

## EA ELEKTRO-AUTOMATIK WORLDWIDE TERMS AND CONDITIONS OF SERVICE

The EA Elektro-Automatik Worldwide Terms and Conditions of Service set forth the rights, duties and obligations of EA Elektro-Automatik and the Customer with respect to standard Repair, maintenance and Calibration performed by EA Elektro-Automatik (or any of its third party services provider).

### 1. DEFINITIONS

As used in these terms and conditions:

- a. **"Affiliate"** means any entity that directly or indirectly through one or more intermediaries Controls or is Controlled by such person or is under direct or indirect common Control with such person.
- b. **"Factory Calibration"** means (to the extent commercially available) functional verification, as determined by EA Elektro-Automatik, during the period of service and includes or Certification of Functional Verification.
- c.
- d. **"Certification of Functional Verification"** means a non-traceable certificate of conformance.
- e. **"Control"** means, in respect of an entity, the ability to control, directly or indirectly, through ownership, by contract or otherwise, the composition of the board of directors or other governing body, the voting rights of the majority of voting securities, or the management of the affairs of that entity.
- f. **"Customer"** means the legal entity or natural person who has purchased the Service or Plan.
- g. **"Designated Service Center"** means a EA Elektro-Automatik or Affiliated site where Service is performed.
- h. **"Equipment"** means the Customer's EA branded equipment covered by the Service Agreement, Plan, quotation, or acknowledgement.
- i. **"Plan"** means any Factory Service Plan as designated in the Service Agreement description or at [EA Service Plans](#) . Plans are subject to additional terms and conditions which can be found [here](#).
- j. **"Repair"** means remedial maintenance, including all parts and labor necessary to return the Equipment to the Specifications, subject to the exclusions (if any) identified in the Service Agreement of these Terms.
- k. **"Service Agreement"** means the agreement, statement of work, quotation, acknowledgement, or Plan describing the Service to be performed.
- l. **"Service Charges"** are the fees specifically stated in the Service Agreement for the Equipment specified.
- m. **"Service(s)"** means Repair and replacement, and Calibration (to the extent commercially available) and maintenance services as described in the applicable Service Agreement.
- n. **"Specifications"** means the Equipment performance specifications determined by EA Elektro-Automatik.
- o. **"EA Elektro-Automatik"** means EA Elektro-Automatik GmbH or any Affiliate that has contracted to provide the Service.
- p. **"Terms"** means EA Elektro-Automatik Worldwide Terms and Conditions of Service.

### 2. TERM

The effective date and the term of the Service Agreement is shown on the applicable quotation, acknowledgement, or Service Agreement. Except as otherwise provided below in Section 11 (Suspension of Service; Termination), the Service Agreement will expire at the end of the term unless both parties agree in writing to an extension.

### 3. SERVICE AREA

Services will be managed within the country where the order is booked by EA Elektro-Automatik. Some Services may be performed outside the country where the order is placed except as prohibited by the Customer or applicable laws.

### 4. SERVICE TERMS

EA Elektro-Automatik will provide the Services in accordance with the applicable Service Agreement. EA Elektro-Automatik will provide the Services at a Designated Service Center during normal business hours (excluding EA Elektro-Automatik holidays), unless otherwise specified in the Service Agreement. Unless otherwise specified in the Service Agreement, Customer will be responsible for shipping Equipment both to and from the Designated Service Center. If EA Elektro-Automatik arranges for the shipping, EA Elektro-Automatik will invoice Customer for a shipping and handling charge for all Equipment shipped covering freight, insurance and packaging.

Customer will at all times allow EA Elektro Automatik access to Equipment when Service is required. Customer will ensure that the Equipment user cooperates with EA Elektro-Automatik to the extent necessary to allow Service to be performed efficiently and without interruption. For on-site Service, Customer will allow EA Elektro-Automatik to use any Customer equipment or facilities that EA Elektro-Automatik reasonably deems necessary for the performance of the Service. Customer is responsible for extracting EA equipment out of the application or system for service.

**EA Elektro-Automatik Certifications:** EA Elektro-Automatik certifications can be viewed via the following link: [Quality management - EA Elektro-Automatik](#). EA Elektro-Automatik makes no guarantees or certifications beyond those identified for the relevant country. EA Elektro-Automatik is not licensed or certified to perform metrology services in relation to the mandatory technical and legal requirements which have the objects of ensuring public guarantee ("Legal Metrology").

### 5. COVERAGE ELIGIBILITY

Except for Equipment within the initial warranty period or which is already covered by a Service Agreement, Equipment is only eligible for coverage after the Equipment has been inspected and accepted by an authorized EA Elektro-Automatik service representative. Customer is responsible for identifying any performance deficiencies prior to or at the time of requesting Service coverage. Any Equipment with performance deficiencies may be brought up to Specifications at then-current EA Elektro-Automatik per call rates, upon Customer's request. If newly covered Equipment is subsequently determined by EA Elektro-Automatik not to meet Specifications due to a pre-existing, unidentified deficiency, Customer must request in writing that EA Elektro-Automatik bring the Equipment up to Specifications at then-current EA Elektro-Automatik per call rates or EA Elektro-Automatik will remove the Equipment from the Service Agreement with no further obligation for such Equipment. Customer will not transfer any Equipment covered by a Service Agreement to another Customer site or other location without the prior written consent of EA Elektro-Automatik (such consent not to be unreasonably withheld).

### 6. SERVICE CHARGES

Service Charges will be increased to include Equipment added to a Service Agreement from time to time at the then-current rates. Unless otherwise specified in the Service Agreement, Service Charges will be invoiced upon completion of Service. When the Services are sold through a EA Elektro-Automatik authorized reseller, the Service Charges are designated by and payable to the reseller.

### 7. PURCHASE ORDERS

Customer's submission of a purchase order or acceptance of Service in response to or in anticipation of a Service Agreement will be deemed acceptance of these terms and conditions to the exclusion of any additional or different terms or conditions on Customer's purchase order or other Customer documentation, even if such purchase order or documentation states otherwise.

### 8. TAXES

All prices are exclusive of all sales, use, and excise taxes, and any other similar taxes, including by way of example only value-added tax, duties, and charges (collectively, "Charges") of any kind imposed by any governmental authority on any amounts payable by Customer. Customer shall be responsible for all Charges; provided, that, Customer shall not be responsible for any taxes imposed on, or with respect to, EA Elektro-Automatik' income, revenues, gross receipts, personal or real property, or other assets. If sales to Customer are exempt from any Charges, Customer shall furnish to EA Elektro-Automatik a certificate of exemption prior to shipment.

### 9. INVOICES AND PAYMENT

Customer will pay all amounts invoiced by EA Elektro-Automatik within thirty (30) days after the date of the invoice in the same currency as Customer's purchase order, unless otherwise indicated in the Service Agreement. EA Elektro-Automatik will not adjust any Service Charges if Customer fails to utilize any Services under the Service Agreement. Customer will not be entitled to make any deduction for set-off or counterclaim. Without prejudice to its other rights under this Agreement, EA Elektro-Automatik may charge interest at the lesser of 1.5% per month or the maximum amount allowed by applicable law on any balance outstanding after the payment due date, such interest accruing on a daily basis. EA Elektro-Automatik may change its credit terms or suspend its performance when, in the opinion of EA Elektro-Automatik, Customer's financial condition or record of payment so warrants. Customer agrees to pay any third-party collection expenses, including attorney's fees, incurred by EA Elektro-Automatik to collect any past-due amounts.

### 10. REPLACEMENT PARTS, MODULES AND PRODUCTS

Parts, modules and replacement products used by EA Elektro-Automatik for Services may be new or reconditioned to like-new performance. Customer will not be entitled to reject Equipment on the basis of the inclusion of reconditioned materials. All parts, modules and products replaced by EA Elektro-Automatik will become the property of EA Elektro-Automatik.

### 11. SUSPENSION OF SERVICE; TERMINATION

EA Elektro-Automatik may suspend the Services or terminate the Service Agreement by written notice to Customer if Customer fails to pay any amount when due, or if Customer breaches any other material provision of these terms and conditions and such breach continues for a period of thirty (30) days after Customer receives written notice from EA Elektro-Automatik describing the breach in reasonable detail. Such termination will not relieve Customer of its obligation to pay Services Charges for any Services provided.

### 12. WARRANTY

EA Elektro-Automatik warrants that the Services will be performed in a workmanlike manner. Notwithstanding the foregoing, EA Elektro-Automatik warrants that any Equipment calibrated (in the meaning of the Factory Calibration definition above-mentioned) by EA Elektro-Automatik, found to be out of tolerance within three (3) months from the performance of the Services, due to defects in workmanship, including parts or process, will be recalibrated at no charge if such item is returned to EA Elektro-Automatik, at the Customer's expense., If any Repair Service or any new or reconditioned part installed in the course of Services proves defective within the three (3) month warranty period, EA Elektro-Automatik will correct the defective work and replace the defective part without charge for labor. Third-party manufacturer repair and/or Calibration services used by EA Elektro-Automatik in the course of providing Services are not warranted by EA Elektro-Automatik. Customer must notify EA Elektro-Automatik in writing of the defect before the expiration of the three (3) month warranty period and make suitable arrangements for the re-performance of Service. Materials that are reconditioned to like-new performance and functionality may be used in performance of the Service. Customer shall not be entitled to reject



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Services or seek any diminution in the price of Services on the basis of the inclusion of reconditioned materials. EA Elektro-Automatik is not responsible for Equipment damaged after return to Customer due to causes unrelated to the Service performed.

**THIS WARRANTY IS GIVEN BY EA ELEKTRO-AUTOMATIK WITH RESPECT TO ITS SERVICES IN LIEU OF ANY OTHER WARRANTIES, EXPRESS OR IMPLIED. EA ELEKTRO-AUTOMATIK, ITS AFFILIATES AND ITS VENDORS DISCLAIM ANY IMPLIED WARRANTIES OF NON-INFRINGEMENT, TITLE, SATISFACTORY QUALITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR THEIR EQUIVALENTS IN ANY JURISDICTION. EA ELEKTRO-AUTOMATIK'S RESPONSIBILITY TO REPLACE DEFECTIVE PARTS AND CORRECT ITS WORK OR REPERFORM SERVICE IS THE SOLE AND EXCLUSIVE REMEDY PROVIDED TO THE CUSTOMER FOR BREACH OF THIS WARRANTY.**

### 13. EXCLUSIONS

EA Elektro-Automatik will not be liable or responsible under any warranty or other obligation to:

- a. service any Equipment that has been damaged, abused, overused or misused as determined by EA Elektro-Automatik;
- b. service any Equipment that has received unauthorized modification, repair or service that impairs performance or impedes normal service;
- c. paint or refinish any Equipment for cosmetic purposes;
- d. provide any application software support or any service involving application hardware; or
- e. repair or replace any accessories, unless otherwise provided in the Service Agreement.

Such services may be provided by EA Elektro-Automatik at its discretion, at Customer's request and charged to Customer at the then current rates for parts and per call service.

### 14. FORCE MAJEURE

EA Elektro-Automatik shall not be responsible for any delay or failure to perform due to any cause beyond its reasonable control, including acts of terrorism, nature or governments; pandemics; interruptions of telecommunications, power or transportation; failure of contractors or suppliers; or inability to obtain necessary labor or materials. If any such event occurs, EA Elektro-Automatik reserves the right to cancel the applicable order.

### 15. LIMITATION OF LIABILITY

EXCEPT WHERE PROHIBITED BY LAW, IN NO EVENT WILL EA ELEKTRO-AUTOMATIK, ITS REPRESENTATIVES, AFFILIATES OR VENDORS BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES, LOSS OF USE, LOST TIME, LOST DATA RESULTING FROM THE DAMAGE OR FAILURE OF A SERVICED PRODUCT OR FROM DELAYS IN SERVICING A PRODUCT, THE INABILITY TO RENDER SERVICE ON A PRODUCT OR DIMINUTION IN VALUE ARISING OUT OF, RELATING TO, OR IN CONNECTION WITH ANY BREACH OF THESE TERMS AND CONDITIONS, OR ANY OTHER REASON WHATSOEVER, EVEN IF SUCH DAMAGES WERE FORESEEABLE BY EA ELEKTRO-AUTOMATIK OR EA ELEKTRO-AUTOMATIK WAS ADVISED BY CUSTOMER OF THE POSSIBILITY OF SUCH DAMAGES, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY UPON WHICH THE CLAIM IS BASED.

IN NO EVENT WILL EA ELEKTRO-AUTOMATIK'S LIABILITY FOR ALL CLAIMS ARISING OUT OF THE PROVISION OF SERVICES UNDER THIS AGREEMENT EXCEED THE LESSER OF THE FEES PAID BY CUSTOMER FOR THE SPECIFIC SERVICE GIVING RISE TO THE CLAIM OR THE TOTAL FEES PAID BY THE CUSTOMER OVER THE PREVIOUS SIX MONTHS UNDER THE SPECIFIC SERVICE AGREEMENT GIVING RISE TO THE CLAIM.

### 16. EXPORT RESTRICTIONS

Customer must notify EA Elektro-Automatik in advance of shipment if Equipment or related technical information (e.g. calibration specifications) provided to EA Elektro-Automatik are controlled by the International Traffic in Arms Regulations. All technical information must be marked as ITAR controlled, and Customer should mark all technical data with any applicable Department of Defense distribution statement. At the request of EA Elektro-Automatik, Customer must provide applicable international trade compliance information. If ECCN/USML classification of Customer's Equipment requires an export license for return shipment to Customer, Customer agrees to participate in applicable licensing procedures. If a party to the transaction, including Customer, is named on a US, EU or other applicable country restricted party list or is located in a country subject to US, EU, or other applicable country's sanctions or embargoes, Customer agrees to participate in applicable licensing procedures. When required, Customer undertakes to provide to EA Elektro-Automatik appropriate and complete information about the end use of Equipment to be serviced by hereunder. EA Elektro-Automatik will have no liability for delayed delivery or non-delivery resulting from denial, revocation, suspension or governmental delay in issuance of any necessary export license or authority.

EA Elektro-Automatik may, in its sole discretion, cancel all or part of any order, or refuse to perform any Services if a Party to the transaction, including Customer, is named on a U.S., EU or other applicable country restricted party lists or is located in a country subject to sanctions and embargoes.

### 17. NOTICES

All notices required or authorized by these terms and conditions will be given in writing and will be deemed effective upon receipt. Notices to Customer will be sent to the address shown in Customer's purchase order. Service notices to EA Elektro-Automatik will be sent to the office of EA Elektro-Automatik designated as responsible for the Service. Legal notices to EA Elektro-Automatik must be sent to the EA Elektro-Automatik corporate headquarters.

### 18. AMENDMENT

An amendment or waiver of any provision of these terms or conditions will not be effective unless agreed in writing and signed by an authorized representative of each party. No distributor, reseller or channel partner can amend these terms or conditions, and any such attempts are null, void and without any effect. These terms and conditions will not be deemed modified or amended through any course of trade, course of performance or similar concept.

### 19. ASSIGNMENT; TRANSFER

Customer may not assign or otherwise transfer, subcontract or delegate its rights or obligations under these terms and conditions or Service Agreement without the prior written consent of EA Elektro-Automatik. Any attempt by Customer to assign, subcontract or delegate any rights or obligations without written consent will be null and void and will grant EA Elektro-Automatik the right to terminate these terms and conditions and any Service Agreement.

### 20. PERSONAL DATA

EA Elektro-Automatik may collect personal data in connection with these Terms. EA Elektro-Automatik will process such personal data as set forth in the applicable EA Elektro-Automatik Privacy Policy/Statement/Notice available at [Terms and Conditions - EA Elektro-Automatik](#)

### 21. WAIVER

The failure of either party to enforce at any time any provision of these terms and conditions will not be construed as a waiver of such provision or the right to subsequently enforce each and every provision. No waiver by either party, either express or implied, of any other breach of any of these terms and conditions will be construed as a waiver of any other breach of such term or condition.

### 22. GOVERNING LAW

The rights and obligations of the parties shall be governed by and construed in accordance with the laws of the jurisdiction where the EA Elektro-Automatik selling entity is incorporated without giving effect to its principles of conflict of laws, and exclusive venue shall be in the courts of said jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods does not apply to these Terms.

### 23. DISPUTE RESOLUTION

The parties shall first attempt in good faith to resolve any dispute, controversy, or claim arising out of or relating to these Terms, or the breach, termination, or invalidity hereof (each, a "Dispute") by negotiation and consultation between themselves at the program level within thirty (30) days from the date an issue is raised by either party. If a Dispute cannot be resolved at the program level, it will be escalated to senior management, where the executive leaders of the parties shall attempt to resolve the Dispute within sixty (60) days from the escalation date. If the Dispute is still not resolved at the senior management level, then either party may, upon written notice, initiate an action with a court of competent jurisdiction pursuant to the Governing Law section. Nothing in this section shall restrict the right of the parties to immediately seek an injunction in any court of competent jurisdiction if there is a threat of irreparable injury, or for EA Elektro-Automatik to bring an action in the court of any jurisdiction where Customer is located or using EA Elektro-Automatik Service to enforce EA Elektro-Automatik's intellectual property rights.

### 24. ORDERS UNDER U.S. GOVERNMENT CONTRACTS

If the Service Agreement is being placed pursuant to a U.S. government contract, whether by the U.S. government as the end user, a prime contractor or higher tiered subcontractor to the U.S. government, Customer acknowledges that this order is for Commercial Services (as defined in FAR 2.101) only under a Firm Fixed Price type contract (as described by FAR 16.202-1). EA Elektro-Automatik agrees to comply with each of the subcontractor flow down requirements cited in Federal Acquisition Regulation 52.244-6, Subcontracts for Commercial Items (Jan 2017), where the inclusion of the clause is mandated by FAR 52.244-6(c)(1) and to the extent the applicable thresholds are met by the Service Agreement.

### 25. SEVERABILITY

If any term or provision of these terms and conditions is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other term or provision of these terms and conditions or invalidate or render unenforceable such term or provision in any other jurisdiction.

### 26. SURVIVAL

The provisions of terms and conditions that by their nature continue, including, but not limited to warranty and limitation of liability, will survive any expiration, cancellation or termination of terms and conditions.



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### 27. HEADINGS

The headings in these terms and conditions are for reference only and do not define, modify, expand or limit any of the terms or provisions.

### 28. ENTIRE AGREEMENT

These terms and conditions and the Service Agreement will comprise the entire agreement between the parties with regard to the Services. Customer has not relied on any statement or representation of EA Elektro-Automatik or any person on behalf of EA Elektro-Automatik other than the representations, warranties and agreements expressly contained in these terms and conditions. All negotiations and prior agreements relating to the Service Agreement and any terms or conditions included within Customer's purchase orders, are superseded by these terms and conditions.

