

## **Maintenance Service (“Care Plan”) Terms and Conditions**

The terms set forth herein apply to any Care Plan entered into by the customer (“**Customer**”) with Kongsberg Precision Cutting Systems to the extent such terms are not in conflict with specific terms agreed upon as part of the order documentation. In case of conflict between the terms set forth herein and the terms set forth in the order documentation, the latter shall control.

For the purpose of this Care Plan “Kongsberg Precision Cutting Systems” refers to Kongsberg Precision Cutting Systems Belgium BV or the local “Kongsberg” branded affiliate having fulfilled the order of the Customer, as the case may be. The “Customer” refers to the person or legal entity appearing on the order documents as Kongsberg’s customer.

1. *Care Services.* During the Term of the Care Plan entered into, in relation to the Product(s) covered, Kongsberg Precision Cutting Systems will provide Customer, on an industry standard basis and in accordance with the service levels set forth by the corresponding Care Plan (if any), with (i) remedial services in response to a notification by Customer that a Product is inoperative or substantially fails to perform in accordance with the Product documentation (“**Errors**”), (ii) certain Updates to the Products, (iii) (pertaining to Hardware Products) certain Spare Parts, and/or (iv) certain ancillary services, all in accordance with and subject to the terms of the specific Care Plan entered into by the Customer (jointly “**Care Services**”). Kongsberg Precision Cutting Systems reserves the right to engage subcontractors in the performance of its obligations under this Agreement, and agrees to be responsible for any acts or omissions by such subcontractors, performed within the scope of exercising Kongsberg Precision Cutting Systems’ obligations under this Agreement.

In relation to Software Products, including the case being Software Products incorporated into Hardware Products, remedial services aimed at correcting Errors may, at Kongsberg Precision Cutting Systems’ discretion, be performed through a software fix (i.e. either a permanent resolution or temporary workaround or patch), or by making an Update or Upgrade that addresses the Error available to Customer, provided that the method of addressing Errors through software fixes is only available in view of the most recent commercial release of the Software Product and two immediately preceding minor versions of the Software Product (defined as a version of the Software Product indicated by a version number of x.y-1 or x.y-2 where x.y is the most current commercial release of the Software Product).

In relation to Software Products where dependencies in versioning exist, Kongsberg Precision Cutting Systems recommends to maintain such Software Products at the same versioning when updating. In case such recommendation is not observed, all warranties provided for in relation to the affected Software Products shall lapse, and Kongsberg Precision Cutting Systems disclaims any liability in relation to its failure to perform any of its obligations under this Agreement.

2. *Products Covered.* The Care Services performed under this Agreement solely pertain to the hardware and/or software covered by the corresponding Care Plan (jointly the “**Products**”). The Products covered by the Care Plan entered into at the Effective Date of this Agreement are listed as part of the Care Plan entered into. During the Term of an applicable Care Plan, the parties may add or remove Products covered in writing, subject to the parties’ mutual consent and, the case being, an adjustment of the Care Services Charges as agreed upon at such time.

3. *Excluded.* Excluded from the performance of Care Services are any services relating to (i) improper handling; use of a Product not in accordance with the Product documentation; or causes other than normal wear and tear; (ii) modifications made to, services performed, or attempts to repair a Product by anyone other than Kongsberg Precision Cutting Systems or a Kongsberg Precision Cutting Systems authorized reseller or representative; (iii) Customer’s failure to maintain a suitable operating environment or minimum system requirements specified as part of the Product documentation or separately provided by Kongsberg Precision Cutting Systems; (iv) Hardware Products that require refurbishment; (v) Hardware Products subjected to unusual physical or electrical stress.

4. *Customer Responsibilities.* Customer shall,

(A) provide for (i) remote access to the Products (TeamViewer or a similar software product as determined by Kongsberg Precision Cutting Systems), and (ii) in case an onsite intervention per the corresponding Care Plan is required, physical access to the Products in order to facilitate the performance of the Care Services;

(B) pertaining to hardware Equipment, perform routine maintenance procedures as prescribed in the Product documentation;

(C) perform routine system and user file backups as described in the Product documentation;

In order to provide Care Services pursuant to this Agreement, Kongsberg Precision Cutting Systems sponsored modifications may, at Kongsberg Precision Cutting Systems' discretion, be made to the Products. Customer shall provide access to the Products (remote or otherwise as directed by Kongsberg Precision Cutting Systems), during normal service hours upon notification from Kongsberg Precision Cutting Systems that a modification is to be made. Kongsberg Precision Cutting Systems disclaims any liability for its failure to perform any of its obligations under this Agreement in case such access is refused.

**5. Care Plan Charges.** In consideration of the rights set forth herein, Customer agrees to pay Kongsberg Precision Cutting Systems the Care Plan Charges set forth by the applicable Care Plan or in the applicable order documentation, and any further charges set forth herein. Unless set forth otherwise, Care Plan Charges shall be invoiced in advance and are payable either (i) within thirty (30) days from invoice date or (ii) prior to the start of the Initial Term or any Renewal Term of the applicable Care Plan, whichever occurs first.

Applicable to any Care Plan that auto-renews per the terms of Section 7, following the Initial Term, Care Plan Charges are subject to increase to compensate for indexation/inflation per a notice from Kongsberg Precision Cutting Systems; Kongsberg Precision Cutting Systems further reserves the right to change Care Service Charges applicable to any Renewal Term by means of a written notice at least 120 days prior to the expiration of the then current Term. In case Customer cannot agree to such change in pricing, Customer, as a sole remedy, has the option to cancel the corresponding Care Plan per the terms of Section 7.

Care Services performed (i) outside the window of Working hours (normal or extended if covered), at the request of Customer (ii) in view of reasons excluded per Section 3, or (iii) not covered by the particular Care Plan entered into, shall be charged at the then prevailing hourly Kongsberg Precision Cutting Systems rate, available upon request.

Kongsberg Precision Cutting Systems reserves the right to use electronic invoicing methods, and Customer consents to the same. Each party shall bear its own taxes incurred in the performance of this Agreement, including but not limited to sales, use, revenue, gross receipts, income, value added and other national, federal, state or local taxes and import duties.

**6. End-of-life.** Kongsberg Precision Cutting Systems reserves the right to declare any particular Product "end-of-life". In such case, following a corresponding notification to Customer, and unless agreed upon differently in writing, the Product(s) affected shall be considered removed from the scope of Products covered under the affected Care Plan from the corresponding date set forth in such notification. Care Plan Charges shall be adjusted accordingly.

#### **7. Term, termination & suspension.**

A Care Plan is entered into from the start date set forth in the corresponding order documentation, the start date set forth by the Care Plan or in the absence thereof the signature date of this Agreement, and remains in place for a non-cancellable term indicated by the Care Plan, the order documentation, or in the absence thereof a term of one year from the start (jointly the "**Initial Term**"). Absent an end date set forth by the applicable Care Plan and absent written notice of cancellation by either party at least 90 days prior to the expiration of the then current Initial or Renewal Term, a Care Plan auto-renews by consecutive one (1) year terms each time upon its anniversary date (with each such consecutive term being referred to as a "**Renewal Term**"). A Care Plan with an end date stipulated by such Care Plan automatically expires upon the expiration of the indicated term, unless timely renewed by mutual consent of the parties.

Each party may terminate this Agreement (i) in case of the other party failing to perform any material obligation set forth by this Agreement, with such material breach remaining uncured following a ten (10) days written notice identifying said failure; In case such failure is not capable of being remedied, termination may occur forthwith; or (ii) if a receiver is appointed over the other party or its property; if the other party becomes insolvent or materially unable to pay its debts as they mature in the ordinary course of business or makes an assignment for the benefit of its creditors; or if any proceedings (whether voluntary or involuntary) are commenced against the other party under any bankruptcy, insolvency or debtor's relief laws and such proceedings are not vacated or set aside within sixty (60) days from the date of the commencement thereof. Without prejudice to any other or further remedy available, Kongsberg Precision Cutting Systems reserves the right to suspend the performance of any obligation under this Agreement in case of Customer failing to pay Care Services per the terms set forth herein.

## 8. Confidentiality

8.1 During the Term of this Agreement, either party may receive from the other party or have access to certain information of a technical or business nature, labelled as confidential or proprietary to the other party, or which under the circumstances of disclosure is reasonably to be considered as being confidential or proprietary to the other party ("**Confidential Information**").

8.2 The receiving party agrees (i) to only use the other party's Confidential Information for the purpose of performing its obligations under this, (ii) to protect the confidentiality of such Confidential Information using the same degree of care it uses to protect its own information of a confidential nature (and at least reasonable care) and (iii) to disclose such Confidential Information only to its employees, directors, consultants, contractors, affiliates or agents ("**Authorized Representatives**") who have a need to know such information for the same purpose, provided that Authorized Representatives are bound by obligations of confidentiality substantially similar to those set forth herein.

8.3 The obligations stated in this Section 8 shall however not apply in relation to any information which

(a) was already known to the receiving party at the time of its disclosure by the disclosing party; (b) is or becomes publicly available through no fault of the receiving party; (c) is rightfully received from a third party without a duty of confidentiality; or (d) is independently developed by the receiving party without use of or reference to the other party's Confidential Information.

9. Limitation of liability. KONGSBERG PRECISION CUTTING SYSTEMS MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, OTHER THAN THOSE EXPLICITLY SET FORTH IN THIS AGREEMENT.

IN NO EVENT WILL KONGSBERG PRECISION CUTTING SYSTEMS, REGARDLESS OF LEGAL THEORY, BE LIABLE FOR ANY INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, SUCH AS BUT NOT LIMITED TO ANY LOSS OF PROFIT, LOSS OF ANTICIPATED SAVINGS, LOSS OF DATA, OR ANY OTHER ECONOMICAL ADVANTAGE, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY MATERIALS OR SERVICES PROCURED UNDER THIS AGREEMENT.

IN NO EVENT WILL KONGSBERG PRECISION CUTTING SYSTEMS' LIABILITY, REGARDLESS OF LEGAL THEORY, EXCEED, FOR ALL CLAIMS IN AGGREGATE, AN AMOUNT EQUAL TO THE TOTAL AMOUNT PAID BY CUSTOMER TO

KONGSBERG PRECISION CUTTING SYSTEMS UNDER THIS AGREEMENT DURING THE PERIOD OF SIX (6) MONTHS IMMEDIATELY PRECEDING THE INITIAL CLAIM.

10. *Miscellaneous.* Customer shall not assign this Agreement or any rights or obligations under this Agreement absent Kongsberg Precision Cutting Systems' prior written consent.

This Agreement, including any terms incorporated herein by reference, shall constitute the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior related proposals, negotiations and discussions between the parties. This Agreement shall not be modified except by a written instrument duly executed by authorized representatives of the parties. This Agreement may be executed by electronic signature in two or more counterparts, all of which seen together will constitute one and the same agreement.

Force Majeure Events. Neither party will be responsible for, nor be in default under this Agreement due to any delays or failure of performance (except payment obligations) reasonably resulting from acts or causes beyond its reasonable control, including without limitation acts of war, government restrictions or embargoes, third-party labor strikes, power failures, floods, fire, earthquakes, other natural disasters, or other similar events ("**Force Majeure Event**"). In the event that either party is reasonably unable to perform any of its obligations under this Agreement because of a Force Majeure Event, the party who has been so affected will promptly give notice to the other and will exercise all reasonable efforts to resume performance upon the passing of the Force Majeure Event.

This Agreement shall be governed by and construed in accordance with the laws of the country, state or other geographic designation where the registered seat of Kongsberg Precision Cutting Systems is located, without reference to its conflicts of laws principles. The United Nations Convention on the International Sale of Goods will not apply. Each party hereby consents, on an exclusive basis, to the jurisdiction of the courts where the registered seat of Kongsberg Precision Cutting Systems is located, to hear decide upon any conflict and litigation arising from this Agreement, the interpretation, performance and breach thereof. Notwithstanding the previous, Kongsberg Precision Cutting Systems shall be entitled to bring any actions against Customer in the courts of the jurisdiction or place where Customer is established, domiciled or operating, if the action concerns the collection of a debt, money owed or non-payment of invoices or protection or enforcement of Kongsberg Precision Cutting Systems intellectual property rights.