

## General Terms of Sale

### JENOPTIK (Shanghai) Precision Instruments and Equipment Co., Ltd.

#### 1. General provisions

1.1 All our current and future deliveries, services and offers are exclusively governed, even in the absence of an express agreement, by these general terms of sale ("GToS"). Any separate terms and conditions of the purchaser are of no force and effect unless expressly incorporated into these GToS

1.2 The present terms shall apply mutatis mutandis to contracts for work, contracts for work and materials and mixed contracts.

#### 2. Contracting

2.1 Our quotations and any drawings, images, measurements, weights and other performance data therein contained (the "Offer") are subject to the parties' confirmation by way of an Order Confirmation in writing in accordance with Sub-section 2.2, and non-binding unless expressly marked as being binding or specifying a certain period for acceptance, during which period the Offer shall be binding. Each Offer incorporates these GToS.

(a) For prices quoted in Offers that are not expressly marked as being binding, we reserve the right to withdraw or revise any Offer at any time prior to the purchaser's acceptance and confirmation.

(b) For prices quoted in Offers expressly marked as being binding, we consider ourselves committed to them for four weeks starting from the date of the Offer unless the Offer specifies a different period for acceptance. Once the four weeks starting from the date of the Offer, or the otherwise specified period for acceptance, has lapsed, we reserve the right to withdraw or revise the Offer at any time thereafter.

2.2 A contract shall not be deemed to come into being until confirmed by way of an order confirmation in writing and duly signed by both parties (an "Order Confirmation"). If there is no Order Confirmation in an individual case or if a contract comes into being without it, the Offer and these GToS shall be authoritative in determining the substance of such contract.

2.3 Where an export permit is required for the performance of a contract, performance shall be subject to the condition precedent of such permit being issued.

2.4 We have sole ownership and copyrights to our written offers, images, drawings, calculations and other records, including in electronic form. Such items must not be made accessible or known to third parties nor reproduced by the given counterparty itself or by third parties.

2.5 Any particulars made known to us by the purchaser shall not be deemed confidential.

#### 3. Subject matter of contract

3.1 We shall supply the hardware identified in the Order Confirmation and, to the extent agreed, software conforming to the specifications set forth in the Order Confirmation.

3.2 Software shall be supplied in an executable form (object code) only. The source code does not form part of the subject matter of contract and is not included.

3.3 Our hardware and software is delivered complete with the documentation provided for and made available by us or the manufacturer (manuals).

3.4 The allocation and application of the hardware and

software supplied by us shall be the purchaser's responsibility.

3.5 Installation, configuration and briefing do not form part of our duties except where expressly agreed.

#### 4. Payment terms

4.1 The prices quoted in the Order Confirmation shall be deemed agreed. Except as otherwise agreed, prices shall be deemed to be quoted in RMB "ex works" and exclusive of packaging. Packaging and other additional or special services shall be charged separately.

4.2 Each party shall bear all the respective Taxes arising as a result of or in consequence of these GToS or its implementation. Any applicable withholding Tax shall be borne by us or the purchaser (as applicable) in accordance with the relevant law of the People's Republic of China, who shall then provide evidence in writing to us or the purchaser (as applicable) of the payment of the withholding Tax. For the purposes of these GToS, "Tax" or "Taxes" shall mean any form of taxation, levy, duty, charge, withholding of whatever nature (including enterprise income tax, individual income tax, value added tax, business tax, consumption tax, customs and other import duties, property tax, land value appreciation tax, deed tax, withholding tax, capital gains tax, stamp duty and all other taxes on gross or net income, profits or gains, receipts, sales, use, occupation, franchise or personal property), including any related fine, penalty, additional tax, surcharge or interest, imposed, collected or assessed by, or payable to, a any state or local governmental authority exercising fiscal, revenue, customs or excise function.

4.3 Except where otherwise stated in the Order Confirmation, the purchase price shall be due for payment without discount immediately upon receipt of the invoice. The criterion for adherence to this deadline shall be the date of receipt of payment by us. Discounts are subject to specific written agreement between us and the purchaser.

4.4 Payments of the purchaser may initially be set off, contrary to its repayment terms, against its more senior debts. The purchaser shall promptly be advised of the specific manner of set-off applied by us.

4.5 If we learn about circumstances that are apt to substantially diminish the purchaser's creditworthiness and to jeopardise settlement of our accounts receivable, we are permitted to render outstanding performances only against payment in advance or to require the provision of additional collateral security. Moreover, we are in that case and in particular in case of default on payments due free to declare immediate maturity of the entire residual debt.

#### 5. Terms of performance

5.1 Delivery, shipment of goods and passing of risk is made "ex works" from our address as named in the Order Confirmation pursuant to INCOTERMS 2010 except to the extent otherwise agreed. Upon delivery, the risk passes to the purchaser, including in case of partial delivery.

5.2 The dates and time limits of delivery anticipated by us are always tentative except where a fixed time limit or deadline has expressly been promised or agreed. Compliance with a fixed date or period of delivery presupposes that the purchaser meets its co-operation obligations in that it, in particular, assists in fully clarifying the technical details of the order, provides us on time with records and documents within the agreed scope, punctually makes down payments and furnishes payment security.

5.3 We are entitled to make partial deliveries and partial

performances if:

- such partial delivery or partial performance is usable by the purchaser;
- it is assured that the remaining delivery or performance will in fact be made; and
- the purchaser does not incur any substantial additional expense as a result of such partial delivery or performance.

5.4 Unless differently provided for by the Order Confirmation, the place of performance of our services and the purchaser's payment obligation is our business address.

5.5 Where formal acceptance is required, our delivery or performance shall be deemed to have been formally accepted if and when:

- delivery or performance, where appropriate with installation, has been completed;
- the seller has accordingly advised the purchaser while drawing its attention to the implied form of acceptance provided for above and has requested the purchaser to accept the delivery or performance;
- twelve days have passed since delivery or installation or, alternatively, the customer has begun to use the delivery or performance result and six business days have in that case elapsed since delivery or installation; and
- the purchaser has neglected to declare acceptance within that period for any reason except where the use of the purchased object is rendered impossible or substantially impaired by a defect communicated to the seller.

## 6. Warranty

6.1 Our deliveries and performances shall carefully be inspected immediately following delivery or performance. The purchaser is required to immediately notify the seller in writing of any material and/or legal defects. In no event shall we be liable for any defect which the Purchaser has not notified to us within one (1) years of the date of delivery of the relevant hardware, software or other deliverable.

6.2 If the object of purchase is found to be defective, the purchaser may either require the defect to be remedied or delivery of a new, flawless object. The latter option is not available to the purchaser until after we have made at least two unsuccessful attempts at remedying the defect or have found it impossible or unreasonable or have refused to do so. If rectification and/or substitute delivery have failed, the purchaser may either withdraw from the contract or reasonably reduce the purchase price with our written consent (not to be unreasonably withheld).

6.3 The cost of supplementary performance shall be borne by the purchaser if such performance takes place at the purchaser's request or instigation at a place other than the place of delivery.

6.4 The Purchaser shall not assign its warranty rights without our prior written consent.

6.5 In case of withdrawal from the contract we shall refund the purchase price reduced by reasonable compensation for the benefits derived pending completion of such reversal.

6.6 The purchaser is obliged to make arrangements for proper data privacy in accordance with applicable laws, regulations, rules and standards.

6.7 Where building components supplied by other manufacturers are found to be defective and the seller is unable to remedy such defects for licensing or physical reasons, the seller shall be free to either assert its warranty claims against the manufacturer or supplier for the purchaser's account or assign such rights to the purchaser. Warranty claims against the seller in respect of such defects are deemed to exist under these terms only if any judicial enforcement of the a.m. claims against the manufacturer and the supplier has proved unsuccessful or is considered bound to fail e.g. in case of an insolvency. While such litigation is pending, the statute of limitations in respect of the purchaser's pertinent warranty claims against the seller shall be suspended.

6.8 All warranty rights shall lapse where changes are made to our performance results without our consent, where parts are exchanged or materials used which do not conform to our original specifications and where, as a result, any analysis or rectification of defects becomes impossible or is inordinately hampered. In these cases we are entitled to a refund of any costs we may have unnecessarily incurred for the analysis and rectification of such defects. The same shall apply if our operating or maintenance instructions are not observed or if our performance results are not used in accordance with contract or with our product specifications or operating instructions. This shall also apply where our performance results are used in combination with third-party performances in a way that is incompatible with our product specifications or operating instructions or where the defect of the given performance is based on design records or other standards provided by the purchaser. The above provisions shall not apply if the purchaser can prove that the given defect is not attributable to any of the aforementioned circumstances.

6.9 In regard to deliveries of software, we warrant substantial compliance with the agreed and stated programme specifications provided that the given software is installed on such device systems as are confirmed by us to be compatible as per the given product specifications and that such use by the purchaser is confined in accordance with contract to the hardware and software environments specified by us and/or any third-party software suppliers where our deliveries include any third-party software pursuant to Sub-section 10.10.

## 7. Liability

7.1 Except as expressly provided in this GToS, we do not make and hereby disclaims to the maximum extent permitted by law all representations, warranties and conditions in relation to the performance of our obligations under these GToS, including any and all express, implied and statutory warranties as to the quality, fitness for a particular purpose of the products supplied (including hardware and software).

7.2 Notwithstanding any other provisions of these GToS: (i) our total aggregate liability to the purchaser under or in connection with these GToS, whether in contract, tort or otherwise, shall be limited to the amounts paid under the relevant Order Confirmation, and (ii) we shall not be liable, whether in contract, tort, under statute or otherwise (including, in each case, negligence) for any indirect or consequential losses or for any loss of profits, business, contracts, anticipated savings, goodwill, data or revenue .

7.3 To the extent that we furnish technical information or provide consultancy services and that such information or advice does not fall within the scope of the performances owed and contractually agreed to by us, we do so free of charge and to the exclusion of any liability.

7.4 Our liability under a guarantee furnished by us is not based on the above covenants but rather on the terms of the given guarantee and statutory provisions.

7.5 The above covenants are valid regardless of the legal ground of the given liability and shall also apply but not be limited to non-contractual and tortious claims.

7.6 Any liability on the seller's part is excluded to the extent not otherwise agreed in this Sub-section 7.

## 8. Reservation of title

8.1 All goods delivered shall remain our property ("Reserved Goods") pending satisfaction of all receivables including future and contingent accounts, based on deliveries agreed on the basis of these terms, and of claims to credit balances in current accounts pertaining to the a.m. receivables.

8.2 The purchaser is entitled to process and re-sell the Reserved Goods in the ordinary course of business as long as it is not in default. Pledging or transfer by way of security is not permissible. Where the value of the collateral securities granted to us exceeds by more than 50 per cent (50%) the receivables secured and not yet satisfied, we shall, on request and at our choice, release collateral in whole or in part.

8.3 The purchaser shall insure the Reserved Goods against loss, theft and damage under customary and appropriate terms of insurance.

8.4 Processing is made on our behalf as manufacturers without committing us. We become co-owners of the new item at the ratio between the invoice value of the Reserved Goods and the value of the other items processed. The purchaser shall provide storage at no charge to us. Any new item emerging from such processing shall be subject to the terms applicable to Reserved Goods.

8.5 Where Reserved Goods are inseparably combined or mixed with other items not belonging to us, we become co-owners of the new items at the ratio between the invoice value of the Reserved Goods and the value of the other combined or mixed items. Where such combination or mixture is made in such a manner that the item of the purchaser must be looked upon as the principal item, it shall be deemed agreed that the purchaser shall transfer to us a proportionate co-owner's interest therein. The purchaser shall provide storage at no charge to us. Any new item emerging from such combination or mixing shall be subject to the terms applicable to Reserved Goods.

8.6 The purchaser assigns to us already now in full by way of security all accounts receivable deriving from the re-sale or further processing of Reserved Goods, including all claims to credit balances in current accounts pertaining to the a.m. receivables. However, the purchaser is entitled to collect such receivables in its own name but for our account so long as we do not revoke the direct debit authorisation by reason of delay in payment by the purchaser.

8.7 Where third parties have recourse to Reserved Goods, in particular in the form of attachment, the purchaser shall draw attention to our ownership status and shall notify us immediately. The purchaser shall be liable for all costs incurred by us in this connection.

8.8 Where the purchaser acts contrary to contract, in particular where it fails to make payment when due, we are entitled, after setting a reasonable time limit, to require surrender of the Reserved Goods. The purchaser is obliged to comply.

## 9. Intellectual property rights

9.1 The purchaser shall immediately notify us in writing whenever a third party asserts a claim against it by reason of the latter's use of a consignment/performance, invoking infringement of intellectual property rights. We reserve, in respect of these cases, the sole right, exercisable in our sole and absolute discretion, to legal defence by all available defensive and extrajudicial measures. The purchaser, at our request, is obliged to assist us in this endeavour.

9.2 Our liability for infringement of any third-party intellectual property rights shall be confined to those cases where the subject rights are owed to the given third party also in respect of the territory of the People's Republic of China or of the country of destination of the given consignment or of those states where the object of purchase is to be used according to the stated contractual purpose. The latter provision shall only apply to the extent that the states covered by the contractual purpose are specifically named in the Order Confirmation.

## 10. Rights to software

10.1 The following rules shall apply where the subject matter of contract includes or is exclusively confined to the delivery or permanent transfer for use of software unless a separate licensing agreement has been concluded.

10.2 We shall retain ownership of the software at all times. The purchaser is granted a non-exclusive right unlimited in terms of time and place to the use of the software, unless otherwise specified by us. Where, according to the contract, the given performance result is not used by the purchaser itself but is rather passed on by it to a third party (end customer) in its entirety or as part of another performance pursuant to Sub-section 10.6, the rights specified in this Section 10 are only owed to such end customer. The purchaser is obliged to procure that the end customer gives an undertaking to this effect.

10.3 The use of the given software must be confined to the scope defined in the pertinent contract. In case of a licence confined to a specific device, the software may be installed and used only on a single device. In case of a server licence, the software may be installed and used only on a single server. Use shall be limited to the number of natural persons that corresponds to the number of licences acquired. Any use beyond the contractually agreed measure is not in conformity with the contract.

10.4 Permissible use comprises the installation of the software on a device or server, loading thereof onto a working memory, in each case to the extent required and feasible, and use thereof by the purchaser for the intended purpose. In no event is the purchaser entitled to let or otherwise sublicense the acquired software, to publicly communicate it or make it accessible wireless or wire-bound or to make it available to third parties against payment or free of charge. Sub-section 10.6 shall remain unaffected.

10.5 The purchaser is not allowed to alter, copy or otherwise reproduce the software transferred for its use. The purchaser may produce a backup copy. The purchaser will clearly display the words "backup copy" on the copy produced along with the manufacturer's copyright notice.

10.6 The purchaser is entitled to transfer the acquired software to a third party for permanent – not, however, for temporary use. In that case, the purchaser shall:

- completely cease using the software,
- remove and erase all copies installed with the purchaser and -
- erase all copies installed on other data carriers with the purchaser (complete with backup copies) unless it is obliged by law to preserve them for a longer period.

10.7 The purchaser is required to confirm to us in writing at our request that it has carried out the measures listed in Sub-section 10.6 or to state the reasons for preserving the software for a longer period. Where software is transferred to the purchaser for its permanent use, the latter is obliged to communicate to us the name and the full address of the acquirer. The acquirer is obliged to confirm to us in writing that it has received the software from the purchaser. The purchaser is obliged to procure an undertaking from the acquirer to comply with these GToS in relation to its use of the

software.

10.8 Where software supplied by us is installed on hardware and expressly labeled as OEM software, the acquired software may be transferred for use to a third party only jointly with such hardware. Data carriers supplied by us complete with OEM software copies are merely backup or recovery data carriers which are not independently transferable. In all other respects, Sub-section 10.6 shall apply.

10.9 The purchaser undertakes to prevent its staff members and other third parties by taking suitable precautions from having unauthorised access to the software supplied and to the pertinent documentation, doing so in particular by storing the original data carriers and the backup copies in a secure place. Copyright notices, serial numbers and other programme identifying marks must not be removed from the data carrier or from the documentation and must not be modified.

10.10 Our deliveries may include third-party software which we undertake to identify as such. The scope of rights of use to such software is primarily defined in the pertinent licensing conditions provided by the third-party supplier. The above terms shall apply by way of supplement. The purchaser is required to accept the licensing conditions of the third-party supplier, failing which we are entitled to withdraw from the contract.

#### **11. Supply constraints**

11.1 Events of force majeure or other events not foreseeable by or not attributable to us, in particular measures of public authorities such as import and export restrictions, may prevent us from delivering until after the pertinent impediment is removed. This may also apply to supply bottlenecks not foreseeable by or not attributable to us concerning such raw materials, energy or preliminary or intermediate products as are required for the production of the goods. The purchaser shall be advised by us of the commencement and the end of such bottlenecks.

11.2 The supply bottlenecks referred to in Sub-section 11.1 also entitle us to withdraw from the contract without owing damages to the purchaser. In that case, any payments made by the purchaser shall immediately be refunded to it.

#### **12. Withdrawal/termination clause**

12.1 In the event that a party materially breaches any of its obligations under these GToS and fails to remedy such breach within thirty (30) days of being informed of such breach, the other party may issue a written notice to such party in default at any time to terminate the contract.

12.2 Either party is entitled to terminate the contract, in whole or in part, immediately upon notice to the other party in the event of any Insolvency Event in relation to the other party. For the purposes of these GToS, "Insolvency Event" shall mean the presentation of a petition or the taking of analogous proceeding (which are not withdrawn or discharged within sixty (60) business days) for the winding up or dissolution of the affected party or, to appoint a liquidator, manager, receiver, administrator, administrative receiver or other similar office in respect of any assets of the other party.

#### **13. Environmental safety clause/packaging**

13.1 In the area of waste management, the purchaser shall comply with the instructions accompanying our products and shall ensure that the items specified on the delivery note are disposed of properly and as required by statute.

13.2 The costs of waste disposal shall be borne by the purchaser. In respect of goods or components re-sold, the

purchaser shall transfer this obligation to the purchaser next in line.

#### **14. Anti-corruption/compliance**

The purchaser undertakes to comply with all statutory provisions, in particular in the areas of anti-corruption, competition and restrictive practices law. In particular, the purchaser represents that it will refrain from offering, promising or granting our staff members and persons close to them any unlawful benefits. The same obligations apply to those staff members of the purchaser, its vicarious agents and other third parties who are acting on the purchaser's instructions and whom the purchaser is required to commit accordingly.

#### **15. Transfer of information within the Group**

We are entitled to pass on to companies associated with us within the Group such data as come to our knowledge in the context of our customer relations with the purchaser except to the extent that this is incompatible with proper data privacy in accordance with applicable laws, regulations, rules and standards.

#### **16. Assignment and Sub-Contracting Rights**

We may assign, transfer, sub-contract or otherwise deal with all or any of the rights under these GToS and grant, declare, create or dispose of any right or interest in it with the purchaser's consent (not to be unreasonably withheld).

#### **17. Applicable law, venue**

17.1 All legal relations between us and the purchaser shall exclusively be governed by the law of the People's Republic of China.

17.2 Any dispute, controversy or claim arising out of or in connection with these GToS, including any question regarding their existence, validity or termination (hereinafter "Dispute") shall be settled through friendly consultations between the parties. If no settlement is reached within thirty (30) days from the date one party notifies the other party in writing that a Dispute has arisen, such Dispute shall then be submitted to the China International Economic and Trade Arbitration Commission (hereinafter "CIETAC") in Beijing for arbitration which shall be conducted in accordance with the Commission's arbitration rules in effect at the time of applying for arbitration.

17.3 The arbitration award shall be final and binding on the parties, and the parties agree to be bound thereby and to act accordingly. The costs of arbitration and the costs of enforcing the arbitral award (including witness expenses and reasonable attorneys' fees) shall be borne by the losing party, unless otherwise determined by the arbitral award. When any Dispute occurs and is under arbitration or any other proceedings, the parties shall continue to exercise their respective rights, and fulfil their obligations under these GToS.

17.4 The PRC shall be the place of arbitration and all oral hearings shall take place in Shanghai.

17.5 The language of arbitration shall be English. All oral hearings shall be conducted in English and all documents and witness statements, if not in English, shall be translated into English by the party producing the document or statement.

17.6 The arbitration tribunal will consist of three arbitrators, to be appointed in accordance with the CIETAC rules, provided that the presiding arbitrator shall not currently be or previously have been a national of Germany or the PRC. In addition, the parties agree that any of the arbitrators may be appointed from outside CIETAC's panel of arbitrators.

17.7 However, nothing in this Section 17 is intended to prevent us from commencing or continuing court proceedings for the purpose of obtaining interlocutory or interim relief in any jurisdiction pending arbitration or the outcome of arbitration.

## **18. Miscellaneous**

### **18.1 Whole Agreement**

These GToS set out the whole agreement between the parties in respect to the subject matter of these GToS and supersedes any prior agreement (whether oral or written).

### **18.2 Governing Law**

These GToS and any non-contractual obligations arising out of or in connection with these GToS shall be governed by, and construed in accordance with, the laws of the People's Republic of China without regard to the conflicts of law principles thereof.

### **18.3 Waiver**

No failure or delay on the part of either party in the exercise of any power or right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power or right preclude other or further exercise thereof or of any other right or power. The waiver by either party of a breach of any provision of these GToS shall not operate or be construed as a waiver of any other or subsequent breach hereunder. All rights and remedies existing under these GToS are cumulative to, and not exclusive of, any rights or remedies otherwise available.

### **18.4 No Partnership**

The parties enter into these GToS as independent contractors. Nothing in these GToS shall be deemed to constitute a partnership between the parties or to constitute the purchaser as our agent, or otherwise to entitle either party to pledge the credit of the other party or otherwise bind the other party, and neither party shall be entitled to do any act or execute any instrument or agreement or make any representation, or give any warranty, on behalf of the other party.

### **18.5 Severability**

If any provision of these GToS is held to be invalid or unenforceable, then such provision shall (so far as it is invalid or unenforceable) be given no effect and shall be deemed not to be included in these GToS but without invalidating any of the remaining provisions of these GToS. The parties undertake to negotiate in good faith to agree on the replacement of such invalid or unenforceable provisions with a valid and enforceable substitute provision the effect of which is as close as possible to the intended effect of the invalid or unenforceable provision.

### **18.6 Amendment**

Any changes to these GToS including this provision are subject to our written approval and/or a written agreement in order to be effective.

### **18.7 Language**

These GToS shall be written in English and Chinese. Both language versions shall be equally authentic. In the event of any discrepancy between the two language versions, the English language version shall prevail.