

EAGLE CARE REPAIR AND MAINTENANCE SERVICES GENERAL TERMS AND CONDITIONS

1. APPLICABILITY

- 1.1 The present general terms and conditions of the Eagle Care Repair and Maintenance Services, as amended from time to time (the **Terms and Conditions**) govern and shall apply to the provision of the repair and maintenance services described herein (the **Services**) provided by Proceq S.A. (CHE- 105.959.666), Schwerzenbach ZH, Switzerland or any of its company's group of companies and/or affiliates (**PROCEQ**) to a purchaser of certain PROCEQ's hardware, as a service recipient (the **Customer**), and constitutes together with the Contract (as defined below) the services agreement between the Customer and PROCEQ on the provision of all the Services.
- 1.2 PROCEQ has the right to amend and change these Terms and Conditions at any time at its own discretion. The Customer has the right, at any time, to request from PROCEQ a copy of the currently applicable Terms and Conditions.
- 1.3 Any modifications or deviations from or to these Terms and Conditions are valid exclusively if made in written form and signed by PROCEQ. Any general terms and conditions of the Customer or any third parties shall not apply, irrespective of whether PROCEQ expressly objects to it in a particular case or not.
- 1.4 If individual provisions of these Terms and Conditions should be invalid, in whole or in part, the validity of the remaining provisions or the valid parts of such provisions shall not be affected.
- 1.5 Particular conditions of contract validly agreed upon by the parties in written form for the purpose of a specific Service shall prevail over these Terms and Conditions if in contradiction with the same.

2. SCOPE OF THE CONTRACT

- 2.1. The subject of the Services agreement concluded pursuant to these Terms and Conditions and respective Contract is to define the conditions according to which PROCEQ will provide to the Customer the Services with respect to certain purchased PROCEQ's branded hardware (hereinafter the **Equipment**), as specified in the respective order form (the **Contract**).
- 2.2. A Contract is entered into only upon acceptance of the Services by PROCEQ. PROCEQ reserves the right to refuse entering into the Contract with the Customer without giving reasons.
- 2.3. In consideration for the payment of the agreed Services Fee, the Customer shall be entitled to the Services according to the provisions of these Terms and Conditions and the Contract, as applicable. These Terms and Conditions shall form an integral part of, and shall amend and support, the Contract which terms and conditions shall, however, prevail in case of any inconsistencies.

3. THE SERVICES

- 3.1. Subject to Customer's compliance with all the terms set forth hereto, PROCEQ will provide to the Customer the Services. The Services will incorporate either one (1) calibration, one (1) repair (incl. calibration) or one (1) replacement (incl. calibration) service to the Equipment once during each individual Term of the Contract, for damages in or to the Equipment or part thereof arising out of an accidental damage that causes material damage in materials and workmanship of the Equipment. For purpose of this Clause 3.1, accidental damage means physical damage, breakage or failure of the Equipment due to an unforeseen and unintentional event occurring either due to handling or due to an external event that materially affects the functionality of the Equipment. Notwithstanding anything herein to the contrary, PROCEQ will not carry out any Services in case of damage caused by negligence or willful misconduct of the Customer or any third party or upon occurrence of any event falling under any of the exclusions stipulated hereunder, in particular without limitation, those stated in Clause 6.1.
- 3.2. PROCEQ will, at its sole discretion repair or replace or provide service parts for the affected Equipment and provide both parts and labor or may direct the Customer to replace certain readily installable parts itself pursuant to Clause 6.1 (b).
- 3.3. The Customer hereby acknowledges and agrees that in the event PROCEQ repairs or replaces the Equipment or provides service parts to the Customer, the replaced Equipment and/or parts that PROCEQ provides may be manufactured from new, refurbished, or serviceable used parts at PROCEQ sole discretion. The replacement of the Equipment and/or parts thereof will be functionally equivalent to the replaced Equipment and/or parts thereof and will assume the remaining Term coverage under the Contract.
- 3.4. If PROCEQ decides, at its sole discretion, that it would not be practical or economically viable to perform a repair, it may opt for a replacement of the Equipment with a functional equipment that is equivalent in performance and reliability as the original Equipment. The replacement equipment will become the new Equipment under these Terms and Conditions and PROCEQ will keep the original Equipment.
- 3.5. PROCEQ will replace a stolen Equipment with a fully functional equivalent Equipment, if within thirty (30) calendar days of the Equipment being stolen, the Customer provides PROCEQ with a copy of a police report explaining the circumstances of the theft and identifying the tool type and serial number of the stolen Equipment, provided that:
 - (a) the Equipment has not been stolen due to the negligence or willful misconduct of the Customer or an officer, employee or sub-contractor of the Customer or any person acting on behalf of the Customer; and
 - (b) at the time of the Equipment being stolen the Customer had made all payments to PROCEQ due under these Terms and Conditions and the Contract.
- 3.6. Replacement of the Equipment hereunder, may be subject, in certain circumstances, to the prior payment of a fee by the Customer to PROCEQ. PROCEQ, will inform the Customer accordingly in such cases.

- 3.7. The Services do not cover any defects or damage to any software or data residing or recorded in the Equipment. For purpose of these Terms and Conditions, **software** means all operating software of the Equipment or used in connection therewith, software display units, software applications that are pre-installed on or together the Equipment and any update thereon which may vary from time to time. When providing repair or replacement service, PROCEQ will use reasonable efforts to reinstall the Equipment's original operating software configuration and subsequent update releases but will not provide any recovery or transfer of software or data contained on the replaced unit not originally included in the Equipment.
- 3.8. Except as otherwise stated herein, in particular in Clause 3.6, and provided that all fees due hereunder have been duly paid by the Customer Services will be provided at no extra cost by PROCEQ to the Customer.
- 3.9. During the downtime of the Services, PROCEQ may, but shall not be obliged to, provide the Customer with an equivalent and provisional equipment upon the Customer's written request. PROCEQ retains all right, title and interest in and to such equipment. Such provisional equipment shall be immediately returned to PROCEQ in good condition taking into consideration the wear and tear or change resulting from proper use upon receipt of the repaired or replaced Equipment. The Customer is responsible to remove all data, including without limitation, encrypted data, passwords, programs and confidential, proprietary and personal information, prior to the return of such equipment. PROCEQ shall in no way be responsible for confidentiality or security of any data contained in any returned equipment.
- 3.10. Any delay in the return of the provisional equipment shall constitute a material breach of the Contract.
- 3.11. The Customer shall take all reasonable precautions to protect the Equipment and shall use and maintain the Equipment in accordance with its instructions.
- 3.12. The Services shall not have precedence over the service level for standard voluntary limited warranty (to the extent applicable) provided to the Equipment pursuant to PROCEQ's General Terms and Conditions of Sale and PROCEQ's General Terms and Conditions of Rental in place at the date of the purchase of the Equipment (**General Terms**) or standard maintenance.

4. ELIGIBILITY

- 4.1. Customer's eligibility to contract and receive the Services under these Terms and Conditions is subject to Customer's proper compliance with all obligations stated herein, including without limitation, the Customer having paid all Fees due under the Contract and these Terms and Conditions.
- 4.2. The Services may be only contracted by the Customer within one (1) month period of time as of purchase of the Equipment according to a valid, non-breached sales contract for the Equipment. Upon expiry of the deadline stated previous, the Customer shall no longer be eligible to contract for the Services. Notwithstanding the previous, PROCEQ may on a case-by-case basis consider, at its sole discretion, contracting of the Services after this point of

time. In any such case, PROCEQ reserves the right to do on-site checks to the Equipment, the costs of which shall be fully borne by the Customer.

5. SERVICE OPTIONS AND SHIPPING

- 5.1. If the Customer determines that the Equipment requires repair or replacement service hereunder, PROCEQ at its sole option, will facilitate service through one (1) of the following options (i) Customer will return the Equipment requiring service to PROCEQ; or to (ii) an authorized partner of PROCEQ.
- 5.2. Customer shall return the Equipment to PROCEQ or any its authorized partners (as applicable) at its sole expense and shall be solely responsible for the compliance with all applicable export laws and regulations and be responsible for all custom duties, and other associated taxes and charges. PROCEQ will bear all shipping costs to return the repaired Equipment or replacement thereof to the Customer.
- 5.3. Any provisory equipment provided to the Customer by PROCEQ on a loan basis pursuant to Clause 3.10 during the Services downtime, shall be returned to PROCEQ within ten (10) days as of the Customer being notified that the Equipment will be returned. All shipping costs arising out of provision of such equipment shall be fully borne by the Customer.
- 5.4. If, in PROCEQ's sole judgment, a repair is requested when no defect in materials and workmanship in the Equipment is found, PROCEQ shall have the right to charge the Customer a fee to cover any reasonable costs incurred by PROCEQ with such request.
- 5.5. Customer hereby acknowledges and agrees that the Services shall only be performed by PROCEQ or any its authorized partner.
- 5.6. The Services shall not apply to any Equipment which has been repaired by any third-party repair or maintenance service. PROCEQ reserves the right to terminate the Contract with immediate effect for cause in the event of occurrence of performance of any non-authorized repair or maintenance services operated in the Equipment by or on behalf of the Customer during the Term.
- 5.7. PROCEQ reserves the right to change at any time the method by which PROCEQ may provide the Services to the Customer and the Equipment's eligibility to receive a method of such Services.

6. EXCLUSIONS

- 6.1 The Services shall not apply in any of the following cases:
 - (a) failure due to defects in the Equipment. For such failures the voluntary limited warranty provided by PROCEQ (to the extent applicable) pursuant to the General Terms, applies;
 - (b) all parts subject to ordinary wear and tear such as, without limitation, impact bodies, indenters, impact plungers, test blocks, connecting cables, batteries, wheels or impact bodies, unless damage has occurred due to a defect in materials and workmanship;
 - (c) installation, removal or disposal of the Equipment, or installation, removal, repair, or maintenance of non-covered Equipment (including accessories, attachments, or other devices such as external modems) or electrical service external to the Equipment;

- (d) damage to the Equipment caused by an accident falling outside the scope of Clause 3.1., fire, abuse, neglect, misuse (including faulty installation, repair, or maintenance by anyone other than PROCEQ or an PROCEQ authorized partner), unauthorized modification, extreme environment (including extreme temperature or humidity), extreme physical or electrical stress or interference, fluctuation or surges of electrical power, lightning, static electricity, fire, acts of God or other external causes;
 - (e) Equipment with a serial number that has been altered, defaced or removed;
 - (f) problems caused by a device that is not the Equipment, including equipment that is not PROCEQ-branded, whether or not purchased at the same time as the Equipment;
 - (g) service necessary to comply with the regulations of any government body or agency arising after the date of the Contract;
 - (h) the loan of a provisional equipment pursuant to Clause 3.10 during the period when the Equipment is being repaired;
 - (i) Equipment that has been lost or stolen, except where Clause 3.4 applies.
 - (j) the Services only covers Equipment that is returned to PROCEQ in its entirety;
 - (k) cosmetic damage to the Equipment (including but not limited to scratches, dents and broken plastic on ports) which do not impair the functionality of the Equipment;
 - (l) preventative maintenance on the Equipment;
 - (m) defects caused by normal wear and tear or otherwise due to normal aging of the Equipment; and
 - (n) technical support of any kind.
- 6.2 When providing repair or replacement service, PROCEQ will use reasonable efforts to reinstall the Equipment's original software configuration and subsequent update releases but will not provide any recovery or transfer of software or data contained on the serviced unit not originally included in the Equipment.
- 6.3 The Customer acknowledges and agrees that PROCEQ shall have the right to charge any expenses and costs directly or indirectly incurred by PROCEQ due to the provision of Services to the Customer's account, if one or more of the facts stated in Clause 6.1 is determined in the context of the service provision or afterwards. PROCEQ will directly invoice the Customer for such expenses and costs as well as for any additional expenses for possible adaptations, transcriptions or address changes pursuant to the rates applicable at this point of time.
- 7. TERM AND TERMINATION**
- 7.1 The Contract and coverage provided hereunder shall be valid for a period of one (1) year as of the effective date as stated in the Contract and not as of purchase of the Equipment (the **Term**).
- 7.2 PROCEQ may cancel the provision of the Services and terminate the Contract prior expiry of the Term at any time at its sole discretion. In such case, the Customer will receive a pro-rata refund of already paid Fees for the remaining Contract's unexpired Term.

- 7.3 PROCEQ may cancel the provision of the Services and terminate the Contract immediately upon written notice to the Customer and without any refund or any remedies whatsoever upon occurrence of any of the following events:
- (a) cases of misrepresentation by the Customer or non-compliance with or breach of any obligation or undertaking of the Customer under the relevant sales contract, these Terms and Conditions and the Contract;
 - (b) if any claim is found to be fraudulent or if the Customer knowingly give misleading information when requesting the Service;
 - (c) the Customer breaches any provision of these Terms and Conditions and/or the Contract and fails to remedy such breach within thirty (30) calendar days of its notification by PROCEQ. For the avoidance of doubt, any failure to make timely payments shall be considered a material breach; or
 - (d) the Customer becomes insolvent or bankrupt, seeks deferred payment authorization, goes into liquidation, has an administrator, administrative receiver or receiver appointed, makes a voluntary arrangement with its creditors, or proceedings are brought by a creditor in respect of any of the foregoing.
- 7.4 Upon expiry of the Term, the Contract will automatically renew for further periods of one (1) year each, unless the Customer terminates the Contract by sending written notice to PROCEQ at least three (3) months prior. PROCEQ is not obligated to renew the Term of the Contract. PROCEQ reserves all right to amend and modify the Fees and the terms of these Terms and Conditions in the event of a renewal. PROCEQ will endeavor to issue to the Customer a notification specifying the new applicable Fees not less than four (4) months before the end of the applicable Term.
- 7.5 In case of termination of the Contract pursuant to Clause 7.3, PROCEQ shall have the right to pursue in addition any remedies that it may have at law or in equity, including the recovery of all damages to which PROCEQ may be entitled to.

8. SUSPENSION

- 8.1 PROCEQ shall have the right to suspend the provision of the Services at any time during the Term in case of any breach of the Contract by the Customer in addition to any other remedies available to PROCEQ hereunder or at law. The Customer shall not be entitled to any refund whatsoever.
- 8.2 In the event of a suspension pursuant to Clause 8.1, the Customer will have the right, provided that the breach of Contract which gave rise to the suspension has been fully remedied as per Clause 7.3 (c), to upon payment of an additional fee lift the Services suspension and resume the Contract.
- 8.3 Any suspension of the Contract pursuant this Clause 8 shall not affect the initial contracted Term.

9. PAYMENT AND BILLING

- 9.1 The Customer shall pay the amount stipulated in the respective Contract (**Fees**) as specified therein to ensure that the Equipment is covered under the Services during the Term. Unless otherwise agreed in writing by PROCEQ, all payments due under the Contract shall be done in the currency stated in the respective Contract. The Customer undertakes to pay all Fees to PROCEQ promptly and not to withhold payment.
- 9.2 Any payments provided for hereunder shall be paid net of any applicable withholding required under applicable regulations and laws of the territory of the Customer.
- 9.3 The Fees will be invoiced to the Customer in advance for the entire Term.
- 9.4 In the event of any renewal of the Term pursuant to Clause 7.4, PROCEQ will invoice the Customer with the Fees correspondent to the renewed Term and the Customer shall pay such Fees as stipulated in the respective Contract in order to renew the Services.
- 9.5 For any payment not made by its due date, the Customer agrees to pay late payment charges in the amount of 5 % p.a. of the unpaid amount subject to maximum limitations by law. This shall not affect PROCEQ right to claim further damages.
- 9.6 A unilateral reduction of the Fees by the Customer is not permitted. The Customer shall further not be entitled to set off any claim made by PROCEQ in connection with the Contract against a claim it itself may have against PROCEQ, regardless of whether such counterclaim has arisen under or in connection with the Contract or otherwise.
- 9.7 PROCEQ reserves the right to charge additional fees as provided hereunder for services provided under the Contract.

10. LIMITATION OF LIABILITY AND REMEDIES

- 10.1 To the extent permitted by applicable law, PROCEQ's liability under these Terms and Conditions is limited to the amounts paid by the Customer for the Services according to the Contract for the relevant Term. In no event shall PROCEQ, and any its employees, officers, officers, representatives or subcontractors, have any liability for any direct, indirect, special, incidental or consequential damages, including but not limited to damages for lost profits, loss of data, loss of use of equipment or facilities, interruption of business or failure to maintain the confidentiality of data arising in any way out of these Terms and Conditions under any theory of liability, whether or not PROCEQ has been advised of the possibility of such damage. PROCEQ specifically does not warrant that it will be able to (i) repair or replace covered Equipment without risk to or loss of programs, software or data, and (ii) maintain the confidentiality of data. The Customer agrees that if the Customer is covered by consumer protection laws or regulations in its country of purchase or country of residence, the benefits conferred by these Terms and Conditions shall replace all such rights and remedies conveyed by such consumer protection laws and regulations.
- 10.2 PROCEQ disclaims, to the extent permitted by applicable law, all warranties and liability for damages by PROCEQ, its suppliers and authorized partners for any damages and remedies whether direct, indirect or consequential arising out of or in connection with the Contract.

- 10.3 PROCEQ makes no warranty regarding any transaction, product or service executed through it, and its authorized partners or by a third party. The use of any such product or service shall be done at the Customer's own discretion and risk.
- 10.4 The sole remedy available to the Customer for or arising out of the provision of any of the Services or the Contract, shall be the calibration, repair or replacing of the Equipment and/or relevant part thereof pursuant to the terms of these Terms and Conditions.

11. MAINTENANCE OF RECORDS AND INSPECTION

The Customer shall maintain records relating to parts and services provided hereunder for at least three (3) years. Upon PROCEQ's reasonable request, during the Term and for a period of three (3) years after its expiration or termination for whatever reason, the Customer shall promptly provide to PROCEQ copies of any requested records. PROCEQ shall have the right to inspect Customer's facilities at any time during regular business hours for purposes of verifying its compliance with the terms of the Contract.

12. WARRANTIES AND INDEMNITIES

- 12.1 Both parties warrant that they (i) have the necessary power and consents to enter into and to operate the Contract; and (ii) are not aware of anything in their reasonable control which will or could have an adverse effect upon their ability to perform their respective obligations under the Contract.
- 12.2 The Customer undertakes to duly pay all Fees hereunder to PROCEQ and not to withhold payment for any reason whatsoever.
- 12.3 The Customer agrees to pay any and all taxes and charges in connection with the Contract. PROCEQ accepts no obligation for the payment of any tax burden on the Customer arising for any reason including but not limited to tax on benefits in kind.
- 12.4 The Customer agrees to hold harmless, to indemnify and to keep indemnified PROCEQ for any and all losses howsoever arising in connection with injury, death and damage to property caused by the Customer's use or operation of the Equipment.
- 12.5 The Customer may not assign, transfer or transfer any its obligations and benefits under the Contract without the prior written consent of PROCEQ.
- 12.6 The failure or delay by either party hereto to enforce any term or provision of the Contract or to act upon a breach of any term shall not constitute a waiver of their rights.
- 12.7 Both parties warrant that they will not do anything to hinder or adversely affect the execution of the Contract.

13. OTHER PROVISIONS

- 13.1 The Customer agrees that PROCEQ is entitled to assign any rights, title and interest in, to or arising from the Contract to any entity within the PROCEQ group of companies, any its affiliates or third parties and may subcontract or assign performance of its obligations to third parties.

- 13.2 PROCEQ reserves the right to assign its rights to receive any due payment under the Contract or these Terms and Conditions to any third party at its sole discretion.
- 13.3 PROCEQ is not responsible for any failures or delays in performing under the Contract that are due to events outside PROCEQ's reasonable control.
- 13.4 The Customer agrees and understands that it is necessary for PROCEQ to collect, process and use its data in order to perform the Services and support obligations hereunder and hereby accepts that PROCEQ's Data Privacy Policy as amended from time to time available at <https://www.proceq.com/service/overview/> shall constitute an integral part of these Terms and Conditions.

14. PLACE OF PERFORMANCE, APPLICABLE LAW, PLACE OF JURISDICTION

- 11.1 Unless specified otherwise, the place of performance of the Services under the Contract shall be the Swiss registered domicile of PROCEQ.
- 11.2 The Contract, including, but not limited to, these Terms and Conditions and this Clause 11 shall be governed, construed and interpreted in accordance with the internal laws of Switzerland (excluding Swiss private international law and international treaties and the Vienna Convention on the International Sale of Goods dated 11 April 1980), particularly the provisions of the Swiss Code of Obligations (hereinafter CO), namely articles 253 et seq. CO.
- 11.3 All disputes arising out of or in connection with the Contract, including without limitation disputes on its conclusion, binding effect, amendment and termination shall be brought exclusively before the Courts of the Canton of Zurich, Switzerland. Place of jurisdiction shall be Zurich, Canton of Zurich, Switzerland.

Date: 28 August 2019