

Leica Geosystems

SmartNet General Terms and Conditions of Business

1 PRELIMINARY REMARKS

- 1.1 All SmartNet Services are expressly subject to the Terms and Conditions set forth below. Any other terms and conditions are hereby expressly rejected.
- 1.2 Leica Geosystems has access to a national reference station infrastructure, which is based on a global navigation satellite system (GNSS) for the territory stated in more detail in sub-section 2.1 of the SmartNet country annex to the Terms ("**Country Annex**"). The reference station data shall be supplied to Leica Geosystems by the institution designated in sub-section 2.2 of Country Annex. For this purpose, the reference stations shall record the measurement data stated in sub-section 2.3 of Country Annex. With said measurement data, a network calculation specific to Leica Geosystems shall be carried out making use of the Leica Geosystems Spider software in a computer centre belonging to Leica Geosystems.
- 1.3 As the result of the network calculation, the correction data listed in sub-section 3 of the Country Annex shall be provided to Customer.
- 1.4 Access to the correction data shall be via the user authorisation stated in sub-section 4 of Country Annex.
- 1.5 A Licence Fee shall be charged for the use of the correction data.
- 1.6 The service of the network solution including the precision of the correction data by Leica Geosystems shall bear the designation defined in sub-section 1 of Country Annex.

2 DEFINITIONS

- 2.1 "**SmartNet Services**" shall designate the provision of the correction data to a Customer by Leica Geosystems subject to the terms and conditions of a valid Licence Agreement.
- 2.2 "**Leica Geosystems**" means Leica Geosystems B.V., a private limited liability company, incorporated under Dutch law, holding office at Turfschipper 39 and 43 (2292 JC) Wateringen, the Netherlands, with chamber of commerce number 27128785.
- 2.3 "**Customer**" shall designate a Customer who is a user of the SmartNet Services on the basis of a valid Licence Agreement.
- 2.4 "**Licence Agreement**" shall designate an agreement between Customer and Leica Geosystems containing the terms and conditions between the contracting parties with a view to the specific use of SmartNet Services and including the terms and conditions of the present contract by reference.
- 2.5 "**Licence fee**" shall designate the fees which a Customer must pay for access to and the use of the SmartNet Services and which have been specified to the Licence Agreement.
- 2.6 "**Start of licence**" shall designate the time of the release for the use of the SmartNet services.
- 2.7 "**Term of licence**" shall designate the term of the Licence Agreement during which SmartNet Services shall be provided by Leica Geosystems.

- 2.8 "**GPS**" shall designate the global positioning system operated by the United States Department of Defense, which alone is responsible for the precision, the daily operation and the maintenance of the GPS satellites
- 2.9 "**GLONASS**" shall designate the Russian satellite navigation system.
- 2.10 "**GNSS**" shall designate the global navigation satellite system, which contains the signals of all global systems, i.e. GPS (US), GLONASS (Russia) and all and any future developments in satellite navigation included in the SmartNet Services by Leica Geosystems.
- 2.11 "**SmartNet Terms**" shall designate these terms and conditions subject to which the SmartNet Services are provided to Customers.
- 2.12 "**SmartNet Land cm service**" shall designate correction data derived from the use of GNSS L1, L2, code and carrier phases as well as, if applicable, further satellite geodetic observations (as generally understood in the context of GNSS signals), permitting positioning in the range of centimetres in the "**Country**" designated in more detail in sub-section 2.1 of Country Annex.
- 2.13 "**SmartNet Land Submeter service**" shall designate correction data derived from the use of GNSS L1 and code observations (as generally understood in the context of GNSS signals), permitting positioning in the sub-metre range in the "**Country**" designated in more detail in sub-section 2.1 of Country Annex.
- 2.14 "**Internet Provider**" shall designate the companies of the mobile GSM/GPRS providers.
- 2.15 "**MountPoint**" shall designate the IP-based mount point at which the correction data are provided in the defined format for access by Customer to the SmartNet Services per internet via GPRS/NTRIP.

3 GENERAL AGREEMENTS

- 3.1 Titles have only been included for better legibility and may not influence the interpretation of any provisions of the present SmartNet Terms or the Licence Agreement.
- 3.2 To the extent not otherwise demanded by the context, words in the masculine shall also include the feminine and vice versa and words in the singular shall also include the plural and vice versa in the present SmartNet Terms, Country Annex and in all Licence Agreements.
- 3.3 A reference to a statutory provision in the present SmartNet Terms, Country Annex or the Licence Agreements shall include a reference to this statutory provision regardless of whether it is amended, extended or put back into force from time to time.
- 3.4 Any reference to a licence partner shall designate a partner to the Licence Agreement.

4 ACCESS TO THE SMARTNET SERVICES

- 4.1 For receipt of SmartNet Services, Customer must, at its own expense and risk, set up an access via an Internet Provider.
- 4.2 Leica Geosystems reserves the right to extend or amend the SmartNet Services or to add new ones at its sole discretion and without any obligation in this regard.

4.3 Although the SmartNet Services are currently based on the use of GPS and GLONASS observations, Leica Geosystems reserves the right to use additional or alternative global navigation satellite systems at its sole discretion and thus to generate further SmartNet Services.

5 CONDITIONS OF USE

5.1 Customer acknowledges that the supply of SmartNet Services is completely dependent on Customer's GPS/GNSS receiver, the location of the GPS/GNSS receiver, the individual reception situation and the satellite geometry and availability and that Leica Geosystems cannot give any precision guarantees in this regard.

5.2 Customer acknowledges that use of the SmartNet Services can be interrupted or the validity of data can be impaired by local conditions such as signal blockages or disturbances, the availability of GSM/GPRS via the Internet Provider or other phenomena.

6 SERVICES OF LEICA GEOSYSTEMS

6.1 Leica Geosystems shall be responsible for the set-up and maintenance of an access and/or a GSM dial-in possibility making reception of the SmartNet Services possible.

6.2 Leica Geosystems shall inform Customer as soon as possible in the event of failure or quality defects in the SmartNet Services. Further, Leica Geosystems shall notify Customer via suitable notice of intended changes to data contents and data formats if and insofar as these can have effects on the use of the SmartNet Services.

6.3 Leica Geosystems engages to undertake all economically justifiable efforts to continuously update and extend the performance potential of SmartNet Services.

7 PRICES AND PAYMENT TERMS

7.1 Upon conclusion of a Licence Agreement, a Licence Fee to the amount stated in the Licence Agreement shall be due for payment.

7.2 Leica Geosystems shall charge the Customer the Licence Fee in the way documented in sub-section 5 of Country Annex.

7.3 If Customer falls into arrears with the payment of the Licence Fees, Leica Geosystems can at its sole discretion either (i) suspend the provision of SmartNet Services for as long as Customer fails to pay the due amounts, or (ii) terminate the Licence Agreement with immediate effect, without being liable for any damages and/or costs as a result.

7.4 To the extent not stated to the contrary in the Licence Agreement, all Licence Fees shall be exclusive of statutory value added or turnover tax, which shall be separately specified on the invoice and charged to the Customer.

7.5 Offset of amounts due by Customer to Leica Geosystems ("*verrekening*") is not allowed, with the exception that such offset would only be allowed with counterclaims against Leica Geosystems which are successfully upheld in court as evidence by a final and conclusive ruling in favour of Customer.

7.6 Leica Geosystems is at any time entitled to amend the Licence Fee. Leica Geosystems shall inform Customer hereof in writing one (1) month in advance.

8 TERM AND TERMINATION

8.1 Each Licence Agreement shall take effect following written licence order confirmation on the part of Leica Geosystems on the date of Start of licence stated in the Licence Agreement.

8.2 The Licence Agreement shall apply for the term of the licence stated in the licence order. After the expiry of the Term of Licence, the Licence Agreement shall automatically be extended by the prior term of the agreement to the extent that no deviating licence term has been agreed in the Licence Agreement or the term of the licence is terminated as per the end of the License Agreement with a notice of one (1) month.

8.3 Without any liability for damages towards Customer, Leica Geosystems shall be entitled to terminate the Licence Agreement with a notice in writing of one month and at its sole discretion and to cease rendering SmartNet Services totally or partly, taking a suitable run-up time into due account. The fees paid for the ongoing term of the agreement shall be reimbursed to Customer pro rata temporis.

9 WARRANTY AND LIABILITY

9.1 The SmartNet Services shall not be provided operatively, functionally, technically or in any other way tailored the specific requirements of any customer. Customer shall be responsible for ensuring that the SmartNet Services are suited to the purpose intended by it.

9.2 Leica Geosystems does not give any kind of warranty or assurance with a view to uninterrupted continuity of SmartNet Services (partial or total).

9.3 Leica Geosystems does not warrant that SmartNet Services are free from errors or defects.

9.4 Leica Geosystems assumes no kind of responsibility or liability for any kind of loss or damage of any kind originating from:

- (1) any kind of interruption or failure (partial or total) of any kind of electronic transmission (including but not limited to the internet) of the SmartNet Services or their MountPoints and any invalidity of data;
- (2) any kind of interruption, disturbance, non-availability (partial or total) of the GNSS (or interruption, disturbance or non-availability of the SmartNet Services as a consequence thereof),

where any of these defaults under 1 to 2 are caused by any facts or circumstances beyond the direct control of Leica Geosystems.

9.5 Leica Geosystems shall not be liable towards Customer under or in relation to the provision of SmartNet Services for any consequential damages, including but not limited to (i) loss of income, (ii) loss of actual or anticipated profits, (iii) loss of business, (iv) loss of contracts, (v) loss of goodwill or reputation or (vi) indirect or consequential loss or damage of any kind. Leica Geosystem's maximum aggregate liability in any year to Customer in connection to the provision of SmartNet Services, whether arising in or caused by breach of contract, tort or otherwise shall not exceed the total amount of the Licence Fee which Customer has paid to Leica Geosystems in that year.

9.6 Customer engages to ensure that it and its employees possess the necessary knowledge in order to be able to make proper and correct use of the SmartNet Services and MountPoints. Leica Geosystems hereby rejects any liability for damages as a result of incorrect use by Customer of the SmartNet Services, which it has received from Leica Geosystems, and of the MountPoints. Customer shall furthermore indemnify

Leica Geosystems against any claims for damages it shall have received from any third party as a result of the incorrect use by Customer of the SmartNet Services and MountPoints.

10 DATA PROTECTION

10.1 Leica Geosystems guarantees to Customer that all person- and Customer-related data received from it serving the purpose of rendering the SmartNet Services and/or the commissioned mediation of services from Internet Providers shall exclusively be used for this purpose and in no way made accessible to third parties

11 FINAL PROVISIONS

- 11.1 These SmartNet Terms cannot be altered, modified, or amended by without the express written consent of Leica Geosystems, the acceptance of a purchase order from Customer not constituting express consent.
- 11.2 Customer is not entitled to assign its rights and duties from the present SmartNet Terms to third parties or to transfer them in any other way without prior written consent from Leica Geosystems.
- 11.3 Customer shall reimburse Leica Geosystems for all costs, including all suitable attorneys' costs and court costs and fees incurred by Leica Geosystems in connection with justified claiming or assertion of its rights according to the present SmartNet Terms.
- 11.4 If one of the provisions of the present SmartNet Terms – whatever the reason – is declared null and void, this shall have no kind of effect on the validity of the other provisions. In such a case, the invalid provision shall be replaced by another, legally valid provision coming closest to the contracting parties' original intention.

12 INTELLECTUAL PROPERTY

- 12.1 The Customer acknowledges that nothing shall be construed to give the Customer either during or after obtaining SmartNet Services from Leica Geosystems any right, title or interest in the intellectual property rights with regard to or relating to the Smartnet Services, including but not limited to copyrights, patent rights or the right to use trademarks. Furthermore, all intellectual property rights in work or resulting from work done by or on behalf of Leica Geosystems pursuant to this Agreement shall vest in Seller. The Customer agrees to render its full assistance and cooperation to Leica Geosystems in obtaining and maintaining such rights.
- 12.2 Except where intended to serve as instructions for use or advertising matter, all technical information in relation to the SmartNet Services remains property of Leica Geosystems and may without its prior written consent not be utilized, copied, reproduced, transmitted or communicated to third parties.

13 APPLICABLE LAW AND VENUE

13.1 The present SmartNet Terms in combination with Country Annex including all Licence Agreements shall be exclusively governed by the laws of the Netherlands. The United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980, shall not apply. Both contracting parties engage to endeavour to find a mutual regulation in good faith in the event of disputes arising under or in connection with the provision of SmartNet Services, the SmartNet Terms, Country Annex and Licence Agreements. If no agreement can be

reached amicably despite the parties' endeavours, the competent district court of The Hague, the Netherlands shall have exclusive jurisdiction for deciding on all disputes from or in connection with the provision of SmartNet Services, the SmartNet Terms, Country Annex and Licence Agreements. Leica Geosystems shall also have the right to sue Customer at its place of residence or corporate headquarters.

14 SMARTNET TERMS COUNTRY ANNEX

- 14.1 The SmartNet Terms Country Annex to the present SmartNet Terms shall form an integral part of the present SmartNet Terms as amended at the time in question.
- 14.2 In the event of conflicts, the regulations of the SmartNet Terms Country Annex shall prevail over those of the SmartNet Terms.