



NIKON METROLOGY

GENERAL PURCHASE TERMS & CONDITIONS

1 Definitions

The following terms shall have the meanings set forth below

- (a) "Contract" means the instrument of contracting, such as "PO", "Purchase Order", or other such type designation, including all referenced documents, exhibits and attachments. If these terms and conditions are incorporated into a "master" agreement that provides for releases, (in the form of a Purchase Order or other such document) the term "Contract" shall also mean the Release document for the Work to be performed
- (b) "Buyer" means NIKON METROLOGY, acting through its companies, or business units, as identified on the face of the Contract. If a subsidiary or affiliate of BUYER is identified on the face of the Contract than NIKON METROLOGY means that subsidiary, or affiliate.
- (c) "BUYER's Procurement Representative" means a person authorized by NIKON METROLOGY cognizant procurement organization to administer and/or execute this Contract.
- (d) "PO" or "Purchase Order" as used in any document constituting a part of this Contract shall mean this Contract.
- (e) "SUPPLIER" means the Party identified on the face of the Contract with whom BUYER is contracting.
- (f) "Work" means all required articles, materials, supplies, goods, and services constituting the subject matter of this Contract.

2 Acceptance of Contract / terms and conditions

- (a) This Contract integrates, merges, and supersedes any prior offers, negotiations, and agreements concerning the subject matter hereof and constitutes the entire agreement between the Parties.
- (b) SUPPLIER's acknowledgment, acceptance of payment, or commencement of performance, shall constitute SUPPLIER's unqualified acceptance of this Contract.
- (c) Additional or differing terms or conditions proposed by SUPPLIER or included in SUPPLIER's acknowledgment hereof are hereby objected to by BUYER and have no effect unless expressly accepted in writing by BUYER.

3 APPLICABLE LAWS

This Contract shall be governed by and construed in accordance with the law of the country from which this Contract is issued, excluding its choice of law rules. SUPPLIER agrees to comply with all applicable laws, orders, rules, regulations and ordinances.

4 ASSIGNMENTS

SUPPLIER may not assign or transfer (voluntarily or involuntarily, by operation of law (including by merger or consolidation), judicial decree or otherwise) any of its rights or obligations under this Agreement to any other person or entity without the prior written consent of BUYER. Any violation of the foregoing provision will give BUYER the right to terminate this Agreement. BUYER may assign or transfer this Agreement or any or all of its rights and obligations under this Agreement to any other person or entity without the consent of Contractor.

5 CHANGES

- (a) The BUYER Procurement Representative may at any time, by written notice, and without notice to sureties or assignees, make changes within the general scope of this Contract in any one or more of the following : (i) drawings, designs or specifications; (ii) method of shipping or packing; (iii) place of inspection, acceptance or point of delivery; and (iv) delivery schedule.
- (b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of this Contract, BUYER shall make an equitable adjustment in the Contract price and/or delivery schedule, and modify the Contract accordingly. Changes to the delivery schedule will be subject to a price adjustment only.
- (c) Any claim for an equitable adjustment by SUPPLIER must be submitted in writing to BUYER within thirty (30) days from the date of notice of the change, unless the Parties agree in writing to a longer period.
- (d) Failure to agree to any adjustment shall be resolved in accordance with the "Disputes" clause of this Contract. However, nothing contained in this "Changes" clause shall excuse SUPPLIER from proceeding without delay in the performance of this Contract as changed.

6 CONTRACT DIRECTION

- (a) Only the BUYER Procurement Representative has authority to amend this Contract. Such amendments must be in writing.
- (b) BUYER engineering and technical personnel may from time to time render assistance or give technical advice or discuss or effect an exchange of information with SUPPLIER's personnel concerning the Work hereunder. Such actions shall not be deemed to be a

chance under the "Changes" clause of this Contract and shall not be the basis for equitable adjustment.

- (c) Except as otherwise provided herein, all notices to be furnished by the SUPPLIER shall be sent to the BUYER Procurement Representative.

7 DEFAULT

- (a) BUYER, by written notice, may terminate this Contract for default, in whole or in part, if SUPPLIER fails to comply with any of the terms of this Contract, or fails to provide adequate assurance of future performance. SUPPLIER shall have ten (10) days (or such longer period as BUYER may authorize in writing) to cure any such failure after receipt of notice from BUYER. Default involving delivery schedule delays shall not be subject to the cure provision.
- (b) BUYER shall not be liable for any Work not accepted, however, BUYER may require SUPPLIER to deliver to BUYER any supplies and materials, manufacturing materials, and manufacturing drawings that SUPPLIER has specifically produced or acquired for the termination portion of this Contract. Buyer and supplier shall agree on the amount of payment for these other deliverables.
- (c) SUPPLIER shall continue all Work not terminated
- (d) If after termination under paragraph (a), it is later determined that SUPPLIER was not in default, such termination shall be deemed a Termination for Convenience.

8 DISPUTES

In the event of any dispute, claim, question, or disagreement arising out of or relating to this Agreement or the breach thereof, the Parties shall use their best efforts to settle such disputes, claims, questions or disagreement. To this effect, they shall consult and negotiate with each other in good faith and attempt to reach a just and equitable solution satisfactory to both Parties.

9 INDEPENDENT CONTRACTOR RELATIONSHIP

- (a) SUPPLIER is an independent contractor in all its operations and activities hereunder. The employees used by SUPPLIER to perform Work under this Contract shall be SUPPLIER's employees exclusively without any relation whatsoever to Buyer.
- (b) SUPPLIER shall be responsible for any costs or expenses including attorneys' fees, all expenses of litigation and/or settlement, and court costs, arising from any act or omission of SUPPLIER, its officers, employees, agents, suppliers, or subcontractors in any tier, in the performance of any of its obligations under this Contract.

10 INFORMATION OF BUYER

Information provided by BUYER to SUPPLIER remains the property of BUYER. SUPPLIER agrees to comply with the terms of any Proprietary Information Agreement with BUYER and to comply with all Proprietary Information markings and Restrictive Legends applied by BUYER to anything provided hereunder to SUPPLIER. SUPPLIER agree not to use any BUYER provided information for any purpose except to perform this Contract and agrees not to disclose such information to third parties without the prior written consent of BUYER.

11 INFORMATION OF SUPPLIER

SUPPLIER shall not provide any proprietary information to BUYER without prior execution by BUYER of a Proprietary Information Agreement.

12 INSPECTION AND ACCEPTANCE

- (a) BUYER may inspect all Work at reasonable times and places, including, when practicable, during manufacture and before shipment. SUPPLIER shall provide all information, facilities, and assistance necessary for safe and convenient inspection without additional charge.
- (b) No such inspection shall relieve SUPPLIER of its obligations to furnish all Work in accordance with the requirements of this Contract. BUYER' final inspection and acceptance shall be at destination.
- (c) If SUPPLIER delivers non-confirming Work, BUYER may; (i) accept all or part of such Work at an equitable price reduction; (ii) reject such Work; or (iii) make, or have a third party make all repairs, modifications, or replacements necessary to enable such Work to comply in all respects with Contract requirements and charge the cost incurred to SUPPLIER.
- (d) SUPPLIER shall not re-tender rejected Work without disclosing the corrective action taken.

13 INSURANCE/ENTRY ON BUYER PROPERTY

In the event that SUPPLIER, its employees, agents, or subcontractors enter the site(s) of BUYER for any reason in connection with this Contract then SUPPLIER and its subcontractors shall procure and maintain worker's compensation, comprehensive general liability, bodily injury and property damage insurance in reasonable amounts, and such other insurance as BUYER may require. In addition, SUPPLIER and its subcontractors shall comply with all site requirements. SUPPLIER shall indemnify and hold harmless BUYER, its officers, employees, and agents from any losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorneys' fees, all expenses of litigation and/or settlement, and court costs, by reason of property damage or loss or personal injury to any person caused in whole or in part by the actions or omissions of SUPPLIER, its officers, employees, agents, suppliers, or subcontractors. SUPPLIER shall provide BUYER thirty (30) days advance written notice prior to the effective date of any cancellation or change in the term or coverage of any of SUPPLIER's required insurance. If requested, SUPPLIER shall send a "Certificate of Insurance" showing SUPPLIER's compliance with these requirements, SUPPLIER shall name Buyer as an additional insured for the duration of this Contract. Insurance maintained pursuant to this clause shall be considered primary as respects the interest of BUYER and is not contributory with any insurance with BUYER may carry. "Subcontractor" as used in this clause shall include SUPPLIER's subcontractors at any tier.

14 INTELLECTUAL PROPERTY

SUPPLIER warrants that the Work performed and delivered under this Contract will not infringe or otherwise violate the intellectual proper rights of any third party. SUPPLIER agrees to defend, indemnify and hold harmless BUYER and its customers from and against any claims, damages, losses, costs and expenses, including reasonable attorneys' fees,

arising out of any action by a third party that is based upon a claim that the Work performed or delivered under this Contract infringes or otherwise violates the intellectual property rights of any person or entity.

15 NEW MATERIALS

The Work to be delivered hereunder shall consist of new materials, not used, or reconditioned, remanufactured or of such age as to impair its usefulness or safety.

16 PACKING AND SHIPMENT

- a) Unless otherwise specified, all Work is to be packed in accordance with good commercial practice.
- b) A complete packing list shall be enclosed with all shipments. SUPPLIER shall mark containers or packages with necessary lifting, loading, and shipping information, including the BUYER Contract number, item number, dates of shipment, and the names and addresses of consignor and consignee. Bills of lading shall include this Contract number.
- c) Unless otherwise specified, delivery shall be DDP Place of Shipment.

17 PAYMENT, TAXES AND DUTIES

- a) Unless otherwise provided, terms of payment shall be net thirty (30) days from the latest of the following: (i) BUYER receipt of the SUPPLIER's proper invoice; (ii) Scheduled delivery date of the Work; or (iii) Actual delivery of the Work. BUYER shall have a right of setoff against payments due or at issue under this Contract or any other contract between the Parties.
- b) Payment shall be deemed to have been made as of the date of mailing BUYER payment or electronic funds transfer.
- c) Unless otherwise specified, prices include all applicable federal, state and local taxes, duties, tariffs, and similar fees imposed by any government, all of which shall be listed separately on the invoice.

18 PRECEDENCE

Any inconsistencies in this Contract shall be resolved in accordance with the following descending order of precedence: (1) Face of the Purchase Order, Release document or Schedule, (which shall include continuation sheets), as applicable, including any Special terms and conditions; (2) Any master-type agreement (such as corporate, sector or blanket agreements); (3) these General Provisions; and (4) Specification.

19 QUALITY CONTROL SYSTEM

- a) SUPPLIER shall provide and maintain a quality control system to an industry recognized Quality Standard and in compliance with any other specific quality requirements identified in this Contract.
- b) Records of all quality control inspection work by SUPPLIER shall be kept complete and available to BUYER and its customers.

20 RELEASE OF INFORMATION

Except as required by law, no public release of any information, or confirmation or denial of same, with respect to this Contract or the subject matter hereof, will be made by SUPPLIER without the prior written approval of BUYER.

21 SEVERABILITY

Each paragraph and provision of this Contract is severable, and if one or more paragraphs or provisions are declared invalid, the remaining provisions of this Contract will remain in full force and effect.

22 TERMINATION

- a) For specially performed Work; BUYER may terminate part or all of this Contract for its convenience by giving written notice to SUPPLIER. BUYER' only obligation shall be to pay SUPPLIER a percentage of the price reflecting the percentage of the Work performed prior to the notice of termination, plus reasonable charges that SUPPLIER can demonstrate to the satisfaction of BUYER, using generally accepted accounting principles, have resulted from the termination. SUPPLIER shall not be paid for any Work performed or costs incurred which reasonably could have been avoided.
- b) In no event shall BUYER be liable for lost or anticipated profits, or unabsorbed indirect costs or overhead, or for any sum in excess of the total Contract price. SUPPLIER's termination claim shall be submitted within ninety (90) days from the effective date of the termination.
- c) For other than specially performed Work: BUYER may terminate part of all of this Contract for its convenience by giving written notice to SUPPLIER and BUYER only obligation to SUPPLIER shall be payment of a mutually agreed-upon restocking or service charge.
- d) In either case, SUPPLIER shall continue all Work not terminated.

23 TIMELY PERFORMANCE

- a) SUPPLIER's timely performance is a critical element of this Contract.
- b) Unless advance shipment has been authorized in writing by BUYER, BUYER may store at SUPPLIER's expense, or return, shipping charges collect, all Work received in advance of the scheduled delivery date.
- c) If SUPPLIER becomes aware of difficulty in performing the Work, SUPPLIER shall timely notify BUYER, in writing, giving pertinent details. This notification shall not change any delivery schedule.#
- d) In the event of a termination for convenience or change, no claim will be allowed for any manufacture of procurement in advance of SUPPLIER's normal flow unless there has been prior written consent by BUYER.

24 WAIVER, APPROVAL, AND REMEDIES

- a) Failure by BUYER to enforce any of the provision(s) of this Contract shall not be construed as a waiver of the requirement(s) of such provision(s), or as a waiver of the right of BUYER thereafter to enforce each and every such provision(s).
- b) BUYER' approval of documents shall not relieve SUPPLIER from complying with any requirements of this Contract.
- c) The rights and remedies of BUYER in this Contract are cumulative and in addition to any other rights and remedies provided by law or in equity.

25 WARRANTY

SUPPLIER warrants that all Work furnished pursuant to this Contract shall strictly conform to applicable specifications, drawings, samples, and descriptions, and other requirements of this Contract and be free from defects in design, material and workmanship. The warranty shall begin upon final acceptance and extend for a period of (i) the manufacturer's warranty period or twelve (12) months, whichever is longer. If any non-conformity with Work appears within that time, SUPPLIER, at BUYER' option, shall promptly repair, replace, or reperform the Work. Transportation of replacement Work and return of non-conforming Work and repeat performance of Work shall be at SUPPLIER's expense. If repair or replacement or reperformance of Work is not timely, BUYER may elect to return the non-conforming Work or repair or replace Work or reprocure the Work at SUPPLIER's expense. All warranties shall run to BUYER and its customers.

26 QUALITY AND DESCRIPTION

- a) The Goods shall conform as to quality; description and specification with the particulars specified by the Buyer and shall be of sound materials and workmanship.
- b) The Supplier further warrants that the design, construction, composition and quality of the Goods shall comply in all respects (i) with all relevant requirements of any statute, statutory instrument or regulation in force at the date of delivery and (ii) provided that were Supplier's trade description does not comply with Buyer's specification then the latter shall prevail.
- c) Without prejudice to his other rights the Buyer reserves the right to reject and refuse payment for any Goods supplied which fail on inspection or in use to comply with the foregoing conditions. Upon notification of rejecting by the Buyer rejected Goods shall be returned to the Supplier at the Supplier's risk and expense and the Supplier shall within 28 days or at a time otherwise acceptable to the Buyer replace such rejected Goods by Goods which are in all respects in accordance with the contract. Alternatively the Buyer may at its absolute discretion deem the contract avoided and the Supplier shall immediately return all monies paid to it by the Buyer.

27 DELAYS AND FAILURE TO PERFORM

In the event that Supplier is or will be unable, for any reason (including an event of force majeure), to supply the Product/Service in accordance with the quantities and/or delivery dates as specified, Supplier shall promptly notify Buyer in writing. If such failure to supply will continue or does continue for a period longer than the Buyer will accept after the delivery date agreed to by Buyer and Supplier, and Supplier is unable in its then current facility to manufacture the Product or deliver the Service, Buyer may thereafter, at its discretion and upon written notice to Supplier, (i) require Supplier to supply the undelivered Product/Service at a future date agreed upon by the Parties in writing; (ii) cancel, without penalty, the order for the undelivered Product/Service; or (iii) manufacture or have manufactured by a Third Party ("Third Party Manufacturer"), that quantity of Product required by Buyer with Supplier is unable to supply; or (iii) have an alternative supplier deliver the Service. In the event that the supply failure results in an additional expense to the Buyer, the Supplier agrees to reimburse the Buyer the difference of the cost.

28 HAZARD

The supplier will inform and keep the Buyer informed of all hazards and regulations (statutory or otherwise) which the Supplier knows or believes to be associated with the use, handling storage, labeling and transport of the Goods and the Supplier will ensure that relevant consignments are properly marked with the appropriate internationally recognized danger symbols and that prominent hazard warnings appear in English on all packages and documents.

29 FORCE MAJEURE

Neither Party shall be liable to the other for failure to perform its obligations under this Agreement where such failure is caused by fires, embargoes, and governmental act or regulation, acts of God, acts of war, insurrection, riot or civil disturbance, or any other cause not under the control of the defaulting Party. If any event of force majeure should occur, the affected Party shall promptly give notice thereof to the other Party, and the affected Party shall use its commercially reasonable efforts to perform its obligations despite any such event of force majeure. Strikes shall not be considered as Force Majeure.