

1. **Conditions:**
- 1.1 These terms and conditions ("the Conditions") supersede all previous conditions, including any terms and conditions of the buyer or its servants or agents and shall not be superseded, varied or waived other than by the express written consent of Topcon Technology Limited ("the Seller").
- 1.2 Any order, purchase order or request for the goods by the buyer to the Seller shall be conclusive proof of the buyer's acceptance of the Conditions which shall apply instead of and notwithstanding any terms and conditions of the buyer whether included in such order and whenever arising.
2. **Delivery:**
- 2.1 Delivery dates are given in good faith but the Seller shall have no liability for failure to deliver the goods (or any of them) promptly or at all; and notwithstanding such failure the buyer shall be bound to accept delivery and to pay for the goods in full provided that delivery shall be tendered at any time within two months of the stipulated delivery date.
- 2.2 The goods shall be delivered to the buyer at the buyer's address.
- 2.3 The buyer shall make all arrangements necessary to take delivery of the goods whenever they are tendered for delivery and risk in the goods shall pass to the buyer immediately after they are despatched by the Seller.
- 2.4 The Seller may deliver goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the Conditions.
- 2.4 The failure of the buyer to pay for any one or more of the said instalments on the due dates, shall entitle the Seller (at its sole option) without notice to suspend further deliveries of goods pending payment by the buyer and/or treat this contract as repudiated by the buyer.
3. **Nature of Goods:**
- 3.1 The goods shall be supplied in accordance with the description contained in the Seller's trade literature and/or quotation.
- 3.2 The Seller may from time to time make changes in the specification of the goods which are required to comply with any applicable safety or statutory requirements or which do not materially impair the function of the goods.
- 3.3 All implied and express terms, conditions and warranties relating to quality and/or fitness for purpose of the goods are excluded whether made by the Seller or its servants or agents or otherwise (other than the express written warranty provided by the Seller to the buyer).
- 3.4 The specifications and designs of the goods (including the copyright, design right or other intellectual property in them) shall as between the Seller and the buyer be the property of the Seller. Where any designs or specifications have been supplied by the buyer for manufacture by or to the order of the Seller then the buyer warrants that its use for all purposes shall not infringe the rights of any third party.
4. **Acceptance of Goods:**
- 4.1 The buyer shall be deemed to have accepted the goods immediately upon delivery.
- 4.2 The buyer shall inspect all the goods upon delivery and shall immediately notify the Seller of any defects or if the goods are not in accordance with the contract.
- 4.3 If the buyer properly rejects any goods which are not in accordance with the contract the buyer shall nonetheless pay in full for all such goods unless the buyer promptly notifies the Seller of such rejection within 7 days of delivery and at the buyer's cost returns all such goods to the Seller before the date that payment is due.
- 4.3 The Seller shall under no circumstances be bound to accept return of any goods which have been used or damaged.
5. **General Exclusion and Limitation:**
- 5.1 The Seller shall be under no liability whatever to the buyer for any consequential or indirect loss and/or expense (including loss of turnover or profit) suffered by the buyer arising out of a breach of this contract or negligence by the Seller. The
- 5.2 In the event of a breach of this contract or negligence by the Seller the remedies of the buyer shall be limited to damages. Under no circumstances shall the liability of the Seller exceed the price of the goods.
- 5.3 The Seller shall be under no liability in respect of the following which are hereby expressly excluded.
  - 5.3.1 for injury, damage of any kind or nature, direct, indirect, consequential or contingent to personal property howsoever caused;
  - 5.3.2 for any costs incurred by the buyer without the prior written approval of the Seller to repair, replace, or carry out any work on any of the goods, defective or otherwise;
  - 5.3.2 for any other damage, losses, costs, (including loss of goods, chattels, crops, or any other delays, loss arising from delay or due to or incurred by way of labour supplies, substitute machine rental, liabilities to customers and third parties and all other such losses of any nature) whether direct or indirect and whether or not resulting from or contributed to or aggravated by the default or negligence of the Seller, or its servants or agents or by any defect in the goods.
- 5.4 Nothing in the Conditions shall exclude any liability for personal injury or death caused by negligence of the Seller.
6. **Set-Off Counterclaim and Lien:**
- 6.1 The buyer may not withhold payment of any invoice or other amount due to the Seller by reason of any right of set-off or counterclaim which the buyer may have or allege to have or for any reason whatever.
- 6.2 The Seller shall be entitled to a general lien on all goods of the buyer in the Seller's possession (including goods of the buyer which have been paid for) for the unpaid price of all goods sold to the buyer by the Seller under this or any other contract.
7. **Reservation of Ownership:**
- 7.1 Property, legal and beneficial, in any goods supplied by the Seller shall not pass to the buyer until the Seller has received full payment for all sums then owed by the buyer to the Seller.
- 7.2 Goods in respect of which property remains with the Seller shall be kept separate and identifiable as the property of the Seller and the buyer shall at its own expense immediately return such goods to the Seller, or permit the Seller to enter into the buyer's premises to collect them should the Seller so request.
8. **Warranty:**
- 8.1 In the event of any defects in materials or assembly of the goods appears within either 1 year (in respect of industrial goods) or within 2 years (in respect of agricultural goods) of the date of purchase by the end – user, subject to such end – user providing the Seller with satisfactory proof of the date of such purchase and providing that such defect is not due to any act or omission (including misuse or negligence) nor the result of exterior damage, the Seller shall (at its option) either replace or repair the goods or refund the purchase price of such goods.
- 8.2 The Seller reserves the right to replace the goods with goods of similar function, quality and specification where the original goods are no longer supplied by the Seller. For the purposes of this clause "purchase price" means the lesser of the actual price paid by the end – user for the goods or the manufacturer's recommended price.
- 8.2 This warranty does not apply to prototype instruments (which are supplied without any performance or other guarantee).
- 8.4 The costs of returning goods to the Seller shall be paid by the buyer and the costs of returning any such goods repaired under this warranty to the buyer shall be paid by the Seller.
- 8.5 The Seller shall use all reasonable endeavours to provide a prompt and efficient repair service for goods, both during and after the warranty period referred to in clause 8.1.
9. **Installation:**
9. Unless expressly and specifically stated in writing otherwise the installation of the goods shall be the responsibility of the buyer.
10. **Terms of Payment:**
- 10.1 Payment for the goods shall be made by the buyer named in the Order Acknowledgement in full by the end of the month following the month of invoice, unless otherwise agreed in writing.
- 10.2 Payment for goods shall accrue interest at 1.5% per month or part thereof if payment is not made on or before the due date.
- 10.3 The Seller reserves the right to vary prices for the goods except between the date of Order Acknowledgement and the date of delivery.
11. **Force Majeure:**
11. The Seller shall not be liable for any claims, costs, damages or other losses suffered by the buyer to the extent resulting from any failure on the part of the Seller, its servants and / or agents caused by or directly or indirectly due to war, terrorism, act of any Government or other competent authority, civil unrest, embargo, computer system failure, storm, fire, accident, industrial action including strikes or lockouts, acts of God, illness, prevention from or hindrance in obtaining raw materials, energy or other supplies, or any other similar cause or matter beyond the reasonable control of the Seller.
12. **Jurisdiction:**
12. This contract is subject to the law of England and Wales and the non-exclusive jurisdiction of the courts of England and Wales.
13. **Rights of third Parties:**
13. It is acknowledged and agreed by the buyer that the Conditions are not intended to be and shall not be enforceable by any person other than the buyer under the Contracts (Rights of Third Parties) Act 1999, but this does not affect any right or remedy of a third party which exists or is available apart from the said Act.

