

Leica Geosystems

SmartLink General Terms and Conditions of Business

1 PRELIMINARY REMARK

All correction data provided within the framework of the SmartLink Services are subject to these General Terms and Conditions of Business for SmartLink as set forth below ("SmartLink Terms"). Leica Geosystems does not accept any contradictory or additional terms and conditions, even by accepting the Purchase Order referencing different terms and conditions. These Terms and Conditions cannot be altered, modified, or amended by subsequent Purchase Order or writing received from Buyer without the express written consent of Leica Geosystems. Customer's standard terms and conditions of business or purchasing shall only be effective if Leica Geosystems expressly acknowledges them in writing.

2 DEFINITIONS

- 2.1 **"Customer"** means a customer who is a user of the SmartLink Services on the basis of a valid Licence Agreement.
- 2.2 **"Embargoed Countries"** shall mean any country which is deemed by Leica Geosystems to be embargoed due to trade restrictions or security concerns. The Embargoed Countries are currently Cuba, Gaza Strip, Iran, North Korea, Syria and Turkish Republic of Northern Cyprus. Customer understands and accepts that this list may change from time to time and Leica Geosystems shall notify Customer accordingly in such an event.
- 2.3 **"Licence Agreement"** means an agreement signed in writing by Customer and confirmed in writing by Leica Geosystems containing the terms and conditions between the contracting parties with a view to the specific use of SmartLink Services and including the terms and conditions of these present SmartLink Terms by reference.
- 2.4 **"Licence fee"** means the fees which a customer must pay for the use of the SmartLink Services and which have been specified in the licence order to the Licence Agreement.
- 2.5 **"Start of licence"** means the time of the release for the use of the SmartLink Services.
- 2.6 **"Term of licence"** means the term of the licence agreement during which SmartLink Services shall be provided by Leica Geosystems.
- 2.7 **"GPS"** means the global positioning system operated by the United States Department of Defense, which alone is responsible for the precision, the daily operation and the maintenance of the GPS satellites.
- 2.8 **"GLONASS"** means the Russian satellite navigation system.
- 2.9 **"GNSS"** means the global navigation satellite system, which contains the signals of all global systems, i.e. GPS (US), GLONASS (Russia) and all and any future developments in satellite navigation included in the SmartLink Services by Leica Geosystems.
- 2.10 **"SmartLink"** means Leica Geosystems' use of orbit and clock corrections via geostationary L-band satellite to continue the output of a near RTK accurate position on

loss of RTK data which is generated and broadcast for use in receivers in order to improve the accuracy of stand alone GNSS positioning.

- 2.11 **"SmartLink Services"** shall mean clock and orbit correction data provided to a Customer by Leica Geosystems within the framework of a valid Licence Agreement.

3 GENERAL AGREEMENTS

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

4 ACCESS TO THE SMARTLINK SERVICES

- 4.1 Although the SmartLink Services are currently only based on the use of GPS and GLONASS observations, Leica Geosystems reserves the right to use additional global navigation satellite systems at its sole discretion.
- 4.2 The Customer agrees to comply with all applicable laws with respect to Export Controls and Economic Sanctions. The Customer agrees in particular not to export or re-export, directly or indirectly, SmartLink Services, software or technical data that are intended to be used for any purposes prohibited by the United States Government regulations or the EU Dual Use Regulations, including but not limited to nuclear and/or missile proliferation or chemical or biological weapons or weapons precursor development, unless the Customer first obtains written permission to do so from Leica Geosystems. In particular Customer acknowledges that SmartLink Services must not be used in, exported to or further re-exported to Embargoed Countries. Customer is obliged to provide Leica Geosystems with an end-user statement upon request. Where Leica Geosystems and/or any of its third party suppliers discovers that the SmartLink Services are being utilized in a Embargoed Country then Leica Geosystems and/or its third party suppliers shall be entitled to terminate the SmartLink Services forthwith and without penalty. Furthermore, Customer agrees not to further export or re-export SmartLink Services to any denied entities and denied individuals listed on any denied parties list or the entity list. Additional compliance requirements may be imposed upon Customer for any third party products and/or services pursuant to a third party agreement

(which Leica Geosystems may have with such third party entity for the purposes of the provision of the SmartLink Services), which requirements shall be provided to Customer by Leica Geosystems or by the third party. The Customer shall be fully liable to Leica Geosystems and/or any of its third party suppliers of products and/or services for all loss suffered by Leica Geosystems of any nature resulting from breach of this clause. The Customer's obligations in this clause shall survive the termination or expiration of this Agreement.

5. CONDITIONS OF USE

- 5.1 Customer agrees and accepts that precisions are completely dependent on Customer's GPS/GNSS receiver, the location of the GPS/GNSS receiver, the individual reception situation and the satellite geometry and availability and that Leica Geosystems cannot give any precision guarantees in this regard.
- 5.2 Customer agrees and accepts that use of the SmartLink Service can be interrupted or the validity of data can be impaired by local conditions such as signal blockages or disturbances or other phenomena.
- 5.3 Customer agrees and accepts that the use of SmartLink may also be interrupted by interference to SmartLink from atmospheric or other sources; or obstruction of access to the L-band satellite or interruption to or non performance of the GPS and/or GLONASS for whatever reason; Customer agrees and accepts that where any of the provisions of sub-sections 5.1 to 5.3 are applicable, then Leica Geosystems shall have no liability to Customer due to the non-availability or the SmartLink or due to Customer's inability to receive the SmartLink, in any circumstances whatsoever.

6. SERVICES OF LEICA GEOSYSTEMS

- 6.1 Leica Geosystems shall inform Customer as soon as possible in the event of failure or quality defects in the SmartLink Services. Further, Leica Geosystems shall notify Customer via suitable notice of intended changes to data contents and data formats if and insofar as these can have effects on the use of the SmartLink Services.
- 6.2 Leica Geosystems engages to undertake all economically justifiable efforts in order continuously to update and extend the performance potential of SmartLink Services.

7. PRICES AND PAYMENT TERMS

- 7.1 Upon conclusion of a Licence Agreement, a Licence fee in the amount stated in the licence order shall be due for payment.
- 7.2 Leica Geosystems shall charge the Customer an up-front payment in advance for the provision of the SmartLink Services. The SmartLink Services must be purchased by the Customer for a minimum period of two (2) calendar years. This amount is due in accordance with the payment terms stated in the license order.
- 7.3 If Customer falls into arrears with the payment of the amount due, Leica Geosystems can at its sole discretion either (i) postpone rendering of the SmartLink Services for as long as Customer fails to pay the amount due, or (ii) terminate the Licence Agreement with immediate effect.
- 7.4 To the extent not stated to the contrary in the Licence Agreement, all Licence fees shall be exclusive of statutory value added or turnover tax, which taxes shall be stated separately on any invoice and charged to Customer.
- 7.5 Offsetting of existing amounts between Customer and

Leica Geosystems by Customer is strictly prohibited. Customer may only offset counterclaims, which have been acknowledged in writing or are finally legally awarded.

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

8. TERM AND TERMINATION

- 8.1 Each Licence Agreement shall take effect following written order confirmation on the part of Leica Geosystems on the date of start of licence stated in the Licence Agreement.
- 8.2 The Licence Agreement shall apply for the term of the licence stated in the licence order. After the expiry of the term of licence, the Licence Agreement shall automatically be extended by the prior term of the agreement to the extent that no deviating licence term has been agreed in the Licence Agreement or the term of the licence is terminated prior to the end of the Licence Agreement with three (3) months' notice.
- 8.3 Leica Geosystems shall be entitled to terminate the Licence Agreement in writing at any time and at its sole discretion and to cease rendering of SmartLink Services totally or partly, taking a suitable run-up time into due account. In such a case, Customer shall have no kind of claim to damages whatsoever from Leica Geosystems or any of its third party suppliers of products and/or services. The fees paid for the ongoing term of the Licence Agreement shall be reimbursed to Customer pro rata temporis.

9. WARRANTY AND LIABILITY

- 9.1 The SmartLink Services shall not be provided operatively, functionally, technically or in any other way to satisfy the requirements of any specific Customer. Customer shall be responsible for ensuring that the SmartLink Services are suited to the purpose intended by it.
- 9.2 Leica Geosystems and/or its third party suppliers of products and/or services give no kind of warranty or assurance with a view to uninterrupted continuity of SmartLink Service (partial or total).
- 9.3 Leica Geosystems and/or its third party suppliers of products and/or services do not warrant that SmartLink Services are free from errors or defects.
- 9.4 Leica Geosystems and/or its third party suppliers of products and/or services assume no kind of responsibility or liability for any kind of loss or damage of any kind originating from:
 - (1) the use of the SmartLink Services;
 - (2) any kind of interruption or failure (partial or total) of any kind of electronic transmission of the SmartLink Service;
 - (3) any kind of interruption, disturbance, non-availability (partial or total) of the GNSS (or interruption, disturbance or non-availability of the SmartLink Services as a consequence thereof).
- 9.5 To the extent permissible by law, Leica Geosystems, its directors, employees, agents, consultants and/or any of its third party suppliers of products and/or services exclude any liability - regardless of whether from Licence Agreement, quasi-agreement or tort (including slight negligence) - or otherwise at law, for any indirect, particular, subsidiary and consequential damage or losses of business of any kind, loss of information or data, additional expenditure, third-party claims and other financial losses originating from or in connection with the SmartLink Services or for any other losses as a result of

the use, a failure or interruption of operation of the SmartLink Services. This shall apply even if Leica Geosystems has been informed of the possibility of the occurrence of said damage.

- 9.6 Leica Geosystems, its directors, employees, agents, consultants and/or any of its third party suppliers of products and/or services liability for payment of reimbursement for damage incurred by Customer on the basis of the SmartLink Terms shall only apply to damage directly occurring and shall be limited to the total amount of the Licence fee which Customer has paid to Leica Geosystems in correspondence with the SmartLink Terms, during the remaining term of the Licence Agreement.
- 9.7 Customer warrants that it will ensure that it and its employees possess the necessary knowledge in order to be able to make use of the SmartLink Services in the correct way. Leica Geosystems, its directors, employees, agents, consultants and/or any of its third party suppliers of products and/or services hereby reject any liability for losses and/or damage to be put down to insufficient knowledge of Customer with a view to the SmartLink Services.

10. DATA PROTECTION

- 10.1 Leica Geosystems warrants to Customer that it shall adhere to secure information handling when processing personal data and Customer related data and shall adhere in all respects to applicable European laws. All personal data and Customer related data received from Customer shall be processed solely for the purposes of providing the SmartLink Services and may be disclosed to Leica Geosystems third party supplier for the purposes of such third party assisting in the activation and support of SmartLink. All personal data and Customer related data received from Customer shall not be disclosed to any other third party organisations for any purposes whatsoever, without Customer's written consent.

11. FINAL PROVISIONS

- 11.1 These SmartLink Terms together with the licence orders and any annexes thereto, shall form the entire agreement between Leica Geosystems and the Customer with respect to the subject matter of the Licence Agreement and shall supersede all previous negotiations, assurances and agreements whether written or verbal.
- 11.2 Each supplement and/or any amendment to these SmartLink Terms must be made in writing. Any such supplement and/or amendment to these SmartLink Terms shall be endorsed by authorised signatories of the contracting parties.
- 11.3 Customer is not entitled to assign its rights, title and interest and/or any duties incumbent on Customer with respect to the SmartLink Terms to third parties and shall not be entitled to transfer the aforementioned in any other way, without the prior written consent from Leica Geosystems.
- 11.4 Customer shall reimburse Leica Geosystems for all costs, including all suitable attorneys' costs and court costs and fees incurred by Leica Geosystems in connection with any justified claim or assertion of its rights according to the SmartLink Terms.
- 11.5 Should any of the provisions of these SmartLink Terms – for whatever the reason – be declared null and void, such declaration shall have no effect whatsoever on the validity of the remaining provisions. In such a case, the invalid provision shall be replaced by another, legally

valid provision coming closest to the contracting parties' original intention.

12. APPLICABLE LAW AND VENUE

- 12.1 These SmartLink Terms including any Licence Agreement shall be governed by the laws of England and Wales, excluding any conflict of laws principle that would refer to the laws of another jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980, shall not apply. Both contracting parties engage to endeavour to find a mutual regulation in good faith in the event of differences of opinion in connection with these SmartLink Terms and any Licence Agreements. If no agreement can be reached amicably, despite the parties' best endeavours, the ordinary court of law at the registered office of Leica Geosystems shall be exclusively competent to determine the outcome on all disputes from or in connection with the matter in dispute, in which context Leica Geosystems shall also have the right to sue Customer at its place of residence or corporate headquarters.