A. General provisions

1. Definitions

The following definitions apply to these Terms and Conditions:
- Conditions: the General Terms and Conditions of Hexagon Metrology B.V. including part B;
- HEXAGON: Hexagon Metrology B.V., Van Elderlaan 1, 5581 WJ Waalre;
- Other Party: each natural person, partnership, legal body or other entity that enters into or has entered into an agreement with HEXAGON, or to whom an Offer or proposal is or has been made by or on behalf of HEXAGON, or to whom or by whose order a delivery is or has been made by or on behalf of HEXAGON, or by order of or for the benefit of whom one or more services is or has been performed by or on behalf of HEXAGON;
- Tender or Offer: any offer issued or made by or on behalf of HEXAGON to the other party, also referred to as proposal;

2. Area of application

2.1 The Conditions shall apply to:
- the supply of 3D coordinate measuring machines
- the supply of spare parts
- the retrofit of machines
- repairs
- the servicing of machines
- other services and deliveries of HEXAGON

2.2 All agreements which are intended to be component parts of the contract or which are concluded between HEXAGON and the Other Party 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 subsequently amended.

2.3 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.

2.4 If at any time one or more provisions in the Conditions is or becomes fully or partly void or invalid, this shall not affect the remaining provisions in the Conditions.

3. Offer and acceptance – offer documents

3.1 Unless HEXAGON stipulates differently, offers made by HEXAGON are not binding and are subject to amendment.

3.2 The agreement is realized by a written Offer and a written acceptance

3.3 Any sources supplied by on behalf of HEXAGON such as price lists, brochures, catalogues, folders, websites and other data shall only be binding on HEXAGON insofar as explicit reference is made in the proposal to data from these sources.

3.4 The Other Party’s orders are not deemed to be accepted until they have been confirmed by HEXAGON in writing or have actually been carried out.

3.5 HEXAGON retains title to and copyright in all illustrations, drawings and other documents handed over to the Other Party in connection with the conclusion of the contract. Without HEXAGON’s express agreement they may not be used, copied, reproduced or made available to third parties for any purpose other 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”.

3.6 The Other Party is only permitted to use the data and information insofar as necessary for the fulfillment of the agreement. At the first request of HEXAGON, and if the agreement is not realized or cancelled, the Other Party must return all the materials, designs, calculations, information, data, etc., indicated here to HEXAGON immediately.

4. Prices – Conditions of payment – Due date

4.1 Unless otherwise stipulated in the order confirmation, prices shall be EXW (Incoterms 2010) Waalre, The Netherlands. Furthermore, the prices shall include installation on site, 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, €).

4.2 Partial deliveries may be invoiced separately. HEXAGON shall be entitled to make additional charge for any extra costs incurred as a result of partial deliveries made at the Other Party’s request.

4.3 The deduction of any discount must be explicitly agreed in writing.

4.4 Unless stipulated otherwise in the order confirmation, the net purchase price (without deduction) must be paid as follows:
- 30% within 30 days of receipt of the order confirmation;
- 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 Other Party is responsible HEXAGON reserves the right to call in the contractually agreed partial payments at the agreed deadlines. In case of default in payment HEXAGON is entitled to statutory interest (article 6:119a Dutch Civil Code) and paid collection fees.

4.5 Without prejudice to HEXAGON’s other rights, in case of default in payment on the part of the Other Party HEXAGON shall be entitled to suspend any outstanding delivery due under the contract or other similar contracts arising out of the business relationship with the Other Party until full payment of the price has been effected.

4.6 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 obliged to accept these. Acceptance shall not be deemed to be deferment of the original claim.

5. Time of performance – Rights in case of delay

5.1 Lead times and delivery dates given in the Tender/proposal for commitments of HEXAGON are not absolute deadlines. HEXAGON is obliged to observe the specified delivery time or delivery period as much as possible, yet shall never be liable if such delivery times or delivery periods are exceeded. In the event these are exceeded HEXAGON is not obliged to provide any compensation for damages of whatsoever nature. Exceeding a delivery time or delivery period does not entitle the Other Party to terminate or dissolve the agreement or refuse to purchase goods. In cases where a delivery time or period is exceeded excessively the parties must consult with each other.

5.2 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 from a supplier on time, then HEXAGON shall inform the Other Party 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 completely or partially withdraw from the contract; HEXAGON shall without delay repay any consideration already executed by the Other Party/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.

6. Transport and supply – passing of risk

6.1 The supply of the goods shall be ex works (EXW, Incoterms 2010)
7. The Other Party's duties

7.1 The Other Party shall take all steps required to protect persons and property at the site where the supply is to take place. The Other Party must inform HEXAGON about existing safety and accident prevention regulations, insofar as these are relevant for HEXAGON's personnel.

7.2 The Other Party is bound to provide technical assistance at its own expense. The purpose of the technical assistance is to allow the supply to take place immediately upon the arrival of HEXAGON's personnel and to be performed without delay. In particular the Other Party agrees to:
- provide auxiliary and specialist workers in the number and for the period of time required for the supply to take place;
- provide covers to protect against particles of dirt and dust at the site where the supply is to take place;
- 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.

7.3 Should the Other Party 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 costs.

7.4 The Other Party is obliged immediately to fill out the checklist enclosed with the order confirmation and to ensure that the goods are set up at the destination and can be installed in accordance with this section.

7.5 The Other Party shall report any shortages, defects and damage in writing directly to HEXAGON within a reasonable time following the delivery and if nothing is reported then the goods will be regarded as having reached the Other Party in good condition, complete and without damage.

8. Guarantee/Service

8.1 With due observance of the provisions specified elsewhere in these Conditions HEXAGON guarantees the quality of the materials used and their promised characteristics as well as the correct operation of the goods provided by HEXAGON in accordance with the accompanying product specifications.

8.2 This guarantee will only be valid for new products for a period of twelve (12) months following delivery to the Other Party. A guarantee for goods purchased by HEXAGON from third parties will only be given if and insofar as such goods are guaranteed by this third party.

8.3 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 will remain unaffected.

8.4 There will be no claim warranty claim if the defect is immaterial to the Other Party's interests or is based on a circumstance attributable to the Other Party. The warranty for defects is excluded if the Other Party undertakes any changes or repairs without HEXAGON's approval.

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

9. Liability

9.1 The total liability of HEXAGON on account of an attributable failure to fulfil the agreement or for any other reason will be limited to reimbursement of direct losses to a maximum sum of the price (excl. VAT) stipulated in the agreement.

9.2 In all cases the liability of HEXAGON is limited to the amount paid out or covered by the insurance.

9.3 The liability of HEXAGON is excluded for:
- consequential or indirect losses;
- lost profits, lost economies, loss of goodwill, losses due to business stagnation;
- losses as a result of liability to customers of the Other Party;
- losses in relation to the use of items stipulated by the Other Party, including but not limited to installations, tools, machineries, materials or data, information or third-party software;
- losses in relation to the engagement of subcontractors stipulated by the Other Party. Likewise excluded is the liability of HEXAGON for the mutilation, destruction or loss of data or documentation.

9.4 The limitation of liability of Hexagon does not apply in case of wilful or grossly negligent infringement of duties by Hexagon.

10. Limitation periods

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

10.1 A claim for subsequent performance as a result of defective goods, spare parts or delivered services shall be subject to a limitation period of one year 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 Other Party 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. Withdrawal and reduction as a result of defects in the performance, the goods, the spare parts or services shall be ineffective if the claim for subsequent performance has become barred by limitation.

10.2 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 of goods and services and in the case of defective spare parts upon delivery. For all other claims for indemnity the limitation period is two years and shall incept at the end of that year in which the claim arose and the Other Party 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.

11. Security, setoff, rights of retention

11.1 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 Other Party's lack of financial capacity. HEXAGON may set the Other Party a deadline by which the Other Party 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.

11.2 The Other Party shall be entitled to set off only if its counterclaim has been recognized by declaratory judgment or has been recognized by HEXAGON. In these cases the Other Party shall also be entitled to exercise a right of retention insofar as its counterclaim is based on the same contract.
12. Retention of title

12.1 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 Other Party arising out of the contract and the existing business relations with the Other Party have been fulfilled.

For so long as the ownership of the goods supplied by or on behalf of HEXAGON remains with HEXAGON according to the provisions in this article, the Other Party is obliged to hold these goods separately from other goods in such a way that they can easily and clearly be identified as the goods of HEXAGON.

12.2 The Other Party 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. Should the third party not be in a position to reimburse HEXAGON the legal and extra-judicial expenses of legal proceedings in accordance with article 6/96 Dutch Civil Code the Other Party shall be liable to HEXAGON for the loss thus incurred.

12.3 The processing of spare parts, including processing by the Other Party, shall remain unaffected thereby. However, HEXAGON agrees not to collect such receivables. The Other Party's right to collect the receivable is not carried out by or on behalf of HEXAGON.

12.4 The Other Party is obliged to treat and maintain the goods with care. 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 Other Party arising out of the contract and the existing business relations with the Other Party have been fulfilled.

12.5 The Other Party is entitled to sell on the goods and spare parts in the proper course of business; however, the Other Party 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 Other Party stipulated in article 12.2 shall also apply having regard to the assigned receivables.

Following the assignment the Other Party shall still be entitled to collect such receivables. The Other Party's right to collect the receivable shall remain unaffected thereby. However, HEXAGON agrees not to collect the receivable provided that the Other Party meets its 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.

13. Intellectual or industrial property rights

13.1 All right of intellectual and industrial ownership to the software, databases, diagrams, equipment, installations, solutions, analyses, designs, documentation reports, proposals, and preparatory materials for the same developed or made available by HEXAGON for the Other Party, remains exclusively with HEXAGON, its licensors or its subcontractors. The Other Party only receives the usage rights that are expressly assigned in the Conditions and the law. These usage rights are non-exclusive and non-transferable to third parties. Any other or further right of the Other Party is excluded.

13.2 If, contrary to expectation, goods sold by HEXAGON to the Other Party in the Netherlands infringe an industrial or intellectual ownership right of a third party and the Other Party is held liable, then the Other Party is obliged to inform HEXAGON in writing of the situation at once. In this case HEXAGON is required, at its discretion, either to supply the right to use those goods to the Other Party, or to modify the goods in such a way that there is no further infringement, or to deliver replacement goods that do not infringe the right, or once it receives the goods back to repay to the Other Party the purchase price less a reasonable payment for the period that the Other Party had the goods at its disposal. With regard to infringements of industrial, codes property, intellectual property rights outside the Netherlands the Other Party can make no claim or demand whatsoever against HEXAGON.

13.3 HEXAGON is not liable for the infringement of any right of industrial or intellectual ownership or of any other exclusive rights which is the consequence of:

• any change of or to goods sold or delivered by or on behalf of HEXAGON;
• any application of such goods other than that recommended by HEXAGON or expected or assumed by HEXAGON;
• integration with or use or application in combination with goods not sold and delivered by or on behalf of HEXAGON;
• a software modification which is not carried out by or on behalf of HEXAGON.

14. Termination

14.1 In the event a party is in default, this entitles the counterparty to dissolve all of part of the agreement notwithstanding the entitlement to demand fulfillment.

14.2 HEXAGON may, without a declaration of default being required, dissolve the agreement with immediate effect in the event the Other Party is declared bankrupt, dissolved, liquidated or wound up, HEXAGON is required to immediately suspend the payment of all receivables due to HEXAGON. The Other Party's right to collect the receivable is not carried out by or on behalf of HEXAGON.

14.3 If a party terminates or dissolves an agreement in accordance with the provisions of this article then the amount that the Other Party owes to HEXAGON upon termination or dissolution will remain as the full debt and the Other Party will be liable to pay interest and costs according to the provisions of these Conditions, without prejudice to the right of HEXAGON to demand damages, to make use of the rights arising from the retention of title, to take other (legal) measures and other rights due to HEXAGON.

15. Miscellaneous

15.1 The sole place of jurisdiction for all disputes in connection with this contract and its performance is Waalre, the Netherlands; HEXAGON will, however, be entitled to bring an action against the Other Party at the court having jurisdiction in the location where the Other Party's head office is located.

15.2 The place of performance shall be Waalre, the Netherlands, unless otherwise stipulated in these Conditions or in the order confirmation.

15.3 The legal relationship between the parties shall be governed by the law of the Netherlands, to the exclusion of the United Nations Convention on Contracts for the International Sale of goods.

15.4 Disputes arising from an agreement concluded between HEXAGON and the Other Party shall be presented to the judge having jurisdiction in the district 's-Hertogenbosch, the Netherlands as HEXAGON is located in Waalre, the Netherlands.

15.5 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. Service

16. Applicability

16.1 The provisions in Part B of HEXAGON’s Conditions supplement Part A of HEXAGON’s Conditions in the event of a service contract.

16.2 The Other Party shall strictly use the goods in accordance with installation, operation and other instructions and recommendations issued by HEXAGON and to accurately observe the related inspections.

16.3 In the event circumstances, storage or use of the goods covered by the service contract change, HEXAGON should be notified within 14 days in writing. In that case HEXAGON will be entitled to amend the service price agreed upon accordingly.

16.4 In the event of any disruptions involving the goods the Other Party shall immediately notify HEXAGON and do anything required to restrict any losses.

16.5 In the event proper operation of the goods is disrupted due to external causes, external damage, incorrect operation or incorrect use or in the event repairs or replacement of parts is required, such repairs shall be for the account of the Other Party and not be covered by the service contract.

16.6 HEXAGON shall notify the Other Party of the month in which the goods should be inspected. In the event the goods are not offered for inspection or made available to HEXAGON in the month indicated HEXAGON shall be entitled to recover the costs involved with the subsequent inspection and overdue maintenance from the Other Party.

17. Extra/less work

17.1 HEXAGON is entitled, without the Other Party’s express prior consent, to undertake extra work or arrange for it to be undertaken and to pass on the costs provided such costs do not exceed ten per cent (10%) of the originally agreed amount.

17.2 Changes in an assignment originating from the Other Party or brought about or made necessary by a change of circumstances on the part of the Other Party as a result of which the original agreement cannot (completely) remain unchanged shall as far as reasonable be performed and charged as extra work.

17.3 Any extra work or less work which results in the workload deviating by more than ten per cent (10%) from what the parties originally agreed must be discussed between the parties. In the case of cancellation by the Other Party HEXAGON will be entitled to invoice the Other Party for the costs incurred and the goods supplied up until that point and the Other Party shall settle such invoice.