



UNIVERSIDADE DE SÃO PAULO

TERMO DE REFERÊNCIA PRELIMINAR

DEMANDA DE COMPRA Nº 362368/2024

Contemplar os requisitos do inciso XXIII, art. 6º, Lei nº 14.133/2021.

Observação -

Anexo: Vide anexo para "Termo de Referência Preliminar".

Projetos

Contemplar os requisitos do inciso XXIV, XXV e XXVI, art. 6º, Lei nº 14.133/2021, conforme o caso.

Projeto: Não se aplica

Observações: -

ANEXO PARA "TERMO DE REFERÊNCIA PRELIMINAR"



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Contact Name Marcelo Belentani de Bianchi
Bill To Name Instituto de Astronomia, Geofísica e Ciências
Atmosféricas da USP
Bill To Instituto de Astronomia, Geofísica e Ciências
Atmosféricas da USP.
Rua do Matão, nº 1226
Cidade Universitária – São Paulo – SP – Brasil
CEP: 05508-090
CNPJ: 63.025.530/0036-34
Brazil

Quote Number 202405-11405 Ship Date 120-150 days ARO
Quote Name Universidade de São Paulo-CTR6-6S/TACCN/TC20s (Complete Seismographic Station) Warranty Terms Twelve months return to factory, assumption of OEM's warranty for non-Nanometrics equipment
Currency USD Payment Terms Net 30
Validity: 90 days Country of Origin Canada (GATT Rules)
Approved By: John Hunt - Vice President and General Manager, Seismology
Additional Terms and Conditions Estimated W&D.....
Box = 15kg 57 x 42 x 43 cm
Gross Weight = 11.31 kg
Net weight= 7.96 kg
Bank Details:
Bank of Montreal
20-1826 Robertson Road
Ottawa, ON
K2H 5Z6
Canada
Account Number: 23124601001 [USD]
IBAN and/or SWIFT/BIC number: BOFMCAM2
Beneficiary : NANOMETRICS INC
Beneficiary Address: 3001, Solandt Rd, Kanata
ON K2K2M8

Line Items 10

Seismological Products & Services

BIN	Model Number	Quantity	Product	Type	Sales Price	Subtotal
17954-61	CTR4-6S	1.00	CTR4-6S Centaur Digital Recorder, 24-bit, 6 std channels, 8 GB Expandable Store	HS Code = 9015.80	USD 9,000.00	USD 9,000.00
14983-3M	.	1.00	Cable, Power, Meridian/Centaur/TitanSMA/Taurus/Carina Mil-Circ to p-tail, 3m	HS Code = 9015.80	USD 169.46	USD 169.46

nanometrics.ca

3001 Solandt Road, Kanata, Ontario, Canada K2K 2M8
Tel +1 613 592 6776 | Toll Free 1 855 792 6776 (NA) | Fax +1 613 592 5929

Prepared By Diego Uribe
Title Sales Manager
Email diegouribe@nanometrics.ca
Created Date 11/11/2024

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18869	.	1.00	GNSS Antenna With Mounting Bracket and Hardware	HS Code = 9015.80	USD 303.45	USD 303.45
18593-10M		1.00	Cable, GPS Antenna, LMR-240-UF, TNC(M) - TNC(M), 10m	HS Code = 9015.80	USD 215.35	USD 215.35
18023-64GB	.	1.00	SD External Media Card, Industrial, 64GB, FAT32, Centaur, Titan models only	HS Code = 9015.80	USD 127.25	USD 127.25
16381	TACCL-N1	1.00	TACCL-N1 Titan Accelerometer, Triaxial, +/-4g to +/-0.25g, DC-430Hz	HS Code = 9015.80	USD 4,543.95	USD 4,543.95
16774-5M	.	1.00	Cable, Seismometer, Titan/Compact Vault 14-pin Straight connector to Centaur, Ultra-Flex, 5M	HS Code = 9015.80	USD 802.68	USD 802.68
16838	TC120-SV1	1.00	TC120-SV1 Trillium Compact Seismometer, 120s, 750V-s/m	HS Code = 9015.80	USD 8,955.00	USD 8,955.00
16777-5M	.	1.00	Cable, Seismometer, Titan/Compact Vault 14-pin 90° connector to Centaur, Ultra-Flex, 5M	HS Code = 8544.42	USD 802.68	USD 802.68
16862	.	1.00	Carrying/Insulating Case, Trillium Compact Seismometer including Levelling Cradle	HS Code = 9015.80	USD 734.16	USD 734.16

Summary

Subtotal	USD 25,653.98
Shipping & Insurance:	USD 400.00
Export Packaging & Handling:	USD 130.00
Total Price:	USD 26,183.98

Nanometrics Inc. Seismic Instruments & Systems (SIS) Sales Quote Terms

This quotation (the "Quote") and any provision of goods, products, equipment, hardware (collectively, "Goods"), software, or services described herein (collectively with the provision of Goods, the "Services") is governed by: (a) a signed and executed written agreement between Nanometrics Inc. ("Nanometrics") and the customer indicated above (the "Customer", and together with Nanometrics, the "Parties", each a "Party"); or (b) in the event that no such agreement has been signed and executed, the terms and conditions set forth in this Quote as issued by Nanometrics to the Customer (the "Agreement"). This Quote may also be accompanied by a proposal, statement of work, or other document prepared by Nanometrics that further identifies and defines the Services (collectively referred to as a "Statement of Work"). Any such Statement of Work is incorporated herein and forms an integral part of the Agreement.

By acknowledging or accepting the Quote, issuing a purchase order in response to this Quote, signing the Quote, receiving or acknowledging the Services, or otherwise indicating to Nanometrics that Nanometrics should proceed with fulfilling the Quote or providing the Services (in whole or in part), Customer acknowledges and agrees to this Agreement in its entirety. Each Quote will remain valid for the period of time identified in the "Validity" section of the main body of the Quote, after which time, in response to Customer's request to fulfil the Quote, Nanometrics may (in its sole discretion) decline to fulfil the Quote, issue a new quote, make changes to the Quote, or agree to fulfil the Quote as-is.

Any terms and conditions set out in a purchase order or any other document provided to Nanometrics do not and will not form part of the Agreement unless such terms are signed in writing by an authorized Nanometrics representative. The pricing and performance of the Services is conditional on Customer's acceptance of this Agreement in its entirety. This Agreement constitutes the entire agreement between Nanometrics and the Customer and supersedes all other agreements, discussions, and negotiations.

1. Order of Precedence. In the event of a conflict or inconsistency among any parts of the Agreement, any such conflict or inconsistency will be resolved using the following order of precedence, from most authoritative to least: (a) any written and executed agreement between the

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Parties governing the Services (including a master services agreement); (b) the terms and conditions contained in this Quote, including any terms and conditions set out in the "Additional Terms and Conditions" section in the main body of the Quote, unless specific reference is made within a Statement of Work to these terms being varied, in which case such varied terms shall prevail over this Quote; and (c) any applicable Statement of Work. In the event of a conflict or inconsistency between the "Project Notes" section of the main body of the Quote and these terms and conditions included in the Quote, these terms and conditions will supersede and will not be varied by the "Project Notes" section of the main body of the Quote.

2. Work Scope. Any prices for the Services identified in this Quote or in a Statement of Work (the "**Fees**") are subject to change by Nanometrics from time to time in its sole discretion. The Services are to be performed as described in any applicable Statement of Work. Unless otherwise stated, all Fees and other amounts are expressed in Canadian Dollars (CAD). Any order or shipment cancellation or change (including changes to the Services) requires the prior written consent of Nanometrics and may be subject to the payment by Customer of additional fees, including restocking or shipment fees.

3. Fees and Payment. Customer shall pay to Nanometrics all Fees as set out in the Quote (or as may be modified or amended by a signed and executed agreement between Nanometrics and Customer). All such Fees and payments shall be paid by Customer to Nanometrics within thirty (30) days of the date of Nanometrics' invoice unless otherwise set out in the "Payment Terms" section in the main body of the Quote, in which case Customer shall comply with and pay Nanometrics in accordance with such payment terms as set out in the "Payment Terms" section of the main body of the Quote. Unpaid Fees shall incur a late interest charge equal to the lesser of: (a) two percent (2%) interest per month; or (b) the highest interest rate permitted under applicable law.

4. Out of Pocket and Third-Party Charges. Customer shall be responsible for and shall pay to Nanometrics all out of pocket and third-party charges incurred by Nanometrics in the provision of Services to Customer (including any expenses associated with equipment or services that must be procured from a third party for the provision of Services to Customer), plus fifteen percent (15%).

5. Compliance with Law, Taxes, Etc. Customer shall comply with all federal, provincial, territorial, county, local, and municipal laws, codes, regulations, and ordinances that apply to Customer, the performance of this Agreement, or the Services, and shall pay all fees, licenses, duties, taxes (including any excise or customs, value-added taxes (including HST, GST, and/or PST, as applicable) or other goods/sales/use/border taxes), and expenses required by such compliance, and also shall pay all taxes and contributions imposed or required by law for any unemployment insurance, pensions, old age retirement funds, or similar purposes, in respect to this Agreement and the employees and subcontractors of Customer.

6. Provision of Goods. If the Services include the sale, provision, delivery, or shipment of Goods by Nanometrics to Customer, this Section 6 shall apply to and govern such sale, provision, delivery, or shipment.

6.1 Shipment Date. The time period set out in the Quote as the Ship Date is solely an estimate, which may be revised by Nanometrics in its sole discretion and without liability or penalty at the time Nanometrics fulfils the Quote. Nanometrics shall use commercially reasonable efforts to ship the Goods within the time period identified by Nanometrics, subject to availability of such Goods. Nanometrics may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Customer. If such Goods are being sold to Customer, each shipment will constitute a separate sale, and Customer shall pay for the Goods shipped whether such shipment is in whole or partial fulfilment of the quantity purchased under this Agreement. Nanometrics shall deliver the Goods using Nanometrics' standard methods for packaging and shipping such Goods. The applicable Incoterm and delivery point for the shipment is as set out in the "Delivery Terms" section of the main body of the Quote (the "**Applicable Incoterm**"). All Fees are subject to the Applicable Incoterm, INCOTERMS® 2020 and, unless otherwise required by the Applicable Incoterm, Nanometrics shall not be liable for any delays, loss, or damage in transit. If for any reason Customer fails to accept delivery of any of the Goods, or if Nanometrics is unable to deliver the Goods on such date because Customer has not provided appropriate instructions, documents, licenses or authorizations: (a) risk of loss to the Goods shall pass to Customer; (b) the Goods shall be deemed to have been delivered; and (c) Nanometrics, at its option, may store the Goods until Customer picks up such Goods at their storage location (for greater certainty, Nanometrics shall not be responsible for further shipment the Goods or any costs related thereto), whereupon Customer shall be liable for the price of the Goods and all costs and expenses incurred by Nanometrics relating thereto (including, without limitation, costs relating to storage and insurance) in accordance with Section 4.

6.2 Non-Delivery. The quantity and Goods as recorded by Nanometrics on dispatch from Nanometrics' place of business is conclusive evidence of the quantity received by Customer on delivery unless Customer can provide conclusive evidence proving the contrary. Nanometrics shall not be liable for any non-delivery of Goods (even if caused by Nanometrics' negligence) unless Customer gives written notice to Nanometrics of the non-delivery within ten (10) days of the date when the Goods would in the ordinary course of events have been received. Any liability of Nanometrics for non-delivery of the Goods shall be limited to, in the discretion of Nanometrics, delivering the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered.

6.3 Title and Risk of Loss. Risk of loss (and title, if the Goods are to be sold to Customer) passes to Customer in accordance with the Applicable Incoterm, as specified in Section 6.1.

7. Product Obsolescence. Where Nanometrics is providing ongoing Services such as data collection, data analysis, monitoring, the provision of or maintenance of a system, or other similar services ("**Ongoing Services**"), Customer acknowledges and agrees that certain components of the Services including equipment, hardware, goods, or software may become obsolete over time (the "**Obsolete Equipment**") and may hinder Nanometrics' ability to maintain the Ongoing Services (as determined by Nanometrics in its sole discretion). Where Customer has leased or licensed such Obsolete Equipment from Nanometrics, Nanometrics may replace the Obsolete Equipment in Nanometrics' discretion.

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Where Customer has purchased the Obsolete Equipment from Nanometrics or a third party, Customer shall be required to replace any Obsolete Equipment at Customer's own cost, at the written request of Nanometrics.

Any failure or delay by Customer to replace the Obsolete Equipment following such written request by Nanometrics may result in the degradation or impairment of the Services, or Nanometrics suspending or cancelling the Services, in each case, without any penalty, liability, or further obligation to Customer.

8. Customer Obligations. Customer acknowledges and agrees that the performance of the Services is heavily dependent on cooperation from Customer. Nanometrics will not be held responsible for outcomes resulting from requested deviations to its recommendations, specifications, or advice. Customer shall, at its own expense, obtain all necessary permits, permissions, land use rights, consents, and any and all other requirements necessary for Nanometrics to carry out the Services and perform all of Nanometrics obligations under the Agreement. This includes, but is not limited to, all the required regulatory and statutory permits and obligations from appropriate government authorities. Customer's obligations hereunder must be met in a timely fashion to allow for Nanometrics to perform its obligations under the Agreement. In addition to any other obligations described in the Agreement, Customer shall: (a) provide the appropriate and necessary resources, and timely and accurate information and documentation, as reasonably required by Nanometrics, to allow Nanometrics to perform the Services; (b) carry out reviews and respond to requests for approval and information on a timely basis; and (c) make available Customer personnel to Nanometrics familiar with Customer's requirements and with the expertise necessary to permit Nanometrics to undertake and complete the Services. Customer acknowledges that any delay on its part in the performance of its obligations may have an impact on Nanometrics' performance of the Services and Nanometrics shall not be liable for any delay or expense to the extent caused by Customer's failure to fulfill any of its obligations or requirements under an Agreement. Customer shall designate a project management contact for the purposes of communication with Nanometrics and coordinating Customer's obligations under the Agreement. Where Nanometrics is licensing or leasing Goods to Customer, Customer shall implement and comply with reasonable security measures to protect and secure any such licensed or leased Goods. Customer shall be responsible for and shall pay to Nanometrics all expenses or costs associated with repairing or replacing any lost, damaged, or malfunctioning licensed or leased Goods, including but not limited to any damage, loss, or malfunction resulting from improper usage, vandalism, theft, or acts by a third party. Customer is required to carry sufficient insurance to cover the value of any licensed or leased Goods in Customer's possession or control.

9. Additional Terms and Conditions. Additional terms and conditions may apply to Customer's use of the Services. Customer (including all of Customer's employees, contractors, representatives, or other personnel that may have access to such Services) may be presented with additional terms and conditions upon accessing, installing, or using (as applicable) any Services and, in addition, certain additional terms that govern select Services (including Nanometrics' software platforms) are made available at <https://www.nanometrics.ca/hosted-software-service-platform-access-terms-and-conditions>, as well as a limited license for use of Nanometrics provided software is made available at <https://www.nanometrics.ca/eula> (as may be updated by Nanometrics from time to time in Nanometrics' discretion) (collectively, the "Additional Terms"). Access and use of the Services is subject to Customer and any applicable employees, contractors, representatives, or other personnel of Customer that may have access to such Services agreeing to and complying with any Additional Terms. Any such Additional Terms are hereby incorporated into and form a part of this Agreement.

10. Ownership.

10.1 Ownership. Any right, title, or interest (including intellectual property rights) in or to the Services is the property of Nanometrics, its licensors and suppliers, and/or its assignees, including all rights, title, and interest (including intellectual property rights) in all original works of authorship created in whole or in part by Nanometrics and all inventions discovered in whole or in part by Nanometrics pursuant to this Agreement (whether or not patentable), including, but not limited to, software, data, materials, documentation, computer programs, images, film, audio, video, training videos, artistic works, including all worldwide rights therein under any patent, copyright, trade secret, trademark, confidential or proprietary information, or other property right, whether prior to the date of this Agreement or in the future. All intellectual property rights in all pre-existing works and derivative works of such pre-existing works and other deliverables and developments made, conceived, created, discovered, invented or reduced to practice in the performance of the Services hereunder are and shall remain the sole and absolute property of Nanometrics, whether or not such property is embedded or included in one or more of the Services. Nanometrics may monitor the use of the Services and may use any data created, processed, or generated as part of the Services for the purposes of administering, supporting, configuring, evaluating, and improving the Services and to ensure Customer's compliance with this Agreement. Except as expressly set forth in this Agreement (including in a Statement of Work), no rights or licenses are granted to Customer whether by implication, estoppel or otherwise. Under an applicable Statement of Work where (a) Customer provides Nanometrics with data that Customer owns for the purpose of Nanometrics analyzing such data; or (b) Customer is to own any data generated from Customer sites collected or assessed by Nanometrics as a part of the Services (the "Site Data"), Customer grants to Nanometrics and its subcontractors a non-exclusive, worldwide, transferrable, fully paid-up, license to access, use, display, store, analyze, and create derivative works from the Site Data for the purposes of: (i) performing the Services and for inclusion on Nanometrics' portals such as Athena; (ii) use within Nanometrics' business for internal development; and (iii) improvement and monitoring of the Services.

10.2 Acceptable Use and Reverse-Engineering. Customer shall not, directly or indirectly: (a) engage in any activity that degrades the Services for other users or customers of Nanometrics; (b) attempt to compromise or otherwise circumvent the security or integrity of Services; (c) copy, duplicate, reproduce, publish, display, disclose, sell, rent, lease, modify, store, loan, distribute, or create derivative works of the Services or any part thereof; (d) reverse engineer, disassemble, reverse translate, decompile or in any other manner decode the Services or attempt to otherwise reveal any source code of the Services; or (e) use the Services, or any part thereof (i) for the benefit of any other person or entity, (ii) to create any hardware, software, data, services, components, designs or tools, including for the purpose of emulating the Services or enabling the replacement of the Services, or (iii) in competition with Nanometrics in any way. Customer will not cause, assist or permit any third party to do any of the foregoing.

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10.3 Translations and Internal Document Use. Where Nanometrics provides or is to provide Customer with user manuals, user guides, training materials, training information or seminars, product manuals, product guides, or other documentation ("**Documentation**"), Customer may internally reproduce, translate into other languages, store securely, and distribute internally the Documentation for the sole internal purpose of Customer's personnel accessing and using such Documentation. Customer shall be solely responsible for all costs associated with translating any Documentation and Customer acknowledges and agrees that Nanometrics shall not be responsible for any errors or inaccuracies resulting from the translation process. Documentation (including any translated Documentation) is deemed to be the Confidential Information of Nanometrics.

11. Staffing, Conduct, and Performance of Services. Nanometrics shall be entitled, in its sole discretion, to determine the method and means for performing the Services. Customer acknowledges and agrees that certain Services are provided using or via third-party services, including Amazon Web Services and that data regarding Customer and the Services may be made available by Nanometrics to its personnel, contractors, and service providers located in countries including but not limited to Canada and the United States of America (as well as to any other locations that may be utilized by Nanometrics' third-party service providers, including Amazon Web Services). Nanometrics shall have the right to determine which of its employees or subcontractors shall be assigned to perform the Services and to replace or reassign such employees or subcontractors at its discretion. Nanometrics employees and/or subcontractors shall remain under the direction and control of Nanometrics. Should the Services require additional personnel, Customer agrees to pay an additional standard rate related to the Nanometrics procuring such additional personnel. When any personnel are placed on standby, an 'Offsite Standby Charge' will be payable by Customer to Nanometrics as may be set out in the Quote.

12. Non-Solicitation. Customer shall not actively solicit any employee or subcontractor of Nanometrics during the term of the Agreement or for a period of one (1) year thereafter. This prohibition will not apply to Nanometrics employees or subcontractors applying or responding to general public advertisements for open employment positions made available by Customer and not targeted at or specific to Nanometrics employees or subcontractors.

13. Confidentiality. Customer acknowledges that, from time to time, Customer may be exposed to certain business, technical, marketing and financial information and data that is marked as confidential by Nanometrics or that by its nature, through the exercise of reasonable business judgment and in consideration of the circumstances of disclosure would reasonably be considered to be confidential and that is not generally known to the public, including, but not limited to Nanometrics' corporate and business strategies, product plans, data, measurements, personnel information, financial information, pricing, and customer information (collectively, "**Confidential Information**"). Customer agrees that it will take appropriate steps to protect the Nanometrics' Confidential Information from unauthorized disclosure, that it will not disclose such Confidential Information to any third party, except as set forth herein, and that it will not use such Confidential Information (other than as authorized by this Agreement) without the prior written consent of Nanometrics. Disclosure of Nanometrics' Confidential Information by Customer to the extent required pursuant to any law, rule, regulation or court order binding on Customer will not constitute a breach of this section, provided that Customer has given Nanometrics prompt written notice of any requirement or demand for disclosure of Nanometrics' Confidential Information. Upon termination or expiry of this Agreement, Customer shall return to Nanometrics (or if directed by Nanometrics, destroy) all Confidential Information of Nanometrics.

14. Warranties and Disclaimers.

14.1 Sold Goods. For any sale of Goods to Customer where such Goods are both manufactured and supplied by Nanometrics, Nanometrics shall provide to Customer Nanometrics' warranty as set out on its website at <https://www.nanometrics.ca/about-us/warranty-statement> (as may be updated or amended by Nanometrics from time to time in its sole discretion). THIS WARRANTY IS PROVIDED BY NANOMETRICS IN LIEU OF ALL OTHER WARRANTIES AND REPRESENTATIONS EITHER EXPRESS OR IMPLIED AND SUCH WARRANTY CONSTITUTES CUSTOMER'S SOLE REMEDY WITH RESPECT TO ANY DEFECTS IN OR RELATING TO THE GOODS.

14.2 Disclaimer. Customer acknowledges and agrees that Nanometrics' products, goods, and services (including the Goods and Services) are not forecasting tools and cannot predict future seismic activity. Customer shall not and represents and warrants that it shall not rely on the Goods or Services to provide: (a) fail-safe performance; or (b) early warning against, protection from, or the prevention or mitigation of seismic events including earthquakes or tremors.

14.3 Disclaimer of Warranties. EXCEPT AS SET OUT IN SECTION 14.1, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICES (INCLUDING ANY SOLD GOODS OR EQUIPMENT) ARE PROVIDED "AS-IS", "WITH ALL FAULTS" AND "AS AVAILABLE", IN EACH CASE, WITHOUT ANY REPRESENTATIONS, WARRANTIES, GUARANTEES WITH RESPECT TO THE SERVICES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, LEGAL OR STATUTORY, OR ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, INCLUDING WITH RESPECT TO MERCHANTABILITY, MERCHANTABLE QUALITY, QUALITY OR FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AVAILABILITY, ACCURACY, COMPLETENESS, USEFULNESS OR RELIABILITY. NANOMETRICS PROVIDES NO WARRANTY THAT THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THEIR OPERATION OR PROVISION WILL BE UNINTERRUPTED OR FREE OF ERRORS, VULNERABILITIES, VIRUSES/MALWARE OR OTHER HARMFUL CONDITIONS OR COMPONENTS. NANOMETRICS PROVIDES NO WARRANTY THAT ANY DEFECTS IN THE SERVICES CAN OR WILL BE CORRECTED. NANOMETRICS DOES NOT AUTHORIZE ANY PERSON TO CREATE FOR IT ANY OTHER OBLIGATION OR LIABILITY IN CONNECTION WITH ITS SERVICES. NANOMETRICS PRODUCTS AND SERVICES ARE NOT FAULT-TOLERANT AND ARE NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE OR RESALE FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING

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FAIL-SAFE PERFORMANCE, SUCH AS AIRCRAFT NAVIGATION, COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, OR WEAPONS SYSTEMS, IN WHICH THE FAILURE OF THE GOODS OR SERVICES COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE. CUSTOMER ASSUMES THE ENTIRE RISK OF THE USE, OPERATION, RESULTS, AND PERFORMANCE OF THE SERVICES, INCLUDING ANY ACTION CUSTOMER OR ANY THIRD PARTY TAKES OR DOES NOT TAKE AS A RESULT OF THE SERVICES OR ANY INFORMATION CONTAINED THEREIN.

15. LIMITATION OF LIABILITY. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, NANOMETRICS' TOTAL AGGREGATE LIABILITY TO CUSTOMER FOR DAMAGES OF ANY KIND, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE UNDER THIS AGREEMENT WILL BE LIMITED TO AN AMOUNT EQUAL TO THE CUMULATIVE FEES PAID TO NANOMETRICS PURSUANT TO THIS AGREEMENT IN THE TWELVE (12) MONTHS PRECEDING ANY CLAIM GIVING RISE TO SUCH LIABILITY. IN NO EVENT WILL NANOMETRICS BE LIABLE TO CUSTOMER OR ANYONE ELSE FOR ANY LOST PROFITS OR SAVINGS, LOST BUSINESS, LOSS OF DATA, ANY TELECOMMUNICATIONS BREAKDOWN, UNAVAILABILITY, DOWNTIME, INTERRUPTION OR DELAY, ANY SUSPENSION OF SERVICE OR ANY INCIDENTAL, SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE AND WHETHER OR NOT NANOMETRICS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH OCCURRENCE OR DAMAGE. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE SERVICES ARE NOT INTENDED TO AND DO NOT PROTECT OR MITIGATE AGAINST GEOPHYSICAL EVENTS, NATURAL DISASTERS, OR OTHER SIMILAR EVENTS (INCLUDING BUT NOT LIMITED TO SEISMIC EVENTS OR EARTHQUAKES) AND THAT NANOMETRICS WILL NOT BE LIABLE FOR ANY LOSSES OR DAMAGES RESULTING THEREFROM OR FOR ANY FAILURE TO RESPOND TO OR OTHERWISE MITIGATE AGAINST ANY SUCH EVENTS. THE PARTIES AGREE THAT THE FOREGOING REPRESENTS A FAIR ALLOCATION OF RISK HEREUNDER.

16. Insurance. Upon request, Customer shall furnish to Nanometrics certificates of insurance evidencing that adequate insurance has been secured by Customer to support Customer's receipt of Services and Customer's other obligations hereunder.

17. Termination.

17.1 Termination. Nanometrics may terminate this Agreement or any part thereof, without prejudice to any other remedies available to Nanometrics, if Customer is in material breach of any of its representations, obligations or responsibilities under the Agreement (including, without limitation, payment) and if such breach is capable of being cured, if such curable breach continues uncured for a period of fifteen (15) days following Customer's receipt of written notice thereof from Nanometrics. This Agreement will automatically terminate: (a) if Customer experiences financial difficulties (including but not limited to chronic late or failed payments of Fees) such that Nanometrics can reasonably assume that the Customer can no longer meet its obligations under the Agreement; and (b) one (1) day before Customer becomes bankrupt or insolvent, or a receiving order is made against Customer, or an assignment is made for the benefit of creditors, or an order is made or resolution passed for the winding up of Customer, or Customer takes the benefit of any statute relating to bankrupt or insolvent debtors.

17.2 Canceled Operations. If Customer is unable to obtain all necessary or required permits for Nanometrics to perform the Services, Nanometrics may terminate this Agreement. Upon termination by Nanometrics under this Section 17.2, Customer shall pay to Nanometrics: (a) any Fees that have become payable by Customer up to the point of termination; and (b) any costs incurred by Nanometrics in attempting to provide the Services or in connection with such termination.

18. Surviving Provisions. The following provisions shall survive any termination or expiry of this Agreement: Sections 1, 2, 3, 9, 10, 12, 13, 14.2, 15, 21, 22, and this Section 18.

19. Force Majeure. Neither Party shall be responsible for its failure to perform to the extent due to unforeseen circumstances or causes beyond its reasonable control, including but not limited to acts of nature (lightning strikes, floods, earthquakes, fire), wars, terrorism, riots, embargoes, epidemics or pandemics, acts of civil or military authorities, accidents, or strikes, labor problems (other than those involving the employees of the affected Party), or delays involving hardware, software or power systems not within a Party's possession or reasonable control (a "Force Majeure Event"), provided that such Party gives the other Party prompt written notice of the failure to perform and the reason therefore. In the event that any suspension due to a Force Majeure Event exceeds ten (10) business days, either Party may terminate this Agreement by written notice to the other Party, and Customer shall be liable to and shall pay Nanometrics: (a) any Fees that have become payable by Customer up to the point of termination; and (b) any costs incurred by Nanometrics in attempting to provide the Services or in connection with such termination.

20. Assignment. Customer may not assign or transfer this Agreement or any of its rights or obligations hereunder voluntarily, by operation of law, or otherwise without Nanometrics' prior written consent. Nanometrics may assign this Agreement at any time without notice.

21. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. No choice or conflict of laws rules of any jurisdiction shall apply to this Agreement. The provincial and federal courts located in Ottawa, Ontario, Canada shall have exclusive jurisdiction to adjudicate any dispute arising out of or relating to this Agreement. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

22. General. This Agreement embodies the entire agreement of the Parties relating to the subject matter hereof, superseding all negotiations, prior discussions, and prior agreements and understandings relating to the subject matter hereof. The failure of a Party to claim a breach of any term of this Agreement shall not constitute a waiver of such breach or the right of such Party to enforce any subsequent breach of such term. If any provision of this Agreement is held to be unenforceable or illegal, such decision shall not affect the validity or enforceability of such



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provisions under other circumstances or the remaining provisions of this Agreement and such provision shall be reformed only to the extent necessary to make it enforceable under such circumstances. The Parties agree that this Agreement is to be drawn up in the English language and any conflicts between translations of the Agreement or other documents governed by or relating thereto shall be resolved in favour of the English copy.



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