



## **HEXAGON MINING SPECIAL TERMS AND CONDITIONS**

### **APPENDIX B - HARDWARE**

1. **Introduction**. This **Appendix B** constitutes an integral and inseparable part of the Contract along with the Hexagon Mining General Terms and Conditions and the Hexagon Quote or Order Form generated by Hexagon and executed by Hexagon and the Client ("**Order**") for the purchase and use of Hexagon's Hardware as agreed upon by the parties in the applicable Order.
2. **Hardware**. "**Hardware**" means any equipment, hardware, products or other goods (including commercially available components, cables, tablets, fasteners, chassis, housing and mounting hardware sold through Hexagon) supplied by Hexagon to Client.
  - 2.1. **Hardware under a Subscription or Lease Contract**. Upon payment of applicable fees and subject to the terms of the Contract, Hexagon grants to Client a limited, non-transferable (except as otherwise permitted by this Contract), revocable (if in violation of this Contract) right to use the Hardware in accordance with the Documentation, commencing on the date of delivery to Client for the term set forth in the Order and subject to any additional restrictions in this Contract. Client understands that this is a Subscription or a Lease, as the case may be, and is not the sale by Hexagon of any other rights or for perpetual use of the Hardware. All rights related to the Hardware not specifically granted hereunder are reserved by Hexagon. Upon expiration or termination of the Subscription or Lease Contract / Order, Hexagon shall have the right to immediately recover the Hardware in Client's possession.
  - 2.2. **Hardware under a Purchase Contract**. Upon payment of applicable fees and subject to the terms of the Contract, Hexagon transfer to Client the ownership of the Hardware to be used by Client in accordance with the Documentation. Such title and ownership shall be deemed transferred as of the date of delivery to Client and subject to any additional restrictions in this Contract. Client understands that this is a sale by Hexagon or the purchase by Client of the Hardware. All IP related to the Hardware ordered on a Purchase basis remains owned by Hexagon.
  - 2.3. **Acceptance**. By installing and/or using Hexagon's Hardware, Client is agreeing that it has read and accepts all the terms of the Contract, including this Appendix B, the General Terms and Conditions, and the Order. If Client does not agree to these terms, it may not install or use Hexagon's Hardware under a Subscription / Lease basis nor may it be entitled to the warranties set out herewith, under a Purchase Contract.
3. **Shipping; Risk of Loss**.
  - 3.1. **Shipments**. Hexagon will use commercially reasonable efforts to maintain the delivery date(s) as per the Order. However, delivery dates are approximate and not guaranteed. Any partial shipments must be agreed separately in writing and are conditioned upon Client's agreement to pay the corresponding invoice for the completed portion of the Order.
  - 3.2. **Risk of Loss**. Unless otherwise agreed by the Parties in the respective Order, all shipments are EXW (Incoterms 2010). Risk of loss will pass to Client upon shipment from or upon pick up at Hexagon's offices or from or upon delivery to Client's premises, as set forth in the Order ("**Delivery**"). If applicable law does not recognize a security interest in retained title, Client hereby grants, and Hexagon retains a security interest in the Hardware until full payment has been received by Hexagon. Client grants Hexagon the right to perfect its security interest by



filing any registrations, notices, or other filings as may be required in Hexagon's sole discretion. No title of Hardware shall pass on or be transferred to Client under a Subscription Contract.

- 3.3. **Transportation.** Unless otherwise agreed by the Parties in the respective Order, Client will be responsible and will insure the Hardware against loss for the full replacement value during transport to Client. Client agrees to prepare and load the Hardware at Hexagon's facilities with industry-standard practices to minimize the risk of loss or damage to the Hardware during transit.
- 3.4. **Storage.** Hexagon is not, at any time, responsible or accountable for guarding, storing or keeping any Hardware safe from harm and/or environmental conditions at Client's facilities.

#### 4. **Warranty.**

4.1. Hexagon warrants that:

(A) At the time of initial installation, the Hardware will substantially conform to published specifications, provided that it is used properly in accordance with the Documentation and is used with the computer software and with the operating system for which it was designed;

(B) The Hardware (including any system Software) will be free from material defects in workmanship and quality, under normal use, in accordance with the Documentation for **ninety (90) days** from the date of Delivery by Hexagon. The aforementioned warranty does not apply to Hardware repaired or replaced by Hexagon. Such repaired or replaced Hardware will be warranted for the time period as set forth in the Order or, if none, for a period of thirty (30) days from the date of the return shipment back to Client; and

(C) If applicable law mandates a different warranty than as stated herein, Client agrees that the applied warranty will be limited and disclaimed to the greatest extent permitted by such applicable law.

4.2. Client warrants that:

(A) will **not** modify, translate, reverse engineer, reverse compile, decompile, reverse assemble, disassemble, make any attempt to discover the source code of the on-board Software or the underlying ideas, algorithms, structure or organization form of the Hardware, or create derivative works based on the Hardware or its related materials or Documentation. To the extent that the Hardware incorporates its own or third-party developed interfaces or libraries (for example, DLL files), Client is not allowed to invoke such interfaces, or use such interfaces as a development tool;

(B) will **not** assign, resell, share, pledge, rent, gift, or otherwise transfer or grant any rights in the Hardware or related Documentation or components in any form to any person not a party to this Contract (excepting permitted assignees), or, **under a Subscription or Lease Contract**, use the Hardware on a service bureau or time sharing arrangement without the prior written consent of Hexagon.

(C) will **not** attempt to defeat, avoid, by-pass, remove, deactivate or otherwise circumvent any Hardware protection mechanisms for and/or in the Hardware, including without limitation any such mechanism used to restrict or control the functionality of the Hardware;

(D) will **not** remove, delete, alter, or obscure any Hexagon or third-party trademarks, copyright, proprietary notices, labels, or marks from the Hardware;



(E) will **not** separate Hardware components and install them on different devices or remove any Software from the Hardware on which it may come preinstalled.

(F) **not** sublicense, assign, resell, share, pledge, rent, gift, or otherwise transfer or grant any rights in the on-board Software or related Documentation or components in any form to any person not a party to this Contract (excepting permitted assignees), or use the on-board Software on a service bureau or time sharing arrangement without the prior written consent of Hexagon;

(G) will **not** permit any third party to do any of the foregoing; and

(H) may, under a Subscription Contract, may transfer the Hardware between related Client sites only with prior written consent from Hexagon (not to be unreasonably withheld) and following payment to Hexagon of the applicable transfer fees.

(I) The Documentation received from Hexagon is licensed to Client upon purchase of the Hardware or its Subscription / Lease. Client may copy or reproduce the Documentation to the extent reasonably required for the purpose of using the Hardware. All right, title, and interest in and to such copies shall belong to Hexagon. Client must ensure that the copies are clearly marked with a notice stipulating that the Documentation belongs to Hexagon and must not be reproduced.

(J) is responsible for following Hexagon's recommendations regarding technical specifications, system requirements, proper installation, proper use, and other user guidelines provided by Hexagon, available upon request.

(K) Some or all of the Hardware may be subscribed or leased to Client on a trial basis. Client's rights to use trial Hardware are limited to the trial period, and all restrictions and obligations outlined herein apply during and after said trial period.

## **5. Warranty Disclaimers; Remedies; Performance Guarantee**

### **5.1. Warranty Disclaimers.**

(A) Except as otherwise expressly set forth in the Order, the Hardware is provided "AS IS" and "AS AVAILABLE." The warranty set forth in Section 4.1 of this Appendix B is the sole and exclusive warranty given by Hexagon for the Hardware and are in lieu of and exclude all other warranties, express or implied, arising by operation of law or otherwise, including without limitation warranties of merchantability, title, satisfactory quality, non-infringement, course of dealing or performance, usage in trade, and fitness for a particular purpose or intended use (whether or not such use or purpose has been disclosed to Hexagon).

(B) Hexagon does not warrant that Client's use or receipt of Hardware will be error free, free from interruption or failure, or will achieve specific or desired results. Client hereby acknowledges that the Hardware may become unavailable or interrupted due to periodic system maintenance and other factors such as acts of God, technical failure, user error, Software/Hardware failure, telecommunications infrastructure problems, viruses, denial of service attacks, increased or fluctuating demand, actions or omissions by third parties, or other causes.

(C) Client's warranty will be immediately voided as a result of Hardware defects or malfunctions caused by acts or omissions in violation of this Contract; maintenance, repair, alterations, or modifications made without written authorization of Hexagon; improper storage, installation, handling, or use, including any use of the Hardware with any software or hardware not provided by Hexagon; or failure to use the Hardware in accordance with the Documentation or other technical specifications or system requirements.



(D) Except where otherwise regulated by applicable law, warranties do not extend to third-party products, consumables (e.g., cables, reflectors, bulbs, fuses, batteries, etc.), antennas, or normal wear and tear or deterioration.

## 5.2. **Remedies.**

(A) The sole and exclusive remedy in regards to the Hardware warranty is repair or replacement even if such remedy should fail of its essential purpose.

(B) Client must notify Hexagon within thirty (30) days of Client's discovery of any Hardware warranty defect. Hexagon may inspect the Hardware to confirm warranty applicability. If such Hardware error qualifies as a warranty defect, Hexagon in its sole discretion, and as Client's sole and exclusive remedy, will repair or replace the Hardware, as the case may be, or, if Hexagon is unable or unwilling to repair or replace the Hardware, Hexagon will issue a refund for the portion of the Hardware found by Hexagon to be defective. Failure by Client to give Hexagon notice of the defect within the applicable time period will be an unconditional and absolute waiver of Client's claim for such defect. Client agrees to return such Hardware to Hexagon's designated premises at the Client's expense. The Client will, at its own expense, arrange for any required dismantling and reassembly of any other equipment to the extent necessary to remedy the defect. Any costs and expenses related to the return of the repaired Hardware to Client's site shall be borne by Client.

5.3. **Performance Guarantee.** Hexagon does not and will not guarantee any financial results which may be expected by Client in regard to the Hardware, whether purchased or subscribed to by Client. Hexagon's guarantee, subject to the warranty terms stated here in, is solely limited to the adequate functioning of the Hardware based on its technical specifications and according to the terms and conditions established herein.

## 6. **Hardware Maintenance** (Refer to Appendix D "Special Terms and Conditions –Maintenance / Subscription" for details).

6.1. **Technical Support.** Unless otherwise stated in the Order, technical support for Hardware is available through Hexagon regional offices via email, internet, and telephone, according to the Technical Specifications and **provided that Client is current with required payments for Maintenance.** In many countries, toll-free telephone numbers are provided for support. Technical support may provide assistance during normal business hours (unless otherwise agreed by the parties) to download and install enhancements, corrections, upgrades, and updates.

6.2. **Errors; Enhancements and Fixes.** Within the warranty or Maintenance / Subscription term, as the case may be, Hexagon will work to resolve reported repeatable Hardware problems and find a temporary solution within a reasonable time. Hexagon will provide such corrections as well as firmware updates and upgrades **pursuant to special terms and conditions set forth by Appendix D.**

## 7. **Payment; Taxes.**

7.1. **Invoicing; Fees.** The Hardware will be invoiced according to the fees and payment terms specified in the Order.

7.2. **Payment.** Unless otherwise specified in the Order, all invoices are due within thirty (30) days of the date of the invoice. All fees are non-refundable and due in the currency indicated in the relevant Order.



- 7.3. **Late Payments.** After thirty (30) days an unpaid invoice is delinquent and will accrue 1.5% interest per month or the highest rate permitted by applicable law, whichever is lower. If payment is delinquent, Hexagon may suspend or cancel the relevant Order at its sole discretion. If more than one late payment occurs, Hexagon may require full payment prior to future Deliveries.
- 7.4. **Invoice Disputes.** Client agrees to notify Hexagon within fifteen (15) days of receipt of any invoice if it disputes such invoice or any portion thereof along with reasonable documentation as to the dispute. All undisputed fees are payable as if such invoice was not under dispute. For disputed fees, the parties will discuss and timely resolve in good faith. If, after discussions, it is determined by both parties that any such amount was improperly disputed, Client agrees to pay such disputed amount together with interest accruing as of the date the invoice was originally due in accordance with Section 7.3.
- 7.5. **Taxes.** Unless otherwise specified in the Order, fees due are exclusive of taxes, duties, and other charges imposed or levied by governmental entities. If applicable, Client is responsible for all costs for customs documentation, duties, taxes (including VAT, PST, IVA and GST), and other charges or fees payable relating to the Hardware. Should any additional government or regulatory duties or charges become payable directly or indirectly as a result of the performance of this Contract, such amounts shall be payable directly by the Client or as a Reimbursable Expense due to Hexagon.

## **8. Title and Risk.**

- 8.1. **Hardware Purchase.** Notwithstanding the provisions set out in Section 2.2 of this Appendix B, the title of a Hardware purchased by Client shall pass on to Client upon the payment of the corresponding fees to Hexagon, pursuant to Section 7.2 of this Appendix B. Title to the Hardware shall be voided if Client infringes any of the provisions set out in Section 4.2 of this Appendix B.
- 8.2. **Hardware Subscription / Lease.** Notwithstanding the provisions set out in Section 2.1 of this Appendix B, all Hardware ordered on a Subscription or Lease basis remain owned by Hexagon. However, Client's granted rights to use the subscribed or leased Hardware shall be subject to the provisions set out in Sections 3 and 4 of this Appendix A. All rights not specifically granted hereunder are reserved by Hexagon.

## **9. Term and Termination.**

- 9.1. **Term (Purchase).** If the Hardware is purchased by Client, the respective Contract shall become effective on the date of its execution (or the execution of the relevant Purchase Order issued by Client) and remain effective until Delivery of the purchased Hardware is complete.
- 9.2. **Term (Subscription / Lease).** If the Hardware is subscribed or leased by Hexagon to Client under a Subscription / Lease Contract / Order, the respective Contract / Order shall become effective on the date of its execution and remain effective until its expiration date, unless Subscription / Lease is breached pursuant to Section 4.2 of this Appendix B.
- 9.3. **Termination for Cause.** Either party may immediately terminate the Contract / Order if the other party breaches any terms contained herein provided the breaching party is afforded a thirty (30) day right to attempt to cure such breach after written notice of such breach is delivered to the breaching party. Should termination occur due to breach, the parties shall proceed as follows:
- (A) **Breach by Hexagon.** If the Hardware is not delivered to Client according to the schedule or specifications established in the Contract / Order or if the Hardware delivered to Client fails to perform according to the technical specifications set forth by the respective



Documentation, Client shall have the right to terminate this Contract or the relevant Order, notwithstanding the provisions set out in Sections 5.2 (A), (B) and 9.3 of this Appendix B and 14.4 of the Hexagon General Terms and Conditions.

- (B) **Breach by Client.** If this Contract is breached by Client pursuant to Sections 4.2 and 7.3 of this Appendix B, Hexagon shall have the right to terminate this Contract or the relevant Order, notwithstanding the provisions set out in Sections 9.3 of this Appendix B and 14.4 of the Hexagon General Terms and Conditions.
- (C) **Breach by Either Party.** Hexagon or Client may immediately terminate this Contract (or any Order) in the event of any dishonest, illegal, or other material action or omission detrimental to the interests of Hexagon or Client, as the case may be, or in the event of bankruptcy, liquidation, dissolution or discontinuance of business by Client or Hexagon, or the filing of any petition by or against Client or Hexagon under any federal, state, local or other applicable bankruptcy or insolvency laws.