

**General Terms and Conditions for Servicing, Maintenance and Repairs**  
**GTC-SMR ("Terms and Conditions")**

**1. General Provisions**

- 1.1 The entire business relationship between Trioptics GmbH (hereinafter "TRIOPTICS") and the customer (hereinafter the "Customer"), including any future agreements related to servicing or repairs between TRIOPTICS and Customer, shall be governed exclusively by the following terms and conditions, whether services are rendered directly by TRIOPTICS or by a subcontractor. There are no oral collateral agreements between the parties. TRIOPTICS hereby expressly objects to any terms and conditions of purchasing or other terms and conditions of Customer, even if TRIOPTICS renders services without reservation in full knowledge of conflicting, different, or missing terms and conditions or if Customer makes reference to the applicability of its general terms and conditions in Customer's inquiry or order. This shall also apply if and to the extent that the scope of the terms and conditions of purchasing or other terms and conditions of Customer exceeds the scope of these Terms and Conditions. Any conflicting terms and conditions of purchasing of Customer shall apply only if accepted in writing by TRIOPTICS. In special cases where the parties agree to depart from one or the other term of the Terms and Conditions, the applicability of the remaining provisions of these Terms and Conditions shall remain unaffected. Information about the collection and processing of personal data is available in our Data Privacy Policy.

**2. Offer and Acceptance**

- 2.1 All offers of TRIOPTICS are non-binding and subject to change. An order placed by Customer constitutes a binding contract offer in accordance with § 145 of the German Civil Code (*BGB*). TRIOPTICS shall have the right to accept an offer within two weeks from receipt. If TRIOPTICS fails to respond to an offer within the acceptance period, such failure shall not be construed as implied acceptance. Acceptance of an offer shall be valid only if declared by an authorized representative of TRIOPTICS. Any collateral agreements shall be valid only if confirmed in writing by TRIOPTICS. Once made, contract offers of Customer may not be revoked, unless a notice of revocation is received by TRIOPTICS before or simultaneously with the offer.

2.2 Unless agreed otherwise, prices shall be *ex works* in Wedel, including standard packaging suitable for shipment by air, excluding insurance and all shipping costs, charges, customs fees, taxes and fees, and plus any applicable value-added taxes.

### 3. **Contract Terms**

3.1 These Terms and Conditions shall govern servicing and repairs of the specific equipment and systems (hereinafter the "Measuring Systems") itemized in the Servicing and Repair Agreement (hereinafter the "Agreement"), remote servicing of the software/firmware of Measuring Systems, the availability of replacement parts and wear and tear parts for Measuring Systems, telephone and e-mail support for Measuring Systems, and the 48-hour response service. All services shall be provided in accordance with a service agreement, and any applicability of legal provisions governing contracts for the delivery of work is hereby excluded.

3.2 "Servicing" shall mean any work required to be performed by TRIOPTICS to maintain Measuring Systems in normal working condition by preventing any errors or malfunctions, including the following work:

- Visual inspection of Measuring Systems
- Visual inspection of individual components
- Cleaning of all relevant individual components
- Functional testing of individual components
- Functional testing of Measuring Systems
- Functional testing of software
- Software upgrades, if available
- Training for new software options
- Recertification of Measuring Systems
- Scheduled replacement of wear and tear parts
- Delivery of updated versions of the licensed software
- Recalibration of Measuring Systems

3.3 "Repair" shall mean any measures taken to correct material malfunctions of Measuring Systems (hereinafter "Malfunctions"). Repairs include no warranty for the operational condition of

Measuring Systems, but shall be limited to measures taken for the purpose of correcting Malfunctions.

- 3.4 "Recertification" shall mean any measures taken to test and guarantee the accuracy of Measuring Systems.
- 3.5 TRIOPTICS hereby agrees to commence with servicing and repair work within the time periods specified in these Terms and Conditions. TRIOPTICS makes no warranty for the effectiveness of any measures taken.
- 3.6 If desired by Customer, TRIOPTICS shall stock parts in the warehouse of TRIOPTICS for Measuring Systems of Customer during the term of the Agreement which are subject to replacement on a regular basis during scheduled servicing (hereinafter "Wear and Tear Parts"), as well as parts which are determined to be defective during repairs and which must be replaced to restore Measuring Systems to operational condition (hereinafter "Replacement Parts").
- 3.7 The following services are not included in the Agreement, but may be ordered separately from TRIOPTICS:

Hardware:

- Management and expansion of Measuring Systems.
- Replacement of complete Measuring Systems which are subject to normal wear and tear during operation and which have reached the end of their service lives.
- Servicing of changes made to equipment and accessories supplied by Customer, and correction of any defects in Measuring Systems caused by such changes.
- Transport to and restart of Measuring Systems at another location

Software:

- Support, servicing, and updates of the operating system or other, additional software installed by Customer.
- New software functions to be developed and implemented.
- Conversion of software for another operating system.
- New installation of operating systems, application software, and software drivers.

- Support and servicing of the data network and network connections.

#### **4. Initial Inspection**

Before servicing, repair, or recertification services can be provided, TRIOPTICS shall first inspect the performance, mechanics, and cabling of Measuring Systems at the cost of Customer (hereinafter "Initial Inspection") and, if necessary, perform basic servicing work on Measuring Systems as agreed with Customer.

#### **5. Servicing**

In case of the service package "Servicing" TRIOPTICS shall service the Measuring Systems covered under the Agreement at the agreed intervals. If the specified number of operating hours will be reached before the scheduled service date, Customer shall notify TRIOPTICS thereof and the service shall be performed before the scheduled servicing date. Customer shall keep records of the number of operating hours that have actually lapsed.

#### **6. Repair**

- 6.1 In case of the service package "Repair" TRIOPTICS shall take measures to repair Measuring Systems. DBA makes no warranty that repairs will be made within a certain time period.
- 6.2 All repairs must be preceded by a report of malfunction. Customer shall report malfunctions using the following link: <http://www.trioptics.com/contact-service/service-request-form/>
- 6.3 Once reported, a malfunction will be automatically registered in the IT system of TRIOPTICS and Customer will be provided with a return merchandise number ("RMA Number"), which will be required for subsequent measures.
- 6.4 If Customer wishes to return materials or components to TRIOPTICS, Customer shall first request an RMA Number from TRIOPTICS. This number is indispensable for a correct assignment of products returned to TRIOPTICS. Otherwise returns cannot be processed. Any and all risks, costs, loss of materials, etc., associated with a missing RMA Number shall, without exception, be

borne by Customer. The RMA Number must be affixed to returned materials and must appear clearly and unambiguously on all documents related to returned materials. Materials shall be returned to the following address:

TRIOPTICS GmbH  
Attn.: SERVICE RMA No.: #XXXXXXXXXXXXXXXXXX  
Strandbaddamm 6  
22880 Wedel  
Germany

## **7. Remote Servicing of Software/Firmware**

In case of the service package "Remote Servicing of Software/Firmware" TRIOPTICS shall perform remote services on the software for Measuring Systems during business hours in Germany (Monday through Thursday from 8:00 a.m. to 5:00 p.m., and on Friday from 8:00 a.m. to 3:00 p.m., except for weekends and German holidays).

7.2 TRIOPTICS shall provide the following services:

- Functional testing of software/firmware
- Software upgrades, if available
- Training for new software options

7.3 For remote servicing TRIOPTICS shall use the software of TeamViewer GmbH, a company with its registered office in Göppingen, Germany ([www.teamviewer.com](http://www.teamviewer.com)). Customer hereby consents to the use of this software. To allow for remote servicing, Customer must install TeamViewer on the Measuring System, connect the Measuring System to the Internet, manually allow TRIOPTICS to access the Measuring System, and, if necessary, deactivate the firewall of the system, so as to provide TRIOPTICS with access via TeamViewer.

7.4 Customer further shall ensure that the transmission rate of its Internet connection is at least 1 MB/sec.

- 7.5 In addition, trained staff of Customer must be present on location to operate Measuring Systems during remote servicing.
- 7.6 Should a remote service be interrupted by Customer or as a result of an unstable Internet connection, Customer will be charged for the waiting time until Internet connection has been reestablished.

## **8. Telephone and E-mail Support**

- 8.1 In case of the service package "Telephone and E-mail Support" Customer may use the TRIOPTICS hotline during business hours in Germany (see above), which can be reached at the following number:  
+49 – 4103 – 18006 – 270.
- 8.2 In addition, Customer may request service on the service website <http://www.trioptics.com/contact-service/service-request-form/>
- 8.3 The telephone hotline and service website are no replacement for user training. Prior user training is a prerequisite for using the telephone and e-mail support.

## **9. Availability of Wear and Tear Parts and Replacement Parts**

- In case of the service package "Availability of Wear and Tear Parts and Replacement Parts" TRIOPTICS shall stock in its warehouse the parts referenced in the Servicing and Repair Agreement.
- 9.2 In the event of a malfunction or failure of a Measuring System, and after the cause of the malfunction or failure has been diagnosed, the Wear and Tear Parts or Replacement Parts which must be stocked by TRIOPTICS for the service package "Availability of Wear and Tear Parts and Replacement Parts" shall be shipped to Customer at Customer's cost on the next German workday (Monday through Friday).
- 9.3 The service package covers the expense of stocking components, but not the costs of Replacement Parts or Wear and Tear Parts as such.

## **10. Availability of 48-Hour Response Service**

In case of the service package "48-Hour Response Service" TRIOPTICS shall dispatch a service technician to the location where Customer's equipment is located within 48 hours (hereinafter the "Response Time"). The Response Time shall not begin to run unless and until Customer has reported a malfunction using the link <http://www.trioptics.com/contact-service/service-request-form/> and an employee of Customer is available on location to help determine whether the malfunction can be corrected by remote servicing. If the malfunction is reported outside business hours in Germany, the Response Time shall not begin to run until the beginning of business hours in Germany.

## **11. Compensation, Assignment, Offset**

- 11.1 The agreed compensation is exclusive of all taxes or charges/customs fees that may be levied on invoices in the country of Customer. Customer shall be responsible for any and all such taxes or charges/customs fees duly levied on invoices.
- 11.2 The agreed compensation in each case is exclusive of any applicable value-added tax.
- 11.3 Costs of Replacement Parts and Wear and Tear Parts will be charged in addition to the services provided in this Agreement.
- 11.4 TRIOPTICS shall have the right to receive the agreed compensation before services are rendered. Customer shall have no right to receive services under a service package from TRIOPTICS until the agreed compensation for the relevant service package has been paid.
- 11.5 The agreed compensation shall be paid to TRIOPTICS without deduction and in freely disposal funds. The date of payment shall be determined with reference to the date payment is received by TRIOPTICS. In the event of late payment, late charges shall be due in accordance with applicable law, without prejudice to the right of TRIOPTICS to recover higher damages that have actually been incurred.

- 11.6 Discountable drafts and checks will be accepted for conditional credit only. Customer shall be responsible for all discount, bank, and collection fees as well as stamp duties. If the financial condition of Customer should worsen or if Customer should fail to make an installment payment during the amortization period or before the due date of a draft, TRIOPTICS shall have the right to demand immediate payment of the total amount before the end of that time period.
- 11.7 Customer shall have no right to offset any counterclaims against claims of TRIOPTICS, unless such counterclaims are undisputed, liability for such counterclaims has been acknowledged, or such counterclaims have been established by a final and conclusive court judgment. The same shall apply, *mutatis mutandis*, to the exercise of any rights to refuse performance based upon any counterclaims.
- 11.8 Customer shall have no right to assign any claims against TRIOPTICS to third parties, except with the written consent of TRIOPTICS.

## **12. Coordination of Servicing**

- 12.1 TRIOPTICS shall perform services at the agreed service intervals. Customer shall notify TRIOPTICS without undue delay if the maximum number of operating hours of a component of a Measuring System will be reached before the next service date.
- 12.2 The parties shall agree on a service date, and Customer shall contact TRIOPTICS with respect to each service at least 14 (fourteen) days before the service interval has expired.
- 12.3 If a repair is made four (4) weeks or less before a service date, TRIOPTICS shall have the right, but no obligation, to perform the next service at the same time.

## **13. Work Reports, Inspection of Services**

- 13.1 TRIOPTICS shall prepare a report summarizing the observations made and measures taken during a service or repair. The report may be drafted in the German or English language.
- 13.2 Customer shall make available a person who, together with the service technician of TRIOPTICS, will inspect the work performed after a repair or service has been completed and who will



document the inspection by countersigning the work report. If no such person is available, Customer must prove in the event of any claim for defects that the services performed by TRIOPTICS are defective.

- 13.3 Customer shall archive the aforementioned reports in chronological order and keep them in the vicinity of the Measuring System so that they can be readily accessed.

#### **14. Maintenance, Wear and Tear Parts, Replacement Parts, Documentation**

- 14.1 Customer is responsible for the necessary daily maintenance of the Measuring Systems in conformity with the operating instructions/operating handbook.
- 14.2 Customer shall document its daily maintenance efforts and keep the documentation in the vicinity of the Measuring System so that it can be readily accessed.
- 14.3 Customer shall use only original parts or parts in conformity with DIN norms, if Customer performs daily maintenance of Measuring Systems itself.
- 14.4 Customer shall perform no services, or cause third parties to perform services, that are supposed to be provided by TRIOPTICS under this Agreement, except with the consent of TRIOPTICS. If Customer breaches this obligation, all liability and warranty obligations of TRIOPTICS shall lapse, unless Customer proves that Customer's actions had no influence on the defect or damages.
- 14.5 Generally, new Wear and Tear Parts or new Replacement Parts shall be used. If there is a choice of using either new or refurbished Wear and Tear Parts or Replacement Parts, the choice shall be made by Customer.
- 14.6 Customer shall make available to TRIOPTICS any technical documentation which in the opinion of TRIOPTICS is necessary for performing a service or repair (e.g., up-to-date circuit diagrams, drawings, descriptions, tables, and instructions). TRIOPTICS may use such documentation exclusively for the purpose of performing the Agreement.

## **15. Changes to Measuring Systems**

- 15.1 Customer shall provide TRIOPTICS with prompt, written notice of any changes to systems or operations and of any other measures that may have an impact on the obligations of TRIOPTICS under the Agreement.
- 15.2 If such changes or measures do have a material impact on the obligations of TRIOPTICS and the parties fail to agree on how to modify the terms of the Agreement to account for such changes, TRIOPTICS may terminate the Agreement with immediate effect. In such case TRIOPTICS shall have a right to payment of 50% of the compensation that would have been due under this Agreement until the earliest possible date on which the Agreement could have been terminated for convenience. Customer shall have the right to furnish proof that lower damages were incurred. TRIOPTICS shall have the right to furnish proof that higher damages were incurred.

## **16. Working Conditions, Working Time**

- 16.1 Customer must ensure that TRIOPTICS will have unrestricted, safe access to the Measuring Systems while performing services.
- 16.2 In addition, Customer must guarantee safe working conditions at the location of the Measuring System, ensuring that services will not be performed under conditions that create a hazard or pose a risk to human health. Customer must take all necessary measures to protect employees of TRIOPTICS from safety and health risks.
- 16.3 If this is not the case, TRIOPTICS shall be released from its obligations under the Agreement, while Customer shall have a continued obligation to pay the agreed compensation. Customer is responsible for any additional driving costs and waiting times.
- 16.4 Customer shall ensure that employees of TRIOPTICS will be informed of all safety rules in effect at the place where work is performed.
- 16.5 Work shall be performed during business hours at the place where the work is performed. TRIOPTICS may also perform work outside agreed hours at its sole discretion. In such case

Customer must ensure that authorized employees of Customer are present (at the cost of Customer).

## **17. Malperformance**

- 17.1 Except as provided below, the laws applicable to malperformance of service agreements shall apply.
- 17.2 In the event of malperformance, TRIOPTICS shall have three attempts of remedial performance. A correction of a defect generally shall not be construed as an acknowledgment of a breach by TRIOPTICS, unless expressly stated otherwise by TRIOPTICS in a particular case.
- 17.3 The limitation period for any warranty claims shall be 12 (twelve) months from the date services are rendered.
- 17.4 Customer shall provide TRIOPTICS with prompt, written notice of any apparent defects of work performed by TRIOPTICS. Notice of hidden defects shall be provided promptly upon discovery. If Customer fails to provide notice of a defect as required, Customer shall no longer have any claims based on that defect.
- 17.5 If a service by TRIOPTICS is delayed by at least 14 (fourteen) days despite a prior scheduling request from Customer, Customer may set a grace period of 14 (fourteen) days for performance of the service by TRIOPTICS. If TRIOPTICS fails to perform the service within the grace period, Customer may avail itself of the remedies for breach of warranty provided by applicable law.
- 17.6 Customer shall notify TRIOPTICS without undue delay if TRIOPTICS is unable to perform work at the time agreed upon by the parties or communicated by TRIOPTICS to Customer. Irrespective of the reasons for such a delay, Customer shall be responsible for any and all additional costs that may be incurred by TRIOPTICS as a result of the delay.
- 17.7 If defects may cause damages to work of TRIOPTICS or to Replacement Parts or Wear and Tear Parts, Customer shall promptly take all measures necessary to prevent or limit such damages.

## **18. Liability**

- 18.1 TRIOPTICS shall be liable without limitation, whether liability is contractual or non-contractual in nature, for any intentional or grossly negligent actions or omissions, for any damages involving harm to life, limb, or health, for any claims under the German Product Liability Act (*Produkthaftungsgesetz*), and for any breach of guarantee, as provided by applicable law.
- 18.2 In the event of a breach of a contractual obligation the performance of which is a prerequisite for the due performance of the Agreement and on the performance of which Customer may reasonably rely (so-called cardinal obligation), any liability of TRIOPTICS shall be limited to reasonably foreseeable damages.
- 18.3 In all other cases, any liability of TRIOPTICS is hereby excluded, subject to the aforementioned exceptions,.
- 18.4 The limitation period for any damages claims of Customer against TRIOPTICS based on ordinary negligence shall be one year.
- 18.5 The foregoing limitations of liability shall also apply to any liability, including personal liability, of governing bodies, employees, and agents of TRIOPTICS.
- 18.6 In cases involving the delivery of software, TRIOPTICS shall be liable for any loss or alteration of data of Customer caused by the software, however only to the extent that such loss or alteration would have been unavoidable even if Customer had complied with its obligation to back up data at adequate intervals, however at least on a daily basis.
- 18.7 Any liability of TRIOPTICS for ordinary negligence shall be limited to 50% of the replacement value of the system.

## **19. Force Majeure**

Either party shall be released from its contractual obligations in the event that performance is impossible as a result of force majeure, including, without limitation, strike and lockout, in the event of any unforeseen obstacles beyond the control of TRIOPTICS, such as import or export

restrictions, disruptions of operations or shipments, or any delays in the supply of raw materials or construction materials for which TRIOPTICS is not responsible (hereinafter "Force Majeure Event"). The party invoking a Force Majeure Event must notify the other party without undue delay of the start date and end date of the Force Majeure Event.

## **20. Termination**

20.1 The Agreement shall have no fixed term and may be terminated at the end of any given year upon six months' prior notice, however not in the first six months of the contract term.

20.2 The right to terminate the Agreement for good cause shall remain unaffected thereby. Good cause shall include, without limitation, any of the following events:

- a) a payment from Customer is past due for 30 (thirty) days or more,
- b) a party breaches the Agreement and the breach is not cured within 30 (thirty) days from a demand by the other party, or
- c) a force majeure event last longer than three (3) months.

20.3 In the event of termination for good cause, TRIOPTICS shall have a right to compensatory damages equal to 50% of the compensation that would have been due until the earliest possible date on which the Agreement could have been terminated for convenience. TRIOPTICS shall have the right to furnish proof of higher damages. Customer shall have the right to furnish proof that no damages or lower damages were incurred.

20.4 Notice of termination must be in written form and signed by an authorized representative of the terminating party (fax being sufficient).

## **21. Confidentiality**

21.1 The parties agree to keep confidential all documents and information to which they receive access in the course of the performance of the Agreement, unless such documents or information are freely accessible (including the financial terms and conditions of this Agreement).

- 21.2 This duty of confidentiality shall survive and continue in effect after termination of the Agreement and, in the event of a permitted transfer of documents or information to third parties, shall also be imposed on such third parties.
- 21.3 The details shall be governed by an appropriate non-disclosure agreement, to which both parties shall agree and which shall take precedence over the provisions of this Agreement.

## **22. Export Control**

The transfer of goods and services, including any related technology and documentation, may be subject to German, EU, and/or U.S. export control laws and possibly export control laws of other countries. Any resale to embargoed countries or blacklisted persons or persons which use or may use goods or services for military purposes, CRBN weapons, or nuclear technology is subject to approval. By placing an order Customer declares that the order is in compliance with such laws and regulations and that goods or services will not be delivered to any countries, directly or indirectly, that prohibit or restrict the import of such goods or services. Customer declares that Customer has received all required export or import approvals. Customer shall comply with all duties of cooperation in connection with export control laws. In particular, Customer shall disclose how Customer intends to use purchased goods.

## **23. Final Provisions**

- 23.1 Any amendments in connection with this Agreement must be in written form and signed by duly authorized persons (fax being sufficient). There are no collateral agreements to this Agreement.
- 23.2 Customer shall not assign its rights and obligations under this Agreement to any third parties, except with the written consent of TRIOPTICS.
- 23.3 This Agreement shall supersede and replace all prior agreements or arrangements between the parties with respect to the servicing or repair of Measuring Systems, the Remote Servicing of Software/Firmware of Measuring Systems, the availability of Replacement Parts and Wear and Tear Parts for Measuring Systems, the Telephone and E-Mail Support for Measuring Systems, or the 48-hour Response Service.

- 23.4 The place of performance for all obligations arising from this Agreement shall be Wedel, Germany.
- 23.5 For merchants, public entities, and public special funds, exclusive venue and jurisdiction for any and all disputes shall be in the courts of Pinneberg, Germany. However, provided that Customer is a merchant, public entity, or public special fund, TRIOPTICS may also sue Customer in a court where venue and jurisdiction is proper based on Customer's residence, habitual abode, or corporate domicile, or in any other court of proper venue and jurisdiction.
- 23.6 This Agreement shall be governed exclusively by German law, with the exception of German conflict of laws provisions and the UN Convention on Contracts for the International Sale of Goods (CISIG).