Incoterms 2020) and are exclusive of 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.) which are outside of Topcon’s control, after the formation of the Agreement between Topcon and Purchaser, Topcon is entitled to increase the price 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 in the Quotation indicate the anticipated delivery time which Topcon will try to meet. Such quoted dates are not of the essence. The anticipated delivery time is based 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 because timely ordered products are not delivered in time or as a result of other circumstances which are not within Topcon's including those mentioned in Article 13.5 of these Terms and Conditions, Topcon may extend the delivery time by a reasonable period. Should delivery then still not be made, the Purchaser shall promptly notify Topcon and the provisions of Article 13.5 will apply.
- 4.2 Unless agreed otherwise between the parties all Products and spare parts will be delivered EX WORKS (warehouse, place 2, Sandy Hill Business Park, Sandy Way, Tamworth B77 4DU and Essebaan 11, Capelle aan den IJssel Netherlands (as such term is defined in the Incoterms 2020) (the "Delivery").

#### ARTICLE 5 – PAYMENT

- 5.1 Payment is to be made on the date and in the currency set out in the applicable Quotation. 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 Without prejudice to any other right or remedy, Topcon reserves the right to set off any amount at any time owing to it by the Purchaser against any amount payable by it to the Purchaser under the Agreement.
- 5.3 Objections to an invoice must be made in writing by the Purchaser 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 the event that an invoice remains unpaid no less than 30 days after the invoice fell due, Topcon shall have the right to withhold or cease delivery of the Products and/or Services. Furthermore, upon giving to the Purchaser five days' written notice, Topcon shall have the right to take possession of the Products. The Purchaser shall allow Topcon access to its premises, within business hours, for the sole purpose of Topcon taking repossession of the Products. All costs involved shall be for Purchaser's account. The Purchaser authorises Topcon 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. 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 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;
  - (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; 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 the event that Topcon has good reason to believe that Purchaser will not meet its payment obligations, 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 the event the 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, this constitutes a material breach of the Agreement and the provisions of Article 13.2 shall apply.

#### ARTICLE 8 – WARRANTY

- 8.1. Topcon warrants that:
- (i) the Products shall be free from defects in materials and workmanship for the period as specified, and in accordance with the product warranty available on the Topcon Enterprise Solutions portal <https://api.topcon.com/login> (the "Universal Product Warranty");
  - (ii) the Services shall be provided in accordance with good industry practice and with reasonable care and skill; and
  - (iii) no third-party rights shall be infringed by the Purchaser's use of the Products and/or Services.

8.2. To the fullest extent permitted by law, any warranties, conditions and other terms implied by statute or common law are excluded from the Agreement, except as expressly provided in the Agreement.

#### ARTICLE 9 – PURCHASER OBLIGATIONS

9.1 The Purchaser will ensure that:

- (i) the Purchaser has all necessary rights and consents to meet its obligations arising from the Agreement entered into with Topcon, if any;
- (ii) any Purchaser owned or licensed software which is connected to a Topcon System, are free of defects and/or viruses, which can or may cause damage to a Topcon System.

9.2 The Purchaser shall comply with all applicable laws and cooperate and comply with any and all mandates and/or instructions issued by applicable national authorities and/or Topcon relating to the recall of any Topcon Products.

#### ARTICLE 10 – EXPORT CONTROL

Purchaser 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 or software.

#### ARTICLE 11 – LIMITATION OF LIABILITY

11.1 Subject to Article 11.3, Topcon shall not in any circumstances have any liability for any losses or damages which may be suffered by the Purchaser, whether the same are suffered directly or indirectly or are immediate or consequential, which fall within any of the following categories:

- (i) loss of sales or business;
- (ii) loss of profits;
- (iii) loss of agreements or contracts;
- (iv) loss of or damage to goodwill;
- (v) loss of business opportunity and management time; and
- (vi) any other indirect or consequential loss.

11.2 Subject to Article 11.3, Topcon's total liability to the Purchaser for any and all losses arising under or in connection with the Agreement, whether in contract, tort (including negligence) breach of statutory duty or otherwise shall not exceed the total price for the Products and/or Services.

11.3 Nothing in this Agreement limits or excludes any liability of either party which cannot legally be limited or excluded, including but not limited to liability for:

- (i) death or personal injury caused by negligence;
- (ii) fraud; and
- (iii) fraudulent misrepresentation.

#### ARTICLE 12 – NO WAIVER

12.1 No failure or delay by a party to exercise any right or remedy provided under these Terms and Conditions or

by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

#### ARTICLE 13 – SUSPENSION AND TERMINATION

13.1 In the event of the occurrence of one or more of the events described in Article 6.4(ii) to 6.4(viii) of these Terms and Conditions, Topcon shall be entitled to terminate the Agreement in whole or in part or suspend the (further) performance of its obligations under the Agreement and to take back the Products, all such without prejudice to Topcon's right to compensation for any losses or damages it has incurred as a result thereof and any other rights it may have.

13.2 Without prejudice to any other rights or remedies to which the Purchaser may be entitled, Topcon may terminate the Agreement without liability to the Purchaser if the Purchaser commits a material breach of any term of these Terms and Conditions (which, if capable of remedy, is not remedied within 14 business days).

13.3 Without limiting its other rights or remedies, Topcon may terminate the Agreement with immediate effect by giving written notice to the Purchaser if the Purchaser fails to pay any amount due under the Agreement on the due date for payment.

13.4 On termination of the Agreement for any reason the Purchaser shall immediately pay to Topcon all of Topcon's outstanding unpaid invoices and interest.

13.5 In the event that Topcon cannot properly perform its obligations in whole or in part, whether temporarily or permanently, as a result of circumstances which are outside of Topcon's control as set out in Article 13.6 of these Terms and Conditions (a **Force Majeure Event**), Topcon has a right to terminate the Agreement with the Purchaser if the Force Majeure Event persists for more than 14 days.

13.6 A Force Majeure Event includes any circumstance not within Topcon's reasonable control including, without limitation:

- (i) acts of God, flood, drought, earthquake or other natural disaster;
- (ii) epidemic or pandemic;
- (iii) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (iv) nuclear, chemical or biological contamination or sonic boom;
- (v) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;

- (vi) collapse of buildings, fire, explosion or accident;
  - (vii) any labour or trade dispute, strikes, industrial action or lockouts;
  - (viii) non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this Article); and
  - (ix) interruption or failure of a utility service.
- 13.7 Termination of the Agreement shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Agreement that existed at or before the date of termination.
- 13.8 Any provision of the Agreement that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.
- 13.9 Unless terminated earlier in accordance with the terms of this Article 13, this Agreement shall expire following the occurrence of the delivery of the Products and/or Services in accordance with Article 4, the payment by the Purchaser of any monies due in accordance with Article 5 and at the end of the Product/Service warranty as specified in the Universal Product Warranty, save that in the event that support Services or any other ongoing Services will be provided by Topcon as specified in the applicable Order this Agreement shall expire, unless terminated earlier, on the date set out in that Order.

#### ARTICLE 14 – INTELLECTUAL PROPERTY RIGHTS

- 14.1. 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 embedded in the Products and/or Services, which are 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 embedded in the Products or any other materials provided by Topcon.
- 14.2. 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 licence to use the IP Rights.
- 14.3. Topcon grants to the Purchaser a revocable, royalty-free, non-transferable, non-exclusive right for the term of the Agreement to use the IP Rights, under the conditions that (i) such is permitted under the licence conditions Topcon has agreed upon with third parties,
- (ii) such third party licence validly exists, and/or (iii) Topcon is entitled to these third party IP Rights (the "**IP Rights Licence**"). The IP Rights Licence is granted to Purchaser solely in connection with the normal use by Purchaser of the Products and/or Services purchased by Purchaser from Topcon, to the extent permitted by these Terms and Conditions and/or any additional agreement between Topcon and Purchaser. Purchaser may not sub-license any rights under the IP Rights Licence 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 Licence at any time and shall notify the Purchaser of any such amendments.
- 14.4. Purchaser shall use the IP Rights in accordance with the usage guidelines (including any user licence agreement if any) 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.
- 14.5. [The Purchaser shall not (i) challenge Topcon's, or the relevant third party's interest in the IP Rights, or the validity thereof, (ii) obtain any right, title or interest in or to the IP Rights and (iii) modify, adapt, translate, make derivative works or, decompile, disassemble or otherwise reverse-engineer the IP Rights 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 licence 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.]
- 14.6. 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.
- 14.7. Topcon reserves the right to modify the IP Rights or substitute alternative marks for any or all of the IP Rights at any time and shall notify the Purchaser of any such amendments.
- 14.8. Purchaser may not use any trademarks, service marks, trade names, and trademark registrations in connection with the Products and/or Services (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.
- 14.9. Purchaser acknowledges and agrees that, in case any licence 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 Licence 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 Licence.

## ARTICLE 15 – CONFIDENTIALITY

- 15.1 Each party acknowledges that during the course of the Agreement it may have access to confidential information relating to the other party (the “Confidential Information”). The party receiving such Confidential Information (the “Recipient Party”) shall not except in the proper course of its duties, either during the Agreement or any time thereafter, use or disclose to any third party (and shall use reasonable endeavours to prevent the publication or disclosure of) any Confidential Information. This restriction does not apply to any use or disclosure authorised by the party disclosing the Confidential Information (the “Disclosing Party”) or as required by law, or any information which is already in, or comes into, the public domain otherwise than through the unauthorised disclosure of the Recipient Party.
- 15.2 Neither party shall issue any media releases, public announcements or public disclosures relating to the Agreement or its subject matter, including promotional or marketing material, without the prior written approval of the other party.

## ARTICLE 16 - DATA PROTECTION AND SECURITY

- 16.1. Topcon as a data controller. To the extent that each party acts as an independent data controller of any personal data it processes in connection with the Products or Services, whether or not obtained from the other party, each party shall at all times comply with its applicable obligations under the General Data Protection Regulation (EU 2016/679) and any other relevant data protection laws and regulations, each as amended, superseded, replaced or supplemented from time to time (the “**Privacy Laws**”) and the terms ‘personal data’, ‘personal data breach’, ‘process/processing’, ‘sub-processor’, ‘data controller’ and ‘data processor’ take their meaning from the Privacy Laws.
- 16.2. The Purchaser shall (when acting as data processor) (i) take appropriate technical and organizational security measures to protect the confidentiality of the personal data provided by Topcon; (ii) inform Topcon, on Topcon’s request, about the technical and organizational 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) rightful requests or complaints made by data subjects; or (b) any enquiry or investigation by a supervisory authority. In the event that Topcon acts as a data controller and Purchaser as a data processor, Topcon and Purchaser will agree upon the necessary data processing agreement.
- 16.3. Topcon as a processor. Under specific circumstances Topcon may and shall process the Personal Data set out in these Terms and Conditions for the purposes set out therein, as a data processor acting on behalf of the

Purchaser in order to perform its obligations under an Order or other specific agreement.

- (i) 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 name, address, email address, credit card information, login credentials (user name, password), IP address and related information.
- (ii) Topcon will process Purchaser personal data in accordance with the terms of the Agreement and its Privacy Policies ([https://www.topconpositioning.com/sites/default/files/20180719 - eu\\_privacy\\_statement.pdf](https://www.topconpositioning.com/sites/default/files/20180719_-_eu_privacy_statement.pdf)). 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 these Terms and Conditions will prevail.
- (iii) 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 protecting and securing of Personal Data.
- (iv) Topcon may transfer Purchaser personal data to its affiliated entities in connection with the performance of its obligations under the Agreement. For a list of Topcon locations, please see company locations found at <https://www.topconpositioning.com>.
- (v) Purchaser expressly acknowledges that personal data may be transferred to the United States, and Purchaser authorizes Topcon to transfer personal data to and process it in the United States, which may not have the same level of data protection as the country from which the personal data originated. Based on one of the safeguards as provided under Privacy Laws, Topcon warrants that these sub-processors have adopted the same level of protection as Topcon.
- (vi) Purchaser represents and warrants that it has the authority to provide the personal data to Topcon for processing as contemplated by these 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.
- (vii) 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.

- (viii) Purchaser consents to Topcon engaging third party sub-processors to process the personal data for the permitted purposes 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 personal 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).
- (ix) Purchaser will only provide Topcon with the personal data necessary for Topcon to perform its obligations under the agreement.
- (x) Following termination or expiry of the term of the Agreement, 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. 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, in which event Topcon shall securely isolate and protect from any further processing except to the extent required by such law.

#### **ARTICLE 17 -SEVERANCE**

If any provision of this Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of this Contract shall not be affected.

#### **ARTICLE 18 – ASSIGNMENT**

18.1 Topcon may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Agreement.

18.2 The Purchaser may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Agreement without the prior written consent of Topcon.

#### **ARTICLE 19 - THIRD PARTY RIGHTS**

No one other than a party to the Agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.

#### **ARTICLE 20 - NOTICES**

All notices required to be served under these Terms and Conditions shall be in writing and may be served by personal delivery, facsimile or email or by first class post on the parties at their registered office. Notices shall be deemed to have been served at the time of delivery if served by personal delivery, on the next working day after transmission of an email if sent by email and within two (2) business days after posting if sent by first class post.

#### **ARTICLE 21 - GOVERNING LAW AND JURISDICTION**

The Agreement shall be governed by and construed in accordance with the laws of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England and Wales to settle any dispute or claim arising out of, or in connection with the Agreement, its subject matter or formation.

Topcon Positioning Great Britain Ltd. - registered company no. 11211072. VAT no: GB297 4392 52

#### **FOR ACKNOWLEDGEMENT AND UNDERSTANDING:**

#### **PURCHASER**

\_\_\_\_\_  
Name:  
Title:  
Date: