

# Leica Geosystems General Terms and Conditions for Customer Care Packages

(hereafter called “CCP Terms and Conditions”)

## 1 INTRODUCTION

- 1.1 These General Terms and Conditions for Customer Care Packages by Leica Geosystems (“**CCP Terms and Conditions**”) apply exclusively to all Customer Care Packages (“**CCP**”) entered into by the end user of Equipment (“**Customer**”) and the company of the Leica Geosystems Group that is named on the Contract Form (as defined hereinafter) (“**Leica Geosystems**”). Leica Geosystems does not accept any contradictory or additional terms and conditions, even by accepting the Purchase Order referencing different terms and conditions. These CCP Terms and Conditions cannot be altered, modified, or amended by subsequent Purchase Order or any writing received from Customer without the express written consent of Leica Geosystems. Any terms and/or conditions of purchase of Customer shall only be effective if expressly accepted by Leica Geosystems in writing. The CCP Terms and Conditions and the Contract Form(s) are legally binding on both contracting parties.
- 1.2 Leica Geosystems offers its Customers the following types of services: (i) Hardware Maintenance, (ii) Software Maintenance, (iii) Customer Support, and (iv) Extended Warranty (“**CCP Services**”) that are offered either (i) as a combination of these CCP Services as further set out in the Contract Form or (ii) individually on a stand-alone basis as agreed in a separate agreement other than the Contract Form.
- 1.3 Unless otherwise specified in the Contract Form, the CCP are only available for Leica Geosystems products and services that are sold to Customer under the LEICA logo or any other trademark of the Leica Geosystems Group. Any third party products and services sold to Customer under such third party's logo by Leica Geosystems shall be excluded from the CCP.
- 1.4 The Contract Form is a separate written contract between Customer and Leica Geosystems which contains the details of Customer, the Equipment, the CCP Services and the price thereof as well as such other details of each of the CCP Services not covered in these CCP Terms and Conditions (“**Contract Form**”). The final Contract comes into force once Customer has placed a purchase order for CCP Services and Leica Geosystems has confirmed such purchase order in writing. Leica Geosystems maintains and supports only those Instruments and Software that are specifically listed in the Contract Form(s).
- 1.5 These CCP Terms and Conditions have no influence on the provisions of any other agreement between Customer and a company of the Leica Geosystems Group (i.e. Leica Geosystems AG and/or any other

affiliated company or companies). Such agreements remain in force and effect in their entirety, including any software licence agreements in respect of the Software listed in the Contract Form.

- 1.6 The standard Leica Geosystems International Limited Warranty, current version, (“**International Limited Warranty**”) granted by the manufacturer, Leica Geosystems AG, is included by reference hereto and is made integral part of these CCP General Terms and Conditions.

## 2 DEFINITIONS

- 2.1 “**CCP Fee**” means the fee specified in the Contract Form charged to Customer for the CCP Services.
- 2.2 “**Customer Support**” means services provided by Leica Geosystems to assist Customer in the use of Leica Geosystems instruments or software, such as hotline or email support services.
- 2.3 “**Equipment**” means the Instruments and/or the Software listed on the Contract Form that are the subject of CCP Services by Leica Geosystems.
- 2.4 “**Extended Warranty**” means product warranty services provided pursuant to the International Limited Warranty beyond the warranty period set out in the International Limited Warranty.
- 2.5 “**Instrument**” means a hardware product of the Leica Geosystems Group, including firmware and on-board application software.
- 2.6 “**Hardware Maintenance**” means maintenance services provided by Leica Geosystems for its Instruments.
- 2.7 “**Contract Period**” means a time period specified in the Contract Form during which the CCP Services are to be provided.
- 2.8 “**New Version**” means a new Software version that can contain fixing of program errors (bugs) or of malfunctions of the previous version, and/or performance and/or functional increases through additional functions, modifications and/or adaptations.
- 2.9 “**Software**” means Leica Geosystems software including (i) firmware, (ii) on-board application software, and (iii) software that is made available on a stand-alone basis.
- 2.10 “**Software Maintenance**” means the periodic release of New Versions of the Software by Leica Geosystems and such other services set out in the Contract Form, if any.

- 2.11 **“Specified Computer Installation”** means the electronic data processing (EDP) hardware environment required for the proper functioning of the Software as defined in the Software description. Leica Geosystems reserves the right to amend the requirements of the Specified Computer Installations from time to time as sees fit in order to ensure the proper functioning of the Software.

### **3 EQUIPMENT SUBJECT TO CCP SERVICES**

- 3.1 Only Equipment listed in a Contract Form signed by Leica Geosystems is subject to these CCP Terms and Conditions.
- 3.2 Equipment (including replacement Equipment) must be used only (i) for the purpose intended by its manufacturer, and (ii) in accordance with the conditions of use, specific requirements and guidelines set out in the relevant manual (including any additional documentation thereto) for the Equipment.

### **4 HARDWARE MAINTENANCE**

#### **DESCRIPTION OF HARDWARE MAINTENANCE SERVICES**

- 4.1 The individual services that make up the Hardware Maintenance Services for the Equipment set out in the Contract Form are listed in the Contract Form. Unless otherwise stated in the Contract Form, the designations of services and terms used therein have the following meanings:
- 4.1.1 **“Spare Part”** means a new or a reconditioned part that is used as a replacement for defective components of the Instruments. If defective parts are replaced, all such replaced parts become the property of Leica Geosystems.
- 4.1.2 **“Service Certificate”** means that following the completion of the Hardware Maintenance Service Leica Geosystems issues a service certificate to Customer (without actual measurement values), in which the conformity of the Equipment with its technical specifications is confirmed.
- 4.1.3 **“Freight and Insurance Charges for Delivery and Return”** means that Leica Geosystems may take on the risk and costs of certain shipping and insurance charges of the Equipment to be maintained between Customer’s premises and the Leica Geosystems service centre as further detailed in the Contract Form. Customer undertakes to pack the Equipment properly and in accordance with the instructions given by Leica Geosystems and to make the Equipment ready for transport. If Customer is responsible for shipping of the Equipment to the Leica Geosystems service centre, it does so at its own risk and obtaining insurance cover is recommended. Leica Geosystems offers no assurance that the means of transport and container chosen by Customer for delivery to such service centre will also be used for the return of the Equipment.

#### **GENERAL REMARKS ON THE PROVISION OF HARDWARE**

#### **MAINTENANCE SERVICES**

- 4.2 In the case of Equipment that is already being used by Customer upon signature of the Contract Form, Leica Geosystems is entitled to offer Hardware Maintenance Services only following a prior maintenance inspection of the Equipment (including testing and repair) that is carried out at Customer’s expense.
- 4.3 In the event that Leica Geosystems determines that repairs are required in the course of Hardware Maintenance work, i.e. that there is an Equipment malfunction under normal operating conditions or a damage of the Equipment, Leica Geosystems shall inform Customer and provide it with a written estimate of repair costs. Leica Geosystems shall carry out the repair only at the express request of Customer.
- 4.4 Customer is responsible for the saving of all data, for the retrieval and restitution of lost or modified data and programs, and for the protection of confidential data. If Customer wishes to retain an old version of the Software, it must expressly inform Leica Geosystems of this before Maintenance work on the Equipment is begun.
- 4.5 All work shall be carried out depending on the availability of Spare Parts within a reasonable time and during normal working hours by service technicians and engineers at Leica Geosystems service centres as well as at authorized service workshops.
- 4.6 Leica Geosystems shall, at its sole discretion, decide on the place of performing the Hardware Maintenance work. Leica Geosystems may carry out the Hardware Maintenance work directly at Customer’s premises. In any event, Customer undertakes, for the duration of the Hardware Maintenance work, to make available to Leica Geosystems free of charge (i) machine time, (ii) data carriers, and (iii) personnel qualified to operate the Specified Computer Installations. For Hardware Maintenance work carried out at Customer’s premises, Customer is responsible for the payment of all the costs of travelling, board and lodging of Leica Geosystems personnel according to the Leica Geosystems time, material and cost rates applicable at the time.

#### **EXCLUSION FROM HARDWARE MAINTENANCE**

- 4.7 Leica Geosystems has no obligation or responsibility to provide the Maintenance Services in any of the following circumstances:
- 4.7.1 if Equipment is used under intensive, permanent and/or continuous conditions, such as, but not limited to, Equipment used for machine control, tunnelling and monitoring systems;
- 4.7.2 if the repair of any defect or malfunction of the Equipment arises as a consequence of a modification or alteration to the Equipment that has been made without the prior written consent of Leica Geosystems, or of the use of the Equipment in a manner or for an application or function other than that for which it was designed;

- 4.7.3 if in the sole judgement of Leica Geosystems Maintenance work can be carried out only with great difficulty or not at all because Customer has modified the Equipment, installed peripheral devices or has used the Equipment in combination with third party hardware, software and/or information systems;
  - 4.7.4 if devices and/or accessories are manufactured by third parties and sold to Customer by Leica Geosystems and are not included in the relevant Contract Form;
  - 4.7.5 if the repair of any defect or malfunction of the Equipment is the consequence of any cause other than normal operational use, including but not limited to accidents, dropping of the Instrument, unsuitable transport or storage, failure or variations of electrical power, or other misuse or neglect by Customer. Such misuse or neglect shall include any use or procedure prohibited by the Equipment specifications and/or the Equipment manual, or any maintenance services provided by persons who are not Leica Geosystems personnel nor authorised by Leica Geosystems;
  - 4.7.6 if the repair of any defect or malfunction of the Equipment is the consequence of the failure of Customer to deliver the Equipment for the Maintenance Service to Leica Geosystems in accordance with the instructions of Leica Geosystems;
  - 4.7.7 if in the sole judgement of Leica Geosystems Maintenance work can be carried out only with great difficulty or not at all because the Equipment is inaccessible, in particular because the Equipment has been installed as a device peripheral to the mechanical or electrical components of another machine or device; and
  - 4.7.8 if the replacement of any consumable items is required for the ordinary use of the Equipment, including, but not limited to, rubber bands, paper, adhesive tape, batteries, bulbs, cables and cable harnesses.
- 5.4 The provision of Software Maintenance by Leica Geosystems requires that Customer uses the most recent version of the Software. Software Maintenance for older versions is entirely up to the sole discretion of Leica Geosystems and requires a respective express agreement in the Contract Form.
  - 5.5 Leica Geosystems guarantees that during the Contract Period the operating performance of the Software for its intended use will be substantially maintained (i) in the Instruments and in the Specified Computer Installations, and (ii) subject to the conditions and circumstances specified in the relevant program documentation.
  - 5.6 Leica Geosystems does not warrant that the Software will perform free of error and without interruption, nor that it will function correctly in combination with third party hardware and/or application programs, nor that it can be used with any form of data, information system or other software programs. Leica Geosystems does not warrant that it will correct all program errors, nor that the correction of a program error will prevent further program errors from arising.
  - 5.7 Customer is responsible for the saving of all data, for the retrieval and restitution of lost or modified data and programs, and for the protection of confidential data.
  - 5.8 Leica Geosystems shall, at its sole discretion, decide on the place of performing the Software Maintenance work. Leica Geosystems may carry out the Software Maintenance work directly at Customer's premises. In any event, Customer undertakes, for the duration of the Software Maintenance work, to make available to Leica Geosystems free of charge (i) machine time, (ii) data carriers, and (iii) personnel qualified to operate the Specified Computer Installations. For Software Maintenance work carried out at Customer's premises, Customer is responsible for the payment of all the costs of travelling, board and lodging of Leica Geosystems personnel according to the Leica Geosystems time, material and cost rates applicable at the time.

## 5 SOFTWARE MAINTENANCE

### DESCRIPTION OF SOFTWARE MAINTENANCE SERVICES

- 5.1 The individual services that make up the Software Maintenance Services are listed in the Contract Form. Unless otherwise stated in the Contract Form, the designations of services and terms used therein have the following meanings :
- 5.2 **"New Version"** means that Leica Geosystems intends to periodically provide New Versions, including any updated documentation and other documents. Leica Geosystems reserves the right at its discretion to determine the periodicity of such New Versions as well as the discontinuation of providing such New Versions. Leica Geosystems shall deliver such New Versions to Customer, but shall have no obligation to install the same.

### GENERAL REMARKS ON THE PROVISION OF SOFTWARE

#### MAINTENANCE SERVICES

- 5.3 These CCP Terms and Conditions are supplementary to the provisions of any software licence agreements that have been entered into by Customer and Leica Geosystems, and which remain fully effective and applicable.

### EXCLUSION FROM SOFTWARE MAINTENANCE

- 5.9 Leica Geosystems has no obligation or responsibility to provide Software Maintenance in any of the following circumstances:
  - 5.9.1 if the Software or parts thereof is used in a manner, or for a use or function, or in a combination with software and/or an information system from a third party manufacturer for which it was not designed;
  - 5.9.2 if in the sole opinion of Leica Geosystems the use of devices peripheral to the Software or modifications thereof render the Software Maintenance excessively complicated;
  - 5.9.3 if faults are due (i) to the improper operation or use of the Software or parts thereof, including but not limited to operation or use that deviates from that contained in the relevant Software specifications and manuals, or (ii) to maintenance work that has not been carried out by Leica Geosystems or one of its authorised service centres, or (iii) to factors that are not within the control of Leica Geosystems, including but not limited to unsuitable transport or storage, or failure or variations in electrical power supply;

- 5.9.4 if the Software was modified without authorization of Leica Geosystems.

## 6 CUSTOMER SUPPORT

### DESCRIPTION OF CUSTOMER SUPPORT SERVICES

- 6.1 The individual services that make up Customer Support are listed in the Contract Form. Unless otherwise stated in the Contract Form, the designations of services and terms used therein have the following meanings:
- 6.1.1 **“Hotline Support”** means a telephone hotline that is offered free of charge to Customer during Leica Geosystems’ office hours in order to provide assistance in solving Instrument or Software problems.
- 6.1.2 **“Email Support”** means email support that is offered free of charge to Customer during Leica Geosystems’ office hours in order to provide assistance in solving Instrument or Software problems.
- 6.1.3 **“Download Area”** means that Leica Geosystems provides free access to the password-protected Leica Geosystems Customer Download Area via the Internet. In the Download Area, Leica Geosystems provides at its discretion information for Customers, such as software for downloading, manuals, technical documents, newsletters and an online knowledge database in which frequently asked questions (FAQs) are answered.

## 7 EXTENDED WARRANTY

### DESCRIPTION OF SERVICES

- 7.1 The scope of the product warranty that shall be extended in time as specified in the Contract Form is defined by the terms and conditions set out in the International Limited Warranty, unless modified in the Contract Form.

## 8 PRICES AND PAYMENT TERMS

- 8.1 All CCP Fees under these CCP Terms and Conditions shall apply to the Contract Period specified in the Contract Form and are due and payable in advance.
- 8.2 Leica Geosystems may change the CCP Fees for its Maintenance services for a new Contract Period by giving three (3) month’s prior notice.
- 8.3 Unless specified otherwise in the Contract Form, payment terms shall be 30 days as of date of invoice of the CCP Services. If Customer defaults in its payment of the amounts due, Leica Geosystems may, at its sole discretion, either (i) suspend the provision of CCP Services for so long as Customer has not paid the CCP Fees and/or charges due, or (ii) terminate the Contract Form with immediate effect.
- 8.4 Unless otherwise agreed in the Contract Form, all CCP Fees are deemed exclusive of any statutory value added or sales taxes, which shall be shown separately on invoices and charged to Customer.
- 8.5 The setting off of outstanding amounts between Customer and Leica Geosystems is not permitted. The

contracting parties hereby agree to offset only counter claims that are mutually acknowledged in writing or that are determined by the courts.

## 9 FORCE MAJEURE

- 9.1 Leica Geosystems shall not be liable for any failure to perform due to unforeseen circumstances or causes beyond Leica Geosystems’ reasonable control. Such circumstances or causes include but are not limited to war, riot, terrorist attacks, embargoes, acts of civil or military authorities, delay in delivery by Leica Geosystems’ suppliers, fire, floods, accidents, strikes, and any cases in which it is not possible to obtain the necessary transportation, operating facilities, fuel, energy, personnel or materials. In the event of force majeure, the time allowed for performance by Leica Geosystems will be extended for a period equal to the duration of the delay caused thereby.

## 10 INTELLECTUAL PROPERTY

- 10.1 Leica Geosystems is and shall remain the sole owner of all intellectual property rights relating to any form of CCP Services provided (including, but not limited to, New Versions, documentation, etc.) and relating to the know-how developed during and/or in connection with such CCP Services.

## 11 LIMITATION OF LIABILITY

- 11.1 Subject to Clause 11.2 herein, the obligations hereunder apply to the CCP Services in lieu of all warranties, conditions or provisions express or implied, whether of a factual or statutory nature, including warranties of merchantability and fitness for a particular use or purpose. All other warranties, conditions, statements or representations by the contracting parties, promises or guarantees, statutory or otherwise, are hereby to the extent permissible by applicable law expressly excluded in respect of the CCP Services.
- 11.2 Leica Geosystems, its directors, employees, agents and consultants shall not, to the extent permitted by the law, be held liable by Customer for any indirect, incidental, special, consequential or trading losses of any nature, the loss of information or data, additional expenses, third party claims, or financial losses arising from or in consequence of the CCP Services provided by Leica Geosystems, for any losses in consequence of the use, the failure or interruption of operation of the Equipment, whether based on contract, quasi-contract or tort (including simple negligence) or for its auxiliary personnel. The foregoing applies even if Leica Geosystems has been informed of the possibility of such losses being incurred.
- 11.3 In the cases of losses incurred by Customer under these CCP Terms and Conditions, Leica Geosystems’ liability to pay damages shall be limited to direct losses only whose amount shall be limited to the total CCP fee amount paid by Customer to Leica Geosystems in accordance with these CCP Terms and Conditions during the remaining Contract Period.
- 11.4 Customer undertakes to ensure that it and its employees have the necessary knowledge to work with the

Equipment. Leica Geosystems hereby excludes any liability for losses and/or damage resulting from Customer's inadequate knowledge of the Equipment.

## 12 DURATION AND TERMINATION

- 12.1 Each CCP entered into with a Contract Form or separate standalone Maintenance, Support or Extended Warranty agreement shall become effective on the start date specified in the Contract Form or agreement respectively.
- 12.2 The Contract Form shall be valid for the Contract Period specified in the Contract Form. At the end of the Contract Period, the Contract Form shall automatically lapse unless renewed by a new Contract Form.
- 12.3 In the event that Leica Geosystems establishes during the Hardware Maintenance work that the Equipment is irreparable, it shall notify Customer and the relevant Contract Form shall be terminated with immediate effect. The CCP Fees paid for the ongoing Contract Period shall be reimbursed on a pro rata basis.
- 12.4 Leica Geosystems may decide at any time and at its sole discretion to discontinue the production and/or the development of any of its Equipment (software and/or hardware) and, as a consequence, to discontinue its CCP Services related to such Equipment and terminate the relevant Contract Forms with respect to such Equipment fully or in part with immediate effect. In such circumstances, Customer shall not be entitled to any indemnity payment from Leica Geosystems. The relevant Contract Forms shall be terminated with respect to such Equipment and the CCP Fees paid for the ongoing Contract Period shall be reimbursed to Customer on a pro rata basis.
- 12.5 In the event of termination of a software licence agreement relating to the Software being part of the Equipment, any maintenance and support services for such Software shall immediately and automatically be terminated and Leica Geosystems shall be relieved with immediate effect of any obligations under the Contract Form and these CCP Terms and Conditions. In case the termination was not the result of a Customer's fault or negligence, the CCP Fees paid for the ongoing Contract Period shall be reimbursed on a pro rata basis. If a Customer's fault or negligence has led to the termination, the CCP Fees shall not be reimbursed to Customer.

## 13 FINAL PROVISIONS

- 13.1 These CCP Terms and Conditions including all Contract Forms are governed by Swiss Law. The United Nations Convention on Contracts for the International Sale of Goods of 11.4.1980 is expressly excluded. Both contracting parties undertake in the event of any differences of opinion in connection with these CCP Terms and Conditions and Contract Forms to endeavour in good faith to reach an amicable settlement. If no settlement can be reached despite the efforts of the contracting parties, the ordinary courts at the Leica Geosystems registered office in Balgach, Switzerland shall be competent. Leica Geosystems shall, at its sole discretion, also be entitled to take legal action in the competent courts at the Customer's place of business or domicile.
- 13.2 These CCP Terms and Conditions including all signed Contract Forms constitute the entire agreement between the contracting parties with respect to the subject matter hereof and supersede all previous negotiations, commitments and agreements.
- 13.3 Any addition and/or amendment to these CCP Terms and Conditions must be made in writing as a supplement to these CCP Terms and Conditions and must be validly signed by both Parties.
- 13.4 Customer may not assign or otherwise transfer any rights or obligations arising from these CCP Terms and Conditions to third parties without the prior written consent of Leica Geosystems.
- 13.5 Customer shall be obliged to pay all costs and expenses, including reasonable attorney's and court fees and expenses, incurred by Leica Geosystems in relation with the enforcement or preservation of its rights under these CCP Terms and Conditions.
- 13.6 If any of the provisions of these CCP Terms and Conditions for whatever reason should be declared null and void, the validity of all the other provisions shall not be affected. In such an event, the void provision shall be replaced by another legally valid provision that most closely reflects the original intention of the contracting parties.

Leica Geosystems  
CCP Terms and Conditions

Heerbrugg, April 2011