

ATTI DEI DIRETTORI DELLE SEZIONI DI RICERCA SCIENTIFICA O TECNOLOGICA, DELLE
STRUTTURE TECNICHE DI SERVIZIO E DEI DIRIGENTI

Atto n. OCE 601 ADW del 14/10/2024

Oggetto: Fornitura di codici di attivazione del software denominato "ice detection" installato su 4 Arvor-I. Importo complessivo € 1.400,00, IVA esclusa. Affidamento diretto, ai sensi dell'art. 50, comma 1, lettera b), del D.Lgs. n. 36/2023 e s.m.i., alla società NKE Instrumentation Sas, di Hennebont, (Francia), (VAT N. FR58538107483). Oneri di sicurezza interferenziale non soggetti a ribasso d'asta: € 0,00. CIG n. B33E3B40A7, CUP n. F27G22000320001.

IL DIRETTORE DELLA SEZIONE DI RICERCA SCIENTIFICA OCEANOGRAFIA

- Richiamata** la deliberazione del CdA n. 85 dd. 08/10/2020 "Procedura di valutazione comparativa per l'individuazione dei Direttori delle Sezioni e/o Centri di Ricerca Scientifica e/o Tecnologica: Sezione di ricerca scientifica "Oceanografia" - OCE - nomina del candidato vincitore" con la quale si è disposto la nomina a Direttore della Sezione di Ricerca Scientifica "Oceanografia" – OCE, del dr. Cosimo Solidoro, con decorrenza 01/11/2020 e termine al 31/10/2024;
- visto** l'atto della Direttrice Generale n. 76 ADW del 09.02.2024 "Delega temporanea in materia di contratti pubblici di lavori, servizi e forniture ai Direttori delle Sezioni di ricerca/Centri di ricerca e delle Strutture Tecniche di servizio e ai Dirigenti Amministrativi dell'OGS";
- esaminata** la richiesta del dott. Massimo Pacciaroni, agli atti della procedura, relativa alla necessità di acquisire i codici di attivazione del software denominato "ice detection" installato su n. 4 float Arvor-I, prodotti dalla NKE Instrumentation Sas, di Hennebont, (Francia);
- considerato** che, tale software, si basa sul controllo di una serie di parametri misurati dal float, sviluppato esclusivamente dalla ditta NKE ed è stato già utilizzato negli anni precedenti da parte dell'OGS in ambito di campagne polari;
- tenuto conto** che la fornitura è propedeutica alla rilevazione della presenza di ghiaccio e si colloca nell'ambito del progetto Argo Italy;
- considerato** altresì del grado di soddisfazione maturato a conclusione di precedenti rapporti contrattuali, dell'affidabilità dell'operatore economico e l'idoneità a fornire prestazioni coerenti con il livello economico e qualitativo atteso;

ricevuta	dalla NKE Instrumentation Sas, di Hennebont, (Francia), e ritenuta congrua, la quotazione n. IDEV-2409-0016 del 04/09/2024 per la fornitura richiesta, per un importo complessivo di € 1.400,00, IVA esclusa, (Allegato 1);
preso atto	che la spesa massima stimata per il servizio risulta inferiore alla soglia di € 5.000,00;
tenuto conto	inoltre delle disposizioni contenute nella c.d. Legge di Stabilità 2016 (L. 28/12/2015, n. 208), modificata con la c.d. Legge di Stabilità 2019, laddove è possibile effettuare acquisti di beni e servizi di valore inferiore ad € 5.000,00 (IVA esclusa) al di fuori del MePA Consip;
considerato	l'art. 50, comma 1, lettera b), del D.Lgs. n. 36/2023 e s.m.i. (di seguito "Codice"), laddove si dispone che le stazioni appaltanti possano procedere, per importi inferiori a € 140.000,00, ad affidamenti diretti anche senza previa consultazione di più operatori economici;
ritenuto	applicabile, nella fattispecie, quanto previsto dall'art. 49, comma 6, del Codice, laddove si consente di derogare al principio di rotazione per affidamenti diretti di importo inferiore ad € 5.000,00, IVA esclusa;
verificato	infine che risultano applicabili le disposizioni di cui all'art. 10, comma 3, del D.Lgs. 25/11/2016, n. 218 (Semplificazione delle attività degli Enti Pubblici di ricerca ai sensi dell'art. 13 della L. 7/8/2015, n. 124), in quanto la fornitura in oggetto è funzionalmente collegata e destinata ad attività di ricerca, non sussistendo quindi l'obbligo di ricorso al mercato elettronico della Pubblica Amministrazione (MePA);
visto	l'articolo 26, comma 3 bis del D.Lgs. 9 aprile 2008, n. 81, il servizio di cui trattasi non comporta rischi da interferenza, per cui non è stato redatto il DUVRI;
visto	l'art. 53 comma 4 del Codice laddove si prevede che in casi debitamente motivati è facoltà della stazione appaltante non richiedere la garanzia definitiva per l'esecuzione dei contratti;
considerato	il modesto importo dell'affidamento;
visti	gli articoli 17 e 53, del Codice; gli articoli da 1 a 11 del Codice; l'articolo 15 del Codice, l'Allegato I.2 del Codice e l'articolo 6 della L. 241/1990 e s.m.i.; l'articolo 16 del Codice, relativo all'Individuazione e gestione dei conflitti di interesse nelle procedure di affidamento di contratti pubblici; il vigente Regolamento di Amministrazione Contabilità e Finanza dell'OGS; il Regolamento interno per la definizione delle procedure di acquisto di lavori, servizi e forniture, approvato in data 27/03/2023; il Patto d'integrità approvato con determinazione del Direttore Generale n. 230 ADW del 12/05/2023;
dato atto	che, ai sensi di quanto disposto dall'art. 15 del D.Lgs. n. 36/2023 e s.m.i., il sottoscritto è il Responsabile Unico del Progetto (RUP) della procedura di cui trattasi;
preso atto	che non ricorrono nel caso di specie motivi di incompatibilità o di conflitto di interesse, nei confronti dello scrivente, ai sensi della vigente normativa in materia di contrasto alla corruzione;
ritenuto	di nominare la sig.ra Simona Cassaro, collaboratore amministrativo dell'Ufficio Centralizzato per gli Acquisti (UCA), responsabile dell'istruttoria della procedura di cui trattasi;

pertanto sulla base delle premesse sopra indicate,

DETERMINA

1. di procedere, per i motivi esposti in premessa, all'affidamento diretto della fornitura di codici di attivazione del software denominato "ice detection" installato su n. 4 float Arvor-I, alla società NKE Instrumentation Sas, di Hennebont, (Francia), (VAT N. FR58538107483), ai sensi dell'art. 50, comma 1, lettera b), del D.Lgs. n. 36/2023 e s.m.i., verso il corrispettivo complessivo di € 1.400,00, IVA esclusa;
2. per le ragioni sopra descritte e per quanto previsto dall'art. 53, comma 4, del Codice, di non richiedere all'affidatario la prestazione della garanzia definitiva;
3. di autorizzare la stipula del contratto mediante scambio di corrispondenza;
4. di dare atto che, ai sensi di quanto disposto dall'art. 15 del Codice, il Responsabile Unico del Progetto in oggetto è il sottoscritto mentre la sig.ra Simona Cassaro funge da Responsabile dell'Istruttoria;
5. di dare atto che per la spesa complessiva pari ad € 1.708,00, IVA inclusa, è stata effettuata la registrazione anticipata ID UO OCE n. ID DG 18403/2024, n. registrazione 191/2024, progetto EUROARGO_comm.4410_art.255_n23 EUROARGO (c.4410_a.255_n23), CUP F27G22000320001;
6. di dare atto che il presente procedimento sarà soggetto ad avviso di post-informazione mediante pubblicazione sul profilo istituzionale del committente nella Sezione Amministrazione Trasparente/Bandi di gara e contratti.

IL DIRETTORE
Dott. Cosimo Solidoro

Elenco firmatari

ATTO SOTTOSCRITTO DIGITALMENTE AI SENSI DEL D.P.R. 445/2000 E DEL D.LGS. 82/2005 E SUCCESSIVE MODIFICHE E INTEGRAZIONI

Questo documento è stato firmato da:

NOME: COSIMO SOLIDORO
CODICE FISCALE: SLDCSM64E15F356A
DATA FIRMA: 14/10/2024 15:06:53
IMPRONTA: A1B4FA380BFEAA0C02F1D1733D92ECE77A6D69584193DCDD59227562B4E9632
7A6D69584193DCDD59227562B4E963217E73EE20C7E61CB1583B6556EA74C7A
17E73EE20C7E61CB1583B6556EA74C7A6A641796A7DCA5A95DEB5CE0AE14369A
6A641796A7DCA5A95DEB5CE0AE14369A986C5189221106198CC6525BD21099AC

Date : 04/09/2024
Your reference: 2024 - OGS- Ice option for ARVOR-I
Commercial contact :

SAGOT Jérôme
(+33)6.49.07.66.53
jsagot@nke.fr

MAUGUIN Célia
(+33)2.97.36.11.81
cmauguin@nke.fr

Invoicing address

ISTITUTO NAZIONALE DI OCEANOGRAFIA
Mr MASSIMO PACCIARONI
Borgo Grotta Gigante 42/c

34010 SGONICO
ITALY

Mail : mpacciaroni@inogs.it

Item	Part number	Description	Quantity	Ex-VAT price EUR	Net amount tax excluded EUR
1	LG000013	OPTION ICE PROVOR/ARVOR I Float's serial number AI2600-22EU025, AI2600-22EU026, AI2632-23EU029 & AI2632-23EU030	4,00 UN	350,00	1 400,00

Our banking details:

IBAN: FR76 13807006273182105640316
BIC: CCBPFRPPNAN
Bank name: BPGO

Tax excluded line total	1 400,00
Total tax excluded	1 400,00
Total amount	1 400,00
Amount to be paid	1 400,00 EUR

Terms of payment : Bank transfer 30 days

Validity of the offer : 15/12/2024

Delivery leadtime : 4 à 6 semaines

All orders imply full, complete and unconditional acceptance and application of our General Terms of Sale

Exonération TVA, art. 262 ter, I du CGI

Autoliquidation

See our general terms of sales.

Discount in case of payment at a former date to that planned with the contract: 0%.

In case of late payment, a fixed compensation for recovery costs of 40 Euros will be due.



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NKE INSTRUMENTATION GENERAL TERMS OF SALE

(In force as from 01/06/2021)

ARTICLE 1 - APPLICATION / ENFORCEABILITY

All orders placed with NKE INSTRUMENTATION imply full, complete and unconditional acceptance and application of these General Terms of Sale ("GTS"), which shall take precedence over all other terms issued by the client and other documents that have not been expressly accepted by NKE INSTRUMENTATION. NKE INSTRUMENTATION reserves the possibility of amending these GTS at any time. These GTS shall enter into force on the date shown at the head of this document and shall supersede NKE INSTRUMENTATION's previous general terms of sale.

ARTICLE 2 - PRODUCTS / ORDERS

2.1 NKE INSTRUMENTATION only sells its products (in particular probes, profiling floats and instrumented systems) to professional clients, such as engineering offices, research institutes, private or public organisations operating in the water or energy sectors, local authorities, distributors, agents or specialist retailers. No orders can be placed with NKE INSTRUMENTATION by a non-professional client within the meaning of the introductory article of the French Consumer Code. The use of NKE INSTRUMENTATION products by non-professionals and/or for purposes other than professional or scientific research purposes is strictly prohibited.

2.2 NKE INSTRUMENTATION reserves the possibility of making all changes to its products and of suspending the manufacturing and marketing of all or part of its products, without the client being able to make any claim or request any compensation in this regard.

2.3 All requests for products shall be sent to NKE INSTRUMENTATION by email or by telephone subject to written confirmation, to the exclusion of all other means, unless expressly agreed otherwise by NKE INSTRUMENTATION beforehand. The client shall specify in its request the desired type and quantity of products, as well as the desired delivery date. NKE INSTRUMENTATION shall send written confirmation to the client by return. NKE INSTRUMENTATION reserves the possibility of refusing all orders for products, the amount of which is less than €500 excluding tax. The lack of a response from NKE INSTRUMENTATION to a client's request does not constitute tacit acceptance of the client's order. In the event of a discrepancy between the client's request and NKE INSTRUMENTATION's written confirmation, the client shall inform NKE INSTRUMENTATION immediately of its decision to maintain or withdraw its order. Absent immediate instructions from the client, the order, under the conditions stipulated in NKE INSTRUMENTATION's order confirmation, shall be deemed to have been definitively accepted.

In case of requests for products that shall meet specific specifications, NKE INSTRUMENTATION shall send the client a technical and commercial offer that is only valid for the duration stipulated therein. In this case, the order shall become firm and definitive with regard to the client, as from the moment of receipt by NKE INSTRUMENTATION of a quote signed by the client or of payment in connection therewith from the client. The order shall become firm and definitive with regard to NKE INSTRUMENTATION, as from the time a written confirmation of the order is sent to the client or as from NKE INSTRUMENTATION begins to perform the order.

Any product order placed with NKE INSTRUMENTATION in the context of a call for tenders is subject to these GTS.

2.4 By placing an order, the client acknowledges that he has checked the suitability of the products ordered for his needs and that he has received from NKE INSTRUMENTATION all the information and advice necessary to enable him to appreciate the characteristics of the products and to make an informed commitment. Consequently, the client is solely responsible for the suitability of the products with the needs and uses for which they are intended and no claim may be made against NKE INSTRUMENTATION in this respect.

2.5 An order can only be fully or partially modified or cancelled by the client with NKE INSTRUMENTATION's express, prior, written agreement. In the event of the total or partial cancellation of an order, or the suspension or the deferred delivery of the products at the initiative of the client, even if NKE INSTRUMENTATION agrees, *(i)* instalments and/or amounts already paid to NKE INSTRUMENTATION shall inure to its benefit, *(ii)* all the expenses incurred by NKE INSTRUMENTATION for the fulfilment of the order shall be charged to the client, in particular the shipping and return fees for products that have already been dispatched, and *(iii)* the client shall pay NKE INSTRUMENTATION a lump-sum penalty of 5% of the total amount excluding tax of the order concerned.

ARTICLE 3 - PRODUCTS' DELIVERY / CARRIAGE / RECEIPT

3.1 Products are delivered by NKE INSTRUMENTATION Ex Works (2020 Incoterms), i.e., the products ordered by the client are made available at the location specified in the order or, if no location is specified, in the warehouses of NKE INSTRUMENTATION in Hennebont (56), France, before being collected by the carrier.

3.2 The delivery times are only given by way of indication. Failure to comply with delivery times cannot cause the order to be cancelled or entitle the client to refuse the delivery or lead to penalties or damages.

3.3 Partial deliveries for an order may be made.

3.4 The client shall be liable for any loss or damage that the products may suffer or cause, as from the delivery thereof, as defined in Article 3.1. The client undertakes to purchase an insurance policy that covers the products for the risks of loss, theft or destruction, as from the time of delivery.

3.5 When the products are handed over by the carrier, the client undertakes to perform all the inspections and tests that are necessary in order to detect any damage, missing items, apparent defects or non-conformity of the products delivered, with respect to the shipment note and the delivery note. All refusals, claims or reservations must, in order to be taken into account, be stated on the delivery note in the presence of the carrier, duly signed and stamped, and sent to the carrier and to NKE INSTRUMENTATION by registered letter with proof of receipt or letter with confirmation of receipt (e.g. DHL) within three (3) days of receipt (Article L. 133-3 of the French Commercial Code). Absent any refusals, reservations or claims that are stated in accordance with the above conditions, the products shall be deemed conform.

Any damage, non-conformity or defects that cannot reasonably be identified when the products are handed over by the carrier must, in order to be taken into account by NKE INSTRUMENTATION, be the subject of a claim that is made within a maximum time-limit of seven (7) days as from said handover by the carrier, which shall be sent by email and registered letter with proof of receipt or couriered letter with confirmation of receipt (e.g. DHL) to NKE INSTRUMENTATION's registered office and must imperatively contain the following information: order reference, subject of and reasons for the claim. It is the client's responsibility to provide all proof of the reality of the defects, non-conformity or damage declared, so that they can be verified and determined by NKE INSTRUMENTATION.

ARTICLE 4 - SERVICES

Any request for services such as products configuration, calibration, maintenance; data collection, hosting, processing, uploading and/or analysis; warning services; assistance/consulting and/or training shall be sent to NKE INSTRUMENTATION by email or by telephone subject to written confirmation, to the exclusion of any other means, unless expressly agreed otherwise by NKE INSTRUMENTATION beforehand. NKE INSTRUMENTATION shall send the client a services offer or quote which is only valid for the period stipulated therein. The order shall be firm and definitive as from the moment of receipt by NKE INSTRUMENTATION of the services offer or quote signed by the client or of payment in connection therewith from the client.

NKE INSTRUMENTATION undertakes, under a best-efforts obligation, to provide all the care and diligence necessary for the performance of the services entrusted to it, in accordance with the best practices and the applicable regulations.

NKE INSTRUMENTATION reserves the possibility of subcontracting all or part of the performance of the services to the service provider of its choice, which the client expressly acknowledges and accepts under the terms of these GTS.

The services shall be performed on the basis of the information and content provided by the client. In order to enable the proper performance of the services, the client undertakes *(i)* to provide, without any delay, all information, data, content, media and tools, whether or not requested by NKE INSTRUMENTATION, that may be necessary for the proper performance of the services, *(ii)* to check the accuracy of the information and documents communicated and their compliance with the applicable law and regulations and *(iii)* to inform NKE INSTRUMENTATION without any delay in the event of any change in this information and documents. NKE INSTRUMENTATION's liability is expressly excluded in the event that the client fails to comply with this essential obligation.

The client undertakes to comply with any recommendations and advices that may be provided by NKE INSTRUMENTATION in connection with the performance of the services. NKE INSTRUMENTATION's liability is expressly excluded in the event of any damage, defect or delay in the performance of the services resulting from the client's failure to comply with this obligation, which shall be the client's responsibility.



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ARTICLE 5 - PRICE

The prices of the products and/or services shall be those stated on the NKE INSTRUMENTATION price lists that are in force on the date of the order confirmation or, if so, those specified in the quote, in the service offer or in the response to the call for tenders submitted by NKE INSTRUMENTATION. The prices are given in euros or dollars, exclusive of all applicable taxes and packaging costs, are Ex Works (2020 Incoterms), and in particular, do not include the costs of transportation, insurance, customs and excise duties, and currency conversion fees. These expenses shall be invoiced to the client in addition to the price of the products and services.

NKE INSTRUMENTATION's probes price list is updated each year in January. NKE INSTRUMENTATION nevertheless reserves the right of updating its price list at any other time, in the event of a substantive change in economic data, such as a variation in the costs of labour, materials or carriage. Changes to the price list shall enter into force upon expiration of a notice period of thirty (30) days.

ARTICLE 6 - INVOICING / PAYMENT

6.1 Each product order placed by clients located outside metropolitan France (for export) will be invoiced for its full amount at the date of the order. For products order placed by clients located inside the metropolitan France (including Corsica), a deposit of 30% of the total amount of the product order shall be invoiced on the date of the order. The balance will be invoiced to the client at the time of delivery of the products, as defined in Article 3.1. Clients will be invoiced by NKE INSTRUMENTATION for services in accordance with the terms of the order.

6.2 The client shall have a time-limit of seven (7) days following the date of issue of the invoice in which to dispute such invoice. Absent any objections within this time-limit or if the client pays, the invoice shall be deemed definitively accepted by the client, which shall be deemed to have waived the right to challenge said invoice.

6.3 Payment for products and services is owed upon receipt of invoice. No discounts are granted for early payment. The client shall remain personally liable for the payment of the products, including when they are delivered directly to its customers.

6.4 Payment of NKE INSTRUMENTATION's invoices via offsetting is only possible with its prior written agreement.

6.5 Any delay in payment shall, as of right, without reminder or prior formal notice being necessary, give rise to the application of late-payment penalty, per each day of delay, equal to the rate applied by the European Central Bank to its most recent refinancing transaction, increased by 10 percentage points, as well as a fixed indemnity of €40 per invoice unpaid at the due date, as compensation for recovery costs, without prejudice to the statutory interest on late payments and other collection costs incurred by NKE INSTRUMENTATION, which will be invoiced to the client upon presentation of supporting documents.

Failure to pay one single invoice at the due date, may, following standard notification and with no need for prior formal notice **(i)** cause all the amounts owed by the client in respect of the current orders, services and deliveries to fall due, **(ii)** trigger the immediate suspension of all current orders, services or deliveries and/or **(iii)** trigger the termination of all current orders to the exclusive fault of the client, without prejudice to NKE INSTRUMENTATION's right to claim damages.

ARTICLE 7 - RETENTION OF TITLE

NKE INSTRUMENTATION SHALL RETAIN THE TITLE TO THE PRODUCTS SOLD UNTIL PAYMENT IN FULL HAS BEEN MADE OF THE PRICE, INTEREST, PENALITIES AND INCIDENTALS; PAYMENT SHALL ONLY BE DEEMED TO HAVE BEEN MADE UPON EFFECTIVE RECEIPT OF SAID AMOUNTS. All clauses to the contrary, in particular that are included in the client's terms of purchase or on its purchase orders (printed or handwritten), shall be deemed unwritten and cannot be enforced against NKE INSTRUMENTATION.

Until the price has been paid in full, the client shall not sell the products or use them as security of pledge. In the event of an attachment or any other action by third parties concerning the products, the client shall inform NKE INSTRUMENTATION without delay so that it can save its rights. In the event that even one invoice is not paid in whole or in part at its due date, the products shall, at NKE INSTRUMENTATION's request, be returned to it immediately at the client's expense and risk; the products that are in the client's possession shall be deemed to be those for which payment has not been made. As necessary, the client authorises NKE INSTRUMENTATION or any person empowered by it to access its premises and/or its operations in order to take possession of the products during standard opening times. If the products that are the subject of the retention of title clause have been sold on by the client, NKE INSTRUMENTATION's claim shall be automatically transferred and apply to the receivable for the sale of said products. To this end, the client declares that it assigns to NKE INSTRUMENTATION all receivables that will arise from selling on products for which payment is outstanding, title to which has been retained by NKE INSTRUMENTATION.

ARTICLE 8 - INTELLECTUAL PROPERTY

Product orders and deliveries and/or performance of services cannot under any circumstances be construed as granting the client the benefit of any right to NKE INSTRUMENTATION's intellectual or industrial property rights, or as transferring or assigning to it NKE INSTRUMENTATION's intellectual or industrial property rights, which include, in particular, patents, designs, models, studies, plans, trademarks, logos, commercial names, trade names, copyrights, software applications, computer programs, source and executable codes, databases, ideas, concepts, know-how, business secrets, processes and, more generally, all intellectual and industrial property rights of which NKE INSTRUMENTATION is the owner or licensee (hereinafter referred to as the "Intellectual Property Rights").

The client shall refrain from counterfeiting, copying, exploiting, disclosing, reproducing, translating and modifying NKE INSTRUMENTATION's Intellectual Property Rights and, in general, from infringing upon them in any way whatsoever, in particular by decompiling and reverse engineering products. The client shall refrain from applying or obtaining, directly or indirectly, legal protection for all intellectual or industrial property rights that are identical or similar to or derived from NKE INSTRUMENTATION's Intellectual Property Rights on any geographical territory of any kind, including any right or rights that may not yet be protected.

ARTICLE 9 - CONFIDENTIALITY

Confidential information means under these GTS all information, data and documents of any kind whatsoever, in particular of a technical, financial, commercial or accounting nature, that are disclosed, in writing or orally, by one party to the other party before the completion of an order or at the time of the fulfilment thereof, in connection with the parties, the orders, the services, the products and NKE INSTRUMENTATION's Intellectual Property Rights.

The Parties undertake mutually to maintain the strictest confidentiality concerning the Confidential Information and, in this regard, **(i)** not to disclose to any person or entity any of the other party's Confidential Information without that party's prior written agreement, unless the disclosure or use of said Confidential Information is made mandatory pursuant to a law, a regulation or a judicial or administrative decision, **(ii)** not to use the other party's Confidential Information for any purpose other than the fulfilment of the orders and **(iii)** to return the Confidential Information at the first request of the party that disclosed it. Each party guarantees that its officers and representatives will comply with this article.

ARTICLE 10 - MANUFACTURER'S WARRANTY

Except as otherwise provided for in the order, NKE INSTRUMENTATION shall provide a warranty to the client against all defects, faults and non-conformities for a period of **(i)** for probes: 12 months as from their delivery, within the meaning of Article 3.1, **(ii)** for profiling floats: until they are launched and, in any case, for a maximum period of 12 months as from their delivery, within the meaning of Article 3.1.

NKE INSTRUMENTATION does not grant any warranty on its other products, in particular on instrumented systems, unless otherwise specifically agreed in writing by NKE INSTRUMENTATION.

The implementation of NKE INSTRUMENTATION's manufacturer's warranty implies that the client must notify NKE INSTRUMENTATION of any fault, defect and non-conformity by email and registered letter with proof of receipt or couriered letter with confirmation of receipt (e.g. DHL) within 15 (fifteen) days of the discovery of said fault, defect or non-conformity.

The warranty is exclusively limited, at NKE INSTRUMENTATION's discretion, to the repair or replacement of the products that are found to be faulty, defective or non-conforming, to the exclusion of all other measures and compensation.

No return of probes or profilers will be accepted without NKE INSTRUMENTATION's express, prior, written agreement. NKE INSTRUMENTATION reserves the right to carry out all relevant checks beforehand. Where necessary, the products must be returned to NKE INSTRUMENTATION at the client's expense. The costs of verification and reshipping of the products shall be cross-charged to clients when the fault, the defect or the non-conformity are not attributable to NKE INSTRUMENTATION or to its product.

NKE INSTRUMENTATION's warranty is expressly excluded if the non-conformities, defects or faults are caused by:

(i) failure by the client to fulfil its obligations in respect of the order and these GTS, and in particular its obligations to provide information,



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(iii) failure by the client to follow the recommendations or advice provided by NKE INSTRUMENTATION,
(iii) failure by the client to comply with the applicable standards, regulations and best practices,
(iv) abnormal use of the products, lack of upkeep of the products or use that does not comply with the rules and recommendations specified in the products' instructions, which the client acknowledges having read prior to placing the order and which he undertakes to respect scrupulously,
(v) the , incorporation, assembly, calibration, configuration of the products if they have not been entrusted to and carried out by NKE INSTRUMENTATION,
(vi) improper carriage or storage conditions of the products by the client or its own customers,
(vii) product age or normal product wear and tear.

There is also a warranty exclusion in the event that products are modified by the client or by any third party designated by the client if the maintenance of the products is not carried out by NKE INSTRUMENTATION or any third party expressly and previously approved by NKE INSTRUMENTATION.

Article 11 - LIABILITY

NKE INSTRUMENTATION's liability can only be triggered if proof is provided of a fault that is attributable to it. Concerning the supply of products that are prototypes or pilot products, the client acknowledges that NKE INSTRUMENTATION is under a mere best-efforts obligation, that the risk of these products malfunctioning is intrinsic to their nature, and that NKE INSTRUMENTATION's liability cannot therefore be triggered in this regard.

NKE INSTRUMENTATION's liability is under all circumstances expressly excluded in the event of (i) force majeure (Article 12), (ii) a fault, negligence, breach or violation by the client or the client's customers of their own statutory, regulatory or contractual obligations pursuant to these GTS, (iii) use of the products for any purposes other than those for which they are intended or (iv) storage or use of the products in a manner that is not compliant with the instructions and recommendations for use, which the client acknowledges having received and having undertaken to comply with under the terms of the order.

Concerning the products involving data, measurements or alerts transmission, NKE INSTRUMENTATION's liability is expressly excluded in the event of a lack of connection or connection difficulties, and/or issues relating to the delay of transmission of data, measurements and alerts resulting from connection difficulties, disruption and/or slowdown of the Internet network and fixed and mobile telephone coverage.

NKE INSTRUMENTATION cannot under any circumstances be required to indemnify the indirect and/or consequential damages or loss suffered by the client or the client's clients, such as, in particular, loss of revenue, loss of margin, loss of clientele and damage to reputation and image, loss of data, as well as in the event that the expected or hoped-for return on investment from the use of the products is not attained by the client or the client's customers.

In any case, the client shall take without delay all decisions and measures necessary in order to avoid the damage or mitigate its extent. Any breach by the client to this obligation will make the client liable and will exclude or limit NKE INSTRUMENTATION's liability.

In all cases, if NKE INSTRUMENTATION's liability is triggered, the maximum aggregate amount of the compensation owed by NKE INSTRUMENTATION shall not exceed the lower of the following amounts: (i) double the amount excluding tax of the order concerned, (ii) €30,000 (thirty thousand euros).

Article 12 - FORCE MAJEURE

NKE INSTRUMENTATION may not be held liable for total or partial failure to fulfil its obligations, if said non-fulfilment is caused by an event that constitutes force majeure within the meaning of French law and case law. In addition to this definition provided by statute and case law, by express agreement between the parties, the following are equated to force majeure events, which preclude NKE INSTRUMENTATION's liability from being triggered: fires, explosions, floods, storms and other natural disasters, pandemics, wars, riots, shortages of raw materials or transportation, accidents that affect production, abnormal certification times, total or partial strikes or other industrial action involving NKE INSTRUMENTATION's personnel or that of its suppliers or service providers, lock-outs of factories or premises, administrative decisions, acts of state, interruptions or delays involving means of transportation. NKE INSTRUMENTATION shall inform the client as soon as possible of the occurrence of one of said events and may, depending on the circumstances, cancel the current order, suspend or delay the fulfilment thereof without the client being able to claim any form of compensation in this regard or being able to cancel or terminate its order unless NKE INSTRUMENTATION provides prior written agreement.

Article 13 - PERSONAL DATA

NKE INSTRUMENTATION and the client undertake to process the personal data that they may collect and process for the fulfilment of an order in compliance with the provisions of the French Data Protection Act of 6 January 1978, as in force, and European Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data ("GDPR"). In particular, when an order is placed and fulfilled, each party will have to provide the other party with personal data concerning its own employees and representatives or the client's customers, such as name, first name and contact details (email address and telephone number, postal address) and functions. Each party undertakes to use said data exclusively in order to comply with these GTS and for the fulfilment of orders. Said data must only be stored for the duration of fulfilment of the orders and may be archived for a minimum period of five (5) years following the end of the contractual relations between the parties. The data collected by NKE INSTRUMENTATION may be transferred to any company in the group to which it belongs for direct marketing purposes. However, NKE INSTRUMENTATION shall refrain from disclosing such data to any other third parties. Any person whose data is collected shall have a right of access, rectification and deletion concerning his/her data, as well as a right to object to the collection and processing of his/her data.

Article 14 - APPLICABLE LAW / JURISDICTION

These GTS and the orders placed pursuant thereto shall be governed by French law, to the exclusion of the international rules that are applicable to conflicts of laws and those that result from the Vienna Convention on international sales of goods.

All disputes to which these GTS and the orders placed pursuant thereto may give rise concerning the validity, conclusion, construction, performance, termination, consequences and resulting events thereof shall, in the absence of an amicable agreement between the Parties, be referred to the competent Court in the jurisdiction of Lorient (France), to which the parties shall assign exclusive jurisdiction, even in the event of urgent procedures, provisional or protective measures, multiple defendants, incidental claims or third-party proceedings.

All client actions based on these GTS and the orders placed pursuant thereto must, in order to be admissible, be brought before the relevant courts within a maximum time-limit of one (1) year, pursuant to Article 2254(1) of the French Civil Code.

Article 15 - MISCELLANEOUS PROVISIONS

15.1 The client shall refrain from assigning or transferring, in any form whatsoever, its rights and obligations under these GTS and in respect of orders that are placed pursuant thereto, without NKE INSTRUMENTATION's prior written agreement.

15.2 In the event that one of the provisions of these GTS is held to be invalid or inapplicable, the other provisions of these GTS shall remain applicable in full.

15.3 No tolerance concerning the application of the provisions of these GTS can be construed as a waiver of the right to invoke said provision later.

15.4 The client undertakes not to hire away, recruit or give work to, directly or via an intermediary, any NKE INSTRUMENTATION's employee who participated in and/or worked on the fulfilment of the orders over the course of the contractual relations between the parties, for a period of one (1) year following the end of their contractual relations, even if the initial approach is made by the NKE INSTRUMENTATION employee himself/herself.



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