

**Nike Terms and Conditions**  
**June 1998**

\*Contractor certifies that, unless exempt, it will (a) comply with the requirements of Executive Order 11246, as amended, and the implementing regulations found in 41 CFR Part 60 (including the filing of compliance reports or certificates as may be required by Part 60-1.7(a) and (b) plus Part 60-1.8), 250, and 741, each of which is incorporated herein by reference; and (b) include the Provisions of 41 CFR Part 60-1, 4 (a) (1) through (6), Part 60-250.4 and Part 60-741.4 in each of its subcontracts.

**Supplier Instructions:** Please submit one invoice per shipment per Purchase Order, directly to NIKE AP Dept. One packing slip for each location noted on the Purchase Order. Purchase order number must be quoted on all correspondence issued in connection with Purchase Order, failure to do so may lead to delays in payment. This Purchase Order & Contract is subject to and expressly conditioned upon the terms and conditions on subsequent pages hereof, and supplier agrees to be bound by them whether or not the supplier has received them. If supplier has not received the terms and conditions, supplier may contact NIKE (Buyer) for a copy of the terms and conditions before acting on this Purchase Order and Contract.

**1. Entire Contract.**

This purchase order (when signed by an authorized representative or Buyer), these terms and conditions, and any specifications, samples, or descriptions of the goods or services (the "goods" and the "services") that are either expressly incorporated herein by the parties in writing or relied on by Buyer (the "contract") constitute the entire agreement between Buyer and Seller and supersede all prior and contemporaneous oral or written agreements, understandings, and communications between Buyer and Seller.

**2. Acceptance of Terms.**

This purchase order is an offer, not an acceptance. Buyer expressly limits acceptance only to the terms of this contract, and hereby timely objects to any inconsistent, additional or different terms in any prior or subsequent invoice, acknowledgment, confirmation or other document. Seller shall be deemed to have accepted the terms of this contract (a) even if Seller's acceptance purports to make acceptance conditional on acceptance of inconsistent, additional or different terms to this contract, (b) when acknowledged by Seller in writing, or (c) if Seller makes any shipment or performance in response to or in anticipation of this purchase order, unless preceded by a separate writing signed by Buyer specifically modifying these terms. Any of the terms of any invoice issued by or on behalf of Seller which are inconsistent with the terms of this contract are not binding on Buyer and will not apply to the sale, shipment, or performance of any goods, services or other items by Seller unless Buyer expressly agrees in writing.

**3. Delivery.**

The price of all goods and services shall be F.O.B. Buyer's location(s) unless specified otherwise in this contract. Time is of the essence. Delivery of goods or other performance must be completed within the time limits specified in this contract. Delivery shall be deemed to be complete only when the goods and services have been actually received at their destination by Buyer. If delivery or performance is not timely completed, Buyer may refuse any or all of the goods and services and cancel all or any part of this contract. In the event of such cancellation, in addition to any other remedies provided by law, Seller shall pay to Buyer all of Buyer's incidental and consequential costs and damages. Any provisions herein for delivery of goods or the rendering of services by installment shall not be construed as making the obligations of Seller severable. Seller shall not be excused by unexpected difficulty or commercial impracticality of any degree.

**4. Acceptance of Goods and Services.**

Buyer shall have the right to inspect and test the goods and services and reject any nonconforming goods and services. The goods or services shall not be deemed to be accepted until Buyer notifies Seller in writing that the goods have been received at their destination and conform to all specifications and warranties in this contract after the completion of Seller's inspection and testing (the "date of acceptance"). Payment for goods or services shall not constitute acceptance. In addition to any other remedies under law, Buyer shall have the right to reject and refuse acceptance, require prompt correction or cure, or accept any nonconforming goods or services with an equitable adjustment in price. Buyer may return nonconforming goods to Seller at Seller's risk and expense, including transportation and handling costs. The right to test and inspect, whether exercised or not, shall not affect Buyer's right to revoke acceptance or pursue other remedies if nonconformities are later discovered even if the nonconformity could have been discovered upon testing or inspection. Acceptance shall not relieve Seller from its responsibility under any warranty. The risk of loss or damage shall remain with Seller until acceptance.

**5. Warranties.**

In addition to all other express and implied warranties, Seller expressly warrants that all goods and services shall: (a) be free from all liens, charges, encumbrances, or claims of any person; (b) be of merchantable quality, of good material and workmanship, and free from defects in design, materials and workmanship for a period that begins on the date of delivery and expires on the later of (i) the first anniversary of the date of acceptance and (ii) the expiration of Seller's warranty period; (c) be fit for the purposes for which goods of that type are ordinarily used as well as for any purposes Seller has made known to the public or to Buyer or that Buyer has made known to Seller; (d) conform to all specifications and descriptions incorporated in this contract and any samples supplied by Seller or Buyer; and (e) be produced and performed in compliance with and conform in all respects to all applicable laws, regulations, standards, rules and orders of all applicable federal, state, and local governmental authorities, whether domestic or foreign, including without limitation those governing safety, health, labor, hazardous substances and sanitation. Seller hereby assigns to Buyer the benefits of all warranties given by any persons from whom Seller purchased any goods or services. If the goods or services are defective in any way or fail to conform in all respects to the warranties of this contract, Seller shall at its own expense within a reasonable time after notice, repair, replace or correct any defective or nonconforming goods or services, provided, however, that Seller is notified of the defect or nonconformity within a period of one year after the date Buyer discovers the defect. Whether or not Seller repairs, replaces or corrects any defects within a reasonable time, Seller shall reimburse Buyer for reasonable expenses incurred in connection with such failure and in enforcing its warranty rights (including without limitation its reasonable attorney fees at trial and on appeal), in addition to any other remedies Buyer may have.

**6. Software.**

If this contract includes computer programs, software or firmware of any kind in any form ("software"), Seller hereby grants to Buyer a perpetual, nonexclusive, royalty-free license to use and copy the software for any purpose on any equipment or hardware; notwithstanding the terms of any standard form or purported "shrink wrap" license of Seller, which shall not be binding on Buyer unless such license is executed by an authorized representative of Buyer. The price stated in this contract shall be a one-time license fee, and all terms of this contract shall apply as if the license were a purchase. However, if the software is developed or modified for Buyer, at Buyer's request or to Buyer's specifications, then Section 7 below applies.

**7. Ownership.**

Buyer shall be the sole and exclusive owner of all tangible or intangible products, materials, and things that are delivered, produced by, or developed for or in connection with the performance of any services or any goods or software developed or modified for Buyer or to Buyer's specifications, including, without limitation, all designs, inventions, ideas, improvements, graphics, data, computer programs, and all copyrights, patents, trade secrets and other proprietary rights in respect of any of the foregoing (collectively, "Products"). Products does not include general know-how and experience gained prior to development, production, or performance. Seller hereby sells, assigns, and transfers all Products to Buyer, and shall cooperate with Buyer in obtaining or enforcing any patents or copyrights.

**8. Indemnity.**

Seller agrees unconditionally and irrevocably to hold harmless, indemnify and defend Buyer (including its officers, directors, employees, agents and insurers) from, for and against any and all claims, demands, lawsuits, losses, damages, injuries (including personal injury, sickness, death or property damage), expenses (including attorney fees in a bankruptcy or any other proceeding, at trial and on appeal), and other liabilities of any kind or nature, of or to any person or entity (including Buyer), whether in contract, tort, or otherwise, actually or allegedly arising out of or in connection with the negligence of, or negligent performance, non-performance or breach of this contract by, Seller (including its employees, agents, contractors, subcontractors and consultants), any nonconformity, defect or breach of warranty as to the goods or services, the presence of Seller's agents or employee on Buyer's premises, any violation or infringement by the goods or services of any patent, copyright, trademark, trade secret, nondisclosure agreement, or other proprietary rights of any third party or any dispute under any bankruptcy law.

**9. Insurance.**

Seller shall obtain, at Seller's expense, and keep in effect during the term of this contract commercial general liability insurance (including personal injury and contractual liability) with a liability limit of not less than two million US dollars (\$2,000,000) each occurrence and four million US dollars (\$4,000,000) aggregate. If this contract involves the rendering of services, Seller shall also obtain and keep in effect (1) workers' compensation insurance with statutory liability limits, employer's liability insurance with a liability limit of at least US\$1,000,000 and (2) automobile liability insurance (including owned, non-owned, and hired vehicles) with a liability limit of at least US\$1,000,000. If Seller is providing professional services to Buyer, Seller shall maintain Professional Liability/Errors and Omissions insurance with a liability limit of at least US\$1,000,000. Any limits specified in this section may be achieved through a combination of primary and umbrella policies. Coverage shall be written by insurance companies which are satisfactory to Buyer and admitted to do business where the contract is performed. The insurance companies shall have a current A.M. Best's rating of not less than A VIII. The commercial general liability policy shall be endorsed to name NIKE, Inc., its directors, officers, employees, agents, and all subsidiaries as additional insureds and shall be written on an occurrence basis. All insurance policies shall provide Buyer with 30 days advance written notice of cancellation. Seller shall furnish the person who has signed this contract on behalf of Buyer with certificates evidencing such coverage within 30 days after the issuance of this contract but no later than prior to commencing performance, and as the policies expire. A copy of the certificates shall be delivered to: Risk Management Department, NIKE, Inc., One Bowerman Drive, Beaverton, OR 97005-6453 U.S.A.

**10. Independent Contractor.**

Seller agrees it is an independent contractor, and shall at its own expense timely pay to or on behalf of Seller, its employees, agents and subcontractors: (a) all compensation, wages, salaries, and mandatory benefits, (b) all applicable federal, state, and local income taxes (withheld or otherwise), payroll taxes, FICA, Medicare, unemployment insurance, and any other taxes, premiums, or assessments, and (c) statutory workers compensation insurance. Seller shall also assure that any subcontractors comply with the foregoing obligations. Seller agrees to hold harmless, indemnify and reimburse Buyer for the foregoing obligations and any other related liabilities (including penalties and interest) that Buyer may be required to pay for any reason.

**11. Changes.**

Buyer reserves the right at any time to make changes in any one or more of the following: (a) specifications, drawings and data incorporated in this contract where the goods or services are to be specially manufactured or provided for Buyer; (b) methods of shipment or packing; (c) place of delivery; (d) time of delivery; and (e) increase or decrease in quantities of goods. If any change described above causes an increase or decrease in the cost of or the time required for performance of this contract, an equitable adjustment shall be made in the contract price or delivery schedule, or both. Any claim by Seller for adjustment under this clause shall be deemed waived unless asserted in writing within 10 business days from receipt by Seller of Buyer's request for change. Price increases or extensions of time for delivery shall not be binding on Buyer unless a Purchase Order Change Notice is issued and signed by Buyer. Buyer shall not be billed at prices higher or be required to make payment earlier than stated in this contract unless authorized by a Purchase Order Change Notice issued and signed by Buyer.

**12. Termination.**

Buyer may, without cause and at any time, terminate this contract in whole or in part by written notice to Seller. In the event of such termination, Seller may claim its reasonable, direct out-of-pocket costs incurred prior to the effective date of termination plus a reasonable allowance for overhead and profit on goods and services actually provided to or for Buyer in reliance on this contract, and shall not be entitled to, and hereby waives, any other costs or damages. In any event, the total sum payable upon termination shall not exceed the contract price reduced by payments previously made. Buyer may cancel and terminate all or any part of this contract which has not actually been performed or delivered to Buyer in the event Buyer's business is affected by fire, flood, other acts of God, riots, strikes, labor disturbances, the public enemy, or other events beyond Buyer's reasonable control.

**13. Invoices, Cash Discounts and Charges.**

Seller's invoice shall show the following information: Buyer's purchase order number, description of the goods and services, cash discount period, point of shipment, and point of destination. Cash discount periods will be calculated from the date of acceptance or the date Buyer receives a correct invoice, whichever occurs later. No interest, service charges, or finance charges shall be assessed to Buyer or accrue on Buyer's account unless agreed to in a writing signed by an authorized representative of Buyer.

**14. Taxes.**

Unless otherwise agreed in writing, Seller warrants that the price of the goods and services excludes all federal, state and local sales and use taxes, ad valorem taxes, tariffs, duties, commissions or other charges, whether domestic or foreign, imposed on the goods or services, or any part of the transaction in this contract. Seller shall timely pay all taxes to the appropriate authorities and properly file all tax returns. Seller agrees to hold harmless, indemnify and reimburse Buyer for any such taxes (including penalties and interest) that Buyer may be required to pay.

**15. Most Favored Customer.**

Seller represents and warrants that the price(s) charged for the goods or services are the lowest price(s) charged by Seller to purchasers of a class similar to Buyer and that payment terms are the most generous given to any of Seller's customers for quantities similar to those specified in this contract. In the event that prior to final delivery or completion of performance Seller sells or offers to sell to a third party goods or services substantially of the same kind as ordered herein at lower prices or on terms more favorable to Buyer than those stated in this contract, or both, Seller agrees the prices and terms herein shall be automatically revised to equal the lowest prices and most favorable terms at which Seller sold or offered such goods and services, and Buyer shall make payment accordingly. In the event Buyer becomes entitled to lower prices, but has made payment in excess of the lower prices, Seller shall promptly refund the difference in prices to Buyer. Seller agrees to meet the price of legitimate competition or accept cancellation and termination of this contract by Buyer without any claim for costs or damages as provided in Section 12 above.

**16. Security Agreement.**

To the extent Buyer has made any payments to Seller, Seller grants to Buyer a continuing security interest in all or any part of the goods, whether or not completed, that are identifiable to this contract. Seller agrees to execute and deliver at Buyer's request, any documents, instruments, or filings necessary to evidence or perfect this security interest or to obtain priority over any competing security interest in such goods. A copy of this contract may be filed as a financing statement, in which case Seller is the debtor and Buyer is the secured party.

**17. Assignment.**

Seller may not assign all or any part of this contract, whether by transfer, merger, operation of law or otherwise, but may subcontract portions not manufactured or performed by Seller provided that each subcontractor agrees to these terms and conditions. In the event of any subcontract or assignment, Seller shall remain liable and responsible for the subcontractor's or assignee's performance of the obligations. Any assignment of monies due under this contract without Buyer's written consent is void, and the assignee shall acquire no rights against Buyer. This contract shall inure to the benefit of and bind the parties, their successors and permitted assigns. There shall be no restriction on the resale, assignment or transfer by Buyer of the goods or services.

**18. Waiver.**

No delay or omission in the exercise of any right or remedy shall be deemed a waiver of any right or remedy. No waiver of any term, condition, default, breach, right or remedy under this contract shall be valid or binding unless executed in writing by the party making the waiver. No waiver shall constitute a waiver of any other term, condition, default, breach, right or remedy under this contract, nor shall any waiver constitute a continuing waiver.

**19. Modification.**

No term of this contract shall be amended, supplemented, or modified except by a writing signed by the party against whom enforcement is sought.

**20. Severability.**

If a court of competent jurisdiction or arbitrator finds any term of this contract to be invalid or unenforceable for any reason as to any person or circumstance, then the term shall continue in effect only to the extent that it remains valid, and the court's finding shall not render that term invalid or unenforceable as to any other person or circumstance; and all other terms of this contract in all other respects shall remain valid and enforceable.

**21. Governing Law; Jurisdiction.**

This contract shall be governed in all respects by the laws of the state of Oregon, U.S.A., without regard to choice of law provisions, and not by the 1980 U.N. Convention on contracts for the international sale of goods. Specifically, this contract shall be subject to Oregon Revised Statutes Chapter 72, "Sales," regardless of whether this contract predominantly effects the purchase of goods, services or licensed software. The parties agree that jurisdiction over and venue in any legal proceeding arising out of or relating to this contract shall be in the state or federal courts located in Oregon.

**22. Waiver of Right to Jury Trial.**

Seller, as a condition to transacting business with Buyer, hereby waives and relinquishes any right to a jury trial it may now or hereafter have in any dispute arising out of or relating to this contract.