- General purchasing conditions of Nopa Instruments GmbH, as June 2018 –

- For use in business transactions with contractors -

I. General

1. As a supplement to the individual contractual agreements, our purchasing conditions apply exclusively to all business transactions with suppliers or other contractors (hereafter referred to jointly as "supplier"). Business terms and conditions of the supplier or a third party shall not apply even if the supplier makes reference to such and we have not separately objected to application of such once again in an individual case and accept delivery or service.
2. These purchasing conditions shall also apply to all future deliveries between ourselves and the supplier even if such have not once again been separately agreed.
3. Any agreements relating to the conclusion of a contract must be in writing. Amendments or supplements to contractual agreements must be in writing and must be agreed by us.
4. If the creditworthiness or ability of the supplier to deliver should deteriorate to an extent which puts the performance of the contract at risk, or if the supplier suspends his payments or if insolvency proceedings are instituted against his assets, then we have the right of cancellation, which may also be exercised in part.
5. Transfer of an order to third parties without our consent is forbidden and entitles us to cancel or make a claim for compensation. The assignment of claims against us is excluded without our prior approval.

II. Delivery dates and periods; default

1. Where a deadline is exceeded to which no fault attaches, we have a right of extraordinary termination, if the time by which the deadline is exceeded is considerable and the urgency of the delivery demands this because we are bound by deadlines. If we are unable to carry out acceptance on time on account of force majeure or because of other unforeseen obstacles or such as are outside our influence and which have an effect on the acceptance of the goods, then the acceptance period will be reasonably extended and there will be no default in acceptance. In other cases, claims for compensation on account of culpable delayed acceptance, will, in any case, be limited to 50% of the value of the delivery, for which acceptance has been delayed.
2. If the supplier is in default, then, following a warning, we have the right to demand a contract penalty of 0.5% of the net order value for each week started, up to a maximum of 5% of the net order value and/or delivery and/or to withdraw from the contract. The contract penalty paid will be charged against any claim for compensation.
3. If the supplier is in default, then we are entitled to make a covering purchase, in so far as this is useful in the circumstances in order to ward off the threat of consequential losses of default. The supplier shall bear the additional costs that we incur as a result.

III. Transport and transfer of risk

1. Delivery is in principle, "free house". The supplier must quote our ordering details on all dispatch documents and delivery slips.
2. The transfer of risk occurs at the time of delivery to the dispatch address or following erection and acceptance at our works. The goods shall be stored in safe custody on our behalf free of charge and at the supplier's risk, up until the time of shipment. The supplier is liable for losses and damage, which occur during transport, including unloading up until the time of acceptance at our works. The supplier must therefore take out sufficient forwarding insurance in respect of his deliveries.

IV. Quality assurance, evidence of origin

1. With respect to his deliveries, the supplier must comply with the acknowledged rules of the art and the agreed (technical) data, in particular the quality regulations and protective legislation, as well as other safety provisions, such as, EC regulation 93/42/EEC or the MPG (Medical Product Law). The supplier is obliged to maintain a quality management system based on the international standard DIN ISO 9000 ff or ISO 13485 ff or EN 46000 ff with the obligation of achieving a zero-fault target and ensuring the continued improvement of his performance. The supplier will also ensure that his sub-contractors maintain a comparable quality management system that ensures the fault-free nature of the parts bought-in and/or of externally processed parts. Details must be regulated in writing in the individual quality agreements between the parties.
2. Evidence of the origin of the item being supplied must be enclosed with the deliveries. The supplier must deliver products that are purely of German origin or of foreign origin specifically approved by us.

V. Warranty claims, examination for defects, prescription, recourse

1.The supplier must provide goods free from material defects. The statutory provisions apply unless otherwise agreed below. In urgent cases, particularly if there is a risk of delay and in order to stave off any acute risks or avoid even greater risks, we are entitled to remove or have the defect removed by third parties, at the expense of the supplier.
2. If there are no arrangements in quality assurance agreements, then we shall proceed with examining the deliveries within an appropriate period for obvious quality and quantity discrepancies. Any notification of defect will be valid if it is sent to the supplier within a period of 15 working days from the date of receipt of the supplies and, in the case of hidden defects, from the date of their discovery. To this extent, the supplier will not avail himself of late notification of defects. In the case of transit business, account should be taken of the complaint of the accepting party. In the event of complaint, we reserve the right to charge the supplier with the costs incurred in connection with the defect. The supplier shall bear the costs and risk of returning defective delivery items.
3. For the product manufactured or delivered by the supplier or for the order executed by him, our claims for defects shall lapse after 60 months following delivery to us. The supplier will agree the scope of this period of prescription with his company liability insurer.

4. In the case of defects in title, the supplier will indemnify us against claims by third parties. There is a 10-year period of prescription in respect of defects in title.
5. For parts of the delivery, which have been repaired within the period of prescription of our claims for defects, the period of prescription will start afresh from the time when the supplier has fully complied with our claims for subsequent performance.
6. If we take back products produced and/or sold by us as a consequence of the deficiency of the contractual item delivered by the supplier or if the purchase price to us has been reduced because of this, or if a claim has been made on us in any other way for this reason, we reserve the right to exercise recourse against the supplier and for our claims for defects no other period needs to be set.
7. We are entitled to demand compensation from the supplier for expenses which we had to bear in relation to our customer, because the latter has made a claim against us for reimbursement of the expenses required for the purpose of subsequent performance, in particular, transport, infrastructure, labour and material costs.
8. Irrespective of the provisions under point 4, prescription in the case of point 6 and 7 will take effect at the earliest 2 months after the time when we have performed the claims directed against us by our customer, but at the latest 5 years after delivery by the supplier.
9. If within 6 months from the transfer of risk, a defect of quality is revealed, then it is assumed that the defect was already present at the time of transfer of risk, unless this assumption is inconsistent with the nature of the defect.

VI. Product liability, insurance cover, assignment

1. For defects in goods and the resulting damage, which we or third parties incur, the supplier will release us from the resulting liability. The supplier will agree with his insurer, the joint insurance of this indemnification as part of his company liability insurance. The supplier will release us from claims from third parties in respect of responsibility for product damage, to the extent that the cause resides in his area of control and organisation. He is obliged to reimburse expenses for any recall action carried out in order to avoid personal injury and which has become necessary on account of the product defects caused by the supplier.
2. The supplier is obliged to maintain company and product liability insurance with a cover of at least 5 million € or the equivalent in foreign currency as a lump sum for personal injury and material damage. The scope of the product liability insurance must extend to include personal injury and material damage on account of lack of assured characteristics of the delivered product, to damage on account of incorporating, mixing or processing the supplied product, to damage on account of the further processing of the supplied product, costs of dismantling and installation, reject products by machines, together with inspection and sorting costs. The total cover for such damage/losses must likewise amount to at least 5 million EUR or the corresponding equivalent in foreign currency. The cover must also extend to losses abroad. The supplier shall notify us of exclusions in respect of cover for the USA/Canada. On request, the supplier will hand over to the ordering party a corresponding confirmation from the insurer in the form of a so-called *Certificate of Insurance*. The assertion of further claims for compensation is not affected by this.
3. The supplier assigns to us, all present and future contractual claims for compensation, which are due to him against his suppliers, provided the damage has been caused to us as a result of the delivered product. The assignment is regarded as notionally made on signature of the supply contract. We therewith accept such assignment.

VII. Protective rights, indemnification

1. The supplier will accept responsibility for the fact that the delivered item and its packaging comply with the provisions that exist for the operation or use of such items, irrespective of whether these provisions are based on European or U.S. law, statute, official regulations or commercial customs.
2. He will indemnify us against any claims under public or private law resulting from infringements of these regulations. The supplier is responsible for the fact that protective rights of third parties are not infringed in connection with his supply.
3. If a third party makes a claim against us on this account, then the supplier is obliged to indemnify us against such claims upon first request. The supplier's duty of indemnification relates to all expenses, which accrue to us as a result of or in connection with the third party claim.
4. This shall not affect any statutory claims going above and beyond this due to legal or material defects.

VIII. Legal venue, place of performance, miscellaneous

1. The sole international and local legal venue for all disputes emanating from contractual agreements and legal relationships is our registered office in Tuttlingen subject to application of these purchasing conditions. We may also sue the supplier before the court that is competent for the latter's registered office, however.
2. Unless otherwise specified in the order, our registered office is also the place of performance.
3. For all legal relationships between the supplier and us, even where the former has its registered office abroad, German law alone shall apply, to the exclusion of the conflict of laws provisions and the UN Convention on Contracts for the International Sale of Goods (CISG).
4. If individual provisions of the contract are invalid, this will not affect the other conditions. Invalid provisions shall be replaced by provisions in such a way that the commercial purpose intended by the invalid provision is achieved in the best possible manner.