Hexagon Manufacturing Intelligence

Standard Terms and Conditions of Sale (Germany and Austria)

These Terms apply to, and form a necessary part of, any Proposal and Contract for the sale, licensing, or supply of Products or Services by Hexagon to Customer (capitalized terms defined below). As used herein, “Proposal” means any Hexagon proposal, quotation, or offer which incorporates (by reference or otherwise) these Standard Terms and Conditions; and “Contract” means any purchase order issued (or order form signed) by Customer and accepted by Hexagon, or any written agreement entered into by Hexagon and Customer, where the Proposal or any other Contract document incorporates (by reference or otherwise) these Standard Terms and Conditions. Any acceptance by Customer of a Proposal is expressly limited to acceptance of these Terms. Customer’s ordering of Products or Services constitutes acceptance of these Terms.

Each order accepted by Hexagon shall constitute a separate and independent Contract.

1 DEFINITIONS

1.1 “Affiliate” means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. “Control” for purposes of this definition means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

1.2 “Cloud Services” means cloud-hosted services Hexagon provides, or is obligated to provide, under the Contract.

1.3 “Customer” means the customer to which Hexagon is selling or supplying the Offerings under the Contract, as identified in the Proposal, order acknowledgement or invoice.

1.4 “Hardware” means Machines, spare or replacement parts or accessories for Machines, or other equipment or hardware Hexagon provides, or is obligated to provide, under the Contract.

1.5 “Hexagon” means the Hexagon Group-affiliated legal entity selling or supplying the Offerings under the Contract, as identified in the Proposal, order acknowledgement or invoice.

1.6 “Hexagon-Branded” means Hexagon or Hexagon-Affiliate branded.

1.7 “Hexagon Contracts Website” means https://www.hexagonmi.com/terms (or any supplemental or successor web pages of the Hexagon Group), as may be updated from time to time, where the Hexagon Manufacturing Intelligence division’s standard terms and conditions for customers are posted.

1.8 “Machine” means an industrial measurement system, machine, or equipment (e.g., coordinate measuring machine, portable measuring arm, laser tracker, industrial 3D laser scanner, or structured light scanner).

1.9 “Offerings” means Products or Services (whether Hexagon-Branded or third-party branded).

1.10 “Parties” means Hexagon and Customer, and “Party” means either of them individually.

1.11 “Products” means Hardware, Software, or other goods Hexagon provides, or is obligated to provide, under the Contract.

1.12 “Professional Services” means consulting, training, installation, calibration and certification, repair, retrofit, part programing, measuring, custom software development, engineering, hardware maintenance or other services (but excluding Software Maintenance or Cloud Services), if any, Hexagon provides, or is obligated to provide, under the Contract.

1.13 “Services” means Professional Services, Software Maintenance, or Cloud Services.

1.14 “Software” means computer program(s) (including without limitation, applications such as CAD/CAM/CAE/SPC/Metrology software), if any, Hexagon provides, or is obligated to provide, under the Contract.

1.15 “Software Maintenance” means software maintenance services Hexagon provides, or is obligated to provide, under the Contract.

1.16 “Standard Terms and Conditions” means these Standard Terms and Conditions of Sale, including the attached Professional Services Addendum.

1.17 “Terms” means these Standard Terms and Conditions, together with any and all applicable end user license agreements, cloud services agreements, offering-specific terms, service descriptions, and other applicable terms and
conditions, addenda, policies, schedules, set forth or referenced in, or attached to, these Standard Terms and Conditions or the final Proposal, or specifically agreed upon by Hexagon in writing.

1.18 “Third-Party Offerings” means discrete third-party-branded (i.e., not Hexagon-Branded) Offerings (including third party systems, equipment, software products, or online services) not manufactured or developed by Hexagon or its Affiliates, and which are resold by Hexagon for use by Customer.

1.19 Additional terms with specific meanings are defined near where they first appear in these Standard Terms and Conditions.

2 PROPOSALS; PURCHASE ORDERS. Unless Hexagon stipulates differently, Proposals made by Hexagon are non-binding and are subject to amendment or withdrawal. Proposals by Hexagon expire as stipulated in the Proposal or, if no expiration date is stated, within thirty (30) days from the date of the Proposal. Purchase orders may be placed by Customer in any commercially reasonable manner that Customer and Hexagon determine is appropriate, including electronic transmission. Each purchase order should reference the Proposal, and confirm the specific Offerings, quantity, prices, and “bill to” and “ship to” address. All Customer orders are subject to acceptance by Hexagon. Hexagon’s acceptance may be by written (including electronic) order acknowledgement, by invoicing, or by shipment or performance. Hexagon reserves the right to correct clerical errors in the Proposal, order acknowledgement, invoice, or other transaction documentation without any liability on the part of Hexagon.

3 PAYMENT

3.1 Payment is due, without deduction or set-off, in accordance with the terms of any applicable agreed upon payment schedule set forth in the final Proposal, and if no payment terms are set forth in the Proposal then payment terms shall be as set forth in the order acknowledgement or invoice. Customer will refer to Hexagon’s Proposal, order acknowledgement, and invoice for other specific payment instructions.

3.2 The statutory rules governing the consequences of default in payment shall apply. In particular, in the event of default in payment, Hexagon shall be entitled to demand interest on claims for payment at the statutory rate. This does not affect Hexagon’s right to make a further claim for damage caused by delay. Customer will also pay costs of collection, including reasonable attorneys’ fees and collection agency fees, associated with Hexagon’s attempts to collect overdue amounts from Customer.

3.3 Without prejudice to Hexagon’s other rights, in the case of default in payment on the part of the Customer, Hexagon is 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.

4 TAXES; OTHER CHARGES

4.1 Prices quoted by Hexagon are exclusive of all applicable sales, use, value added, goods and services taxes, and other taxes (and all applicable tariffs, customs duties and similar charges), and Customer will be responsible for payment of all such taxes (other than taxes based on the net income of Hexagon), tariffs, duties and charges (and any related penalties and interest), payable in connection with the Contract or the provision of Offerings. If Customer is claiming tax exemption status, Customer must provide a valid tax exemption certificate.

4.2 Unless stated otherwise in the Proposal, prices are also exclusive of any applicable freight and handling, shipment, delivery, transit insurance, transportation, moving, loading and unloading, installation, disposal of packing materials, travel-related charges, or other incidental charges, all of which shall be the responsibility of and paid by Customer.

4.3 Hexagon reserves the right to charge the Customer, as an additional charge, for any additional work undertaken over and above that which would have been otherwise required, (including any expenses or financial penalties incurred by Hexagon) as a result of any instructions supplied by the Customer being incomplete, incorrect, inaccurate, illegible, out of sequence, in the wrong form, or provided to Hexagon too late to enable it to meet a deadline.

5 SHIPMENT; DELIVERY; RISK OF LOSS

5.1 Unless otherwise agreed by Hexagon, Products shall be delivered EX WORKS (Incoterms 2020) shipping point. Unless otherwise agreed by Hexagon, Hexagon may select the carrier and shipping route, and Customer is responsible for payment of any applicable freight and handling charges. Any shipping, delivery and installation dates are estimated dates only, and are conditional on Customer fulfilling its obligations. Hexagon shall not be liable for any loss or expense incurred by Customer if Hexagon fails to meet a delivery schedule. Partial deliveries shall be accepted and paid for by Customer at Contract prices and terms. Partial deliveries may be invoiced separately. Software may, at Hexagon’s sole discretion, be delivered through electronic means (e.g., making the Software available for electronic download) or by delivery of physical media. Most Software is delivered through electronic means. Registration may be required to access or download Software.

5.2 Risk of damage to or loss of the Products shall pass to the Customer at the time of delivery to or collection from (as applicable) the agreed delivery location, other than where the Customer wrongfully fails to take delivery in which case, risk of loss shall pass to the Customer at the time when delivery has been tendered.

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5.3 Customer may not delay scheduled shipments without Hexagon’s prior written consent, which consent Hexagon may withhold in its sole discretion. Any delay in shipment requested by the Customer and authorized by Hexagon shall be conditioned on Customer indemnifying Hexagon in full for all loss, liabilities, costs, charges and expenses resulting from such delay.

6 CANCELLATION. Customer’s payment obligations are non-cancelable. Products are non-returnable, and amounts paid by Customer are non-refundable, except as specifically provided for in these Terms.

7 HARDWARE

7.1 Inspection and Acceptance. Customer shall inspect Hardware upon receipt without delay. Customer shall be deemed to have accepted Hardware at the earlier of: (i) if Hexagon’s installation is not included in the Proposal, upon delivery to Customer unless Hexagon receives written notification of rejection for non-conformance from Customer within ten (10) days after delivery; (ii) if Hexagon’s installation is included in the Proposal, upon certification by Hexagon following completion of Hexagon’s applicable certification procedures at the installation site (or if certification is not required for the Product, upon installation, unless Hexagon receives written notification of rejection for non-conformance from Customer within ten (10) days after installation; or (iii) Customer’s use of the Hardware. If Hexagon is timely notified of Customer’s express rejection of a non-conforming Hardware, and Hexagon determines the Hardware’s non-conformance is covered under warranty, Hexagon will provide subsequent performance according to Section 12 (Warranties). In the case of minor defects or if Hexagon expressly recognizes a duty to repair the defect, Customer may not refuse acceptance.

7.2 Retention of Title. Notwithstanding delivery and the passing of risk in the Products, to the extent permitted by law, title to Hardware purchased by Customer, shall not pass to the Customer until Hexagon has received in cash or cleared funds payment in full of the purchase price and all ancillary fees. Until such time as title in the such Hardware passes under this paragraph the following provisions apply: (a) Customer shall hold the Products as Hexagon’s fiduciary agent, and shall keep the Products separate from those of the Customer and third parties and properly stored, protected and insured, but shall be entitled to use the Products in the ordinary course of its business; (b) if Products are damaged or destroyed by an insured risk prior to the same being paid for by the Customer, the Customer shall hold the proceeds of any such insurance as trustee for Hexagon; (c) if payment is not made in time or in full, Hexagon shall be entitled, without prejudice to other right and remedies, at any time to require the Customer to deliver up the Products to Hexagon; and (d) Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Products which remain the property of Hexagon, but in case of a non-compliance with this provision all monies owing by the Customer to Hexagon shall (without prejudice to any other right or remedy of Hexagon) forthwith become due and payable. Should it be necessary to record the retention of title in a public register or should the validity of the retention of title otherwise require the cooperation of the Customer, Customer will give its approval for registration of the retention of title, and unconditionally authorizes Hexagon or its legal representatives to effect the registration, and Customer agrees to undertake the necessary cooperative action. Notwithstanding anything to the contrary herein or elsewhere, title to Software (including without limitation applications and firmware) shall at all times remain with Hexagon, its Affiliates, or third-party suppliers (as applicable).

8 SOFTWARE AND SOFTWARE MAINTENANCE

8.1 Software: End User License Agreement. Any references to the “sale” of or “selling” or “purchase” of Software shall mean sale or purchase of the end user license to use such Software; Software is licensed and not sold. Usage of Software, and any associated user documentation and materials, shall be subject to the terms and conditions of the end-user/sofware license agreement accompanying the Software or otherwise designated on the Hexagon Contracts Website (or in other Hexagon writing) as governing the use of such Software (“EULA”). Copies of EULAs for relevant Hexagon-Branded Software applications (and for some third-party branded Software applications) are available on the Hexagon Contracts Website or upon request. Customer shall be bound by and adhere to the terms the applicable EULA(s), and shall cause its users to comply with such terms. Without prejudice to any other right or remedy available to Hexagon, Hexagon may suspend performance or cause early termination of Software licenses (and related Software Maintenance) if Customer fails to pay in full, when due, any applicable fees or charges, or otherwise breaches the Contract (including any terms of the EULA). Software is deemed accepted upon delivery.

8.2 Software Maintenance. If Customer acquires a Software Maintenance contract/agreement (sometimes referred to as an “SMA”) under the Contract, during the applicable Maintenance term, unless otherwise agreed, Customer will be entitled to the Software maintenance updates (if any) and remote technical support services made generally available by Hexagon for that Software. Customer shall only be entitled to Software Maintenance on those Software features for which Customer has acquired Maintenance and has a current right to Maintenance. Software Maintenance shall not entitle Customer to any release, module, feature, or future product, which Hexagon licenses separately or offers for an additional fee. Technical support is limited to reasonable remote assistance in response to Customer’s technical support inquiries regarding: (i) Software installation, (ii) Software errors, and (iii) general questions regarding the usage of Software features. Technical support does not include training, consulting, on-site services, or other Professional Services, or the provision of engineering judgment for a customer-specific situation.
If Software Maintenance lapsed (or was not initially acquired), and Customer wishes to procure Software Maintenance, Customer will be assessed additional back maintenance fees for the period the Software was not maintained, as well any applicable reinstatement fees, in accordance with Hexagon’s then-current policies for the Software. Any updates, service packs, or new releases to the Software made available to Customer under Software Maintenance will be subject to terms and conditions of the underlying EULA, unless accompanied with their own EULA. In the event of Hexagon’s material breach of its Software Maintenance obligation and failure to cure such material breach within thirty (30) days after written notice, Customer shall be entitled solely to termination of the Software Maintenance for the Software involved and a pro-rata return of Software Maintenance fees actually paid to Hexagon for the remaining unused Maintenance period of the Software involved.

8.3 License Files. Customer acknowledges that the Software may be protected by license manager programs and require license files to access and use. Any such required license files will be issued by or for Hexagon in accordance with Hexagon, its Affiliates’ or supplier’s then-current license file management policies for the Software. Without derogation of the foregoing, Hexagon specifically reserves the right where it deems appropriate to issue to Customer only temporary license files, and withhold issuance of further license files until Customer fulfills its payment obligations. Customer shall provide Hexagon with information required to generate any necessary license files. Any Customer requests for replacement license files are subject to Hexagon’s then-current policies, and Customer’s payment of applicable fees. Hexagon has no obligation to provide replacement license files if: (i) the Software is not supported on the proposed substitute computer; (ii) if Customer is in breach of the Contract; or (iii) if the applicable Software is not covered by Software Maintenance.

9 CLOUD SERVICES

9.1 Cloud Services in General. Usage of Cloud Services, including without limitation cloud-hosted software-as-a-service Offerings or cloud-hosted features/functions/capabilities of on-premise Software, shall be subject to the terms and conditions of the applicable Hexagon, Hexagon Affiliate, or third-party cloud services terms (“Cloud Services Agreement(s)”). The applicable Cloud Services Agreement(s) may be referenced (i) in the Proposal; (ii) in a EULA; (iii) on the Hexagon Contracts Website; or (iii) at the time of Cloud Services registration or use. Customer shall be bound by and adhere to the terms the applicable Cloud Services Agreement(s), and shall cause its users to comply with such terms. Access to and use of Cloud Services may require additional registration and acceptance of terms and conditions by Customer and / or its users prior to access or use. Cloud Services are not made available on a perpetual or paid-up license basis, but are offered only on a term-limited basis, such as during an ordered subscription term.

9.2 Hexagon Manufacturing Intelligence Cloud Services Agreement. Specifically, usage of any Cloud Services made available under the Hexagon Manufacturing Intelligence Cloud Services Agreement (formerly “HxGN SFx Cloud Services Agreement”) shall be subject to the terms and conditions of the Hexagon Manufacturing Intelligence Cloud Services Agreement (including any Acceptable Use Policy, applicable Offering Specific Terms, and other policies and terms referenced and incorporated therein), available for review and download on the Hexagon Contracts Website.

10 PROFESSIONAL SERVICES. Additional terms and conditions applicable to Professional Services are set forth in the attached Professional Services Addendum, which forms an integral part of these Standard Terms and Conditions with respect to Professional Services, and is incorporated herein by reference.

11 CUSTOMER RESPONSIBILITIES

11.1 Customer’s Products. Customer agrees that Offerings are not intended as a substitute for professional judgment or independent testing and verification. Customer is solely responsible for (i) selection of the Offerings to achieve Customer’s intended results; (ii) any output or results obtained by or on behalf of Customer through use of the Offerings; and (iii) any products or services produced or sold by or on behalf of Customer.

11.2 Back-up of Data. Customer is solely responsible for back-up of its data, and shall maintain regular back-ups of its data consistent with good industry practices.

11.3 Occupational Safety and Health. It is Customer’s responsibility to prepare for, install and use Offerings in a safe, suitable, and legal manner and to provide all proper devices, tools and means to protect all personnel from bodily injury that may result from Customer’s particular use, operation, set-up or service of the Offerings. Customer is advised to consult the applicable user documentation, safety standards, laws and regulations. Customer shall install and use the Offerings at all times in compliance with the applicable user documentation, safety standards, laws and regulations, and general standards of care.

11.4 Indemnification. Customer hereby agrees to defend, indemnify and hold Hexagon, Hexagon Affiliates, suppliers, subcontractors, and representatives (collectively, “Indemnitees”) harmless from and against all claims, demands, and suits for property damage, personal injury or death, and all loss, cost, damage and expense (including reasonable attorneys’ fees) arising out of: (i) Customer’s products, services, data, results, outputs, materials, designs or specifications; (ii) Customer’s modification to the Offerings as originally delivered; (iii) Customer’s failure to purchase, install, provide or implement any safety device or procedure customary in the industry (including, but not
limited to, a mechanical, electrical or software interlock or other safety device); (iv) Customer's failure to independently test and verify results and outputs to ensure they are correct, safe and suitable for use; or (v) Customer’s misconduct, negligence, violation of law, breach of contract, or other fault.

12 Warranties

12.1 For Hexagon-Branded Hardware: Hexagon warrants to Customer that Hexagon-Branded Hardware purchased will be free from defects in workmanship and materials, under normal use, for the applicable warranty period. Hexagon does not assume any agreements as to quality unless these have been expressly agreed in writing. In particular, information in catalogs, price lists and other information material provided to the Customer by Hexagon is in no way to be regarded as an agreement on quality.

12.1.1 If a defect that gives rise to warranty rights becomes apparent during delivery, inspection or at any later time, Hexagon must be notified of this in writing without delay. If Customer fails to carry out the proper inspection according to section 7.1 and/or give notice of defects, Hexagon's liability for the defect that was not reported or not reported in good time is excluded. In any case, obvious defects must be reported in writing without delay upon receipt of the delivery and defects that are not apparent must be reported without delay from discovery. Defects shall be remedied by Hexagon within a reasonable period of time after written notification, at Hexagon’s choice, either by repair or replacement. All items that are replaced become the property of Hexagon. Hexagon’s right to refuse subsequent performance under the statutory grounds remains unaffected. Subsequent performance does not include removal of the defective item or re-installation if Hexagon was not originally obliged to install it.

12.1.2 Customer may reduce the purchase price or rescind the contract in accordance with to the statutory provisions. In the event of rescission, Customer shall be liable for any intentional or negligent actions that results in damage to or destruction or loss of Hardware.

12.1.3 Unless stated otherwise in the Proposal or other Contract document the warranty period shall be: (i) for sales of new Hexagon-Branded Hardware, one (1) year upon delivery (if acceptance has been agreed on, upon acceptance); and (ii) for used Hexagon-Branded Hardware (including used Machines, spare or replacement parts), six (6) months from delivery (if acceptance has been agreed on, upon acceptance).

12.2 Limitations and Exclusions for Hardware

12.2.1 No warranty claim may be made after the expiration of the warranty period. The foregoing warranty will not apply to or cover: (i) consumable items, such as reflectors, bulbs, fuses, batteries, and filters; or (ii) Hardware specifically excluded from a warranty; in either case no warranty is provided.

12.2.2 The following conditions are excluded from the above warranties: (a) damage caused because the Customer has failed to follow the user documentation and Hexagon’s or manufacturer’s instructions as to the storage, installation, commissioning, proper use and maintenance of the Hardware; (b) damage caused by uses other than those purposes for which Hardware was designed; (c) damage caused by accident or disaster, which shall include but is not limited to fire, flood, water, transportation, earthquake, wind and lightning; (d) damage caused by negligence or misuse by Customer or its representatives or agents; (e) damage caused by Customer’s alterations which shall include any deviation from manufacturer’s design; (f) damage caused by performance of maintenance or repair work not done by Hexagon; (g) normal wear and tear of the Hardware over time; (h) defects which are approved or deemed approved by Customer.

12.2.3 Preventative maintenance or planned onsite visits are not included in the above warranties.

12.2.4 Notwithstanding anything to the contrary elsewhere, the above warranties do not apply to Hardware of the TESA / Brown & Sharpe division of Hexagon Group (“TESA”). Warranty and return terms for TESA Products shall be as specified in the applicable TESA documentation.

12.3 Software and Cloud Services. Warranties, for application Software and Cloud Services shall be as set forth in the applicable EULA or Cloud Services Agreement. No other warranties of any kind are provided for Software or Cloud Services. Notwithstanding anything to the contrary in the applicable EULA, and notwithstanding the order of precedence in Section 19.2 of these Standard Terms and Conditions, Software which is made available on a perpetual or paid-up license shall have a warranty period of one (1) year upon delivery.

12.4 For Professional Services.

12.4.1 If Hexagon promises the creation and delivery of Deliverables (defined in the Professional Services Addendum) within the scope of the Professional Services, Hexagon shall only be obliged to provide the corresponding services to the extent that these are set forth in writing in the Proposal at the time the Contract is concluded. The same shall apply to any performance periods promised by Hexagon.

12.4.2 The promise of a particular feature or characteristic or suitability of Deliverables for a particular purpose as well as the assumption of a guarantee shall only be binding if this is confirmed in writing by Hexagon.
12.4.3 Acceptance of Deliverables created and delivered by Hexagon shall take place at the latest within one week of delivery. If Customer does not assert any defects that prevent acceptance within this period, the work shall be deemed accepted.

12.4.4 Customer shall inspect the Deliverables for any defects without delay after delivery, to the extent this is feasible in the proper course of business. If Customer fails to report a recognizable defect without delay after discovery, the Deliverables delivered shall be deemed approved in view of this defect. In case of non-recognizable defects, the Customer must notify Hexagon without delay upon their discovery; otherwise, the Deliverable delivered shall also be deemed approved in view of this defect. Hexagon shall not be entitled to rely on the provisions of this paragraph with respect to defects which Hexagon has fraudulently concealed.

12.4.5 Irrespective of the foregoing, warranty claims of Customer shall be excluded if Customer fails to give notice of recognizable defects within a period of two (2) weeks, calculated from the acceptance of the Deliverables forming the subject matter of the order until the dispatch of the notice of defect.

12.4.6 Defects shall be remedied by Hexagon within a reasonable period of time after written notification, at Hexagon’s choice, either by repair or replacement. Hexagon’s right to refuse subsequent performance under the statutory grounds remains unaffected.

12.4.7 If, after an examination of the alleged defect, it turns out that there is no defect entitling Customer to claims under this Section 12.4, Customer shall pay for the services rendered by Hexagon in this connection in accordance with Hexagon's hourly rate schedule as amended from time to time and shall reimburse Hexagon for any necessary expenses.

12.4.8 With the exception of cases in which Hexagon has fraudulently concealed a defect, claims for defects become time-barred one (1) year after acceptance.

12.5 HEXAGON MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES AND ALL OTHER WARRANTIES ARE SPECIFICALLY EXCLUDED. HEXAGON MAKES NO WARRANTY AS TO THE FITNESS OF ANY PRODUCT OR SERVICE FOR ANY PARTICULAR PURPOSE, EXCEPT AS EXPRESSLY AGREED IN WRITING.

13 LIMITATION OF LIABILITY

In all cases, Hexagon's liability for damages - regardless of whether they arise from contractual or non-contractual claims - shall be governed exclusively by the following provisions:

13.1 In the event of fraudulent concealment of defects in a service and assumption of a guarantee for the success of a service, in the event of intent or gross negligence, in the event of injury to life, limb or health and in the event of culpable breach of essential contractual obligations, Hexagon shall be liable in accordance with the statutory provisions. The same shall apply insofar as the mandatory provisions of the Product Liability Act apply.

13.2 However, in the event of a non-intentional or negligent breach of material contractual obligations, Hexagon's liability for damages shall be limited in amount to foreseeable, typically occurring damage. In any case, the liability per contract year is limited to twice the amount of the purchase price paid by the Customer for the Offerings affected by the damage.

13.3 In the event of loss of data, Hexagon's liability under the foregoing provisions shall be limited to that expenditure which is necessary and reasonable for the recovery of the data in the case of proper data backup by the Customer.

13.4 Otherwise, the liability of Hexagon for damages is excluded. Unless otherwise provided for in the above provisions, Hexagon shall therefore not be liable for (i) damages that have not occurred to the Offering itself (e.g. loss of profit or other pure financial losses of the Customer), (ii) damages arising from the violation of ancillary obligations arising from an obligation or the law (e.g. incorrect advice or clarification, instructions regarding handling), or (iii) claims arising from non-contractual liability.

13.5 Insofar as the liability of Hexagon is excluded or limited, this shall also apply to the personal liability of the employees, representatives and vicarious agents of Hexagon.

13.6 Claims for damages become time-barred in twelve (12) months. The limitation period begins at the point in time at which the claim has arisen and the Customer has become aware or could have become aware of the circumstances giving rise to the claim and the fact that Hexagon is the debtor of the claim. It ends at the latest with expiration of the applicable statutory maximum periods. However, the statutory limitation provisions shall apply to claims based on gross negligence, assumption of a guarantee, fraudulent intent, as well as personal injury and claims under the Product Liability Act.

14 INTELLECTUAL PROPERTY. Hexagon, its Affiliates and third-party suppliers shall retain ownership of all intellectual property they had prior to the Contract. All new intellectual property conceived or created by or on behalf of Hexagon or its Affiliates in the performance of the Contract shall be owned exclusively by Hexagon (or its Affiliates, as applicable). Customer will not: (a) decode, reverse engineer, or decompile any Offering, in whole or in part, unless expressly permitted by applicable law without the possibility of contractual waiver; (b) reproduce,
distribute, modify, make derivative works or publicly perform or make available any intellectual property of Hexagon or its Affiliates (“Hexagon Intellectual Property”), except as expressly permitted in writing by Hexagon; (c) circumvent, directly or indirectly, any technical measures or devices securing Hexagon Intellectual Property; or (d) otherwise access or manipulate the Hexagon Intellectual Property, except as expressly permitted in writing by Hexagon.

15 RIGHTS TO SUSPEND PERFORMANCE. If Customer fails to pay any invoice when due, or is otherwise in breach, Hexagon may, without prejudice to any other right or remedy available to Hexagon, suspend its performance until Customer cures such breach. In addition to the foregoing, Hexagon may suspend performance if it has reasonable grounds for insecurity concerning Customer’s performance. Customer shall pay all reasonable expenses incurred by Hexagon in connection with a suspension, including, but not limited to, expenses for reposition, fee collection, and costs of storage during suspension. The schedule for Hexagon’s obligations shall be extended for a period of time reasonably necessary to overcome the effects of any suspension.

16 TERMINATION FOR BREACH. Either Party may terminate the Contract, effective immediately upon written notice to the other Party, for a material breach by the other Party of any term of the Contract that remains uncured thirty (30) days or ten (10) days in the event that the breach is a failure of Customer to make any required payment) after the non-breaching Party first gives written notice to the other Party of such breach and its intent to terminate the Contract if such breach is not cured. If Hexagon terminates the Contract for breach, without prejudice to any other right or remedy available to Hexagon, Customer must pay within ten (10) days all amounts under the Contract. In the event of termination of the Contract, any and all licenses and usage rights granted to Customer with respect to any intellectual property or services under the Contract shall immediately terminate. In addition, Hexagon’s obligation to provide any further Offerings to Customer under the Contract will immediately terminate. Provisions that survive termination or expiration are those relating to payment, taxes, indemnification, limitation of liability, and others which by their nature are intended to survive.

17 USE OF INFORMATION. Customer shall maintain in confidence any non-public commercial and pricing information disclosed to Customer by or on behalf of Hexagon, and Customer shall not disclose such information to any third party and shall not use any such information for a purpose other than as agreed by the Parties and in relation to the Contract. Customer agrees that Hexagon may disclose Customer’s information, including without limitation, contact information and technical information, to Hexagon Affiliates, suppliers, channel partners and subcontractors, wherever they do business, in furtherance of the Contract and Hexagon’s business relationship with the Customer. If Customer provides Hexagon or Hexagon Affiliates with feedback, recommendations, or suggestions about the Offerings (“Feedback”), then, Hexagon and its Affiliates may use such Feedback without obligation to Customer, and Customer hereby irrevocably grants to Hexagon and its Affiliates a perpetual, irrevocable, worldwide, sublicensable, royalty-free right and license to use that Feedback.

18 EXPORT COMPLIANCE

18.1 Hexagon’s performance under the Contract is subject to the issuance of any required export license or other necessary government authorization or requirements. In addition to any other termination rights, Hexagon has the right to terminate without liability any Contract if Hexagon determines such sale, export or delivery may violate applicable law, or that the necessary government authorization may not be granted. Termination will not affect the right of Hexagon to recover the Contract price for any unpaid Offerings already delivered.

18.2 Customer shall comply with all applicable export control and sanctions laws and regulations, including those of the European Union and the United States. Customer shall not export, re-export, transfer or download any Offerings (or any related technical data) in violation of applicable laws or the Contract. Upon Hexagon’s request, Customer shall promptly cooperate with Hexagon and provide Hexagon with any end-user certificates, affidavits, or other documents reasonably requested by Hexagon in connection with the exporting or importing of any items under this Contract.

18.3 Customer acknowledges that Hexagon and its Affiliates are part of a distributed, global group organization with offices, systems, and personnel in numerous countries; as such, in no event shall Customer disclose export-sensitive information to Hexagon or its Affiliates unless the Parties have agreed to a process for the proper and secure delivery and handling of such export-sensitive information in writing. Without derogation of the foregoing, in no event shall Customer disclose export-sensitive information to Hexagon or its Affiliates via email or other general technical support channels.

19 GENERAL

19.1 Entire Agreement. These Terms, together with Hexagon’s final Proposal, order acknowledgement, invoice, and any modifications or additional provisions specifically agreed upon by Hexagon in writing, state the entire agreement between Hexagon and Customer with respect to the subject-matter hereof, and supersede all prior or contemporaneous agreements or representations, written or oral, with respect to the subject-matter. Any additional or different terms or conditions contained or referenced in any Customer purchase order (or other Customer-issued document) are expressly objected to and rejected and will be of no force or effect. In particular, Customer specifically agrees that any Customer-generated pre-printed terms or general terms and conditions included or

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19.2 Order of Precedence. Except as explicitly stated otherwise herein, in the case of any conflict the following order of precedence shall apply: (i) the final Proposal; (ii) any applicable EULA(s) or Cloud Services Agreement(s), or other applicable terms and conditions, addenda, policies, or schedules, referenced in or attached to these Standard Terms and Conditions (with respect to the Offerings to which they apply); (iii) these Standard Terms and Conditions.

19.3 No Waiver. Hexagon shall have the benefit of all rights and remedies provided by law. Failure of Hexagon to exercise or reserve any right or remedy shall not be construed as a waiver thereof or of any other right or remedy.

19.4 Severability. If any term within the Contract is to any extent illegal, otherwise invalid, or incapable of being enforced, such term shall be excluded to the extent of such invalidity or unenforceability; all other terms hereof shall remain in full force and effect; and, to the extent permitted and possible, the invalid or unenforceable term shall be deemed replaced by a term that is valid and enforceable and that comes closest to expressing the intention of such invalid or unenforceable term.

19.5 Force Majeure. Neither Hexagon nor its Affiliates or suppliers will be liable or responsible for delay or failure to perform any obligations occasioned by any cause beyond their reasonable control, including but not limited to war; terrorist acts; civil disturbance; epidemic; labor unrest; shortage of raw materials or supply chain disruptions; fire; flood; earthquake; acts or defaults of common carriers or suppliers; governmental laws, acts, regulations, embargoes, orders or restrictions; or any other cause, contingency or circumstance not subject to their reasonable control.

19.6 Assignment; Subcontract. The Contract shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and permitted assigns. Customer may not assign or transfer, by operation of law or otherwise, the Contract (or any rights or obligations hereunder), without Hexagon’s prior written consent. Any attempted assignment or transfer in violation of the foregoing shall be void. Hexagon may freely assign or otherwise transfer all or any of its rights, or delegate or otherwise transfer all or any of its obligations or performance under the Contract without Customer’s consent. Hexagon, in its sole discretion, will determine the personnel assigned to perform any Services, and may perform its obligations through Affiliates, third-party representatives, or subcontractors. Customer acknowledges and agrees that Hexagon, and not its Affiliates, will be responsible for Hexagon’s obligations under the Contract.

19.7 Electronic Signatures. Signed copies of Contract documents transmitted via facsimile transmission, by electronic mail in .pdf or other reliable electronic form, will have the same effect as physical delivery of the paper document bearing the original signature. The Parties agree that electronic signatures may be used and shall be treated, for purposes of validity, enforceability as well as admissibility, the same as written signatures.

19.8 Notices. Notices required under the Contract shall be in writing. Notices shall be effective upon receipt. Hexagon may provide any notice to Customer by sending an email message to the email address then associated with Customer’s account.

19.9 Authorization. The person agreeing to the Contract on behalf of the Customer represents and warrants that such person is authorized to bind the Customer to the Contract.

19.10 Governing Language. In the event of translation of these Terms to a language other than German, the German language version shall govern in the event of a conflict.

20 OTHER TERMS

20.1 Resale of Third-Party Offerings. Third Party Offerings may be subject to additional or different third-party terms of use and/or end user license agreements accompanying such Third-Party Offerings, or otherwise presented to Customer, which Customer shall be bound by and adhere to.

20.2 Hardware Loaners or Rentals. Any Machine (or other equipment) loaners or rentals made available by Hexagon shall be governed by the terms and conditions of the Hexagon Manufacturing Intelligence hardware loaner or rental agreement, a copy of which is available upon request. In addition to any other requirements, Customer may be required to confirm its acceptance of the loaner or rental agreement, as part of Hexagon’s processing of any Customer loaner or rental request or order. For avoidance of doubt, notwithstanding anything to the contrary in these Terms or elsewhere, as between Hexagon and Customer, title to loaner and rental Machines and equipment shall remain in Hexagon.

20.3 Offering Specific Terms. Certain Offerings may be subject to additional or different terms applicable to specific Offering(s), such as services descriptions or other service-specific terms, product-specific terms, or other terms relating to specific Product or Service Offerings. Standard Offering specific terms may be made available on the Hexagon Contracts Website, or be attached to or referred to in the Proposal or in these Terms. The version of the applicable offering specific terms effective as of the date of the applicable Proposal shall be deemed incorporated into the Proposal. Customer shall be bound by and adhere to such offering specific terms, as applicable.
21 CHOICE OF LAW / JURISDICTION. The Contract and any disputes arising out of or in connection with the Contract shall be governed by the Governing Law set forth in the below table, without reference to conflict-of-laws principles and excluding the UN Convention on Agreements for the International Sale of Goods. Customer agrees to submit to the exclusive jurisdiction of, and venue in, the Jurisdiction for Disputes set forth in the table below, in any dispute arising out of or relating to the Contract. Notwithstanding the foregoing or anything to the contrary, Hexagon (and its Affiliates and licensors, as applicable) shall have the right to bring claims or actions in any court of competent jurisdiction for infringement of intellectual property rights (including related causes of action, such as breach of contract), to protect confidential information, to protect repossession rights, to enforce payment rights, or to seek equitable remedies.

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<th>If Hexagon’s principal place of business is in:</th>
<th>Governing Law</th>
<th>Jurisdiction for Disputes</th>
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<tr>
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Professional Services Addendum

This Professional Services Addendum (“Addendum”) is an addendum to the Standard Terms and Conditions to which it is attached. Capitalized terms used but not defined in this Addendum have the meanings set forth in the Standard Terms and Conditions. In the event of a conflict between the terms of this Addendum and the main body of the Standard Terms and Conditions, the Addendum takes precedence with respect to Professional Services only.

1. **Scope of Addendum.** The terms of this Addendum apply only to Professional Services, and not to sales of any Products, Software Maintenance, or Cloud Services. For the purposes of this Addendum only, references below to “Services” shall mean “Professional Services.”

2. **Description of Services.** Hexagon will provide ordered Services in accordance with the service description in the Proposal (or schedules thereto). Services are provided as a separate and independent service even if mentioned together with the sale or licensing of Products by Hexagon in the same Contract.

3. ** Cooperation.** Customer will cooperate fully and in good faith with Hexagon in the performance of Services by, without limitation, providing or obtaining for Hexagon, in a timely manner and at no charge to Hexagon: (a) such access and use of Customer’s premises or other facilities as reasonably required for Hexagon to perform the Services, if onsite performance of Services is agreed to; (b) such access and use of Customer’s equipment, software, drawings, models, parts, data, information or tools (“Customer Materials”) reasonably required for Hexagon to perform the Services; (c) complete, accurate and timely information, data and feedback as reasonably required to perform the Services; (d) all required licenses and consents to comply with all applicable law in relation to the Services to the extent that such licenses and consents relate to Customer’s business, premises, staff and/or Customer Materials; (e) complete information related to any restrictions on technical data, including export restrictions, that may impact Hexagon’s selection of personnel to perform the Services; and (f) any Customer deliverables and other obligations required for the performance of the Services. Hexagon’s performance obligations are contingent upon Customer’s compliance with Customer’s obligations. Hexagon shall not be responsible for failures or delays in performing Services due to Customer’s delays or failure to comply with Customer’s obligations. In performing the Services, Hexagon is entitled to base its conclusions on and rely on the accuracy and completeness of the information, data, material, and assumptions that are furnished by or on behalf of Customer, without any independent investigation or verification. In addition to any other remedies available, Hexagon is entitled to compensation for costs and expenses (such as travel expenses, cancellation and rebooking costs, non-productive labor hours and other personnel costs, and third-party expenses incurred by Hexagon), resulting from delays or re-scheduling caused by Customer.

4. **Confidentiality Information.**

4.1 “Confidential Information” means any non-public information and/or materials disclosed by a Party to the other Party in connection with Services under the Contract and reasonably understood to be confidential. Confidential Information excludes any information that: (i) is or becomes generally known to the public through no fault or breach of the Contract by the receiving party; (ii) the receiving party can demonstrate was rightfully in the receiving party’s possession the time of disclosure, without an obligation of confidentiality; (iii) the receiving party can demonstrate was independently developed by the receiving party without use of or access to the disclosing party’s Confidential Information; or (iv) the receiving party rightfully obtains from a third party without any duty of confidentiality or restriction on use or disclosure.

4.2 Each receiving party will: (i) take all reasonable security measures to maintain the confidentiality of the other party’s Confidential Information, but not less than the measures it uses for its own Confidential Information of similar value; (ii) use the other party’s Confidential Information only for the purpose of exercising its rights and performing its obligations under the Contract (or as otherwise expressly permitted under these Terms); and (iii) limit disclosure of the other party’s Confidential Information to its employees and subcontractors (and its Affiliates’ employees and subcontractors) that need to access such Confidential Information for the foregoing permitted purpose and are subject to legally binding obligations to maintain the confidentiality of the Confidential Information that correspond with the obligations under this Section. The receiving party shall be responsible for any violations of this Section by its Affiliates or subcontractors to whom receiving party discloses the other party’s Confidential Information. The receiving party may disclose Confidential Information of the other Party to the extent required by applicable law or order of a court or other government body or agency, but only if the receiving party provides prompt notice of that requirement to the disclosing party to enable the disclosing party to seek a protective order or otherwise prevent or restrict the disclosure. The confidentiality obligations stated in this paragraph shall survive for five (5) years from the date of disclosure hereunder.

5. **Services Deliverables.**

5.1 Services “Deliverables” means any reports, scripts, code, or other work results that Hexagon delivers to Customer in the performance of Professional Services under a Proposal. This Contract does not transfer from Hexagon to Customer any intellectual or industrial property rights and all such rights in all hardware, software, technology, information, data, documentation or other materials brought by Hexagon into any Services engagement, or which are created or developed by Hexagon in the course of or as a result of providing any of the Services, shall belong to
Hexagon (or its licensors, as applicable). Customer shall not reverse engineer, decompile or disassemble Deliverables, or remove any associated technical protection measures or security.

5.2 Subject to Customer’s compliance with these Terms and Hexagon receiving full payment under the Contract, Hexagon grants Customer a non-exclusive, non-transferable license to use the Deliverables, if any, for Customer’s internal business operations. Additional restrictions may apply as set forth in the Proposal or other Contract documents. The license to Deliverables granted does not apply to: (i) any Software products, associated materials, user documentation, or training materials; or (ii) items customarily licensed or otherwise provided by Hexagon under a separate agreement.

6 Customer Materials. Customer retains all its intellectual property rights in Customer materials and data it provides to Hexagon for use in connection with the performance of Services. Customer grants Hexagon a non-exclusive right to use the Customer-provided materials and data in fulfilling Hexagon’s obligations under the Contract.

7 Travel. Unless otherwise agreed, required travel for Services will be billed at Hexagon’s prevailing rates.

8 Non-Solicitation. Customer shall not, during the term of the applicable Services engagement and for one year thereafter, directly or indirectly solicit for hire as an employee, consultant or otherwise any of Hexagon’s personnel who have had involvement with the Services, without Hexagon’s express written consent, provided, however, that Customer shall not be precluded from hiring any employee of Hexagon who responds to any public notice or advertisement of an employment opportunity.

9 Training Materials. Where training materials are delivered by or on behalf of Hexagon, subject to Customer’s continued compliance with the terms and conditions of the Contract, and payment of all applicable fees and charges, Hexagon grants to Customer a non-exclusive, non-sublicensable, non-transferable license to use such training materials solely for internal personal training use by Customer’s personnel for whom the training was purchased, and subject to any other terms and restrictions identified by Hexagon or accompanying the training materials. Any further use, such as copying, modification, distribution, marketing, publication and disclosure to third parties, is not permitted without the written consent of Hexagon.

10 Change Order. Each Party may propose changes in the scope or schedule of the Services. Hexagon is not obligated to proceed with any change unless and until both Parties agree upon such change in writing. The written change documentation will describe the changes in scope and schedule, and the resulting changes in price and other provisions, as agreed.

Additional Terms Relating to Services for Machines

11 Machine Installation Services. If installation service for a Machine is ordered, Hexagon shall be obligated only to provide such equipment as is specified in the Proposal. Customer is responsible for preparing the site for installation of the Machine according to Hexagon’s instructions, including (among other things) providing electric power hookup, air supply, if required, or other special equipment as instructed by Hexagon. Customer shall pay Hexagon any and all costs resulting from Customer being unprepared on the agreed date for installation of the Machine, including, without limitation, a delivery extension surcharge, the cost of storage of the Machine, cancelation fees to installation subcontractors, and time lost by installation technicians.

12 Machine Hardware Maintenance Agreements (“HMAs”)

12.1 Hardware Maintenance. If hardware maintenance agreement (“HMA”) is ordered for a Machine, Hexagon will provide Customer with Services (e.g., annual certification and preventative maintenance) as described in the Proposal (or schedules thereto) for the Machine for which the HMA is purchased.

12.2 Machine Condition; Reinstatement Repairs. Machines eligible for an HMA must either be new or in good operating condition on the date the HMA is purchased. Hexagon reserves the right to inspect the condition of the Machine prior to and as a condition of performing Services under an HMA. For inspection and hardware maintenance of portable Machines (including portable measuring arms and laser trackers), Customer is responsible for shipping the portable Machine, at its own expense, to and from Hexagon’s designated inspection facility in accordance with the packaging and shipping instructions provided by Hexagon. If upon inspection, Hexagon determines the Machine is not in good operating condition, Hexagon will present to Customer a quotation for performing repairs necessary for reinstating the Machine to good operating condition as determined by Hexagon (“Reinstatement Repairs”). Reinstatement Repairs are separate and apart from HMAs, and are subject to separate quotations, fees and charges.

12.3 Access to System. Customer shall grant to Hexagon such access and use of the Machine reasonably required by Hexagon to perform applicable Services under the HMA. If a delay is caused by non-access to the Machine, Customer will be billed for Hexagon’s time involved waiting for access.

12.4 Machine Location. Customer will promptly advise Hexagon of any changes in the location of the Machine. In addition to any other rights and remedies reserved by Hexagon, Customer changes in the location of the Machine covered by an HMA may result in additional fees and charges (e.g., additional travel-related expenses for Services).