

GENERAL TERMS AND CONDITIONS OF BUSINESS OF HEXAGON METROLOGY GMBH (hereinafter called the "Conditions")



Date of issue: March 2014

A. General provisions

1. Area of application - written form

- 1.1 These Conditions shall apply to
- the supply of 3D coordinate measuring machines (herein-after called the "goods")
 - the supply of spare parts
 - the retrofit of machines
 - repairs (except repairs in the scope of servicing contracts)
 - the servicing of machines (except servicing in the scope of servicing contracts)
 - the measurement of products with measuring machines (hereinafter called "measuring services")
 - other services of Hexagon Metrology GmbH (hereinafter called "HEXAGON")

all these being hereinafter referred to as the "Supply".

- 1.2 Any and all contracts concluded by HEXAGON with the Customer concerning the services specified in 1.1 shall be governed exclusively by these Conditions. HEXAGON will not accept any of the Customer's terms and conditions which conflict with or deviate from these Conditions unless HEXAGON has expressly confirmed its agreement in writing. These Conditions shall also apply if HEXAGON whilst aware of terms and conditions of the Customer which conflict with or deviate from these Conditions performs the Supply without any reservation vis-à-vis the Customer or accepts payment.
- 1.3 All agreements which are intended to be component parts of the contract or which are concluded between HEXAGON and the Customer in connection with performance of the contract shall be set down in writing. This provision shall also apply to agreements by which the contract is amended subsequently.
- 1.4 Should the parties conclude a written contract concerning the Supply such contractual agreements shall have precedence over the Conditions. In such a case, these Conditions shall apply only to areas which are not regulated by such contractual agreements.
- 1.5 These Conditions shall only apply vis-à-vis enterprises as defined by Section 14 BGB (German Civil Code), legal persons under public law and special funds under public law.

2. Offer and acceptance - offer documents

- 2.1 Unless HEXAGON stipulates differently, offers made by HEXAGON are not binding and are subject to amendment.
- 2.2 If the Customer's order can be designated as an offer under Section 145 BGB, HEXAGON may accept this within 2 weeks from receipt of the order. Orders are not deemed to be accepted until they have been confirmed by HEXAGON in writing or have actually been carried out.
- 2.3 HEXAGON retains title to and copyright in all illustrations, drawings and other documents handed over to the Customer in connection with conclusion of the contract. Without HEXAGON's express agreement they may not be used, copied, reproduced or made available to third parties for any other purpose than the setting up, taking into operation, use and maintenance of the goods or of the spare parts. This applies in particular to such documents which are designated "confidential".

3. Time of performance – Rights in the case of delay

- 3.1 All details regarding the term or date for performance of the supply shall be deemed to be approximate only, unless the period or date for performance is designated binding in the confirmation of order. When the goods or spare parts are delivered the term or date for performance is deemed to be met, if by expiry of the term or on the stated date the goods or the spare parts have been delivered to the Customer. In the case of the other services, the term or deadline is deemed to have been met if by expiry of the term or on the stated date

the supply is ready for acceptance by the Customer.

- 3.2 Partial supplies are permitted. Should the Customer not be interested in the partial supply, the Customer's rights shall remain unaffected.
- 3.3 Should the Customer assert claims for indemnity due to delay in the supply or, subject to the legal conditions, instead of the supply, the liability of HEXAGON to indemnify is limited in accordance with Section 6. Indemnity due to delay in the supply is furthermore limited in its amount to a maximum of 5% of the agreed remuneration, provided that according to Section 6 HEXAGON is liable for simple negligence.

3.4 In addition the delivery of goods and spare parts shall be subject to the following provisions:

- 3.4.1 Compliance with the delivery date for goods by HEXAGON presupposes that the Customer's obligations are properly fulfilled in due time, in particular the obligation to fill out and forward the checklist sent with the confirmation of order, and to create the local conditions for installation of the machine, and that any agreed advance payment has been received. The right is reserved to plead non-fulfillment of the contract.
- 3.4.2 Should HEXAGON not be able to comply with binding terms for delivery for reasons for which HEXAGON is not responsible (non-availability of the supply), particularly because HEXAGON does not receive deliveries on time from a supplier, then HEXAGON shall inform the Customer of this fact without delay and at the same time advise the foreseeable new term for delivery. If the supply is not available within the new term for delivery then HEXAGON is entitled to withdraw completely or partially from the contract; HEXAGON shall without delay repay any consideration already executed by the Customer.

4. Duties of the Customer

- 4.1 The Customer shall take the measures necessary to protect persons and property at the site of performance of the supply. The Customer must inform HEXAGON about existing safety and accident prevention regulations, insofar as these are relevant for HEXAGON's personnel.
- 4.2 The Customer is bound to provide technical assistance at their own expense. The purpose of the technical assistance is to enable the supply to be commenced immediately upon the arrival of HEXAGON's personnel and to be performed without delay. In particular the Customer agrees to:
- provide auxiliary and specialist workers in the number and for the period of time necessary for performance of the supply
 - provide covers to protect against particles of dirt and dust at the site of performance of the supply
 - make available lockable, dry rooms in which to keep tools, machine parts and machines, and a lockable room with lighting and heating for the use of personnel
- 4.3 Should the Customer default in taking delivery, or fail to comply with other duties to cooperate, in particular those specified in this Section, then HEXAGON shall be entitled to demand compensation for the loss thus incurred, including any extra expenses. For this HEXAGON shall charge a lump sum equivalent to 0.5% of the net remuneration per week, starting with the agreed delivery date, but limited in total to 5% of the net remuneration. The right is reserved to prove a greater loss; however, the blanket sum shall be set off against larger claims for monetary compensation. The Customer shall have the right to prove that HEXAGON incurred no loss at all, or a considerably smaller loss than the lump sum in question. Wasted journeys due to delay in acceptance of the other supplies shall be charged in accordance with HEXAGON's current price list.
- 4.4 The right to raise further claims is reserved.
- ### 4.5 In addition, the delivery of goods and spare parts is subject to the following provisions:
- 4.5.1 The Customer is obliged immediately to fill out the checklist enclosed

with the confirmation of order and to ensure that the goods are set up at the destination and can be installed in accordance with this Section.

4.5.2 Should the preconditions under item 4.3 apply, the risk of accidental loss or accidental deterioration of the goods or the spare parts shall transfer to the Customer at that moment in which the Customer is in default of taking delivery or there is debtor's delay.

5. Customer's rights in the case of defects

HEXAGON shall be liable for the Customer's rights in the case of defects of quality and legal imperfections in title (including delivery of the wrong goods and spare parts and short delivery of goods and spare parts as well as their improper installation or faulty instructions for their installation) in accordance with the following provisions to the exclusion of any and all other claims:

5.1 Duty to examine

The Customer shall immediately report in writing any defect discovered. The Customer's warranty claims will otherwise become forfeited, unless HEXAGON maliciously concealed the defect.

In derogation of this any rights of the Customer for defective goods or spare parts presuppose that the Customer properly fulfilled the obligations to examine and requirements to give notice of defects in accordance with Section 377 HGB (German Commercial Code).

5.2 Defective goods or spare parts

The details and information contained in product catalogs, price lists and other documents forming part of the offer shall be deemed to be agreements concerning the qualities of the goods or spare parts as defined in Section 434 paragraph 1 sentence 1 BGB only insofar as the contract expressly refers to them. For the rest the legal provisions shall apply.

5.3 Limitation to subsequent performance

HEXAGON shall remedy the defects within a reasonable period of time at HEXAGON's own expense. HEXAGON is entitled to choose whether the subsequent performance is effected by repairing the defect or by supplying goods or spare parts that are free of defect or manufacturing a new piece. HEXAGON's right to refuse subsequent performance under the statutory requirements remains unaffected.

If the subsequent performance is unsuccessful the Customer is entitled to reduce the remuneration required by HEXAGON or to withdraw from the contract.

5.4 Exclusion of warranty

There is no claim under the warranty if the defect is immaterial to the Customer's interests or is based on a circumstance attributable to the Customer. The warranty for defects is excluded if the Customer undertakes changes or repairs without HEXAGON's approval.

5.5 HEXAGON is entitled to make any subsequent performance which falls due subject to whether the Customer pays the outstanding remuneration. However, the Customer is entitled to retain a portion of the remuneration proportionate to the defect.

5.6 Claims for damages due to defects shall be subject to Section 6.

6. Claims for compensation - Extent of liability

In all cases HEXAGON's liability for damages - regardless of whether it be contractual or non-contractual - shall be governed exclusively by the following provisions. For the rest HEXAGON's liability for damages is excluded. Insofar as HEXAGON's liability is excluded or limited this shall also apply to the personal liability of HEXAGON's employees, representatives and agents.

6.1 Should HEXAGON have maliciously kept silent about a defect of the goods, spare parts or supply, or have undertaken a guarantee for the qualities of the goods, spare parts or supply, then HEXAGON shall be liable for damages in accordance with the statutory provisions.

6.2 Furthermore HEXAGON shall be liable for damages for loss of life, bodily injury or injury to health caused by negligent or willful infringement of duties on the part of HEXAGON including its

representatives or auxiliaries, in accordance with the statutory provisions.

6.3 HEXAGON shall moreover be liable in accordance with the statutory provisions, insofar as the Customer asserts claims for damages which either are based on a willful or grossly negligent infringement of duties by HEXAGON, including its representatives or agents, or based on HEXAGON being at fault in breach of an essential contractual duty (a duty the performance of which is essential for the proper performance of the contract and in the fulfilment of which the contracting partner regularly trusts and may trust). However, HEXAGON's liability for damages will in such cases be limited in amount to foreseeable, typical damage, except in cases where HEXAGON, including its representatives or auxiliaries, has acted with malicious intent or gross negligence.

6.4 Furthermore HEXAGON shall be liable where applicable under the mandatory provisions of the Produkthaftungsgesetz (German Product Liability Act) of December 15, 1989.

7. Limitation periods

Reciprocal claims asserted by the contracting parties shall be subject to the legal limitation periods unless otherwise specified:

7.1 Claim for subsequent performance

A claim for subsequent performance as a result of defective goods or spare parts shall be subject to a limitation period of one year from issuance of the protocol as specified in Section 12.3 or in the case of spare parts six months from their delivery, and as a result of defects in the remaining supplies one year from acceptance, unless the Customer asserts claims as a result of a defect about which HEXAGON maliciously kept silent or due to a guarantee assumed by HEXAGON for a longer period of time in respect of the nature of the supply.

7.2 Withdrawal and reduction

Withdrawal and reduction as a result of defects in the performance, the goods or the spare parts shall be ineffective if the claim for subsequent performance has become barred by limitation.

7.3 Claims for indemnity and reimbursement of expenses

Claims for indemnity and reimbursement of expenses as a result of defects shall be subject to a limitation period of one year or in the case of spare parts six months. The limitation period shall incept at acceptance or in the case of defective goods at issuance of the protocol in accordance with Section 12.3 and in the case of defective spare parts upon delivery.

For all other claims for indemnity the limitation period shall incept at the end of that year in which the claim arose and the Customer became aware of or was in a position to become aware of the circumstances justifying the claim and of the fact that HEXAGON was the claim debtor. The limitation period is two years. It will expire no later than at expiry of the statutory limitation periods under Section 199 paragraphs 2 and 3 BGB.

Notwithstanding the foregoing provisions the statutory limitation periods shall apply to all claims arising out of gross negligence, malice, assumption of a guarantee, injury to life, body or health, infringement of a substantial contractual duty and claims under the Product Liability Act.

7.4 The foregoing shall apply in cases of substitute delivery of the entire goods or single parts, subject to the proviso that the limitation period for defects shall incept upon delivery of the replacement object or spare part.

8. Security, setoff, rights of retention

8.1 HEXAGON reserves the right to require prepayment or provision of security in the sum of the invoice value of an order, if upon conclusion of the contract it becomes apparent that the right to counter-performance is endangered by the Customer's lack of financial capacity. HEXAGON may set the Customer a deadline by which the Customer shall in stages at their option effect counter-performance against the performance or shall provide security. Should the deadline not be met HEXAGON is entitled to withdraw from the contract. Section 323 shall apply accordingly.

8.2 The Customer shall be entitled to setoff only if their counterclaims have been recognized by declaratory judgment, have not been disputed or have been recognized by HEXAGON. In these cases the Customer shall also be entitled to exercise a right of retention insofar as their counterclaim is based on the same contract.

9. Retention of title

9.1 HEXAGON will retain title to the goods and to all spare parts supplied and installed by HEXAGON until all present and future obligations of the Customer arising out of the contract and the existing business relations with the Customer have been fulfilled.

9.2 The Customer must inform HEXAGON without delay in writing if the goods or spare parts are seized in execution or otherwise subject to interference by third parties, so that HEXAGON may institute legal proceedings in accordance with Section 771 ZPO (German Code of Civil Procedure). Should the third party not be in a position to reimburse HEXAGON the legal and extra-judicial expenses of legal proceedings in accordance with Section 771 ZPO the Customer shall be liable to HEXAGON for the loss thus incurred.

9.3 The processing of spare parts, including processing by the Customer, is always carried out on behalf of HEXAGON. If the spare parts are processed together with other parts that do not belong to HEXAGON, HEXAGON shall acquire co-ownership of the new object corresponding to the ratio of the value of the spare parts (to the amount shown in the invoice, including VAT) to the other processed items at the time of processing. The Customer shall keep, free of charge, the sole or shared ownership thus acquired for HEXAGON. For the rest, the same applies to the object created by processing or alteration as to the spare parts supplied under reservation of title.

9.4 The Customer is obligated to treat and maintain the goods with care. The Customer shall in particular insure them at the Customer's own expense against loss or damage by fire, water and theft.

9.5 The Customer is entitled to sell on the goods and spare parts in the proper course of business; however, the Customer hereby assigns to HEXAGON all receivables in the sum of the final invoice amount (including value added tax) which accrue from the resale vis-à-vis the purchaser or third parties. The duties of the Customer stipulated in Section 9.2 shall also apply having regard to the assigned receivables. Following the assignment the Customer shall still be entitled to collect such receivables. HEXAGON's right to collect the receivable shall remain unaffected thereby. However, HEXAGON agrees not to collect the receivable provided that the Customer meets their payment obligations arising out of the proceeds realized, is not in default with payments and in particular no application has been made to institute insolvency proceedings and payments have not been suspended. However, should this be the case, HEXAGON may require that the Customer informs HEXAGON about the assigned receivables and their debtors, gives all other details necessary for the collection, hands over the documents concerned and advises the debtors (third parties) of the assignment.

9.6 HEXAGON agrees to release the securities due to HEXAGON at the Customer's request insofar as the realizable value of the securities due to HEXAGON exceeds the receivables for which security is furnished by more than 10%; the choice of securities to be released lies with HEXAGON.

9.7 If the goods or spare parts are delivered to countries other than the Federal Republic of Germany or are subsequently brought there, the Customer shall at HEXAGON's request provide HEXAGON with comprehensive support to protect HEXAGON's title to the goods or spare parts in the country in question. This shall apply in particular should under the applicable laws protection of HEXAGON's title require a notarial act, registration or other formal act.

10. Miscellaneous

10.1 The sole place of jurisdiction for all disputes in connection with this contract and its performance is Wetzlar; HEXAGON is however entitled to bring an action against the Customer at the court competent for the Customer's head office.

10.2 The place of performance shall be Wetzlar, unless otherwise stipulated in these Conditions or in the confirmation of order.

10.3 The legal relationship between the parties shall be governed by the law of the Federal Republic of Germany, to the exclusion of the United Nations Convention on Contracts for the International Sale of goods (CISG).

10.4 If any one provision of this contract should be or prove to be invalid in part or whole, both parties to the contract undertake to replace the invalid provision with one that comes closest in a permissible manner to the contractual purpose that both parties intended.

B. Special conditions for the supply of goods

11. Supply – Passing of risk

- 11.1 The supply of the goods shall be ex works (EXW, Incoterms 2000) Wetzlar, unless expressly agreed otherwise by the parties.
- 11.2 Since the goods require special transport due to their sensitivity HEXAGON is entitled to select the mode of dispatch, routing and shipper, without prejudice to the passing of the risk of loss by accident or damage.
- 11.3 HEXAGON is furthermore entitled to have unloading of the goods and their setting up at the destination supervised by HEXAGON personnel, in order to ensure appropriate unloading and setting up.
- 11.4 Should the Customer wish, HEXAGON will take out marine insurance for the delivery; the costs thus incurred shall be borne by the Customer.

12. Installation

- 12.1 Unless otherwise agreed in the contract, HEXAGON will undertake installation of the measuring machine.
- 12.2 The details regarding the installation date in the confirmation of order are not binding. The parties shall reach agreement on the exact date in good time. For the rest Section 3 shall apply correspondingly.
- 12.3 Upon completion of the installation a test run of the machine will be carried out and the specification proved in accordance with the agreed norms or regulations. A corresponding protocol will be issued.

13. Software license, operating instructions

- 13.1 The Software forming part of the scope of the supply is subject to the provisions of the applicable license agreements. These license agreements will be provided together with the software.
- 13.2 Operating instructions will be provided in German and in English. The Customer must give special notification about the necessity for translation into other languages. The translation will be at the Customer's expense.

14. Prices – Conditions of payment – Due date

- 14.1 Unless otherwise stipulated in the confirmation of order prices shall be EXW (Incoterms 2000) Wetzlar. Furthermore, the prices shall include installation at the place of setting up, excluding packing, which will be invoiced separately, and subject to VAT which will be specified separately in the invoice. Invoices from HEXAGON are always issued in euros (EUR, €).
- 14.2 Partial deliveries may be invoiced separately. Should partial deliveries be made at the Customer's request HEXAGON shall be entitled to make additional charge for the extra expenses thus incurred.
- 14.3 The deduction of any discount must be specially agreed in writing.
- 14.4 Unless stipulated otherwise in the confirmation of order, the net purchase price (without deduction) must be paid as follows:
- 30% within 30 days of receipt of the confirmation of order
 60% within 30 days of delivery
 10% within 30 days of complete installation of the machine and completed test run
 In case of a delay in performance for which the principal is responsible HEXAGON reserves the right to call in the contractually agreed partial payments at the agreed deadlines.
- 14.5 Without prejudice to HEXAGON's other rights, in the case of default in payment on the part of the Customer HEXAGON shall be entitled to withhold any outstanding delivery due under the contract or other similar contracts arising out of the business relationship with the Customer until full payment of the purchase price has been effected.
- 14.6 Checks, drafts or the transfer of accounts receivable from third

parties will be accepted only after preceding special agreement on account of performance and not instead of performance. HEXAGON is not obligated to accept them. Acceptance shall not be deemed to be deferment of the original claim.

C. Special conditions for measuring services

- 15.1 Unless agreed otherwise in writing, the measuring services to be provided by HEXAGON comprise the following services:
- The Customer shall place at HEXAGON's disposal at a location of HEXAGON's choosing the products that are to be measured by HEXAGON ("measurement objects").
 - The Customer shall provide HEXAGON with all drawings and/or specifications, from which the tolerances and measurements of the measurement objects can be derived:
 - HEXAGON will measure the measurement objects solely for the purpose of assessing by means of the drawings and/or specifications whether the measurement objects comply with the stipulated tolerances and measurements.
 - Upon conclusion of the measuring work HEXAGON will hand over to the Customer a protocol on the result of the completed measurements ("measurement protocol"). The measuring service will end with acceptance of the measurement protocol.
- 15.2 HEXAGON shall perform its services in compliance with the Customer's requirements as stipulated in Section 15.1 and the generally accepted rules of technology, and complying with the applicable safety regulations.
- 15.3 HEXAGON shall have sole responsibility in the choice of employee for the performance of the measuring service. HEXAGON reserves the right to give instructions to the employee who is performing the measuring service at the Customer's manufacturing location.
- 15.4 The measurement objects will never be processed or altered by HEXAGON. Any processing or alterations required shall be effected by the Customer at Customer's own expense and risk, unless expressly agreed otherwise in the individual case. All liability of HEXAGON for damage or impairment of the measurement object is excluded.
- 15.5 No statements made about the measurement result shall be binding unless they are contained in HEXAGON's written measurement protocol. Any verbal indications made by the employee shall not form part of the measurement protocol. The Customer shall be solely responsible for any measures which the Customer undertakes on the basis of the measurement results.
- 15.6 HEXAGON's warranty extends only to those services which are expressly the subject of an order placed with HEXAGON in accordance with Section 15.1. No warranty is thereby given for the conformity with regulations and performance of the whole plant or equipment concerned to which the measurement objects belong. HEXAGON shall bear no responsibility for the contents and accuracy of the drawings and/or specifications provided. In particular, HEXAGON bears no responsibility for design, choice of materials and construction of the measurement objects, unless these matters are expressly the subject of the order.
- 15.7 The Customer shall confirm acceptance by signing the measurement protocol. Acceptance shall otherwise proceed within the terms specified in Sections 16.2 and 16.3. The Customer shall without delay examine the measurement protocol for any apparent defect and afford HEXAGON the opportunity to remedy it by subsequent performance. The measuring service is deemed to be defective if and insofar as the measurement protocol is attributable to incorrectly performed measurement of the measurement object by the HEXAGON employee or malfunction of the measuring instrument or the software with which the measurements were performed.

D. Special conditions for other contracts

16. Acceptance

- 16.1 The Customer must accept the supply as soon as completion of the supply has been notified and any contractually foreseen testing of the machine in question has taken place. In the case of minor defects,

or if HEXAGON expressly recognizes a duty to repair the defect, the Customer may not refuse acceptance.

16.2 Unless the Customer refuses acceptance of the supplies within 10 working days of first taking the machine into operation, the supplies furnished shall be deemed to have been accepted without reservation.

16.3 Nevertheless HEXAGON hereby sets the Customer a term of 15 working days after completion of the supplies for acceptance (Section 640 paragraph 1 sentence 3 BGB).

17. Prices – Conditions of payment – Due date

17.1 All orders shall be charged on the basis of the time expended by personnel on journeys, waiting time and labor performed by HEXAGON according to the applicable valid price list for services - engineering service, unless expressly agreed otherwise, for example, a lump sum price. Travel expenses will be charged according to the price list for services - engineering service.

17.2 Prices are subject to turnover tax at the applicable statutory rate.

17.3 Materials or hoists for the installation of the machine which are employed in fulfilling the order shall be charged at the applicable standard prices plus value added tax.

17.4 The costs calculated under Section 16.1 to 16.3 will be payable immediately upon receipt of invoice net without any deduction.

17.5 Checks, drafts or the assignment of accounts receivable from third parties will be accepted only after preceding special agreement on account of performance and not instead of performance. HEXAGON is not obligated to accept them. Acceptance shall not be deemed to be deferment of the original claim.