



# GENERAL TERMS AND CONDITIONS

of

**TOPCON EUROPE B.V.**

**TOPCON EUROPE POSITIONING B.V.**

**TOPCON EUROPE MEDICAL B.V.**

(hereinafter jointly and each of them referred to as "**Topcon**")

## ARTICLE 1 - APPLICABILITY

- 1.1 These general terms and conditions (the "**Terms and Conditions**") are applicable to:
- (i) all offer and sales agreements of Topcon; and/or
  - (ii) any use of the websites of Topcon (the "**Site**") by the user/you ("**User/you**") and/or
  - (iii) any offer and sale(s) agreements concluded between the purchaser (the "**Purchaser**"/"**you**") and Topcon. The Purchaser is the company for which - risk and account - the products are purchased by you.
- 1.2 If you do not agree to the Terms and Conditions, you should not use the Site and/or buy any products or services, whether through the Site or pursuant to a sales agreement with Topcon. Topcon is entitled to make changes to the Site, the Terms and Conditions, or the policies and conditions that govern the use of the Topcon products or the Site at any time. Topcon encourages you to review the Site and the Terms and Conditions periodically for any updates or changes. Your continued access or use of the Site shall be deemed to be your acceptance of these changes and of the reasonableness of these standards for notice of changes. Possible general conditions of the Purchaser are herewith explicitly rejected.
- 1.3 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 are made without any engagement. Topcon is not bound by general offers or quotations of Topcon on its Sites or otherwise.
- 2.2 An agreement between Topcon and Purchaser is formed by Topcon's confirmation in writing or through e-mail of the Purchaser's order, or by execution of the order by Topcon.
- 2.3 You (must) have sufficient authorization to legally bind the company you work for to a purchase agreement. If this is not the case, you are personally bound to the purchase agreement.

## ARTICLE 3 - THE PRICES

- 3.1 Except as agreed otherwise, all prices are based on delivery EX WORKS (warehouse, place Capelle aan den IJssel, the Netherlands) (as such term is defined in the Incoterms 2010) 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 (14) days after the notice has been sent, Purchaser will be deemed to have accepted the price increase.



#### **ARTICLE 4 - ACCOUNT INFORMATION**

- 4.1 In consideration of the use of the Site, you agree to: (a) provide true, accurate, current and complete information about yourself as prompted by the checkout form for your account information (consisting of user name and pass word) and (b) maintain and promptly update the account information to keep it true, accurate, current and complete. If you provide any information that is untrue, inaccurate, not current or incomplete, or Topcon has reasonable grounds to suspect that such information is untrue, inaccurate, not current or incomplete, Topcon may suspend or terminate your account and refuse any and all current and future use of the Site. Account information and certain other information about you is subject to our Privacy Policy. Please review our Privacy Policy to understand our privacy related practices.
- 4.2 Purchaser and/or User are obliged to secure their account information against unauthorized access or use by third parties. Purchaser and/or User are responsible for the use of the account information and guarantee to use them with due care.
- 4.3 Use of the account information by third parties other than Purchaser or User is at Purchaser's and/or User's own expense and risk.
- 4.4 Purchaser and/or User are obliged to notify Topcon in case of loss of theft of the account information or by any suspicion of misuse. In the event that Topcon reasonably presumes that misuse of the account information has occurred, Topcon is entitled to block the account information as soon as possible, after the notification. Topcon will decide if Purchaser and/or User shall receive new account information.
- 4.5 Purchaser and/or User indemnify Topcon for all damages, losses, liabilities, costs and expenses (including advisor's fees) arising from a (legal) claim of a third party based on the use of the account information by a third party other than Purchaser and/or User. Topcon is not liable for any damages, losses, liabilities, costs and expenses (including advisor's fees) which Purchaser and/or User suffer by use of the account information.

#### **ARTICLE 5 - DELIVERY**

- 5.1 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 17.4 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.
- 5.2 Unless agreed otherwise, all products and spare parts will be delivered EX WORKS (warehouse, place Capelle aan den IJssel, the Netherlands) (as such term is defined in the Incoterms 2010) (the "Delivery").

#### **ARTICLE 6 - PAYMENT**

- 6.1 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 (30) days after the invoice date.
- 6.2 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 one and a half percent (1.5%) per month over the from time to time outstanding amount(s).
- 6.3 If Purchaser fails to meet his (payment) obligations, Topcon shall be entitled to refuse any further deliveries of products 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 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.
- 6.4 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.



- 6.5 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.
- 6.6 Objections to an invoice must be made prior to the payment date of the invoice.

#### **ARTICLE 7 - RESERVATION OF TITLE**

- 7.1 All products supplied shall remain Topcon's property until the purchase price for the relevant products has been paid in full.
- 7.2 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. 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.
- 7.3 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.
- 7.4 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 8 - SECURITY**

- 8.1 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.
- 8.2 As long as Purchaser does not fulfill any of its obligations as set forth in Article 8.1 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.
- 8.3 In case Purchaser fails to comply with Topcon's request as mentioned in Article 8.1 of these Terms and Conditions within fourteen (14) days after having received a written notification, all obligations of Purchaser shall become due and payable.
- 8.4 Topcon may terminate your access, or suspend your access to all or part of the Site, without notice, for any conduct that Topcon, in its sole discretion, believes is in violation of any applicable law or is harmful to the interests of another user, a third-party or Topcon. You agree that any termination of your access to the Site may be effected without prior notice, and acknowledge and agree that Topcon may immediately deactivate or delete your account and all related information and files in your account and bar any further access to such files or the Site. Topcon shall not be liable to you or any third-party for any termination of your access to the Site and all related information and files in your account.



## ARTICLE 9 - WARRANTY

- 9.1 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, but at least for a minimum period of three (3) months from Delivery, provided that Purchaser has handled the products with utmost care and has followed proper maintenance and application procedures (the "**Product Warranty**").
- 9.2 Purchaser acknowledges and agrees that any additional Product Warranty period or services shall be specific for each different type of product supplied by Topcon Europe Positioning B.V. The applicable specific Product Warranty period is further set out in Annex A to these Terms and Conditions.
- 9.3 Purchaser acknowledges and agrees that any additional Product Warranty period or services shall be specific for each different type of product supplied by Topcon Europe Medical B.V. The applicable specific Product Warranty period is further set out in a separate supply agreement between Topcon and Purchaser.
- 9.4 Purchaser is obliged to examine the products at Delivery and to verify that the Products conform to the provisions of the agreement. Complaints or claims with respect to any of the products must be made in writing, including a detailed specification of the reasons for a complaint or claim as soon as practicably possible and ultimately within twenty (20) business days after Delivery, in the absence of which Topcon shall not be liable.
- 9.5 In the event Topcon determines any products to be defective within the terms of the Product Warranty and of which Topcon has been notified in accordance with Article 9.4 of these Terms and Conditions, Topcon's obligations shall be limited to, at Topcon's discretion, (i) the repair of the relevant product or a component or part thereof, or (ii) the reimbursement of the original purchase price. Topcon expressly disclaims any (implied) warranty of merchantability or fitness for a particular purpose. In no event shall any compensation be due by Topcon to Purchaser for damages, losses, liabilities, costs and/or expenses arising from the non-conformity, failure or malfunctioning of the products, except as provided in Article 13 of these Terms and Conditions.
- 9.6 The Purchaser who is authorized by Topcon to sell, distribute or otherwise transfer any Topcon product to third-parties shall, at its own risk and cost, be free to provide and make arrangements regarding any warranties additional to those as set out in Article 9.1 through 9.3 of these Terms and Conditions towards such third parties with respect to the Topcon products sold, distributed or otherwise transferred by Purchaser. 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 such additional warranties.
- 9.7 Purchaser has no claim on Topcon under the Product Warranty in case Purchaser (i) has processed, repaired, abused, misused or modified (part of) the products, or (ii) allowed third parties to use, process, repair, abuse or modify (part of) the products, or (iii) delivered (part of) the products to third-parties, or (iv) has not used the products in accordance with maintenance and application procedures provided with the products by Topcon, or (v) fails to meet any of its other (contractual) obligations towards Topcon. Calibration of components, labor and/or travel expenses incurred or to be incurred for in-field removal and replacement of components are not covered under the Product Warranty. It is the Purchaser's responsibility to transport a defective product to an authorized Topcon point of sales.
- 9.8 Any claims made by Purchaser under the Product Warranty shall lapse within one (1) year from Delivery.

## ARTICLE 10 - OBLIGATIONS PURCHASER

- 10.1 Purchaser is responsible for his own equipment and software to obtain access to the internet and especially the Site.
- 10.2 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 and/or the Site;
  - (ii) Purchaser is not misusing and or acting in breach of the law and/or regulations by using the system of Topcon and/or the Site;
  - (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;



- (vi) the systems, consisting also of the software to which Purchaser is connected to the system of Topcon and/or to the Site, are free of defects and/or viruses, which can cause damages to the system of Topcon and/or to the Site.
- 10.3 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 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 re-export 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 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 (DELIVERY OF PRODUCTS)**

- 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 9 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 In addition, Topcon shall not be liable for damages, if such damages equal an amount that is higher than the amount which Topcon may claim (and for which reasonable coverage is provided) under its business liability insurance policy. All other liability is in any event limited to the purchase price of the products which have caused the relevant damages.
- 12.6 Topcon as well as its employees and non-employees for whose acts Topcon might be held liable by law are entitled to invoke any and all defenses, whether contractual or granted to Topcon by law, which Topcon may have to defend itself against any liability.
- 12.7 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.
- 12.8 The provisions of this Article 12 do not affect product liability based on mandatory provisions of Dutch law.

#### **ARTICLE 13 - LIMITATION OF LIABILITY (USE OF THE SITE)**

- 13.1 You agree that the Site, including the content thereof, is provided free of charge. Topcon will not be liable to you or any person for any loss or damage of any kind which may arise from the unauthorized use of the Site and the use of any information contained within it. Neither shall Topcon be liable for any information held on sites which may have links to or from the Site and which are not maintained and controlled by Topcon.
- 13.2 The Site is intended for use within the European Union, but can be entered from other countries outside the European Union. Topcon cannot make representations that any product referred to on the Site is appropriate for use, or available, in every country in the world.
- 13.3 Topcon will use reasonable endeavors to ensure that the Site is and stays fully operational. Due to the nature of the internet, Topcon cannot guarantee that the Site will be free from delays, interruptions or errors. Topcon takes all reasonable efforts to ensure that information on the Site is correct, but Topcon cannot give representations or warranties, express or implied, in relation to the accuracy or completeness of the said information.
- 13.4 Topcon will process any personal data collected through the Site in accordance with the applicable data protection laws and regulations. Topcon will take appropriate technical and organizational measures to protect such personal data from loss or unlawful processing. In the event, however, that Topcon's system is infiltrated by unauthorized third parties, Topcon will not be liable for any resulting misuse of such personal data.

#### **ARTICLE 14 - DISCLAIMER OF WARRANTIES (USE OF THE SITE)**

- 14.1 Topcon will use reasonable efforts to include accurate, complete and up-to-date information on the Site, but Topcon makes no warranties or representations with regard to the Site, including, but not limited to, the accuracy, completeness or frequency that it is updated, or adequacy of, or the suitability, functionality, availability or operations of the Site or the information or materials it contains. All such information is provided "as is" without warranty of any kind.
- 14.2 By using the Site, you assume the risk that the information and materials on the Site may be incomplete, inaccurate, out of date or, may not meet your specific needs or requirements.
- 14.3 Topcon specifically disclaims all warranties, express or implied, including, without limitation, the warranties of merchantability and fitness for a particular purpose.
- 14.4 All information and related materials on the Site are subject to change without notice.



- 14.5 All users agree that access to the Site and use of such information is at their own risk, and that neither Topcon nor any party creating, serving or delivering the Site shall be liable for any damages of any kind, including, without limitation, any special, exemplary, direct or indirect, incidental, or consequential or punitive damages (even if Topcon has been advised of the possibility of such damage) arising out of access to, or use of the information contained on the Site or any errors or omissions, misprints, out-of-date information, technical or pricing inaccuracies, typographical or other errors appearing on the Site. This limitation includes damages to, or for any virus that may infect your computer equipment.

#### **ARTICLE 15 - 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 content you submit, post to or transmit through the Site, your use of the Site, your violation of these Terms and Conditions or your violation of any rights of another party.

#### **ARTICLE 16 - 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 17 - NON - PERFORMANCE**

- 17.1 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 7.4 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.
- 17.2 In case Topcon terminates or rescinds the agreement(s) in accordance with Article 17.1 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.
- 17.3 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 17.4 of these Terms and Conditions, Topcon has a right to rescind the agreement(s) with Purchaser.
- 17.4 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 18 - INTELLECTUAL PROPERTY RIGHTS**

- 18.1 For the purpose of these Terms and Conditions, "**IP Rights**" means any patents, trademarks, service marks, trade names, trademark registrations, designs, business names, copyrights, 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 and/or User 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.

- 18.2 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 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. Any material amendments shall be published on the Site.
- 18.3 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.
- 18.4 The Purchaser and/or User shall refrain from (i) challenging Topcon's, or the relevant third party's interest in the IP Rights, or the validity thereof, and (ii) obtaining any right, title or interest in or to the IP Rights. Purchaser and/or User 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 and/or User 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.
- 18.5 Purchaser and/or User 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 on the Site, nor introduce any modifications to the products supplied by Topcon, unless the nature of the delivered product dictates otherwise. Use of the Site does not constitute a license to use in any way, any of the IP Rights owned by Topcon or its licensors.
- 18.6 Topcon reserves the right to modify the IP Rights or substitute alternative marks for any or all of the IP Rights at any time.
- 18.7 Purchaser and/or User 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.
- 18.8 All content, designs, text, graphics, software compilations, underlying source codes, and other graphic arrangements together with the compilation (meaning the collection, arrangement and assembly) of all content on the Site are the copyright of Topcon or its licensors, where applicable. Use of the content of the Site, including but not limited to reproduction, modification, distribution, transmission and/or republication, is strictly prohibited without Topcon's prior written approval. You are also not entitled to create and/or publish your own database that features substantial parts of the Site without Topcon's prior written approval.
- 18.9 For the purpose of these Terms and Conditions, "**Software**" means 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. Purchaser hereby acknowledges that the Software is 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 Software. Topcon reserves the right to modify the Software at any time.
- 18.10 Topcon hereby grants to Purchaser a revocable, royalty-free, non-exclusive right to use the Software, 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 Software (the "**Software License**"). The Software License is granted to Purchaser solely in connection with the normal use by Purchaser of the products 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 Software License to any other party without obtaining the prior written consent of Topcon. The use of the



Software in any other or additional manner shall require the prior written approval of Topcon. Topcon reserves the right to amend the terms and content of the Software License at any time. Any material amendments shall be published on the Site.

- 18.11 The Purchaser and/or User shall refrain from (i) challenging Topcon's, or the relevant third party's interest in the Software, or the validity thereof, and (ii) obtaining any right, title or interest in or to the Software. Purchaser and/or User shall at all times recognize, respect, and protect Topcon's right to full ownership in, or the license to use, the Software. The Purchaser and/or User shall not apply for and/or register the Software or any software that is substantially similar to the Software.
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- 18.13 Topcon reserves the right to pursue legal action in case of breach by the Purchaser, User and/or any other party of any provision of this Article 18.

#### **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.

Capelle aan den IJssel, March 2014

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Essebaan 11

2908 LJ Capelle aan den IJssel

The Netherlands

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Topcon Europe Medial B.V. - Chamber of Commerce no: 24380056, VAT no: NL814458543B01



**FOR ACKNOWLEDGEMENT AND UNDERSTANDING:**

**PURCHASER**

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Name:

Date:



## **ANNEX A**

### **Warranty on Topcon Positioning and Sokkia products and systems**

1. The warranty against defects in any Topcon or Sokkia battery, charger, cable, valve and hose is 90 days.
2. Ordinary adjustment, shipping costs to and from Purchaser's repair facility, and labour or travel expenses incurred for in-field removal and replacement of components are not covered under warranty.
3. Defects and damages caused by external influences like dropping, misuse or wrong adjustment are not covered under warranty.
4. In case of using own components (cables etc.), Topcon Europe Positioning B.V. and Sokkia Europe B.V. reserves the right to cancel any warranties, and is not liable for any possible damages as a result of using non-Topcon or Sokkia components, this to the sole judgement of Topcon Europe Positioning B.V. and Sokkia Europe B.V.
5. During the warranty period, Topcon Europe Positioning B.V. and Sokkia Europe B.V. will, at its option, repair or replace the product at no charge.