



NIKON METROLOGY EUROPE NV

## TERMS & CONDITIONS FOR THE SUPPLY OF GOODS AND ASSOCIATED

September 2019

### 1) DEFINITIONS:

1.1) In these terms and conditions, the following words shall have the following meanings:

"Acknowledgement of Order" means a written acknowledgement of a Customer's order;

"Company" shall mean Nikon Metrology Europe NV, Geldenaaksebaan 329, 3001 Leuven, Belgium;

"Conditions" mean these conditions of sale;

"Contract" means the legally binding contract between the Company and the Customer for the sale of the Goods and/or Services made pursuant to clause 4 of these Conditions;

"Contract Price" means the price of the Goods and/or Services as detailed in the Quotation or, if different to the price detailed in the Quotation, the price in the Acknowledgement of Order;

"Confidential Information" means any and all information which is of a confidential nature and which is disclosed to the Customer by the Company or its agents including but without limitation all Quotations, estimates, technical data, commercial information, know-how, specifications, inventions, processes, and initiatives;

"Customer" means a purchaser of the Goods and/or Services;

"Customer Default" means either the Customer fails to collect the Goods or fails to arrange for collection of the Goods at the date and time agreed with the Company or the Customer fails to provide an address for delivery or other forwarding instructions;

"Delivery" means delivery of the Goods in accordance with clause 10.2;

"Goods" means the goods detailed in the Quotation or, if different from the Quotation, the Acknowledgement of Order;

"Intellectual Property Rights" means any and all patents, trade marks, service marks, registered designs, applications for any of the foregoing, copyright, unregistered design rights and any other similar rights in any country, whether registered or not;

"Party" means a party to the Contract, and the word "Parties" will be construed accordingly;

"Quotation" means a quotation issued by the Company to the Customer;

"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 the Company from time to time, and which are detailed in the Quotation or, if different from the Quotation, the Acknowledgement of Order;

"Service Notice" shall mean a written notice from the Company addressed to the Customer stating that the Company is ready to perform the Services;

"SLA" means the software licence agreement pursuant to which the Company licences software to the Customer.

1.2) Any reference in these Conditions to a clause, shall be deemed to be a reference to a clause of these Conditions unless otherwise stated.

### 2) APPLICATION OF TERMS:

2.1) No order in pursuance of any Quotation or otherwise shall be binding on the Company unless and until such order is accepted by the Company in accordance with clause 4.2 below and, if applicable, the Customer shall have paid the relevant advance payment due to the Company pursuant to the terms of any such Quotation or Acknowledgement of Order.

### 3) REPRESENTATIONS:

3.1) The Contract made between the Company and the Customer pursuant to clause 4 below shall be subject to these Conditions and, save as expressly set out below, no agent of the Company 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.

### 4) APPOINTMENT OF THE COMPANY & INCORPORATION OF THE COMPANY'S TRADING TERMS:

4.1) The Company may issue a Quotation, referring to Goods and/or Services, to the Customer. The Quotation is an invitation for the Customer to offer to buy and is not an offer by the Company to sell goods and/or perform services that is capable of acceptance by the Customer. The Quotation will be valid for 60 days from the date of issue.

4.2) Any order sent or communicated by the Customer to the Company will be an offer by the Customer to purchase Goods and/or Services from the Company subject to these Conditions. Any such order referring to the Quotation and/or the Goods or Services from a Customer will be deemed accepted by the Company upon the issue by it of an Acknowledgement of Order or when the Company advises the customer of the Goods ex stock status, delivers any Goods or performs any Services for the Customer.

4.3) Acceptance of the Customer's order in accordance with clause 4.2 will create a binding Contract, subject to these Conditions and any additional terms referred to in the Quotation or, if different to the Quotation, in or referred to in the Acknowledgement of Order.

4.4) Unless otherwise agreed in writing by the Company these Conditions shall 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.

### 5) DESCRIPTIONS AND DATA:

5.1) Any general description contained in the Company's catalogues or other advertising material shall not form a representation or be part of the Contract.

5.2) No Contract shall be treated as a sale by sample.

### 6) VARIATIONS:

6.1) No variation to these Conditions will be valid and binding unless in writing and signed by either a VP of the Company or an authorised employee.

### 7) QUOTATIONS AND PRICES:

7.1) The Company reserves the right to increase prices referred to in any Quotation denominated in a foreign currency in the event of a currency fluctuation, from the conversion rate specified therein, between the date of such Quotation and the issue of the Acknowledgement of Order. 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 the Company at the rate appearing in the Quotation.

7.2) In the event of any inconsistency between the terms of these Conditions, the Quotation and the Acknowledgement of Order, the following order of priority shall apply:

- 1 – the Acknowledgement of Order;
- 2 - the Quotation; and
- 3 - these Conditions.

7.3) Unless otherwise agreed, the Contract Price is on the basis of delivery ex-the Company's works at the address specified above and is exclusive of VAT and all applicable taxes and duties. The Customer shall pay (and the Contract Price shall be net of) any and all taxes duties and other government charges payable in respect of the Goods and/or Services 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 the Company.

7.4) Where training is to be provided by the Company, this shall be quoted for on the basis of the number of the Customer's personnel in need of training as specified by the Customer and the number of Company man days required to meet that specified need. Training will be taken within 3 months of Delivery or as otherwise specified in the Quotation or Acknowledgement of Order. Any variations or modifications to the Customer's training requirements accepted by the Company, after service of an Acknowledgement of Order, shall be charged as an extra.

### 8) CONFIDENTIALITY & INTELLECTUAL PROPERTY RIGHTS:

8.1) All Intellectual Property Rights in the Goods (including, without limitation, all software and system operation control programmes) and in documentation and drawings supplied by the Company to the Customer are and will at all times hereafter remain the property of the Company and/or its third party licensors.

8.2) The Customer shall at all times, both during and after the termination or expiration of this Contract, keep confidential all Confidential Information supplied to it by the Company whether pursuant to this Contract or otherwise. The

Customer will not, without the prior written consent of the Company, directly or indirectly publish or disclose any such Confidential Information to any third party or make any use of such Confidential Information except to the extent necessary to make use of the Goods and/or Services or if required by law.

**9) PRE-DELIVERY INSPECTION:**

9.1) All Goods manufactured by the Company shall be subjected to the Company's standard inspection system from time to time, details of which can be made available to the Customer. The Company and the Customer may also agree further inspection tests, either pre- or post-Delivery, which will be detailed in the Acknowledgement of Order. The Customer shall be fully responsible for familiarising itself with the responsibilities of both the Customer and the Company before, during and after pre-Delivery inspection.

9.2) Upon the Goods meeting the acceptance criteria (whether the Company's standard inspection criteria, as set out in the Company's standard inspection documentation, or such further inspection criteria as may be agreed between the Parties and detailed in the Acknowledgement of Order), the Customer shall sign an acceptance certificate, to certify the same.

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

9.4) Where the Services include acceptance tests on the Goods, the Customer undertakes to provide all necessary assistance to the Company to enable the acceptance tests to be completed, whether at the Company'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 the Company in sufficient time prior to the agreed acceptance test date (which agreed date will be detailed in the Acknowledgement of Order), acceptance tests cannot and do not proceed, then the Goods shall 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.

9.5) Without prejudice to the above, any Goods actually put into use by the Customer shall be deemed accepted by the Customer.

**10) DELIVERY:**

10.1) For the purpose of this clause, the definition of "the Goods" in clause 1 of these Conditions shall include the whole or any instalment of the Goods. The "Collection Date" shall mean the date on which the Goods are or will be ready for collection by the Customer or shall be deemed to be ready and available to the Customer pursuant to the foregoing provision. "Incoterm" or "Incoterms" means the ICC Incoterms 2000, or the relevant provision thereof.

10.2) Delivery will occur, or alternatively will be deemed to occur, upon the happening of any of the following:

- (i) the collection of the Goods by the Customer (or its agent) from the Company's designated works, or
- (ii) delivery in accordance with the provisions of any Incoterm (including to the extent that any Incoterm may be varied by agreement between the Parties); as is agreed between the Parties in either the Quotation or the Acknowledgement of Order.

10.3) In the event that the Parties agree that the Goods will be delivered ex-works, the Customer shall take delivery of the Goods within 15 days of the Collection Date unless otherwise agreed. The loading of Goods strictly at the Company's premises to the Customer's nominated means of transport shall be at the Company's risk and cost.

10.4) Where applicable pursuant to any Incoterm according to which Delivery is to take place, the Customer shall be obliged to accept the delivery note for the Goods once the vehicle carrying the Goods is as near to the point of Delivery as it can reasonably achieve.

10.5) Subject to the provisions of clause 10.3 above, additional loading of the Goods shall be at the Customer's expense and risk.

10.6) If the Customer fails or refuses to accept Delivery in accordance with the provisions of this clause 10, or fails to give the Company 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 the Company 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 the Company may sell such Goods and deduct any monies payable to the Company 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.

10.7) Any date for Delivery provided by the Company will be a non-binding estimate and shall 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 the Company to enable it to proceed fully with the Contract, and (iii) the Company having received any due advance payment from the Customer in cash or cash equivalent.

10.8) Time for Delivery by the Company will not be of the essence of the Contract. The Company will be entitled to defer Delivery until any advance payment monies due from the Customer have been received.

**11) INTERNATIONAL SUPPLIES AND DELIVERY:**

11.1) If the Contract stipulates delivery outside of the country of the Goods' origin, the Parties may adopt specific provisions of the Incoterms (to the extent that the same are identified in either the Quotation or the Acknowledgement of Order).

11.2) The Customer will be solely responsible for obtaining, at the Customer's own cost, all import / export authorisations and complying with all legislation and regulations concerning the export / import of the Goods (including without limitation, the payment of any relevant taxes, duties or levies).

**12) PACKAGING:**

12.1) Packaging by the Company of any of the Goods or part thereof shall be in accordance with the Company's applicable standard packaging procedures and practices from time to time. Packaging costs will be separately identified in the Quotation and will be deemed to be part of and inclusive in the Contract Price.

**13) FORCE MAJEURE:**

13.1) In the event of the Company being delayed in performing or failing to perform any of its obligations under the Contract or these Conditions due to any act or event beyond the Company's reasonable control including but not limited to Act of God, war, civil disturbance, requisitioning, governmental restriction, prohibition, enactment or regulation of any kind, strike, trade disputes, difficulty in obtaining labour or materials, breakdown of machinery or utilities, fire, accident, non-delivery by the Company's suppliers or damage to or destruction of the whole or part of the Goods, the Company shall be at liberty to suspend the Contract and/or defer Delivery and suspend the Company's other obligations under the Contract without incurring any liability of any nature to the Customer as a consequence thereof.

13.2) The Customer shall be relieved of its obligations to the Company for the period of such suspension including, but without limitation, the payment of any part of the Contract Price due during the period of any suspension in relation to any Goods and/or Services affected. If the period of suspension of the Contract and/or of Delivery exceeds 60 days, either Party will be entitled to terminate the Contract without any liability to the other for such termination.

13.3) In the event of cancellation or suspension of the Contract pursuant to clauses 13.1 and 13.2, the Company shall repay to the Customer that part of the Price paid (if any) in respect of any period or periods affected by such cancellation or suspension apportioned on a basis which shall in the opinion of the Company be fairly and reasonably attributable to such cancellation or suspension.

**14) RISK AND PROPERTY IN THE GOODS:**

14.1) The risk in Goods which the Company agrees to supply shall pass to the Customer on (i) Delivery (subject to the provisions of clause 10.3) or (ii) the date on which Customer Default occurs or (iii) the date on which, the Goods are ready for ex-works Delivery and delivery is postponed at the Customer's request, whichever shall first occur.

14.2) All Goods provided to the Company by the Customer shall be at the Customer's sole risk at all times, and the Company shall not be liable for any loss of or damage sustained by any goods provided to the Company howsoever caused unless attributable solely to negligence on the part of the Company.

14.3) The off-loading of Goods, where applicable, shall always be at the risk of the Customer.

14.4) Notwithstanding Delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall pass to the Customer upon Delivery or notification by the company that the Goods are ready for ex-works collection.

**15) PAYMENT OF THE PRICE OR THE BALANCE OF THE PRICE:**

15.1) The Customer will pay the Contract Price in consideration of the supply of the Goods and/or the Services by the Company.

15.2) Payment of the Contract Price shall be made by the Customer in Euro's, US \$ or pounds sterling, inclusive of all VAT and applicable taxes and duties and not later than 30 days after the date of Delivery, or alternatively as otherwise provided in the Quotation or Acknowledgement of Order, notwithstanding that property in the Goods may have passed to the Customer. Notwithstanding the above, the

Company shall be entitled to invoice the Customer for the full Contract Price on or at any time after completion of the Services.

15.3) All customs duties, sales or other taxes payable by the Company or its personnel in respect of the supply of the Goods and/or Services shall be recharged to the Customer.

15.4) No payment will be deemed to have been received until the Company has received the payment in full in cleared funds.

15.5) The Customer will make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise. The Company shall 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 the Company.

15.6) The Company reserves the right to increase the Contract Price if any extra cost is incurred by the Company 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 the Company to proceed with the Contract.

15.7) Time for payment of the Contract Price shall be of the essence of the Contract.

15.8) Without prejudice to any other rights of the Company interest will be payable on all overdue accounts at the European Central Bank base rate plus 8% p.a. (a part of a month being treated as a full month for the purpose of calculating interest).

15.9) Notwithstanding any other provision of these Conditions, all sums outstanding under the Contract will become due immediately on termination of the Contract.

15.10) Where a Quotation or Acknowledgement of Order provides for payment of the Contract Price by Letter of Credit, that payment shall be made by irrevocable letter of credit established at the Customer's cost in the Company's favour by the Customer forthwith upon the Company sending the Acknowledgement of Order to the Customer, and confirmed by a clearing bank acceptable to the Company and maintained valid for cash drawings against presentation of the Company's invoice(s) until final contract payment but in any case for at least three months after scheduled completion of the Contract.

15.11) The Company reserves the right to deliver and invoice orders by Customers in instalments and in such cases each such delivery will be treated as a separate Contract. The Company will be entitled to suspend further deliveries of instalments until such time as the Customer has paid for previous deliveries.

#### **16) SERVICES AND THE CUSTOMER:**

16.1) For the purpose of this clause 16:

"Installation" shall mean the installation of the Goods at the location specified in the Quotation or, if different, in the Acknowledgement of Order.

16.2) Where Services are to be provided to the Customer, the Customer shall 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 specified by the Company's Services information document which will be provided to the Customer at or prior to the time of sending the Acknowledgement of Order, and for a working environment meeting the standards of safety applicable in the jurisdiction in which the relevant Services are to be performed.

16.3) The Company shall 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, the Company 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.

16.4) If the Company is prevented from performing the Services in the circumstances set out above, the Service Notice will lapse and the Company will endeavour to perform the Services as soon as reasonably practicable following remedy by the Customer of its breach in respect of the site and/or the facilities available therein or thereto or the safety thereof (without any obligation on the Company to make available personnel to provide the Services in any event in circumstances where the Customer remains in breach of these Conditions).

16.5) The Customer shall bear the cost of any liability for damage or loss to any person or property caused by a breach of its obligations in this clause and shall indemnify and hold harmless and indemnified the Company against the said liability.

16.6) Where, by reason of circumstances beyond its control, the Company is obliged to provide labour for the purpose of providing the Services beyond the number of man days provided for in the Quotation, the Customer shall pay to the

Company a charge for the extra man days required at the Company's prevailing rates for each man day from time to time.

#### **17) TERMINATION ON DEFAULT:**

17.1) Without prejudice to any of its other rights or remedies, the Company shall have the right to terminate the Contract immediately at any time by giving notice in writing to the Customer if:

(a) the Customer commits a breach of any of its obligations under the Contract which is not capable of remedy; or

(b) the Customer has committed a breach of any of its obligations under the Contract which is capable of remedy but which has not been remedied within a period of thirty (30) days following receipt of written notice to do so; or

(c) the Customer enters into any compromise or arrangement with its creditors; or

(d) if an order is made or an effective resolution is passed for its winding up (except for the purposes of amalgamation or reconstruction as a solvent company); or

(e) if a petition is presented to court, or if a receiver, manager, administrative receiver or administrator is appointed in respect of the whole or any part of the Customer's undertaking or assets; or

(f) the Customer ceases or threatens to cease to carry on its business.

17.2) Without prejudice to any of its other rights or remedies, the Company shall have the right to terminate this Contract without any liability to the Customer if, in the reasonable opinion of the Company, the Customer has become or is likely in the immediate future to become unable to pay its debts.

#### **18) CANCELLATION:**

18.1) Cancellation of the Contract by the Customer will only be accepted at the sole discretion of the Company and in any case on condition that any costs or expenses incurred by the Company up to the date of cancellation and all loss or damage (including, without limitation, loss of the Company's profit) resulting to the Company by reason of such cancellation will be paid by the Customer to the Company forthwith. Acceptance of such cancellation will only be binding on the Company if in writing and signed by a director or an authorised employee of the Company.

#### **19) SHORTAGES AND LOSS OR DAMAGE IN CARRIAGE:**

19.1) The Company 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 the Company 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) in question.

#### **20) WARRANTY:**

20.1) The provisions of clauses 20 and 21 set out the entire liability of the Company (including any liability of the Company for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of any breach of the Contract, any representation, statement or tortious act or omission, including but without limitation, negligence arising under or in connection with the Contract.

20.2) The Customer recognises 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, the Company gives no warranty (whether express or implied) of merchantability or fitness for a particular purpose.

20.3) Without prejudice to the provisions of clauses 20.2 and subject to the provisions of clause 21 and clause 20.4 and any express term in the Quotation or Acknowledgement of Order excluding or varying this clause 20.3, the Company warrants that in the event of any defect in or failure of Goods arising out of design or manufactured default which, in the case of defects apparent upon inspection within 28 days of the Customer's receipt of the Goods, and in the case of defects not so apparent, within 2000 operating hours or 12 months of the receipt of the Goods (whichever is the earlier), are notified to the Company as being defective in materials or workmanship, the Company will replace ex the Company's works or (in its absolute discretion) repair or pay for the repair or replacement of the said faulty Goods.

20.4) The obligation to repair or replace such Goods, or parts of the Goods, detailed in clause 20.3 will not apply, and subject to the provisions of clause 21.3, the Company 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 the Company;

(ii) the Customer does not notify the Company in writing of the defect as soon as practicable and in any event within seven (7) days of discovery of the defect and shall have provided authority for the Company's servants 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 the Company (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 the Company'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 the Company;

(vii) the defect arises as a result of fair 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 the Company;

(ix) the Customer makes any further use of the Goods or attempts to repair it or have it repaired by someone other than the Company after giving written notice of the defects to the Company.

(x) the defect is in relation to material or workmanship or design in any accessories, proprietary equipment or factored items not manufactured by the Company but supplied by the Company to the Customer either separately or incorporated in or associated with any other machinery or parts. The Company 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 clause 20.5(x).

20.5) Subject to clauses 20.2, 20.3 and 20.4 above, and whether or not the Contract is a contract of sale, all other conditions and warranties implied by statute or common law are hereby expressly excluded to the fullest extent permitted by law, save insofar as the same may be expressly agreed by the Company in writing.

20.6) Where the Company agrees to repair or replace Goods in accordance with the foregoing provisions of this paragraph any time specified for Delivery shall be extended for such period as the Company may reasonably require.

20.7) The Company will make spare parts for the Goods available to the Customer for a minimum period of 3 years from the date of Delivery, subject always to availability of goods from its own suppliers and subject always to the Company's right, in its absolute discretion at any time, to reduce or increase the aforesaid period of 3 years upon 6 months notice to the Customer.

#### **21) LIMITATION OF LIABILITY**

21.1) Subject to clauses 21.3 and 27.8, the Company's total liability under the Contract shall be limited to the value of the Contract Price.

21.2) Subject to clauses 21.3 and 27.8, the Company will not be liable to the Customer in contract, tort or otherwise for any loss of use, loss of profit, loss of anticipated profit, loss of business, overhead recovery, machining costs, revenue, or anticipated savings, any damage to the Customer's reputation or goodwill, any product recall or business interruption costs or any other economic, special, indirect or consequential loss or damage of any kind (even if the Company has been advised of such loss or damage) arising out of or in connection with the Contract.

21.3) Nothing in the Contract or these Conditions shall exclude or limit the liability of the Company for any death or any personal injury caused by the Company's negligence.

21.4) The provisions of this clause 21 shall survive the termination or expiry (for whatever reason) of the Contract.

#### **22) PROVISION OF SERVICES**

22.1) All advice, data or information given by the Company its employees or agents in respect of the Goods and/or Services ("Advice") is provided for the Customer only. The Company will not be liable for any loss or damage whatsoever caused by reliance on the Advice by any third party.

22.2) All Advice is based upon the Customer's requirements and circumstances, as communicated to the Company by the Customer. The Customer shall be solely responsible for ensuring that all information given to the Company 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 the Company of such information shall in no way limit the Customer's responsibility hereunder.

22.3) The Company accepts no liability whatsoever in relation to Advice in circumstances where the Customer has provided inaccurate or incomplete information to the Company prior to the Company communicating its Advice to the Customer.

#### **23) NEGLIGENCE, DEFAULT AND CUSTOMER PROTECTION:**

23.1) Goods supplied by the Company to its own specification or design are designed to be safe and without risk to health provided they are used strictly in accordance with any instructions or information issued by the Company as to their

use and are also used with any necessary safety precautions. If the Customer is unclear as to the correct use of the Goods it should immediately contact the Company for clarification. It is the responsibility of the Customer to meet all safety standards in the application or use of the Goods.

23.2) 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 the Company's instructions, the Company will have no liability in any way to the Customer and the Customer shall indemnify the Company and keep the Company 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.

#### **24) SPECIFICATION, INSTRUCTIONS OR DESIGN:**

24.1) 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 the Company 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).

#### **25) GOVERNING LAW AND DISPUTE RESOLUTION:**

25.1 *The Contract and these Conditions shall be governed by and construed in accordance with the laws of Belgium, without giving effect to the conflict of law provisions thereof as well as excluding the United Nations Convention on Contracts for the International Sale of Goods.*

*All disputes arising out of or in connection with this Agreement shall be submitted to competent courts of the registered seat of the Company. If (i) one of the Parties has its registered office in the United Kingdom during the term of the Contract, or hereafter and a dispute has arisen out of or in connection with this Contract, and (ii) in case the United Kingdom withdraws from the European Union without any agreement upon recognition of Court decisions ("Hard Brexit"), each Party may opt to have any disputes arising out of or in relation with this Contract be finally settled under the CEPANI Rules of Arbitration by one or more arbitrators appointed in accordance with those Rules. The arbitral tribunal shall be composed of one arbitrator. The seat of the arbitration shall be Brussels. The arbitration shall be conducted in the English language. Each Party will bear its own costs of attorney and other arbitration costs.*

#### **26) COMPANY'S GENERAL LIEN:**

26.1) The Company shall be entitled to a general lien on any property of the Customer in possession of the Company from time to time in respect of all debts due by the Customer to the Company.

#### **27) RENEGOTIATION CLAUSE**

27.1) Prior to Acceptance of the Quotation:

In the event of economic/geopolitical circumstances which are beyond the control of Parties and which affect the relevant market, such as the United Kingdom withdrawing from the European Union (Brexit) and give rise to changes of such a nature and extent that they would justify revision of the prices specified in the Quotation (e.g. imposition of tariffs, the Company's increasing costs, etc.) or of any other provision of the Quotation (e.g. delivery time due to waiting time at borders for administrative purposes, custom clearance, etc.) would occur prior to the Acknowledgement of the Quotation, the Company reserves the right to modify the Quotation, in particular but not limited to the Contract Price and the delivery conditions in order to meet the aforementioned economic/geopolitical circumstances.

If the aforementioned situations would occur, NIKON shall notify the Customer thereof stating the reasons for revision and shall transfer the revised Quotation to the Customer within [...] weeks, guided by the principles of reason and fairness.

27.2) After Acceptance of the Quotation:

If the aforementioned economic/geopolitical circumstances affecting the relevant market and giving rise to changes of such a nature and extent that they would justify revision of the prices specified in the Contract (e.g. imposition of tariffs, the Company's increasing costs, etc.) or of any other provision of the Contract (e.g. delivery time due to waiting time at borders for administrative purposes, custom clearance, etc.), occur after the acceptance of the Quotation, the Company shall notify the Customer thereof in writing stating its reasons for revision of the provision(s) of Contract.

As from the date of this aforementioned notification, all obligations with regards to terms, agreed dates/lead times and deadlines to be met by the Company will be considered as obligations in terms of efforts and no longer as obligations in terms of result. All delays, defaults or non-performance caused by the abovementioned changes and other than as a result of the Company's negligence, will never give rise to an indemnity for suffered losses, additional costs, etc. in favor of Customer and the Company shall not have any liability under or be deemed in breach of the Contract.

Following the aforementioned notification, Parties shall enter into negotiations within one week in order to establish whether revision of the price or any other provision is justified. The Parties agree that this renegotiation shall pertain to at least, without limitation, the Contract Price and/or the delivery conditions (i.e. applicable Incoterms). In case the Contract is revised, such revisions shall take effect as per the day on which the aforementioned notice was given by the Company to the Customer.

If Parties, in spite of their best efforts, fail to reach an agreement on the revised provisions of the Contract to restore the contractual balance within thirty days after the aforementioned notice, or if one Party refuses to negotiate in good faith (i.e. a refusal to make concessions or to negotiate as a whole), either Party shall have the right to terminate this Contract immediately, upon prior written notice to the other party, without any compensation being due to the other party.

**28) GENERAL:**

28.1) The headings to the paragraphs of these Conditions are for ease of reference only and shall not affect the interpretation or construction thereof.

28.2) If any provision of the Contract or these Conditions is held by any competent authority or a court of law to be invalid or unenforceable in whole or in part the remaining provisions of the Contract and the provisions of these Conditions shall remain in full force and effect.

28.3) Failure by the Company to enforce strict compliance with these Conditions by the Customer will not constitute a waiver of any of the provisions of these Conditions.

28.4) Nothing in the Contract or these Conditions shall constitute or be construed as constituting a partnership or joint venture between the Company and the Customer or shall authorise either Party to enter into contractual relationships or incur obligations on behalf of the other Party.

28.5) An entity which is not expressly a Party to the Contract has no right to enforce any term of the Contract or these Conditions.

28.6) The Company may without the prior written consent of the Customer assign, transfer or subcontract the Contract or any part of it to any other person. The Customer shall not assign, mortgage, charge or sub-let the Contract to any third party.

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

28.8) The Customer agrees that it will have no remedy in respect of any untrue representation innocently or negligently made by or on behalf of the Company prior to entering into the Contract upon which the Customer relied in entering into the Contract, whether such representation was made orally or in writing. Nothing in the Contract or these Conditions will exclude or limit the liability of the Company for fraudulent misrepresentation.

28.9) Notices under these Conditions shall be deemed to be served on delivery when delivered by hand, on receipt of a printout confirming due transmission when transmitted by facsimile, or five (5) days after mailing if sent by mail, provided the postage is properly paid and such notice is correctly addressed to the respective Party at its registered office, or such other address as shall have been notified to the other Party in writing.

28.10) Where the Company supplies or otherwise makes available to the Customer software in which the Company owns the Intellectual Property Rights (whether such software is integral to any Goods or not), the Customer and the Company shall comply with their respective obligations in the Company's software license agreement ("SLA"), and the SLA is hereby incorporated into these Conditions. In the event of any conflict between the terms of the SLA and these Conditions in relation to any such software, the provisions of the SLA will take precedence.