

# TRIMBLE EUROPE B.V. – MAINTENANCE PLAN

## TERMS AND CONDITIONS

This Maintenance Plan Terms and Conditions (“Terms”) apply to all services, products (updates, replacements, etc.) and information (collectively “Maintenance”) that Trimble Europe B.V. (“Trimble” or “we”) promises and provides to the customer (“Customer” or “you”) identified on the End User Maintenance Plan Certificate (“Certificate”) with regard to the products specified on the Certificate (“Products”).

### 1. COVERED MAINTENANCE INCIDENTS

A “Maintenance Incident” occurs if a Product shows substantial defects in material and workmanship or if a Product materially fails to conform to Trimble’s published specifications during the time period between the Commencement Date and Expiration Date specified on the Certificate (“Coverage Period”) and such failure occurs:

- (a) while the Product is used with software and hardware products for which it was designed and recommended by Trimble; or
- (b) as a result of repetitive use, dust, heat, humidity and salt air as long as the Product is being used in accordance with the operator’s manual and specifications; or
- (c) as a result of a power surge due to a surge in Trimble manufactured power supplies;
- (d) without any causal connection and completely unrelated to (i) misuse or accidents (other than accidents caused by the Product), (ii) improper installation, maintenance, or storage, (iii) any alteration or modification of the Product that was made without Trimble’s authorization; (iv) operation outside of the environmental specifications of the Product; (v) damage caused by lightning or other electrical discharge, except as provided in Section 1(e) below (vi) damage caused by power surge from non-Trimble power supplies, (vii) fresh or salt water immersion or spray (outside of normal product specifications); (viii) exposure to environmental conditions for which the Product is not intended; or (ix) a supply of incorrect, incomplete or inaccurate data by anyone other than Trimble; and
- (e) if your Product is a NETR9 Receiver, as result of damage from lightning or other electrical discharge, solely when used with properly installed surge suppression

If your Product is a total station, you are also entitled to one (1) inspection, cleaning and calibration service for the Product for each year of coverage under your Maintenance Plan. The inspection, cleaning and

calibration service must be performed by a Trimble authorized service provider that is certified to perform such services.

### 2. MAINTENANCE CONTACT

If we designate any person or entity other than Trimble as your Maintenance Contact on the Certificate, e.g., a distributor from whom you have acquired the Products or the Certificate, then you must initially direct any questions or requests to such Maintenance Contact who will forward your request to Trimble or an authorized maintenance service provider, as appropriate. Maintenance Contacts, distributors, third party maintenance service providers and any other third parties act only as messengers and subcontractors for Trimble, but not as agents. Such third parties have no power of attorney, and they are not authorized to amend the Certificate, make any representations or promises on behalf of Trimble, or otherwise legally obligate Trimble in any manner whatsoever. If you are not satisfied with your Maintenance Contact, please contact Trimble at the address provided in the Certificate.

### 3. QUALIFIED MAINTENANCE REQUEST

If a Maintenance Incident occurs, you must submit a sufficiently detailed written request via e-mail, fax or letter to the Maintenance Contact identified on the Certificate (“Qualified Maintenance Request”).

### 4. MAINTENANCE COVERAGE

If a Maintenance Incident occurs and we receive, during the Coverage Period and through the specified Maintenance Contact, a Qualified Maintenance Request from you, we will, at our discretion, either repair or replace the affected Product or issue a proportionate refund to you as further specified in this Section 4 (Maintenance Coverage).

With regard to Software, we may remedy Maintenance Incidents by issuing Support Updates or Minor Updates in accordance with Section 5 of these Terms (Software Updates). We reserve the right to use either new or functionally equivalent refurbished parts to repair defective Products. By submitting a Qualified

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Maintenance Request, you agree to transfer to Trimble ownership and title to all Products or parts that we replace.

THESE ARE YOUR SOLE REMEDIES, AND TRIMBLE'S SOLE LIABILITY, FOR ANY MAINTENANCE INCIDENT.

### **5. SOFTWARE MAINTENANCE**

5.1 Fixes, Updates. If and to the extent you obtain coverage for computer programs either provided with the Product purchased by you (whether built into hardware circuitry as firmware, embedded in flash memory, or stored on magnetic or other media), or provided as a stand-alone computer software product ("Software") pursuant to the Certificate, Trimble will provide you with Support Updates and Minor Updates that Trimble generally makes available to all maintenance customers. "Support Update" means an error correction or new version of Software created to fix an error or other non-conformance of a previous version. "Minor Update" means enhancements to current features of Software. Trimble reserves the right not to create any new versions or to market new versions, including but not limited to versions that we classify as "Major Updates" as new products or upgrades subject to additional fee payments. If we provide any Software as part of Maintenance, then you may use such Software only in lieu of the updated Software and only subject to all license limitations and restrictions that were applicable to the updated Software. If you acquired the updated Software or the Certificate from an authorized Trimble distributor rather than from Trimble directly, we may, in our sole discretion, forward the Support Update or Minor Update to the distributor for final distribution to you.

5.2 Software Maintenance Exclusions. Trimble will not be obligated to provide maintenance for any Software that (1) has been altered or modified in any way without Trimble's authorization; (2) has problems resulting from interaction with third party software or hardware not supported by Trimble; (3) has problems caused by your misuse, improper or inadequate installation, maintenance or storage.

### **6. SHIPPING CHARGES**

If you have submitted a Qualified Maintenance Request, the Maintenance Contact may ask you to send in the Products for examination, repair or replacement. In such case, you will prepay shipping for the transport to the address specified by the

Maintenance Contact. If the Maintenance Contact requests that you obtain transport insurance, you will also prepay such insurance charges. If we determine that a Maintenance Incident has in fact occurred, we will reimburse you for the shipping charges and the costs of any insurance that the Maintenance Contact asked you to obtain, and, if we repair or replace the Product, we will pay for return shipping to you.

### **7. ADDITIONAL REQUIREMENTS**

7.1 Maintenance Coverage can only be purchased if your Product is currently under factory warranty or another maintenance plan. You must provide an accurate and valid serial number for each Product at the time of purchase of the Maintenance Plan.

7.2 Trimble reserves the right to refuse service or terminate the Maintenance Plan if you have provided false or misleading information during the purchase of the Maintenance Plan.

7.3 If Software Maintenance Coverage has expired by more than 30 days, renewal of maintenance coverage under a Maintenance Plan will require additional reinstatement charges.

### **8. DISCLAIMER OF WARRANTY AND LIMITATION OF LIABILITY**

WE SHALL HAVE NO OBLIGATIONS AND YOU SHALL HAVE NO REMEDIES WITH RESPECT TO THE PRODUCTS AND ANY MAINTENANCE, EXCEPT AS EXPRESSLY PROVIDED IN THESE TERMS. IN PARTICULAR, REPLACEMENT PRODUCTS AND ANY INFORMATION AND SERVICES HEREUNDER ARE PROVIDED "AS IS", WITHOUT ANY WARRANTIES, AND WE EXPRESSLY DISCLAIM ANY IMPLIED WARRANTIES INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. A REPAIRED PRODUCT OR REPLACEMENT PRODUCT IS ELIGIBLE FOR MAINTENANCE FOR THE REMAINDER OF THE COVERAGE PERIOD.

OUR LIABILITY TO YOU FOR ANY DAMAGES OR LOSSES, ARISING FROM CONTRACT, TORT, STATUTE OR ANY OTHER LEGAL THEORY, RELATED TO ANY PRODUCTS, MAINTENANCE, THE CERTIFICATE OR ANY OTHER SUBJECT OF THESE TERMS SHALL BE LIMITED TO THE AMOUNT OF THE ORIGINAL PRICE THAT YOU PAID FOR THE PRODUCT OR MAINTENANCE MOST CLOSELY RELATED TO THE DAMAGES OR LOSS. WE DISCLAIM ANY LIABILITY, AND YOU WAIVE ANY RIGHTS AGAINST US, FOR INDIRECT, SPECIAL, CONSEQUENTIAL OR

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INCIDENTAL DAMAGES OR LOSS OF BUSINESS OR PROFITS, INFORMATION, OR DAMAGES DUE TO LOSS OF DATA OR THE OPERATION OR FAILURE TO OPERATE OF GNSS SATELLITES OR THE AVAILABILITY OF GNSS SATELLITE SIGNALS, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR LOSS AND EVEN IF THE LIMITED REMEDIES HEREIN FAIL OF THEIR ESSENTIAL PURPOSE. YOU AGREE THAT THE LIABILITY OF OUR SUPPLIERS, DISTRIBUTORS, SALES REPRESENTATIVES, MAINTENANCE CONTACTS AND MAINTENANCE SERVICE PROVIDERS SHALL BE AS LIMITED AS OUR LIABILITY UNDER THIS SECTION 7.

IF YOU ARE A CONSUMER, YOU MAY HAVE ADDITIONAL RIGHTS UNDER APPLICABLE CONSUMER PROTECTION LAWS AGAINST US OR THE ENTITY OR PERSON FROM WHOM YOU ACQUIRED THE PRODUCTS OR THE CERTIFICATE.

### **8. MISCELLANEOUS**

8.1 Assignment & Transferability. This Certificate may only be transferred (i) by Trimble to a new Product in the exercise of Trimble's replacement option under Section 4 or (ii) by you, in the event of sale or transfer of the Products to a new owner. Notification of the ownership transfer must be given to Trimble, and the new owner must register with Trimble. Trimble shall not be required to provide services under this Extended Limited Warranty to any assignee or transferee who is not registered with Trimble.

8.2 Entire Understanding; Modifications. The Certificate and these Terms set forth the entire understanding between Customer and Trimble regarding its subject matter, and completely supersede and negate any other related prior or contemporaneous, written or oral, representations, understandings, or agreements. Changes to the Certificate or the Terms shall not be effective, unless

in a writing that is duly signed by an authorized representative of Trimble.

8.3 Governing Law; Jurisdiction and Venue. The Certificate, these Terms and any dispute arising out of or in connection with the Certificate, these Terms, Maintenance or the Products ("Dispute") shall be governed by and interpreted in accordance with the laws of The Netherlands, excluding its conflict of law principles and excluding the United Nations Convention on the International Sale of Goods. Any Dispute shall be submitted to binding arbitration, to be held in The Hague, The Netherlands, under the arbitration rules of the United Nations Commission on International Trade Law ("UNCITRAL"). Any arbitration proceeding hereunder shall be conducted in English before a single arbitrator, selected in accordance with the rules of UNCITRAL. After each party has been afforded a reasonable opportunity to present written and testimonial evidence in support of its position in any such arbitration proceeding, the arbitrator shall issue his/her decision and award, which shall be in writing, stating the reasons therefor, and be final and binding upon the parties. Any arbitration award under this paragraph may be enforced in any court of competent jurisdiction. The prevailing party in any Dispute shall be entitled to recover its legal expenses, including reasonable attorneys' fees. Notwithstanding the provisions of this paragraph, Trimble shall have the right to seek relief in any court of competent jurisdiction to obtain injunctive relief.

### **CONTACT INFORMATION:**

TRIMBLE EUROPE B.V

45 MEERHEIDE, 5521 DZ EERSEL, NETHERLANDS

PHONE: 31-497-532-433

END OF TERMS AND CONDITIONS