



Into force as from April 1st 2024

# Nikon Metrology Inc.

## Sales General Terms and Conditions

### 1. PARTIES + REPRESENTATIONS

1.1 These general terms and conditions are applicable between

Nikon Metrology, Inc. ("NIKON") having its registered office at 12701 Grand River Road, Brighton, MI 48116and

The "**Customer**" meaning any natural or legal person who enters into a Contract with NIKON, as identified on an Order Confirmation.

NIKON and the Customer are herein collectively referred to as "Parties" or each separately as "Party".

### 2. PREAMBLE

NIKON is the company, part of the Nikon Corporation, with activities dedicated to the industrial measurement and metrology industry. NIKON has developed innovative measurement products, services and solutions, and market them, directly to its customers.

### 3. OBJECT

The purpose of the Contract is as detailed in the Quotation or, if different, from the Quotation, in the Order Confirmation. It can be Services, Products delivery or solutions.

### 4. DEFINITIONS

4.1 "**Acceptance Date**" means the date upon which NIKON issues an Order Confirmation or advises the Customer of the Products ex stock status, delivers any Product or performs any Services for the Customer, whichever occurs first;

4.2 "**Affiliate**" will mean, with respect to a Party, any Person, whether de jure or de facto, which directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with such Party. For the purposes of this definition, the term "control" means: (i) ownership, directly or indirectly, beneficially or legally, of at least fifty percent (50%) of the outstanding voting securities or capital stock (or such lesser percentage which is the maximum allowed to be owned by a foreign corporation in a particular jurisdiction) of a Person, or has other comparable ownership interest with respect to a Person other than a corporation; or (ii) has the authority, whether pursuant to contract, ownership of securities or otherwise, to direct the management and policies of such Person;

4.3 "**Collection Date**" means the date on which the Goods are ready for collection by the Customer or will be deemed to be ready and available to the Customer pursuant to the Contract;

4.4 "**Conditions**" means these conditions of sale;

4.5 "**Confidential Information**" will mean any and all confidential and proprietary information or materials regarding, related to, arising from, or associated with this Contract provided, disclosed, revealed or otherwise made available by a Party (the "Disclosing Party") to the other Party (the "Receiving Party"), this Contract and the terms and conditions hereof, including but without limitation all Quotations, estimates, technical data, commercial information, know-how, specifications, inventions, processes, and initiatives, as well as patent application, trademark application, service marks application and designs application, copyrighted works, design rights, trade secrets, trade names, business names, any other intellectual property right, formulae, patterns, compilations, Software, devices, methods, techniques, technologies, methodologies, samples, drawings,

production processes, production/manufacturing data, financial data, business plans, forecasts or projections, product data, production plans, names of actual or potential customers or suppliers, personal data, and any other information that is used in or relates to the Parties' business and operations or the business or operations of any of their associated companies. Confidential Information will not, however, include information which: (i) at the time of disclosure is in the public domain, (ii) after disclosure becomes part of the public domain, except through breach of this Contract, (iii) the Receiving Party can demonstrate by reasonable proof was in its possession prior to the time of disclosure by the Disclosing Party hereunder and was not acquired directly or indirectly from the Disclosing Party, (iv) becomes available to Receiving Party free of an obligation of confidentiality from a Third Party who did not acquire such information directly or indirectly from the Disclosing Party and who is not otherwise prohibited from disclosing such information, or (v) is independently developed by the Receiving Party without reference to or use of Confidential Information disclosed by the Disclosing Party;

4.6 "**Contract**" means the legally binding contract between NIKON and the Customer for the sale of the Goods including these Conditions and the Order Confirmation;

4.7 "**Contract Price**" means the price of the Goods as detailed in the Quotation or, if different from the price detailed in the Quotation, the price in the Order Confirmation;

4.8 **Defined Terms.** As used in this Contract, in addition to the other definition, the following terms will have the meanings set forth in this **Article 4** unless context dictates otherwise;

4.9 "**Delivery**" means delivery of the Goods in accordance with **Article 11**;

4.10 "**Derivative Work**" means any work created by the Customer which would constitute an infringement of the Nikon's Intellectual Property Rights if created without license authorizing such creation;

4.11 "**Force Majeure**" means events which causes are beyond the reasonable control of the Parties, including but not limited to, acts of God, acts, regulations, or laws of any government, war, civil commotion, destruction of production facilities or materials by fire, flood, earthquake, explosion or storm, social disorders, acts of terrorism, public disasters and/or any other event or circumstance beyond the control of the affected Party or its providers;

4.12 "**Goods**" means the Products, Services and Software detailed in the Quotation or, if different from the Quotation, the Order Confirmation;

4.13 "**Incoterm**" or "**Incoterms**" means the ICC Incoterms 2020 and the relevant provision thereof;

4.14 "**Installation**" will mean the installation of the Goods at the location specified in the Quotation or, if different, in the Order Confirmation;

4.15 "**Intellectual Property Rights**" means any and all of the following, registered or not, (by whatever name or term known or designated) obtained or developed before or in the course of performance of this Contract, existing anywhere in the world: (i) rights associated with works of authorship, including all exclusive exploitation rights, copyrights, moral rights, reproduction rights and rights of communication to the public; (ii) know-how and trade secrets; (iii) patents; (iv) utility models, designs and other industrial property rights; (v) trademarks, trade dress and similar rights based on designation; (vi) applications for the foregoing, in any country, supra-national organization or territory of the world (vii) and all other intellectual property and proprietary rights of every kind and nature, whether

arising by operation of law, contract, license or otherwise, whether or not any of the foregoing are subject to protection under law;

- 4.16 "LAS" means the License Agreement for the Software pursuant to which NIKON licenses Software to the Customer;
- 4.17 "Order Confirmation" means a written acknowledgement of a Customer's order;
- 4.18 "Party" means a party to the Contract, and the word "Parties" will be construed accordingly;
- 4.19 "Person" will mean any natural person, corporation, firm, business trust, joint venture, association, organization, company, partnership or other business entity, or any government or any agency or political subdivision thereof;
- 4.20 "Products" means the product identified for Delivery in the Quotation, or, if different from the Quotation, the Order Confirmation;
- 4.21 "Quotation" means a quotation issued by NIKON to the Customer;
- 4.22 "Services" means the hardware and Software upgrade services, installation services, consultancy services, re-calibration services, maintenance services (or any of the foregoing) and any other services offered by NIKON from time to time, and which are detailed in the Quotation or, if different from the Quotation, the Order Confirmation;
- 4.23 "Service Notice" will mean a written notice from NIKON addressed to the Customer stating that NIKON is ready to perform the Services;
- 4.24 "Software" means the computer program, IT program, software or software component, whatsoever the form (e.g. executable or source code), owned by NIKON or NIKON's licensor, as mentioned in the Quotation or, if different, in the Order Confirmation, or as embedded in the Products, and which use is licensed according to the LAS or third party licensor's terms and conditions;
- 4.25 "Third Party" will mean any Person other than NIKON or the Customer or an Affiliate of NIKON or the Customer;
- 4.26 Any reference in these Conditions to a clause, will be deemed to be a reference to a clause of these Conditions unless otherwise stated.

## 5. INDICATIVE INFORMATION / QUOTATION / ORDER CONFIRMATION / RENEGOTATION /

- 5.1 NIKON may issue a Quotation, referring to Goods, to the Customer. The Quotation is an invitation for the Customer to offer to buy and is not an offer by NIKON to sell goods and/or perform services that is capable of acceptance by the Customer. Unless otherwise provided in the Quotation, the Quotation will be valid for 30 calendar days from the date of issue.
- 5.2 Any order sent or communicated by the Customer to NIKON will be an offer by the Customer to purchase Goods from NIKON subject to these Conditions. Any such order from a Customer referring to the Quotation and/or the Goods will be deemed accepted by NIKON upon the issue by NIKON of an Order Confirmation or when NIKON advises the Customer of the Products ex stock status, delivers any Product or performs any Services for the Customer. Notwithstanding Article 6 of the Contract, the Customer has the right to withdraw the order within five calendar days after the Acceptance Date by serving a written notice to NIKON in which case the order will be cancelled without damages or penalties being due to NIKON or to the Customer.
- 5.3 Acceptance of the Customer's order in accordance with this Article 5 will create a binding Contract, subject to these Conditions and any additional terms referred to in the Quotation or, if different from the Quotation, in the Order Confirmation.
- 5.4 Unless the Customer requests an immediate performance, the Contract will enter into force the sixth calendar day after the Acceptance Date provided that the Customer has not notified NIKON of the withdrawal of its order within five calendar days after the Acceptance Date.
- 5.5 Unless otherwise agreed in writing by NIKON these Conditions will apply to the exclusion of any terms and conditions stipulated or referred to by the Customer in its order or pre-contract negotiations or otherwise or any inconsistent terms implied by trade custom, practice or course of dealing.

## 6. ORDER CANCELLATION

- 6.1 The Customer may request the cancellation of its order at any time by providing written notice to NIKON. The Customer shall provide the cancellation notice in writing, specifying the date of cancellation and any other relevant details. In the event of order cancellation, the Customer shall fully compensate NIKON for all losses, damages, and costs incurred by NIKON due to the cancellation. Cancellation of the Contract by the Customer will only be accepted at the sole discretion of NIKON and in any case on condition that any costs or expenses incurred by NIKON up to the date of cancellation and all loss or damage (including, without limitation, loss of NIKON's profit) resulting to NIKON by reason of such cancellation will be paid by the Customer to NIKON forthwith. Acceptance of such cancellation will only be binding on NIKON if in writing and signed by an authorized Vice President.
- 6.2 The Parties agree that, without prejudice to NIKON's right to claim full compensation for actual prejudice suffered, the amount of compensation for cancellation will be pre-estimated at 20% of the total amount of the cancelled order. The Customer shall make payment of the pre-estimated compensation to NIKON upon providing the written cancellation notice to NIKON. The pre-estimated compensation will not limit NIKON's right to demonstrate and claim full compensation for any additional or actual prejudice that exceeds the pre-estimated amount. If NIKON claims a full compensation, upon request from the Customer, NIKON will provide a detailed breakdown of the losses, damages, and costs resulting from the cancellation to support the compensation claim. Upon payment of the full compensation by the Customer, NIKON and the Customer agree to waive any further claims or disputes related to the cancellation.

## 7. TERM

- 7.1 When its performance is spread over time, the Contract is made effective on the Acceptance Date and it shall remain effective during one year from the Acceptance Date, unless otherwise provided on the Order Confirmation.

## 8. TERMINATION

- 8.1 Either the Customer or NIKON may terminate the Contract without notice, in its entirety upon the occurrence of any of the following events:
- (a) if the other Party commits a material breach (i.e. a breach which has a material adverse effect on the rights or obligations of a Party under the Contract) of the Contract, which will not have been remedied within fifteen (15) calendar days after the receipt by the other Party of a notice identifying the breach and requiring its remedy; or
- (b) in case of gross negligence or wilful misconduct by the other Party; or
- (c) if the other Party shall file in any Court or agency pursuant to any statute or regulation of any state or country, a petition in bankruptcy or insolvency or for reorganization or for an arrangement or for the appointment of a receiver or trustee of the Party or of its assets, or if the other Party proposes a written agreement of composition or extension of its debts, or if the other Party shall be served with an involuntary petition against it, filed in any insolvency proceeding, and such petition shall not be dismissed with sixty (60) days after the filing thereof, or if the other Party shall propose or be a Party to any dissolution or liquidation, or if the other Party shall make an assignment for the benefit of creditors; or
- (d) if, at any time, the other Party is affected by an event of Force Majeure provided that the one hundred twenty (120) day-time period under Article 25.4 has expired.
- 8.2 **Accrued Rights; Survival.** Unless otherwise agreed in writing by the Parties, the termination of this Contract for any reason whatsoever shall not relieve the Parties of their obligations and liabilities arising prior to the date of termination or which, expressly or impliedly, arise or continue to apply after the date of termination of this Contract including any and all damages arising from any breach hereunder, remedies, liabilities, rights or obligations of the Parties existing on the termination date. In all cases of termination of this Contract, unless otherwise agreed, the sums paid by the Customer on the effective date of the termination of the Contract will remain with NIKON and the sums remaining due on the effective date of the termination of this Contract will be paid within the time limits set forth in the Contract, without prejudice to any damages. The provisions relating to confidentiality, intellectual property, invoicing, liability, warranty, referencing, notifications, applicable law, and dispute resolution will survive the termination or expiration of the Contract for any reason and will remain in effect after any such termination or expiration for the applicable period set forth therein.
- 8.3 **Consequences of termination.** Upon expiration or termination of the Contract for any reason whatsoever, all licenses granted to the

Customer will automatically and immediately terminate, unless otherwise provided in the Contract.

## 9. EXPORT CLAUSE

9.1 The Customer will comply with all applicable European, UK, Japanese, United States and non-United States export control and trade sanctions laws ("**Export Laws**"). The Customer will not, directly or indirectly, export, re-export, provide, or otherwise transfer any Product, Service or Software: (i) to any individual, entity, territory, or country prohibited by Export Laws or Nikon Corporate export control policies, available on Nikon website; (ii) to anyone on Export Laws restricted parties lists; or (iii) for any purpose prohibited by Export Laws, including nuclear, chemical, or biological weapons, or missile technology applications, without the required government and NIKON authorizations. Any breach to this provision is deemed as material breach.

9.2 NIKON will do its best efforts for obtaining the necessary export licenses and/or approvals according to applicable export control regulations and clearance by Nikon Corporation export control department that apply to the shipment of the Goods by NIKON. The Customer hereby confirms that it will fully cooperate with NIKON for obtaining and providing all information that may be required for obtaining such export licenses or approvals. NIKON assumes no obligation of results for obtaining the export licenses and/or approvals. NIKON is in no way liable if export licenses and/or approvals are denied by public authorities or by any Third Party, including Nikon Corporation export control department. NIKON is not liable for not obtaining export control license or authorizations. The Customer herewith expressly waives against NIKON all possible claims for damages of any nature, be it general or special, as a result thereof.

9.3 All orders and sales under this Contract are subject to both applicable governmental and Nikon Corporate export control regulations and policies.

## 10. GENERAL OBLIGATIONS OF THE CLIENT

10.1 **Respect of Laws. Anti-Bribery.** The Customer will, and will procure that persons associated with the Customer who are performing obligations under this Contract, will: (i) at all times comply with all applicable laws throughout the term of the Contract; (ii) comply with all applicable laws, statutes, regulations and sanctions relating to anti-bribery and anti-corruption, including but not limited to the UK Bribery Act 2010, the European anti-bribery laws, the U.S. Foreign Corrupt Practices Act (FCPA) or any other applicable laws or regulations, and any guideline and instructions provided from time to time; (iii) have in place throughout the term of the Contract, its own policies and procedures relating to anti-bribery and anti-corruption, including but not limited to adequate procedures to protect itself from any bribery and corruption risk and take adequate preventive measures for strict compliance; (iv) comply with the Nikon Code of Conduct (<https://www.nikon.com/about/sustainability/nikon-sustainability/codeofconduct/>); (v) ensure that all bank accounts are registered in the country of operation of the Customer; (vi) promptly report to NIKON any request or demand for any undue financial or other advantage of any kind received in connection with the performance of this Contract; (vii) keep proper books and records in order to demonstrate full compliance with the provisions hereof.

10.2 **Active cooperation.** When a pre-study phase is required to adapt NIKON's equipment or systems to the Customer's items, the Customer's active cooperation is compulsory. This includes the provision of samples of the items to be measured, as during the production phase, in order to capture the common defects and structures of the Customer's specific items. These samples should represent the types of defects that are expected to be seen with NIKON equipment in the production line. Failure to provide this cooperation and samples could result in additional costs that will be charged to the Customer.

10.3 The Customer will provide NIKON, at all times and without charge, with all required or requested information, documents, and assistance that are necessary for the proper performance of the Contract. The information provided by the Customer must be accurate and correct and must be communicated to NIKON promptly. NIKON will not be held responsible, and NIKON does not offer any guarantee, in the event that the failure of a service is attributable to a lack of information provided by the Customer to NIKON.

10.4 **Financial Difficulty Notification.** In the event that the Customer encounters financial difficulties or anticipates facing financial challenges that may impact their ability to fulfil its obligations under the Contract, the Customer shall promptly inform NIKON in writing. The notification to NIKON will include a detailed description of the financial difficulties faced by the Customer, the anticipated impact on their performance under the Contract, and any proposed measures to mitigate the effects of the financial difficulties. The Customer shall provide the notification as soon as the financial difficulties become

known to it, with due diligence to ensure that NIKON receives the information in a timely manner. The Parties will engage in good faith discussions upon receipt of the Customer's notification to explore potential solutions and adaptations to the Contract that may be necessary due to the financial difficulties. The Customer shall cooperate with NIKON in providing any additional information or documentation that may be reasonably required to assess the impact of the financial difficulties on the Contract. NIKON will treat all information provided by the Customer regarding their financial difficulties as strictly confidential and will not disclose such information to Third Parties without the Customer's prior written consent, except as required by law or regulation. The Customer's notification of financial difficulties will not be construed as a waiver of any rights or remedies available to NIKON under the Contract or at law.

10.5 **Restriction on the Goods.** The Customer hereby acknowledges and agrees that: (i) the Goods will not be used by the Customer nor by anybody for the purpose of the development or production of nuclear weapons, biological weapons, chemical weapons, missiles and conventional weapons; (ii) the Goods will not be used by the Customer nor by Customer's end customers for the purpose of development/manufacturing of military products; (iii) the use that the Customer or by Customer's end customers make of the Goods will be clearly separated from any military use within the by Customer's or its end customers' group or other departments. This provision shall not apply to countries part of the group A, as set out on the METI (Ministry of Economy, Trade and Industry of Japan) website ([www.meti.go.jp/policy/anpo/seminer/shiryu/guidance\\_english.pdf](http://www.meti.go.jp/policy/anpo/seminer/shiryu/guidance_english.pdf)).

10.6 The Customer shall not encumber the Goods with any lien or security interest until the full price of the Goods has been paid to NIKON. Any lien or security interest granted by the Customer in violation of this provision shall be null and void and not enforceable against NIKON.

10.7 During five (5) years as of the Acceptance Date, the Customer agrees not to resell, distribute, or transfer the Goods purchased from NIKON to any Third Party without obtaining the prior written consent of NIKON. The Goods sold by NIKON are intended solely for the Customer's internal use and will not be sold, distributed, or otherwise made available for commercial purposes, resale, or any other distribution without NIKON's express authorization. The Customer will not rebrand, relabel, or present the Goods as its own or as goods from any other source.

10.8 The restriction on resale will be applicable during five (5) years as of the Acceptance Date. Notwithstanding the above restrictions, the Customer may resell or distribute the Goods if expressly authorized in writing by NIKON for specific purposes or within designated territories. Survival: This restriction on resale or distribution will survive the termination or expiration of this Contract.

## 11. DELIVERY (INCLUDING PRE-DELIVERY INSPECTION)

11.1 **Pre-Delivery.** All Goods manufactured by NIKON are subject to NIKON's standard inspection, which details are available upon request. The Parties may agree upon further pre- or post-Delivery tests, as detailed in the Order Confirmation. The Customer understands and agrees to be familiar with the respective responsibilities of NIKON and the Customer to such inspections.

11.2 Upon the Goods meeting the acceptance criteria, the Customer will sign an acceptance certificate, to certify the same.

11.3 If, by reason of any failure by the Customer to provide all relevant assistance to NIKON in sufficient time prior to the estimated Delivery date, any pre-Delivery inspection cannot in NIKON's reasonable opinion proceed, then the Goods will be deemed to have passed NIKON's pre-delivery tests and to be in full conformity with all relevant contractual standards or protocols applicable to the Goods and will be deemed available for Delivery ex-works. Any requirement for an acceptance certificate signed by the Customer will be deemed waived.

11.4 Where the Services include acceptance tests on the Goods, the Customer undertakes to provide all necessary assistance to NIKON to enable the acceptance tests to be completed, whether at the NIKON's or the Customer's premises, including without prejudice to the generality of the foregoing, the provision of components of the relevant type, quality and quantity. If, by reason of any failure by the Customer to provide all relevant assistance to NIKON in sufficient time prior to the agreed acceptance test date (which agreed date will be detailed in the Order Confirmation), acceptance tests cannot and do not proceed, then the Goods will be deemed accepted and in full conformity with all relevant contractual and other statutory or Governmental standards or protocols. Any requirement for an acceptance certificate signed by the Customer will be deemed waived.

11.5 Without prejudice to the above, any Goods actually put into use by the Customer will be deemed accepted by the Customer.

- 11.6 **Delivery.** By default, the Delivery of the Goods will be made on the basis of the Ex Works (EXW) Incoterm. NIKON will make the Goods available at its premises or another named place of business ("**Delivery Point**") specified in the Quotation or, if different, the Order Confirmation.
- 11.7 The Customer will be responsible for collecting the Goods from the Delivery Point at its own cost and risk. The Customer will arrange for transportation and, if desired, insurance of the Goods from the Delivery Point to the final destination.
- 11.8 NIKON will make the Goods available at the Delivery Point on the agreed-upon Collection Date. NIKON will provide the Customer with any necessary documentation related to the Goods, such as invoices, packing lists, and the delivery note. In case of delay in collection by Customer, the Delivery shall be deemed accomplished on the agreed-upon Collection Date at the Delivery Point.
- 11.9 The risk of loss or damage to the Goods as well as the title to the Goods will transfer to the Customer according to the applicable Incoterm, when the Goods are made available at the Delivery Point.
- 11.10 Any additional costs, incurred after the Goods are made available at the Delivery Point on the agreed-upon Collection Date and the Customer having not proceeded to the collection, such as but not limited to storage, charging, transportation, insurance, customs duties, taxes, or other charges, will be the sole responsibility of the Customer and, if incurred by NIKON, will be recharged to the Customer.
- 11.11 NIKON will promptly notify the Customer when the Goods are available for collection at the Delivery Point.
- 11.12 If the Customer fails or refuses to accept Delivery in accordance with the provisions of this **Article 11**, or fails to give NIKON adequate instructions to facilitate Delivery or the Customer fails to collect the Goods by the agreed Collection Date, then (if it has not already passed) risk in the Goods will pass to the Customer, and NIKON may store or arrange for storage of such Goods and charge the Customer for all related costs and expenses (including without limitation storage and insurance) and NIKON may sell such Goods and deduct any monies payable to NIKON by the Customer from the sale proceeds and account to the Customer for any excess or charge the Customer for any shortfall below the Contract Price.
- 11.13 Any date for Delivery provided by NIKON will be a non-binding estimate and will be subject always to such of the following as are applicable: (i) any necessary import or export license being obtained by the Customer, (ii) the Customer having given all necessary instructions and information to NIKON to enable it to proceed fully with the Contract, and (iii) NIKON having received any due advance payment from the Customer in cash or cash equivalent.
- 11.14 Time for Delivery by NIKON will not be of the essence of the Contract. NIKON will be entitled to defer Delivery until any advance payment monies due from the Customer have been received.
- 11.15 **Packaging.** Packaging by NIKON of any of the Products or part thereof will be in accordance with NIKON's applicable standard packaging procedures and practices. Unless otherwise provided in the Quotation or, if different, the Order Confirmation, the packaging costs will be separately identified in the Quotation or, if different, the Order Confirmation, and will be deemed to be part of and inclusive in the Contract Price
- 12. WARRANTIES**
- 12.1 The Goods delivered to the Customer shall be deemed declared conform with the delivery note by the Customer within twenty (20) calendar days after Delivery unless the Customer provides a specific and detailed claim before the expiration of this period by registered letter to NIKON. The burden of proof of non-conformity lies with the Customer. Acceptance covers all apparent defects and non-conformities, that is, all defects that the Customer could have detected at the time of Delivery or within twenty (20) calendar days following the Delivery through careful and diligent inspection.
- 12.2 The duration of the warranty offered by NIKON for hidden defects will not exceed twelve (12) months or 2.000 hours of use (whichever is the earlier) as of the Delivery acceptance of the concerned Good. The application of any possible warranty is subject to the fulfillment of the following cumulative conditions: (i) the defect renders the material substantially unfit for its usual or expressly mentioned special use in the Quotation or the Order Confirmation; (ii) the Good has been properly installed and positioned; (iii) the Good is used under normal conditions; (iv) the maintenance and usage instructions provided upon Delivery or mentioned in the documentation accompanying the Delivery have been followed by the Customer; (v) the Good has not been modified, disassembled, or repaired by the Customer or any Third Party; and (vi) the Customer has notified the claim relating to the hidden defect to NIKON by registered letter within a maximum period of eight (8) days after discovering the hidden defect.
- 12.3 NIKON will not be liable for any defective Goods if: (i) the Goods have not at all times been stored, used, operated, adjusted, serviced and set in accordance with the methods recommended or the instructions given by NIKON; (ii) the Customer does not notify NIKON in writing of the defect as soon as practicable and in any event within eight (8) days of discovery of the defect and shall have provided authority for NIKON's representatives or agents to inspect the Goods; (iii) the full Contract Price of the Goods has not been paid by the due date; (iv) the defect arises as a result of the negligence of the Customer or its employees or subcontractors; (v) the defect arises because the Customer has failed to follow any instructions issued by NIKON (whether oral or in writing) as to the storage, assembly, installation, commissioning, use or maintenance of the Goods including, without limitation any failure to comply with (and maintain a log of) any preventative maintenance schedule or similar discipline referred to in NIKON's Operator's Manual; (vi) the defect arises as a result of any alteration, servicing or repair of the Goods carried out other than by skilled operators approved by NIKON; (vii) the defect arises as a result of normal wear and tear, accident, misuse, wilful damage, or abnormal working conditions; (viii) the defect arises as a result of any defective parts, materials or equipment used in conjunction with the Goods which are not manufactured by NIKON; (ix) the Customer makes any further use of the Goods or attempts to repair it or have it repaired by someone other than NIKON or NIKON's authorized person after giving written notice of the defects to NIKON. (x) the defect is in relation to material or workmanship or design in any accessories, proprietary equipment or factored items not manufactured by NIKON. NIKON will seek to obtain for the Customer the benefit of any condition, guarantee or warranty which may be provided by the manufacturer of all such items referred to in this **Article 12**.
- 12.4 When NIKON's warranty on the Good is applicable, the warranty is limited, at NIKON's choice, to the free repair or replacement of the defective Good. Under no circumstances will the Good be refunded to the Customer. In no event shall NIKON's liability (regarding apparent defects or hidden defects) exceed the invoiced value of the concerned Good. The Customer shall return the defective Good to NIKON at the Customer's expense and risk for repair or replacement. The Good must be returned free of charges to NIKON, and its return to the Customer will not be free of charges, unless otherwise provided. The Customer is responsible for all import and re-export licenses, formalities and costs.
- 12.5 If the returned Goods presents no defect, is not defective, or was not acquired from NIKON, the Customer will indemnify NIKON for all expenses incurred by NIKON for this verification (repair, estimate, testing, transportation, packaging, etc.). Technical tests undergone by all returned Goods will be charged if the Goods show no defect.
- 12.6 Any claim from the Customer will not suspend the Customer's obligation to pay the amounts due to NIKON, and NIKON's acceptance of the return of the Good does not constitute any acknowledgment of an error or damage or defect. The return of Goods, accepted or not, does not imply NIKON's acknowledgment of the defective or non-conforming nature of the concerned Goods.
- 12.7 Any return of Goods must imperatively be in an appropriate packaging. The Customer shall be informed once the Good is repaired. However, the Good will be considered as NIKON's property, and NIKON will be released from its obligation to return if the Good has not been retrieved by the Customer within a period of three (3) months following the notification of repair by NIKON.
- 12.8 The benefit of any warranty is limited to the Customer mentioned in the Quotation or, if different, Order Confirmation.
- 12.9 The conditions of actual production in each Customer's facility vary considerably. Therefore, descriptions of the production or performances capabilities of any Good are estimates only and, as such, are not warranted without prejudice to the guarantees that may be mentioned in the Quotation or, if different, Order Confirmation.
- 12.10 The Customer acknowledges and accepts that, where the Goods comprise measuring and/or metrology equipment, such equipment may not be suitable for all conceivable measuring and/or metrology purposes. Therefore, NIKON gives no warranty (whether express or implied) of merchantability or fitness for a particular purpose unless such purpose has been mentioned in the Quotation or, if different, Order Confirmation.
- 12.11 **Calibration.** Notwithstanding any contrary provision in the Contract, the warranty for product calibration is limited to thirty (30) calendar days. NIKON recommends that the Customer orders a calibration of the Products each year.

- 13. SPECIFICATIONS, INSTRUCTIONS OR DESIGN**
- 13.1 If Goods are made to a specification, instruction or design supplied by the Customer or any Third Party on behalf of the Customer then: (i) the suitability and accuracy of that specification, instruction or design will be the Customer's responsibility; and (ii) the Customer will indemnify NIKON against all loss, damage or expense (including, without prejudice to the generality of the foregoing, legal costs) which it may incur in any country by reason of the Goods being made to such specification, instruction or design (including, without limitation, by reason of any infringement or alleged infringement in any country of any Third Party's Intellectual Property Rights).
- 14. SPECIFIC RULES FOR SERVICES**
- 14.1 When Services are performed at the Customer's place, NIKON will use its best reasonable efforts to comply with security and plant instructions and the Customer will be solely responsible if applicable for the provision of a proper base for the machine site, of a clean dry compressed air supply, electricity supply, forklift truck or other suitable lifting or other facilities as reasonably specified by NIKON's instructions.
- 14.2 NIKON will be entitled to charge the Customer for each man day lost, or part thereof, in waiting for the Customer if, following service of a Service Notice, NIKON is available to perform the Services but is prevented from doing so (in its reasonable opinion) by reason of the lack of all relevant assistance from the Customer (including but not limited to the lack of availability of test components or parts from the Customer) and/or the condition of the Installation site and/or the facilities or services available therein or thereto at the time of agreed Installation
- 14.3 Training provided by Nikon.** When training is to be provided by NIKON, this will be part of the Quotation or, if different, in the Order Confirmation. Training will be taken within three (3) months of Delivery or otherwise specified in the Quotation or, if different, in the Order Confirmation. Any variations or modifications to the Customer's training requirements accepted by NIKON after the Order Confirmation shall be charged as an extra. Where training is to be provided by NIKON outside NIKON's facilities, the Contract Price shall not include the facility costs, nor travel and accommodation costs. The reproduction costs of the training material is at Customers expense and the number of copies is limited to the training audience and for training purpose only. The Customer is obliged to allocate to the training only individuals possessing the skills and qualifications necessary to readily receive and comprehend the training provided.
- 14.4 **Maintenance.** The Services may include maintenance services from NIKON. Maintenance services from NIKON only cover normal wear and tear of the Goods resulting from their normal use.
- 14.5 If the Customer decides not to purchase maintenance services from NIKON and, at a later date, decide to purchase maintenance services from NIKON, NIKON has the right to invoice maintenance services to the Customer for the period between the Acceptance Date and the date of the purchase of the maintenance service by the Customer. If the Customer decide to suspend maintenance services from NIKON and, at a later date, decide to reactivate the maintenance services from NIKON, NIKON has the right to invoice maintenance services to the Customer for the period between the suspension date and the reactivation date of the maintenance service by the Customer.
- 15. PAYMENT**
- 15.1 Payment of the Contract Price will be made by the Customer in US Dollar, inclusive of all VAT and applicable taxes and duties and not later than twenty-one (21) days after the date of receipt of the invoice, or alternatively as otherwise provided in the Quotation or, if different, Order Confirmation, notwithstanding that property in the Goods may have passed to the Customer. Notwithstanding the above, NIKON will be entitled to invoice the Customer for the full Contract Price for the Services on or at any time after completion of the Services.
- 15.2 All customs duties, sales or other taxes payable by NIKON in respect of the supply of the Goods will be recharged to the Customer. The Customer will make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise. NIKON will be entitled to set off and retain any and all sums due to the Customer against any contingent or actual liabilities of the Customer to NIKON.
- 15.3 NIKON reserves the right to increase the Contract Price if any extra cost is incurred by NIKON after quoting the Contract Price as a result of the inaccuracy or incompleteness of any instructions issued by the Customer, or as a result of any failure to supply any information, drawings or specification which is required to enable NIKON to proceed with the Contract.
- 15.4 For each invoice from NIKON, the occurrence of its due date will constitute automatic notice of default to the Customer by operation of law. In the event of any delay or default in payment by the Customer under the Contract, the Customer will pay late payment interest to NIKON on the outstanding amount at a rate calculated twice a year, on the first of January and on the first of July, which will be equal to the base lending rate of the Wall street Prime Rate (WSPR) in effect on the first of January and on the first of July of each year plus 8 percents.
- 15.5 The late payment interest will begin to accrue from the due date for payment until the actual date of payment. Any part of a month shall be considered as a full month for the purpose of calculating late payment interest. The Customer will pay the late payment interest together with the outstanding principal amount upon receipt of a written demand from NIKON.
- 15.6 The imposition of late payment interest shall not prejudice or affect NIKON's right to seek any other remedies available under this Contract or at law for the Customer's failure to make timely payment.
- 15.7 Any payments received from the Customer shall first be applied to outstanding late payment interest, fees, and expenses, with the remainder applied to the outstanding principal amount.
- 15.8 Notwithstanding any other provision of these Conditions, all sums outstanding under the Contract will become due immediately on termination of the Contract.
- 15.9 NIKON reserves the right to deliver and invoice orders by Customers in installments. NIKON will be entitled to suspend further deliveries of installments until such time as the Customer has paid for previous deliveries.
- 15.10 Where a Quotation or Order Confirmation provides for payment of the Contract Price by Letter of Credit, that payment will be made by irrevocable Letter of Credit established at the Customer's cost in NIKON's favour by the Customer forthwith upon NIKON sending the Order Confirmation to the Customer, and confirmed by a clearing bank approved by NIKON and maintained valid for cash drawings against presentation of NIKON's invoice(s) until final Contract payment but in any case for at least three months after scheduled completion of the Contract.
- 16. PRICES AND CURRENCY**
- 16.1 NIKON's invoices are established in US Dollar. NIKON's invoices are due and payable in the currency of the invoice.
- 16.2 NIKON reserves the right to increase prices referred to in any Quotation denominated in a currency other than the domestic currency of NIKON in the event of a currency fluctuation, from the conversion rate specified therein, between the date of such Quotation and the issue of the Order Confirmation. The increase will be limited to such amount as is necessary to maintain the price referred to in the Quotation as it would have appeared if converted to the domestic currency of NIKON at the rate appearing in the Quotation.
- 16.3 Unless otherwise agreed, the Contract Price is on the basis of Delivery ex-NIKON's works at the address specified in the Order Confirmation and is exclusive of VAT and all applicable taxes and duties. The Customer will pay (and the Contract Price will be net of) any and all taxes duties and other government charges payable in respect of the Goods at the rate or rates prevailing when the taxable or chargeable event occurs even if a relevant law or regulation imposes such tax, duty or levy solely on NIKON.
- 16.4 Where training is to be provided by NIKON, this will be quoted on the basis of the number of individuals needed and the number of hours needed to conduct training as specified by the Customer and the number of man days required to meet that specified need. Training will be completed within six (6) months of Installation or as otherwise specified in the Quotation or Order Confirmation. Any variations or modifications to the Customer's training requirements accepted by NIKON, after service of an Order Confirmation will be charged as an extra.
- 17. PRICES VARIATIONS**
- 17.1 The Acceptance Date mentioned on each invoice determines the applicable prices.
- 17.2 New prices will only be applied to orders which Acceptance Date is posterior to the explicit or tacit acceptance of such new prices by the Customer.

## 18. DATA PROTECTION

- 18.1 To the extent required by the applicable regulations, the Customer authorises NIKON to process the personal data that the Customer communicates to NIKON. The Customer acknowledges that the processing of the personal data it communicates to NIKON is necessary for the performance of the Contract. The purpose of the processing is to perform the Contract and to comply with any regulatory or legal obligation of NIKON. The personal data communicated by the Customer to NIKON and the persons concerned may fall under any category. The Customer authorises NIKON to use sub-contractors for the processing of personal data. NIKON will retain personal data for the duration of the Contract in accordance with applicable legal requirements, and only as long as necessary for the purposes described herein or as long as required by law or to support or defend against potential legal claims. Any questions or requests relating to the personal data provided to NIKON may be made by contacting NIKON as available in NIKON's Privacy Policy on NIKON's website. Information on the processing of personal data is available to the data subject in NIKON's Privacy Policy available on NIKON's website.
- 18.2 The Customer shall hold NIKON harmless and indemnify NIKON against any and all claims and recourse by Third Parties directly or indirectly relating to the processing of the personal data referred to herein that the Customer has unlawfully communicated to NIKON.

## 19. CONFIDENTIALITY

- 19.1 **Restrictions.** Each Party will, and will use commercially reasonable efforts to ensure that it will: (i) maintain all Confidential Information of the other Party in trust and confidence; (ii) not disclose any Confidential Information of the other Party to any Third Party (except that a Party may disclose such Confidential Information to those of its employees, agents, independent contractors, Affiliates, or sublicensees who require such information in order to perform under this Contract and who are subject to binding obligations of confidentiality and limited use at least as restrictive as those of this **Article 19**); (iii) not disclose or use any Confidential Information of the other Party for any purposes other than those necessary or permitted for performance under this Contract; (iv) not use any Confidential Information of the other Party for any purpose or in any manner that would constitute a violation of any applicable governmental laws, rules, regulations, or orders; and (v) not reproduce any Confidential Information of the other Party in any form except as required to perform in accordance with this Contract.
- 19.2 Each Party will use at least the same standard of care as it uses to protect its own Confidential Information of a similar nature to prevent unauthorized disclosures or uses of Confidential Information of the other Party, but in any event each Party will use no less than commercially reasonable care to achieve such objectives. Each Party will promptly notify the other Party upon discovery of any unauthorized use or disclosure of the Confidential Information of the other Party.
- 19.3 The Parties agree that the material financial, commercial, scientific and technical terms of the Contract will be considered Confidential Information of both Parties. Notwithstanding the foregoing, either Party may disclose such terms to bona fide potential corporate partners, potential investors or merger or acquisition partners, and to commercial lenders, financial underwriters, investment bankers and legal and financial advisors, provided that all such disclosures will be made only to such Parties under commercially reasonable obligations of confidentiality no less protective than the obligations set forth in this **Article 19**.
- 19.4 **Authorized Disclosure.** Notwithstanding any other provision of this Contract, each Party may disclose Confidential Information of the other Party: (i) to the extent and to the persons and entities required by an applicable governmental law, rule, regulation or order; provided, however, that the receiving Party will first have given prompt notice to the other Party hereto as soon as reasonably practicable to enable it to seek any available exemptions from or limitations on such disclosure requirement and will reasonably cooperate, at the other Party's expense, in such efforts by the other Party; (ii) as necessary to file or prosecute patent applications relating to Innovations, prosecute or defend litigation or otherwise establish rights or enforce obligations under this Contract, but only to the extent that any such disclosure is necessary; (iii) to permitted sublicensees, successors and assigns under this Contract (if any); (iv) to identified Third Parties with the prior, express, specific, written permission of the Disclosing Party.
- 19.5 **Publicity.** Neither Party will issue any publicity release or announcement containing information about this Contract without the advance written consent of the other Party, except as such release or announcement may be required by law, in which case the Party making the release or announcement will, before making any such release or announcement, afford the other Party a reasonable opportunity to review and comment upon such release or announcement to the extent practicable.

- 19.6 **Return of Confidential Information.** Upon any expiration or termination of this Contract, each Party will, upon request of the other Party, use diligent efforts (including without limitation a diligent search of files and computer storage devices) to return or destroy all Confidential Information of the other Party and all copies, summaries, compilations, extracts or other derivatives thereof, except to the extent such Confidential Information is necessary to exercise any license or other right surviving termination of this Contract and provided however that the receiving Party may retain electronic copies thereof which remain in ordinary, routine backups of information technology systems. Additionally, each Party will be allowed to keep one archival copy, or a required quantity, of any Confidential Information of the other Party for record keeping purposes only or as required by applicable law, rule or regulation.

- 19.7 **Injunctive Relief.** The Parties expressly acknowledge and agree that any breach or threatened breach of this **Article 19** may cause immediate and irreparable harm to the Party whose Confidential Information is at issue, which harm may not be adequately compensated by damages. Each Party therefore agrees that in the event of such breach or threatened breach and in addition to any remedies available at law, the Party whose Confidential Information is at issue will have the right to seek equitable and injunctive relief, without bond, in connection with such a breach or threatened breach.

- 19.8 **Survival.** The terms of this **Article 19** will survive for ten (10) years as of the termination date of this Contract.

## 20. INTELLECTUAL PROPERTY

- 20.1 NIKON retains all right, title and interest in and to any and all of its Intellectual Property Rights, including its Intellectual Property Rights in the Products, Software, middleware, documentation, trade names and results of Services rendered to the Customer in the performance of the Contract. NIKON owns title and interest on all of its innovations, data, formulations and information obtained or developed before or in the course of performance of this Contract and the related Intellectual Property Rights.
- 20.2 Without prejudice to the foregoing and except as explicitly granted to the Customer, nothing in this Contract will be deemed or implied to be, and the Parties disclaim all implied rights to, the grant by NIKON to the Customer of any license, right, title or interest in its products, services, Intellectual Property Rights, any technology or know-how, operating procedures, marketing materials or strategies, intangibles, material or proprietary rights or any other tangible or intangible property, except as are expressly set forth in this Contract.
- 20.3 Without prejudice to the license terms and conditions attached to the delivered Software (LAS), which therefore exclusively applies to such Software, NIKON grants to the Customer a time-limited, non-transferrable, non-assignable and non-exclusive license to use the Products, Software, middleware, documentation and results of the performed Services, all other rights being reserved. NIKON will be the sole owner of all Intellectual Property Rights relating to Derivative Works from the date of their creation and the Customer hereby agree to assign and transfer all rights, title and interest in and to any and all of its Intellectual Property Rights in all Derivative Works to NIKON.
- 20.4 Unless otherwise provided, the duration of the license granted by NIKON to the Customer corresponds to the term of the Contract and, in case of Software, to the term of the maintenance contract subscribed by the Customer.
- 20.5 If the Customer has knowledge of an infringement, unauthorized use, misappropriation or ownership claim or threatened infringement or other such activity by a Third Party with respect to any Intellectual Property Rights of NIKON (an "**Infringement**"), the Customer will promptly notify NIKON in writing and will promptly provide NIKON with available evidence of such Infringement. NIKON has the right, but not the obligation, to institute, prosecute, and control any action or proceeding with respect to Infringement.
- 20.6 Notwithstanding anything to the contrary in the Contract, it is expressly agreed that where NIKON markets Software, products or services provided by Third Parties, the terms and conditions applicable to such Third Parties' Intellectual Property Rights in Software, products and services will be those established by the Third Parties and the Customer expressly declares to be in compliance with them. The Customer releases NIKON from any liability and the Customer indemnifies NIKON against - and the Customer will hold NIKON harmless from - any and all claims, remedies and indemnities arising out of or in connection with any breach of the terms and conditions applicable to such Third Parties' software, products and services by the Customer.
- 20.7 NIKON warrants that, to the best of its knowledge, the Goods being sold do not infringe upon the Intellectual Property Rights of any Third Party, and NIKON has the legal right to sell and transfer such Goods

- to the Customer. NIKON represents that, as of the effective date of this warranty, there are no claims, threats, or pending legal actions alleging infringement or violation of any Third-Party Intellectual Property Rights concerning the Goods.
- 20.8 The Customer agrees to promptly notify NIKON in writing of any claim, action, or allegation of infringement related to the Goods that comes to its attention. In the event of a potential or actual Intellectual Property infringement claim from a Third Party, NIKON may, at its option and expense: (i) obtain the right for the Customer to continue using the concerned Good; (ii) modify the concerned Good to make it non-infringing while maintaining its functionality; (iii) replace the concerned Good with a non-infringing equivalent or (iv) accept the return of the concerned Good and refund the purchase price to the Customer. This warranty will be void if any unauthorized modifications, alterations, or use of the concerned Good have been made by the Customer or any Third Party.
- 20.9 Where NIKON markets Software, products or services provided by Third Parties and the infringement claim relates to these Third Parties' software, products or services, the Customer agrees and acknowledges that its sole recourse and obligation is to enforce the warranty against the Third-Party supplier of NIKON who provided the Software, product or service concerned. In the event of a potential or actual intellectual property infringement claim, the Customer agrees that it will look solely to the Third-Party supplier of NIKON for any remedies, including but not limited to obtaining the right to continue using the Software, product or service concerned, modification of the Software, product or service concerned, replacement of the Software, product or service concerned, or refund of the purchase price.
- 20.10 Where the license terms and conditions attached to the delivered Software (LAS), which therefore exclusively applies to such Software, are applicable to a software, the warranty is solely governed by the LAS and the above-mentioned provision relating to the warranty are not applicable.
- 20.11 The Customer hereby grants NIKON and its authorized representatives the non-exclusive right and authorization to adapt, modify, change, or make any necessary alterations to any item provided by the Customer, including any software, that is protected by Intellectual Property Rights, to the extent required for the sole purpose of performing the Contract ("**Authorized Modifications**"). The scope of the authorization includes, but is not limited to, adaptations, modifications, enhancements, translations, configurations, adjustments, and any other changes necessary to integrate the Customer's items into the deliverables under the Contract.
- 20.12 NIKON will not use the Customer's Intellectual Property Rights for any purpose other than fulfilling its obligations under the Contract. Nothing in this provision will be construed as a transfer or assignment of any Intellectual Property Rights from the Customer to NIKON.
- 20.13 The Customer will indemnify and hold NIKON harmless from and against any claims, demands, actions, or liabilities arising from or related to any infringement or unauthorized use of the Customer's Intellectual Property Rights resulting from Authorized Modifications.
- 20.14 The obligations and restrictions under this provision will survive the termination or expiration of the Contract and will continue to be binding upon the Customer.
- 21. LIABILITY**
- 21.1 Each Party's liability is limited to that imposed by mandatory law. Each Party will only be liable in the event of gross negligence or wilful misconduct attributable to that Party. In all situations where a Party could be held liable, whatever the cause or the legal ground for the claim, that Party's total liability is limited to compensation for the foreseeable, typically occurring damage, which may not exceed 40% of the annual Contract price. Neither of the Parties may be held responsible for delays or problems in the performance of the Contract if they are the result of Force Majeure.
- 21.2 Nothing in the Contract will exclude or limit the concerned Party's liability in case of bodily injury or death cause by its negligence, breach of a confidentiality duty, a payment obligation, an obligation concerning intellectual property or a warranty obligation.
- 21.3 NIKON will in no event be held liable, in contract or in tort, for any indirect damage of any nature whatsoever such as lack of earnings, Third Party claim, loss or damage to data or sample, loss of use, loss of profit, loss of anticipated profit, loss of business, overhead recovery, machining costs, revenue or anticipated savings, damage to the Customer's reputation or goodwill, any product recall or business interruption costs, or any economic, special, indirect or consequential loss or damage arising out of or in connection with the Contract or with the inability to use the Goods, even if NIKON had been informed of the risk of such damage occurring.
- 21.4 No advice or information obtained by the Customer from NIKON shall create any warranty not expressly stated in Contract. NIKON accepts no liability whatsoever in relation to advice in circumstances where the Customer has provided inaccurate or incomplete information to NIKON prior to NIKON communicating its advice to the Customer.
- 21.5 If the Goods have been (i) modified or altered in any way by the Customer, or (ii) used or installed otherwise than in accordance with NIKON's instructions, NIKON will have no liability in any way to the Customer and the Customer shall indemnify NIKON and keep NIKON indemnified from and against any and all losses, liabilities, costs, claims, demands, expenses and fees, actions, proceedings and damages arising out of injury or other loss sustained by any Third Party as a result of any such modification, alteration, use or installation. NIKON will not be liable for any damages arising from the Customer's failure to comply with the Contract. Furthermore, NIKON will not be liable for damages that have been caused directly or indirectly by the Customer or a Third Party, regardless of whether such damages were caused by fault or negligence.
- 21.6 Unless otherwise provided in the Quotation or, if different, Order Confirmation on the applicable Incoterm, NIKON will have no liability (whether for direct or consequential loss) for damage in transit, shortage of delivery or loss of Goods where risk has passed to the Customer hereunder but will, where carriage is arranged by NIKON as a principal (and not as agent for the Customer) assign (where permitted), at the Customer's request and cost, the relevant rights of claim against the carrier(s).
- 22. SUBCONTRACTING**
- 22.1 NIKON has the right to subcontract all or part of the performance of the Contract to subcontractors without the Customer's consent.
- 23. INDEPENDENCE**
- 23.1 Nothing in this Contract shall be construed to create any relationship of employer and employee, franchisee, sales representatives, agent and principal, partnership or joint venture between the Parties. Each Party is an independent contractor. Neither Party shall assume, either directly or indirectly, any liability of or for any other Party or have the authority to bind or obligate any such other Party and shall not represent that it has such authority.
- 24. USE OF CLIENT'S NAME FOR BUSINESS PURPOSES**
- 24.1 As long as the Customer does not withdraw its consent, NIKON and its Affiliates are entitled to indicate to their clients, prospects and other business relations and any Third Party that the Customer is one of their clients and NIKON and its Affiliates are entitled to use the Customer's name and logo in its reference list and on the NIKON's and NIKONS' Affiliates' websites. NIKON and its Affiliates will immediately cease to indicate that the Customer is one of its Customers and to use the Customer's name and logo upon the Customer's first written request.
- 25. FORCE MAJEURE**
- 25.1 In the event of the occurrence of one or more events constituting Force Majeure or any other cause of exemption affecting one or more obligations of either Party to the Contract, the Party affected will be obligated to notify the other Party of the occurrence of such cause of exemption as soon as it become aware of it, preferably by registered mail or, if not possible, by any appropriate means.
- 25.2 The notification must indicate the nature, starting date, presumed end date, and presumed impact of the Force Majeure or other cause of exemption on the performance of the obligations of the Party affected by it. Once the cause of exemption has ended, the Party whose obligations have been affected must promptly notify the other Party of the precise date of the end of this cause of exemption and its actual impact on the performance.
- 25.3 If a Party is unable to perform its obligations under the Contract due to Force Majeure, the performance of the Contract will be suspended. The suspension of the performance of the Contract automatically leads to the postponement of all deadlines by a number of calendar days equal to the number of calendar days covered by the suspension period.
- 25.4 If the suspension of the performance of the Contract due to Force Majeure lasts for more than one hundred twenty (120) calendar days, each Party may terminate the Contract by registered mail, without prior notice and by operation of law, without any damages or indemnities being due to the other Party due to such termination.
- 25.5 No Party will be held liable or responsible to the other Party nor be deemed to be in default under, or in breach of any provision of, this

Contract for failure or delay in fulfilling or performing any obligation of this Contract when such failure or delay is due to an event of Force Majeure.

address has been properly specified to the other Party, with a copy to Legal.nm-us@nikon.com , when addressed to NIKON.

25.6 To the extent possible, each Party will use reasonable efforts to minimize the duration of any Force Majeure. This Force Majeure provision is also applicable in the event of Force Majeure of a Party's subcontractors or Third-Parties suppliers as long as they cannot be replaced without unreasonable costs or materially affecting the timing of the affected Party's performance.

## 28. GENERAL LIEN

28.1 NIKON shall be entitled to a general lien on any property of the Customer in possession of NIKON from time to time in respect of all debts due by the Customer to NIKON.

## 26. HARDSHIP

## 29. ASSIGNMENT

26.1 In the event that unforeseen circumstances beyond the control of either Party, such as but not limited to changes in laws or regulations, natural disasters, lack of components to produce or manufacture Goods, acts of God, political instability, or economic upheaval, render the performance of this Contract excessively onerous or commercially impracticable ("Hardship Event"), either Party is entitled to request the other to adapt the Contract in accordance with the initial economic balance of the Contract, and the Parties will engage in good faith negotiations to consider and agree on appropriate measures to alleviate the impact of the Hardship Event on the continued performance of this Contract.

29.1 The Contract will not be assignable by any of the Parties to any Third Party hereto without the written prior consent of the other Party, which will not be unreasonably withheld or delayed. Any attempt by a Party to assign, sublicense or transfer the Contract or the rights and obligations under the Contract in violation of this Article 29 will be null and void.

26.2 The Party experiencing the Hardship Event will promptly notify the other Party in writing of the occurrence of such event and provide detailed information regarding the nature of the event and its impact on the performance of the Contract.

29.2 If authorized by a Party, no assignment and transfer by the other Party shall be valid and effective unless and until the assignee/transferee shall agree in writing to be bound by the provisions of the Contract.

26.3 Upon receipt of the notice, both Parties will promptly enter into discussions to explore potential solutions to mitigate the effects of the Hardship Event for NIKON. The Parties agree to act in good faith throughout these negotiations.

29.3 The Contract may be freely assigned by a Party to an Affiliate provided that such Affiliate has agreed in writing to be bound by the provision of the Contract.

26.4 In the event that the Parties are unable to reach a mutually agreeable solution within a reasonable time, NIKON may, as a temporary measure, seek relief from strict compliance with the affected obligations under this Contract. Such relief will be limited to the duration of the Hardship Event and will not discharge the Parties from their respective obligations entirely.

29.4 Each Party may assign this Contract, without the written prior consent of the other Party to any Third Party that acquires all or substantially all of the business or assets of the assigning Party whether by merger, reorganization, acquisition, sale or otherwise provided that this Third Party agrees in writing to be bound by the terms and conditions of this Contract.

26.5 If the Parties are unable to find a satisfactory resolution to the impact of the Hardship Event, despite good faith efforts, the Party experiencing may request, in writing, a modification, adjustment, or termination of this Contract. Such request will specify the proposed changes or the desire to terminate the Contract and the reasons supporting the request.

29.5 The terms and conditions of this Contract will be binding on and inure to the benefit of the permitted successors and assigns of the Parties.

26.6 The rights and obligations set forth in this provision are in addition to any other rights and remedies available at law or in equity. The existence of a Hardship Event and its impact will be subject to verification and validation by both Parties.

## 30. NO WAIVER

30.1 No Party may waive or release any of its rights or interests in this Contract except in writing. The failure of a Party to assert a right under this Contract or to insist upon compliance with any term or condition of this Contract shall not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition. No waiver by a Party of any condition or term in any one or more instances shall be construed as a continuing waiver of such condition or term or of another condition or term, nor shall it operate as a discharge of such covenant, agreement or condition or render the same invalid, or impair the right of any of the Parties, their representatives, successors, or permitted assigns to enforce the same in the event of any subsequent breach or breaches by the other Party, its representatives, successors or permitted assigns.

26.7 Unless and until a modification or termination of this Contract is agreed upon, both Parties will continue to perform their obligations to the extent feasible under the circumstances created by the Hardship Event.

## 31. SEVERABILITY

31.1 If any provision of this Contract should be held by a Court of competent jurisdiction to be invalid, illegal or unenforceable in any jurisdiction, the Parties shall negotiate in good faith a valid, legal and enforceable substitute provision that most nearly reflects the original intent of the Parties and all other provisions of this Contract shall remain in full force and effect in such jurisdiction and shall be liberally construed in order to carry out the intentions of the Parties as nearly as may be possible. Such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of such provision in any other jurisdiction. Any provision of this Contract which would be held invalid, illegal or unenforceable in any jurisdiction will remain applicable to the maximum extent permitted by the applicable law in such jurisdiction.

## 27. NOTIFICATIONS

## 32. ENTIRE AGREEMENT

27.1 Except where the Contract requires the use of registered letter, any notice or request required or permitted to be given under or in connection with the Contract will be deemed to have been sufficiently given if in writing and personally delivered or sent by certified mail (return receipt requested), or express courier service (signature required), or email with receipt confirmation to the Party for which such notice is intended, at the address set forth for such Party in the Quotation or, if different, in the Order Confirmation.

32.1 These Conditions and the Order Confirmation (or, if none is served, the Quotation) represent the entire agreement between the Parties relating to the sale of the Goods and supersede all prior agreements, arrangements and understandings between the Parties relating to the sale of the Goods.

27.2 Each Party is obliged to inform the other Party of any change of address which may occur during the term of the Contract.

32.2 In the event of any inconsistency between the terms of these Conditions, the Quotation and the Order Confirmation, the following order of priority will apply but solely insofar as necessary to solve the inconsistency: 1 – the Order Confirmation; 2 - the Quotation; and 3 - these Conditions.

27.3 If delivered personally, by email or by facsimile transmission, the date of Delivery shall be deemed to be the date on which such notice or request was given. If sent by overnight express courier service, the date of Delivery shall be deemed to be the third(3<sup>rd</sup>) calendar day after such notice or request was deposited with such service. If sent by certified mail, the date of Delivery shall be deemed to be the seventh(7<sup>th</sup>) calendar day after such notice or request was deposited with the national postal service of the sender.

27.4 Each Party will be deemed to have received all notifications, approvals, and other communications sent to the email address indicated in the Quotation or, if different, the Order Confirmation, even if this email address is no longer current, provided that no other email



**33. CONTRACT MODIFICATIONS**

33.1 Unless otherwise provided for into this Contract, the Contract will not be amended, altered or changed except by written agreement duly signed by both Parties.

**34. CONSTRUCTION OF THE CONTRACT**

34.1 The terms and provisions of this Contract represent the results of negotiations between the Parties and their representatives and neither of the Parties has acted under duress or compulsion, whether legal, economic or otherwise. Accordingly, the terms and provisions of this Contract shall be interpreted and construed in accordance with their usual and customary meanings, and each of the Parties hereto hereby waives the application in connection with the interpretation and construction of this Contract of any rule of law to the effect that ambiguous or conflicting terms or provisions contained in this Contract shall be interpreted or construed against the Party whose attorney prepared the executed draft or any earlier draft of this Contract.

**35. ADVERTISING MATERIALS**

35.1 Any general description of the Goods contained in NIKON's catalogues or other advertising material will not form a representation or be part of the Contract. Solely the mentions of the Quotations or, if different from the Quotation, of the Order Confirmation are binding on NIKON.

**36. ADVICES**

36.1 All advice, data or information given by NIKON in respect of the Goods ("Advice") is provided for the Customer only. NIKON will not be liable for any loss or damage whatsoever caused by reliance on the Advice by any Third Party.

36.2 All Advice is based upon the Customer's requirements and circumstances, as communicated to NIKON by the Customer. The Customer will be solely responsible for ensuring that all information given to NIKON either directly or indirectly by the Customer or by the Customer's agents, employees, consultants or advisers is accurate, correct and suitable. Examination or consideration by NIKON of such information will in no way limit the Customer's responsibility hereunder.

**37. REPRESENTATIONS**

37.1 The Contract made between NIKON and the Customer will be subject to these Conditions and, save as expressly set out in the Contract, no agent of NIKON has authority to agree any terms or make any representations inconsistent with these Conditions or to enter into any contract except on the basis of them.

**38. COUNTERPARTS**

38.1 This Contract may be signed in counterparts, each and every one of which will be deemed an original, notwithstanding variations in format or file designation which may result from the electronic transmission, storage and printing of copies of this Contract from separate computers or printers. Facsimile and electronic signatures will be treated as original signatures.

**39. COSTS**

39.1 Except as is otherwise expressly set forth herein, each Party shall bear its own expenses in connection with the activities contemplated and performed hereunder and thereunder.

**40. GOVERNING LAW AND JURISDICTION**

40.1 The Contract will be governed by and interpreted according to the laws of the State of Michigan, USA, without reference to its conflict of laws rules thereof as well as excluding the United Nations Convention on Contracts for the International Sale of Goods. No effect will be given to any other choice of law or to any conflict-of-laws rules or provisions that would result in the application of the national laws of any state other than the state in which NIKON has its registered office.

40.2 In the event of any dispute arising out of or in connection with the present Contract, the Parties agree in the first instance to discuss and consider referring the dispute to the ICC Mediation Rules. If the dispute has not been settled pursuant to the said Rules within forty-five (45) days following the filing of a request for mediation or within such other period as the parties may agree in writing, such dispute will be settled definitively by the Courts and tribunals of the location of the registered office of NIKON.

40.3 Notwithstanding anything to the contrary in the Contract, either Party may validly bring any proceedings for provisional or protective measures or injunctions before any court of competent jurisdiction.