General Conditions of Sale and Supply

1 Generally

1.1 Scope

These General Conditions of Sale and Supply shall apply to all sales by Leica Geosystems AG, hereinafter designated as Vendor. They shall be deemed accepted by Purchaser by all contracts of sale and software-license agreements entered into by the customer, hereinafter designated as Purchaser.

1.2 Force majeure

1.2.1 Vendor shall sell the products at the relevant prices set forth in the price list applicable for the time being.

1.2.2 Vendor shall have the right to alter price lists at any time, subject to two calendar months prior notice in writing.

1.2.3 Vendor shall have the right to alter the prices of orders already accepted, if its material, labour, or operating costs change.

1.3 Effective date and scope of contract

Regardless of whether an order is given orally or in writing, no contract shall exist until and unless Vendor has confirmed its acceptance thereof in writing or by conclusive action, such as the immediate delivery of the products ordered. The scope of Vendor’s duty to supply these products shall be as set forth in Vendor’s confirmation of the order.

2 Terms of supply

2.1 Extent of delivery

As far as possible, Vendor shall supply the whole of the order as a single delivery. Purchaser hereby agrees to accept partial deliveries and if Purchaser intends to refuse part deliveries, it shall expressly declare its refusal in writing.

2.2 Delivery dates

Vendor hereby undertakes to deliver the products, in the event of force majeure, Vendor shall be entitled to withdraw from the contract only if delivery has still not been possible within a reasonable period of grace. Purchaser shall not be entitled to claim damages for non-delivery. Vendor shall be released from its duty to observe agreed delivery dates if Purchaser is in default in meeting its contractual obligations or requires changes to the products after Vendor’s confirmation of the order.

2.3 Force majeure

In the event of force majeure, Vendor shall be released from its duty to observe agreed delivery dates and shall not be liable for any damages incurred. Vendor shall not have the right to withdraw from the contract and to claim damages. Cases of force majeure shall include (but not necessarily be limited to) unforeseeable events in manufacturing or distribution; unforeseeable events in manufacturing or distribution caused by delivery delays by suppliers; boycotts, to any other or more extensive rights, to suspen pend deliveries. Descriptions and illustrations, technical and performance data published in technical docu ments, such as (but not necessarily limited to) specifications, drawings, and brochures, shall not be deemed binding and are subject to change without notice.

2.4 Delivery, transfer of risk

2.4.1 Due performance of delivery shall be deemed made in full and in possession and risk shall pass to Purchaser when the products are ready for dispatch at Vendor’s works.

2.4.2 Excess as expressly otherwise agreed, Vendor shall act on Purchaser’s behalf in dispatching the products or forwarding them, insurance cover at Purchaser’s charge for normal transport risks.

2.5 Acceptance of returned products

Vendor shall not be required to accept products returned by Purchaser, but may do so as an exception, subject to its prior agreement in writing. Always provided that returned products were dispatched by Vendor no later than the calendar month in which the late acceptance shall be strictly limited to undamaged brand-new standard products in their original packing, i.e., products not modified at Purchaser’s request. Products returned without Vendor’s prior agreement will be returned unaccepted and at Purchaser’s risk and charge.

3 Payment of purchase price

3.1 Prices

Unless expressly otherwise agreed, all prices for products shall be deemed ex works, in Swiss currency, as set forth in the price lists applicable for the time being. The prices stated in Vendor’s invoice shall bear all other charges, such as (but not necessarily limited to) charges for freight and insuranc e; export, transit, import, and other permits; certificates, taxes, tariffs, duties, claims charges, etc. Prices for repairs and alterations shall be deemed ex works or from the nearest service workshop.

3.2.2 The conditions of payment as set forth in Vendor’s confirmation of order shall apply to all contracts of sale and software-license agreements entered into by the customer, hereinafter designated as Purchaser.

3.2.2 Unless expressly otherwise agreed, Vendor shall make all contracts of sale, including all deductions of any kind, such as (but not necessarily limited to) discounts, expenses, taxes, and duties. Purchaser shall transfer payments to the bank account designated in Vendor’s invoice.

3.3 Payment of purchase price

3.2.3 Purchaser shall not be entitled to withhold payment of the purchase price for any reason.

3.2.4 Purchaser shall not set off any payment due against any other claim or counterclaim.

3.3 Default of payment

Upon expiry of the agreed date of payment, Purchaser shall be deemed in default. All consequential costs due to default shall be at Purchaser’s charge, invoiced in Swiss currency, including interest at the discount rate charged by the Swiss National Bank plus three percent, at the time of default in payment. In the event of default of payment, Vendor shall have the right to demand advance payment for future orders, to revoke confirmed orders and confirmed letters of credit to be opened, and to withhold delivery of products not yet consigned.

4 Retention of title, grant of security interest

4.1 The price paid by Purchaser for the products shall include (but not necessarily be limited to) charges for freight and insurance.

4.2 Until payment in full of the purchase price, Purchaser shall not pledge the products, assign or transfer them as security, or otherwise charge them with the rights of any third party, but may sell them in the ordinary course of business.

4.3 While Vendor retains title or has a security interest in the products supplied, Purchaser shall maintain them at its own charge and keep them adequately covered by insurance against fire, theft, flood, water, and other risks, and upon Vendor’s demand shall produce proof of such insurance. Purchaser hereby expressly assigns to Vendor its rights against insurer.

4.4 Purchaser hereby undertakes to render all necessary assistance in all measures necessary to protect and secure the title of Vendor (but not necessarily limited to) in dealing with any formalities that may have to be completed to secure and register retention of title in the grant of security interest, as the case may be.

5 Warranty, liability

5.1 Warranty

5.1.1 Duty to notify defects:

Within seven calendar days of acceptance of the products, Purchaser shall notify Vendor of any recognizable defects and shall specify the type of defect in writing.

5.1.2 Duty to notify transport damages

Immediately after receipt of the products, Purchaser shall notify Vendor in writing of any loss or damage sustained by the products during transport. In the event of the above, the Purchaser shall act strictly in accordance with the insurer’s general conditions. Purchaser shall notify or require any third party, but may sell them in the ordinary course of business.

5.1.3 Claims on account of wrong delivery or wrong quantities shall be entertained unless made in writing immediately upon discovery, but in any case not later than one calendar month after the date of the invoice.

5.1.4 Scope of warranty

For its own products, Vendor grants the warranty set forth in the General Conditions of Warranty and applicable at the time of the order. The General Conditions of Warranty shall be deemed an integral part of these General Conditions of Sale and Supply.

5.2 Liability

5.2.1 VENDOR SHALL BE LIABLE FOR DELIVERY ACCORDING TO CONTRACT ONLY WITHIN THE LIMITS AND CONDITIONS OF WARRANTY. ANY FURTHER LIABILITY FOR DIRECT AND/OR INDIRECT DAMAGES (INCLUDING (BUT NOT LIMITED TO) LOSS OF PROFIT AND/OR ANY THIRD-PARTY CLAIM THAT MAY ARISE OUT OF NON-PERFORMANCE OF CONTRACT UNDER THE CONTRACT, OR OUT OF THE USE, OPERATION, OR UNUSUAL DANGERS OF ANY SUPPLIED BY VENDOR, IS HEREBY EXPRESSLY EXCLUDED, INCLUDING ANY LIABILITY FOR CONSEQUENTIAL DAMAGES.

5.2.2 The limitations of liability as set forth above shall not apply to gross negligence by Vendor, nor where the law of the land requires otherwise.

6 Product liability

Vendor shall ensure that a user manual in the country’s official language(s) is supplied with each product and that the user manual is designated in the manual to the user’s observance. As far as permissible under local laws, Purchaser hereby expressly excludes any liability whatsoever in the event of Vendor’s failure to observe the above conditions.

7 Technical alterations and technical documents

7.1 Vendor reserves the right to alter the specifications and features of the products and to make technical development. Descriptions and illustrations, technical and performance data published in technical documents, such as (but not necessarily limited to) specifications, drawings, and brochures, shall not be deemed binding and are subject to change without notice.

7.2 Technical documents shall remain Vendor’s property and Purchaser shall return them upon demand. Without Vendor’s prior agreement in writing they shall not be copied, distributed, or made accessible to any third party in any manner whatsoever. In particular, they shall not be used for the purpose of making any instrument or components thereof. They may be used for the purposes of maintenance, operation and operation only to the extent that they have been designated thereto by Vendor.

8 Software

Vendor shall grant Purchaser an irrevocable non-exclusive licence to use any software and releases of new versions thereof for the purposes of installation, maintenance, and/or operation only to the extent that they have been designated thereto by Vendor.

9 Requirements applicable to installation site

Purchaser shall have a user manual in the local language, bylaws, regulations, and other requirements that may govern the delivery, assembly, installation, and/or operation of Vendor’s products, and to any other or more extensive rights, to suspend deliveries or to suspend further deliveries without regard to any orders still pending.

10 Use of trademarks, identifying marks, and of display and publicity material

Purchaser shall not use Vendor’s trademarks, particularly the trademark Leica, strictly in accordance with the terms and conditions of said separate agreements in connection therewith.

11 Suspension of deliveries

If Purchaser’s sales prove unsatisfactory or if it suspends payments, is subject to a court order of settlement and/or if bankruptcy proceedings are instituted against it, or if it gives up or transfers its business, Vendor shall be entitled, without prejudice to any other or more extensive rights, to suspend further deliveries without regard to any orders still pending.

12 Applicable law and jurisdiction

12.1 The legal venue for Vendor and Purchaser shall be Vendor’s registered office, but notwithstanding this provision Vendor shall also be entitled to call upon the court of competent jurisdiction at Vendor’s registered office.

13 Final provisions

13.1 Other terms and conditions

Vendor does not recognize any other terms and conditions as valid. Purchaser hereby expressly waives the right to apply its own terms of business.

13.2 Severability

The invalidity or unenforceability of any part of the present General Conditions of Sale and Supply and of any contract between the parties which refers thereto shall not affect the validity of the remaining terms and conditions thereof.

13.3 Alterations

No alterations, additions, or deletions to these General Conditions of Sale and Supply shall be valid or enforceable unless set forth in writing and agreed by Vendor.