

**GENERAL TERMS AND CONDITIONS OF PURCHASE**

IM74032A

**1. FIELD OF APPLICATION**

1.1 The present Terms and Conditions of Purchase ("TCP") apply to the purchase of all materials, equipment, spare parts, products, chemical products, raw materials, components, software and services (the "Products") proposed or furnished by the providers (the "Vendors") to Jenoptik Industrial Metrology France SA (the "Purchaser"). The TCP equally apply to any quotation requests emanating from the Purchaser and to any offers made by the Vendors and form an integral part of any order (the "Order") passed to the Vendors by the Purchaser.

Only provisions contained in the TCP, the Order and any document expressly incorporated in the TCP or Order by reference bind the Purchaser, unless the latter has expressly agreed in writing to be bound by other terms and conditions. No terms and conditions contained in order confirmations, offers or any other document issued by the Vendors may bind the Purchaser, even if the latter has not expressly rejected them. Express or tacit acceptance of the order by the Vendor carries the waiver, ipso facto, by the latter of applying its own general or specific terms and conditions of sale which are mentioned in any commercial document, offer, quotation sent prior to the order, or on any document (acceptance, delivery note, invoice) issued by the Vendor prior to the order.

1.2. No order or amendment to it shall bind the Purchaser unless the latter has expressly agreed to this in writing.

1.3 If the special provisions of the TCP prove to be inapplicable, for whatever reason, none of the other provisions of the TCP shall be affected by them.

1.4 Special provisions of an Order, as well as those agreed in writing by the Purchaser and Vendors which overrule the TCP, shall prevail over the corresponding provisions of the TCP.

**2. PRICE - QUOTATION - ACCEPTANCE OF ORDER - PAYMENT CONDITIONS - INVOICING**

2.1 All prices of Orders shall be fixed and firm and may not be revised. These prices are net of tax and include all subscriptions, insurances and other costs payable by the Vendors in the context of processing the Order up until delivery (included) to the final destination indicated by the Purchaser, all the packaging, protection and securing materials as well as appropriate documents, incidentals and measures necessary for maintenance and complete and functional use. These prices also include all fees for the use of all the intellectual property rights, including those of third parties.

2.2 Any Order passed by the Purchaser must be accepted by the Vendor within 48 hours of its receipt. Failing a reply from the Vendor within this period, the Order shall be deemed accepted by the Purchaser who must then carry out said order according to the terms and conditions mentioned thereon.

2.3 After each delivery of the Products within the framework of an Order, the Vendors shall send the corresponding invoices in accordance with the legal requirements (and with those of the Purchaser, where appropriate). Invoices shall specify the amount of any downpayment or outstanding balance requested.

2.4 Subject to acceptance of deliveries by the Purchaser, payments shall be made 45 days from the end of the month payable on 15th of the following month. Any early payment on the part of the Purchaser shall give him the right to a discount from the Vendor of at least 10% of the amount of the invoice.

However, the Purchaser shall be authorised to defer payment if the Vendors do not comply with the requirements of the Order. In such an event, the Vendors shall have no right to claim interest, or part of the price, nor any penalties or other form of compensation.

Only express and clear acceptance of Products by the Purchaser shall be valid.

**3. QUALITY**

3.1 Before making an offer or giving the Purchaser a quotation, the Vendors (i) shall provide the Purchaser with any necessary advice and information concerning the Products offered, (ii) inform the Purchaser of the standards, usage, dangerous risks, legal regulations and standards concerning the Product.

3.2 The Vendors must provide the Purchaser with Products which completely conform to the security, health and environmental regulations currently in force.

3.3 The Vendors shall provide the Purchaser with any necessary information regarding the areas of Security, safety or the environment which concern the Products and/or their processing, handling or use. To this end, the Vendors must obtain from the Purchaser information regarding any use of the Products and any special characteristics (site regulations, operations, transport, etc.) of the agreed place of delivery. Information provided to the Vendors shall not limit their responsibility. If the Vendors infringe any security, health or environmental obligations, the Purchaser shall be authorised to cancel any Order and any expenses and total responsibility arising from this infringement and/or cancellation of the Order(s) shall be the Vendors' responsibility.

3.4 The Vendors assume the entire responsibility of any detrimental consequence arising from measures they have decided to take or not take as regards security, safety and the environment, and acknowledge their entire responsibility in the event where the Purchaser should exercise his right to cancel the Order in question.

**4. DELIVERY - PACKAGING - TRANSPORTATION - TRANSFER OF OWNERSHIP - TRANSFER OF RISKS**

4.1 Except as may otherwise be provided, transfer of ownership and risks of any of the Products shall be carried

out at the final destination, import clearance having been effected, unloaded at the final destination indicated by the Purchaser (the "Delivery"). If no point of delivery is specified, delivery may be carried out where the Purchaser normally receives deliveries.

4.2 Before Delivery, the Vendors shall inspect the Products in order to verify that their specifications, quality, weight and physical dimensions comply with the Order, so as to identify any possible damage to the Products or their packaging. The Products shall be packed in such a way as to avoid being damaged during transportation or handling. Each article shall bear marking and identification in accordance with (i) regulations currently in force, especially with respect to dangerous products and (ii) the Purchaser's instructions. Slings and gripping points shall accompany the Products if necessary. If Vendors need to use the Purchaser's or his employees' lifting equipment at the point of delivery, they must inform the Purchaser at least 24 hours in advance. Vendors shall use the Purchaser's lifting equipment at the point of delivery at their own risk.

4.3 Transportation: Vendors must take all the necessary measures to ensure adequate transportation of the Products by any appropriate means, using any adapted material or, if necessary, by calling in sub-contractors. The Vendors shall organise transportation of the Products to the point of Delivery whilst avoiding (i) any damage to the Products and (ii) any unloading problems concerning the Products.

Delivery periods defined in the Order constitute an essential element of the Order. The Purchaser is authorised to cancel any Order which is not carried out within the periods specified. Moreover, the Purchaser reserves the right to refuse partial or early deliveries, in which case he may return the Products or store them at the expense and risks of the Vendors.

The Vendors shall advise the Purchaser immediately (with written confirmation) of any delay and provide him with any information they have available regarding the reasons for and duration of the delay. In the event of delayed delivery, the Purchaser shall be authorised, without prejudicing other forms of recourse, to invoice late delivery penalties of 1% of the amount of the Order per whole week of delay, these penalties having an upper limit of 5% of the amount of the Order. The existence of these penalties does not prejudice the Purchaser's rights to claim damages from the Vendors.

4.4 The Products' deed of ownership shall be transferred unconditionally to the Purchaser at the time of Delivery, even if the price of the Products has not been fully paid. Except as may otherwise be provided, the Vendors do not have to wait for full payment of the Products in order to transfer the deed of ownership of the Products.

**5. ACCEPTANCE - INSPECTION - RIGHT OF REPLACEMENT**

5.1 Products delivered are subject to acceptance by the Purchaser. Reception by the Purchaser is only definitive after quantity and quality controls carried out by the quality department or, if the need arises, by the Purchaser's technical department for the provision of services.

5.2 Except by specific provision of the order, refusal of delivered products shall be notified to the Vendor by the Purchaser without a time limit with effect from delivery. Any non-compliant product shall be returned at the expense and risks of the Vendor. Any delivery that is not accompanied by the documents stipulated on the order and corresponding delivery note may be refused by the Purchaser and the products may be returned at the expense and risks of the Vendor.

5.3 In the event of products returned because of non-compliance, the Purchaser reserves the right to demand the replacement or adjustment of the said products, based on the initial terms of the order. In the event of products returned because of non-compliance without replacement, the provider may be forced, ipso facto, to apply the stipulations of article 5.5 in the event of the Purchaser procuring supplies from another source.

5.4 In the event of refusal of all or part of a Delivery, the refused Products may be stored and/or returned by the Purchaser at the expense and risks of the Vendors.

5.5 In the event where the Purchaser finds himself obliged to procure supplies from another source for all or part of the order, the defaulting Vendor shall bear, ipso facto, the difference in the costs recorded between the new order and the defaulting Vendor's initial order.

**6. TECHNICAL DOCUMENTATION - OPERATING AND MAINTENANCE MANUALS**

The Vendors shall supply the Purchaser at the time of Delivery at the latest, any technical documentation relating to the Products such as operating, maintenance and training manuals, drawings, plans, technical data and safety sheets, test reports and quality certificates, analysis and compliance certificates and any other useful documentation. Except as may otherwise be provided, delivery of software or Products comprising software shall include, with respect to questions of maintenance and/or adaptability, all the source codes and executable codes relating to them. Technical documentation, as well as any specific tools concerning Orders, shall remain the property of the Purchaser and shall form an integral part of the Products within the meaning of the present TCP.

**7. GUARANTEE - RESPONSIBILITY**

7.1 The Vendors guarantee that the Products comply with all agreed specifications and demands (including performance obligations) and are suitable for the uses anticipated by the Purchaser and, if the latter so requests, are compatible with good manufacturing practices. Moreover, the Vendors guarantee the Purchaser against any fault or defect, apparent or hidden, arising from a design error, a fault in the material or manufacture rendering the ordered Products unsuitable for their use and destination. Any declaration or guarantee mentioned in the Vendors' catalogues, brochures, promotional documents and quality systems shall engage the responsibility of the latter. The

Vendors guarantee that the Order's technical specifications satisfy the specific needs of the Purchaser and declare that they have carefully examined these specifications. Finally, the Purchaser shall benefit from the Manufacturer's Original Warranty related to the delivered Products.

7.2 Except as may otherwise be provided in the Order, the Vendors guarantee the correct functioning of the Products for 12 months with effect from the date of their implementation. Claims made by virtue of this guarantee shall suspend the guarantee period until the Vendors have remedied the fault; the guarantee period shall therefore be extended as a result.

7.3 If it is proved that the Products do not comply with the guarantee, the Purchaser may either: (a) cancel the Order in question by virtue of the provisions of Article 11; (b) accept the Products with a reduction in price; or (c) refuse the non-compliant Products and demand delivery of substitute Products at that necessary repairs be carried out, this being entirely at the expense of the Vendors. In the event that the Products are refused, these shall be stored and/or returned by the Purchaser at the expense and risks of the Vendors.

7.4 If the Vendors do not replace the Products by appropriate Products or do not carry out repairs rapidly, the Purchaser shall be authorised to replace them or have them repaired through another provider and demand that the Vendors reimburse the expenses incurred.

7.5 THE VENDORS SHALL BE RESPONSIBLE FOR ANY LOSS OR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL AND NON-MATERIAL DAMAGE, INCLUDING LOSS OF REVENUES, INCURRED BY THE PURCHASER FOLLOWING ANY FAULTY MERCHANDISE OR ANY OTHER PROBLEM LINKED TO THE VENDORS' SERVICES.

7.6 The Purchaser's rights and forms of recourse stipulated in the present TCP are added to any other right or form of recourse provided by the laws currently in force.

7.7 No inspection or acceptance of the Products by the Purchaser discharges the Vendors from their responsibilities and obligations with respect to the defects and other problems relating to the Products.

7.8 The Vendors guarantee the provision of the Products and spare parts or components of the latter for the purposes of repairing them, their maintenance or development during a period of 5 years with effect from the date of the Order. Moreover, they guarantee that neither the production nor distribution of the said Products shall be suspended or stopped during the course of the abovementioned period. If the Vendors decide to stop production of all or part of the Products, they shall inform the Purchaser at least one year in advance in order that the latter has the possibility of passing additional orders with the objective of procuring the said Products for themselves.

**8. INTELLECTUAL PROPERTY RIGHTS - LENDING EQUIPMENT**

8.1 The Vendors guarantee that neither the Products nor their rights or obligations arising from the Order, constitute counterfeiting, infringement of any trademarks, patents, copyrights or other intellectual property rights of third parties. The Vendors guarantee the Purchaser and exonerate him from any lawsuits or requests for indemnity, responsibilities, losses, costs, lawyer fees, and damages arising directly or indirectly from any infringement of intellectual property rights. If the Purchaser requests, the Vendors shall, at their own expense, take responsibility for any such requests for indemnity, legal proceedings and actions which third parties may instigate against the Purchaser.

8.2 If the Products are the subject of legal actions or requests for indemnity for infringement of intellectual property rights, the Vendors must either obtain an authorisation for use of the Products for the Purchaser as soon as possible, or modify or replace the Products in order to ensure infringement no longer occurs. The modification or replacement of the Products must not in any case damage the functionality of the Products or render them less appropriate for the Purchaser. If the Vendors do not fulfil these obligations, the Purchaser will have the right to take any measures he judges necessary to recover the cost of the Products from the Vendors.

8.3 Except as otherwise mentioned in the Order, patentable inventions and protectable creations, as well as their results, insofar as they arise from the execution of any Order, shall be the property of the Purchaser unless the Vendors can prove that they arise exclusively from their inventiveness and that they have been developed independently from the Order.

8.4 In the event that the Purchaser hands over to the Vendor capital equipment, components or machines (hereinafter referred to as the "Equipment") belonging to him in order to allow the Vendor to carry out an Order, the Vendor undertakes to identify this Equipment on his premises as being the non-seizable property of the Purchaser. Moreover, he undertakes to look after them carefully and prudently and maintain them in a regular and considerate manner in such a way that their perfect functioning is always maintained. As such, the Purchaser is only responsible for the fair wear and tear of the Equipment, the Vendor remaining responsible for any damage, deterioration, breakage, loss, theft or disappearance, whether this be his fault or that of a third party.

**9. CONFIDENTIALITY - RIGHTS OF OWNERSHIP**

9.1 Any information, written or verbal, provided by the Purchaser to the Vendors concerning the Purchaser's know-how, specifications, procedures and needs, as well as all the data, documents and technical or commercial information, shall be treated as confidential information and must not be divulged to any third party without the prior and written agreement of the Purchaser, for 10 years following the date of their disclosure to the Vendors. The said information shall be used exclusively for the purposes of processing the Order in question or for the purposes of preparing offers or quotations.

9.2 Rights of ownership and copyright which relate to any model, drawing, sample or other document that the Purchaser has provided to the Vendors, shall remain the Purchaser's property. The said confidential information shall at no point be divulged to third parties without the prior and written agreement of the Purchaser.

**10. FORCE MAJEURE**

10.1 The party which is the victim of a case of force majeure must immediately inform the other party of this (with written confirmation) and provide him with any pertinent information as well as proof confirming the said case of force majeure, as well as the possible length of delay regarding his business activities. Strikes affecting the Vendors, shortages of raw materials, delays by sub-contractors, strikes by carriers or similar events may not constitute a case of force majeure for the Vendors.

10.2 If a case of force majeure affects the Vendors, the Purchaser shall be authorised, at his full discretion to (a) agree an extension to the delivery period with the Vendors or (b) cancel the Order or any part of it without incurring any responsibility on his part, and request the reimbursement of sums already paid in view of the cancelled part of the Order.

10.3 The amount of Products already delivered remain due only if the Purchaser can use them normally despite the non-delivery of the balance of the Order. The Vendors shall reimburse the Purchaser any surplus sum that he may have paid in advance.

10.4 Material breakdowns, shortages of raw materials or any other cause which does not reasonably arise from the Purchaser and which prevents the use of the ordered Products or limits the Purchaser's needs for Products, shall authorise the Purchaser, at his entire discretion, to suspend or postpone the delivery of ordered Products, or cancel all or part of the Order without incurring any responsibility on his behalf.

**11. CANCELLATION**

11.1 The Purchaser is authorised to suspend execution of an Order for a period which he has determined, or cancel it totally or in part, by giving the Vendors notice of five (5) days. Under no circumstances shall the Vendors have the right to compensation for incidental or non-material damages or for loss of income.

11.2 If the Vendors do not fulfil any one clause of an Order, the Purchaser shall have the right to cancel the said Order immediately, or a part of it, by notifying the Vendors in writing, without prejudicing any other form of recourse, and without incurring any other responsibility or obligation. Moreover, the Purchaser shall have the right to be reimbursed by the Vendors of any sums which he has paid pursuant to the Order, as well as any expenses which he has incurred in order to obtain the replacement Products from another provider, and to claim compensation for the losses or damages that he has suffered due to late execution or non-execution of the Order by the Vendors. Likewise, if the production or assembly of the Products by the Vendors does not advance, with the result that this challenges the execution of the Order in question within the period specified by virtue of the terms and conditions of the latter.

11.3 The Purchaser is authorised to cancel the Order without engaging other responsibilities or obligations if he has good reason to believe that the Vendors shall not be in a position to keep their obligations.

**12. INSURANCE**

The Vendors shall subscribe to and maintain in force any insurance policies necessary to cover all their obligations. They undertake to rapidly provide the Purchaser with their insurance certificates upon the Purchaser's request.

**13. SUB-CONTRACTING**

If the Vendors are authorised to sub-contract to third parties all or part of their obligations, the said activities of sub-contracting shall be their affair exclusively and under their entire responsibility. The Vendors shall inform their sub-contractors of the provisions of the present TCP as well as those of the Order, and will provide them with any information relating to the Purchaser's demands, particularly with regard to security and confidentiality regulations. The Purchaser reserves the right to refuse any of the Vendor's sub-contractors who do not comply with these conditions.

**14. TRANSFER**

The Vendors shall not transfer any Order, any right arising from an Order or any debt due by the Purchaser without the prior written agreement of the latter.

**15. JURISDICTION - APPLICABLE LAW**

15.1 Any Order shall be exclusively governed and interpreted in accordance with French law.

15.2 Any lawsuit arising within the framework of the Order shall fall exclusively within the jurisdiction of the Caen Commercial Court.

**16 COMPLIANCE WITH LABOUR LEGISLATION**

The Vendor testifies under oath that the products sold are manufactured in compliance with labour legislation, in particular regarding illegal working and child labour. The Vendor commits himself to keeping this undertaking in force during the entire length of its commercial relations with the Purchaser.