

General Terms and Conditions of Business

nanoplus America, Inc.

1. General provisions

1.1. The following conditions apply to all sales conducted by nanoplus America, Inc., hereafter referred to as supplier. Differing or supplementary conditions by the purchaser as well as subsidiary agreements are only binding, if agreed upon between the parties through mutually signed agreement.

1.2. Offers expire within 180 days of the date of the offer.

1.3. Offers apply to the country of the registered office of the enquiring or contracting partner. The enquiring or contracting partner vouches for all disadvantages and liabilities that arise from the usage of the delivered item outside of this country.

1.4. As far as no differing arrangements have been agreed by the supplier, the standard contract types are to be construed in accordance with the Incoterms 1990 including all supplements valid at the time of the conclusion of the contract.

2. Scope of services and pricing terms

2.1. The delivery commitment comprises deliveries and services confirmed by the supplier in written form. If the delivery item is to comply with special purposes of the contracting partner, these purposes as well as the requirements that the delivery item hence has to comply with need to be specified explicitly and completely by the purchaser within the order and to be confirmed by the supplier.

2.2. The purchaser bears all customs duties, consular fees and other taxes, dues and fees that are charged on the basis of regulations outside the States of Colorado as well as any costs relating to these. The price of deliveries including customs duties or other fees is based on regulations effective at the time of the offer. The purchaser will be charged with the actual costs. Potentially arising taxes will be charged additionally.

2.3. The supplier is required to adhere to foreign packaging, weighing and customs provisions, if the purchaser gives specific instructions in time. Additional costs connected to this are carried by the purchaser.

3. Specifications, drafts and other documents

3.1. All specifications regarding weight and dimension as well as drafts, annotations, descriptions and images communicated by the supplier are merely approximate; documents including definitive specifications will be delivered to an appropriate extent after conclusion of the contract. The technical concept underlying an offer is subject to modifications by the supplier as long as the performance and the quality of the delivery item are not impaired.

3.2. The copyright and the sole property of all drafts and other documents remain with the supplier. Third parties may not be given access to the drafts and other documents without the supplier's consent and are to be returned on demand.

4. Conditions of payment

4.1. All payments are to be effected to the paying agent appointed by the supplier corresponding to the agreement reached and without any deductions. The supplier considers the payment period complied with if he can dispose of the amount due within this period.

4.2. Should it be impossible to transfer the payments from the country the payments are to be effected from by the due date, the purchaser is required to pay the owed amount into a bank account inside this country within the payment period. In case the market value of a currency used for the payment without prior agreement should decline, the purchaser has to settle the difference by means of a subsequent payment.

4.3. In case the delivery is delayed independent of negligence on the part of the supplier, the payments are to be settled as though the delay never had occurred.

4.4. Should the purchaser default in settling the payments (in part or in their entirety), he is required from this point on – without infringing upon any other rights of the supplier – to pay default interest of five percentage points per year above the respective key interest rate of the Federal Reserve, as long as the supplier does not provide evidence for higher damages caused.

4.5. The performance of all commitments the supplier has made to the purchaser depends on the purchaser's compliance with the conditions of payment agreed upon as well as all other commitments made to the supplier by the purchaser.

4.6. Offsetting or retention by the purchaser are prohibited unless the demands for offsetting or retention are undisputed or legally determined. The supplier has the right to avert the usage of retention rights by use of security deposits.

5. Reservation of title

5.1. The delivered items remain the property of the supplier until all payments the supplier is entitled to on the basis of the business relationship with the purchaser, as well as payments arising from this relationship in the future, are received (goods subject to reservation of title). The purchaser is not entitled to pledge the goods subject to reservation of title or assign them as security.

5.2. In the case of the resale of the goods – regardless of the condition – the purchaser assigns until the payment is completed all rights that arise from the resale of the supplied goods up to the price of the delivered items. The purchaser commits to disclose the names of the garnishees and the amount owed to the supplier. If the purchaser fulfils all payment obligations and there are no disadvantageous changes to his financial circumstances, the supplier will not enforce the assigned claims.

5.3. In case the purchaser remodels the goods subject to reservation of title or connects them with other items, the processing, remodelling or connecting is performed for the supplier. He immediately is the owner of the item produced through the processing, remodelling or connecting. Should this be impossible for legal reasons, the supplier and purchaser agree that the supplier is the owner of the new item at any point of processing, remodelling or connecting. The purchaser keeps the new item for the supplier with the diligence of a prudent businessman. The item produced through processing, remodelling or connecting is classified a good subject to reservation of title. After processing, remodelling or connecting with other items that are not the supplier's property, the supplier is co-owner of the new item to a degree that reflects the proportion between the value of the processed, remodelled or connected good subject to reservation of title to that of the new item. In case the new item is sold or let, the purchaser hereby assigns his claims arising from the selling or letting including all ancillary rights by way of security, without the need for subsequent special arrangements. The assignation is only effective to the amount the purchaser was billed for by the supplier for the processed, remodelled or connected goods subject to reservation of title. The debt securities assigned to the supplier take priority to all other claims.

5.4. Should the purchaser default in settling the payments or honouring a bill or a check either entirely or in part, should the liabilities exceed the assets or the payments be suspended or has a composition or insolvency been filed for, the supplier is entitled to immediately seize all goods subject to reservation of title; in addition he can assert all further rights based on the reservation of title immediately; the same applies in the case of any other substantial aggravation of the economic circumstances of the purchaser. The purchaser grants the supplier and his representatives access to all offices during office hours. By demanding the delivery or seizing the property, the supplier is not withdrawing from the contract. The supplier has the right to dispose of the good subject to reservation of title with the diligence of a prudent businessman and to satisfy himself under abatement of the open claims from their proceeds.

5.5. Should the value of the security exceed the supplier's demands arising from the open business relationship against the purchaser by a total of more than 20 percent, the supplier is obligated to clear owing securities on demand.

5.6. If the reservation of title is not valid in the country of destination in the form in which it is presented here, the purchaser has to work with the supplier to establish a collateral system compatible with the provisions of his country.

6. Time of delivery and delay

6.1. The time of delivery is only binding if it has been confirmed by the supplier in written form.

6.2. The time of delivery will only be complied with if, the purchase order is fully settled, all permits are granted and all documents, payments and collaterals have been delivered by the purchaser and have arrived with the supplier on time. The time of delivery will be extended as appropriate, should not all of the preceding conditions be met on time. The time of delivery is complied with, if the shipment is ready for despatch within the period agreed upon and a respective notification has been sent to the purchaser.

6.3. Should the supplier be hindered from realising the delivery and other performances by mobilisation, war, rioting, strikes, business disruption, fire, natural disasters, obstruction of transport, changes in legal provisions, regulatory actions or provisions or other unforeseeable events that are beyond his will, the time of delivery will be extended appropriately.

6.4. The purchaser can only demand a contractual penalty if it has been agreed upon separately by mutually signed agreement between the parties. All compensations for damages suffered by the purchaser due to a delayed delivery, particularly including those resulting from breach of contract, negligently committed illegal actions as well as claims regarding consequential damages are strictly excluded. This does not apply as long as and to the extent that liability is compulsory by law.

6.5. In case the purchaser causes an interruption or a delay of the operations incumbent upon the supplier, the purchaser must defray all additional costs.

6.6. Should the despatch be delayed for reasons beyond the control of the supplier, he is authorised to place the delivery item in storage at the purchaser's risk and to demand compensation for the resulting costs. The supplier is entitled to affect an insurance against storage risks at the purchaser's expense.

6.7. If the purchaser is responsible for providing the means of transport for the delivery and does not produce them on the contractually agreed time, the supplier is relieved of all delivery duties by placing the items in storage and insuring them at purchaser's costs and risk. The forwarding agents certificate of receipt is considered a record of contractual delivery.

7. Inspection and acceptance

7.1. Inspections in the presence of the purchaser or his representative as well as special inspections require prior agreements; the supplier is entitled to charge the purchaser with the costs of such an inspection.

7.2. Should an acceptance inspection be arranged for the delivery item, this inspection is to take place inside the supplier's fabrication facilities. The acceptance has occurred when the purchaser has not voiced any objections up to the termination of the inspection.

7.3. In case the purchaser forgoes agreeing upon an acceptance inspection or is not present at the inspection despite due notice, the supplier's inspection is regarded as acceptance.

7.4. Should the inspections be delayed for reasons beyond the control of the supplier, the purchaser will be charged with any additional costs that might arise from this.

8. Passing of the risk

The risk is generally passed to the purchaser as soon as the delivery item leaves the supplier's fabrication facilities or is placed at the purchaser's disposal. Should a different pricing term be agreed upon, for which the Incoterms 1990 including all supplements valid at the time of conclusion of the contract allots differing provisions on the passing of the risk, these differing provisions apply. Should the delivery be delayed for reasons beyond the control of the supplier, the risk is

passed to the purchaser with the notice that the items are ready for despatch.

9. Warranty

9.1. If the delivery item is defective, the demands of the purchaser are restricted to the supplier's choice of the remedy of defect or the delivery of an item free of defects (supplementary performance). Hereby it is understood that the delivery item is inoperative or its function impaired, which was verifiably caused before the passing of the risk, particularly by incorrect construction, bad materials or inadequate execution. The supplier has to be informed of such defects immediately upon detection in written form.

9.2. The purchaser has to grant the supplier the time necessary by the supplier's equitable discretion for the remedy of defect. Should he deny this, the supplier is relieved of the remedy of defect.

9.3. Should the remedy of defect not be executed inside an appropriate timeframe or should the remedy of defect fail, the purchaser is eligible for abatement or to withdraw from the contract.

9.4. The statute of limitations for claims of remedy of defect amounts to one year, calculated from the day of the passing of the risk.

9.5. The claims of remedy of defect do not apply to natural abrasion as well as damages that occurred after the passing of the risk as a result of erroneous treatment, treatment that does not comply with the regulations, excessive strain or chemical, electrochemical or electrical conditions not covered by the contract. Improper modifications or repair or maintenance works will make all claims of remedy of defect invalid.

9.6. NO OTHER WARRANTIES, EXPRESSED OR IMPLIED ARE MADE BY EITHER PARTY AND SUPPLIER EXPRESSLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE. NO ORAL STATEMENTS BY EITHER PARTY'S AGENTS, EMPLOYEES, OR REPRESENTATIVES, WHETHER MADE BEFORE OR AFTER EXECUTION OF THIS AGREEMENT, AND NO DELIVERABLE, PROTOTYPE OR SAMPLE SHALL BE CONSTRUED AS CREATING ANY WARRANTIES, EXPRESS OR IMPLIED.

9.7. Further claims by the purchaser, particularly regarding consequential damages are strictly excluded. This does not apply as long as and to the extent that liability is compulsory by law.

10. Cancellation

10.1. The supplier is entitled to cancel the contract if he is unable to fulfil the contract for reasons beyond his control. Furthermore, the supplier is entitled to cancel the contract if events that were unforeseeable at the time of conclusion of the contract change the contractual relationship so fundamentally that he can no longer be expected to adhere to the contract.

10.2. In the aforementioned cases, the supplier can demand compensation from the purchaser for all necessary expenses that have been executed for the order, unless the parts produced for this order can equivalently be used otherwise within an appropriate timeframe or the impossibility of fulfilment of the contract was caused by interference of US official quarters.

11. Industrial property rights

11.1. The supplier is liable for infringements on third party industrial property rights within the scope of the following provisions. The performance of these obligations presupposes that the purchaser immediately informs the supplier of claims lodged by third parties against the supplier and that the purchaser proceeds in consultation with the supplier in dealing with the claims and pursuing his rights; if one of these conditions is not complied with, the supplier is relieved of his duties. Should an infringement on third party industrial property rights occur and the purchaser, as a consequence, be partially or entirely enjoined from using the delivery item, the supplier will at his own costs and by his own choice either

- a) provide the purchaser with the right to use the delivery item or
- b) design the delivery item free of industrial property rights or
- c) replace the delivery item with a different item of corresponding efficiency that does not infringe on any industrial property rights or
- d) retract the delivery item in exchange for a refund of the purchase price.

11.2. In case the purchaser makes modifications to the delivery item, by installing additional components or connecting the delivery item with other devices or mechanisms that as a result infringe on third party industrial property laws, the supplier is exempt from liability.

11.3. The supplier is not liable in the case of a delivery item that has been produced based on drafts, developments or other specifications of the purchaser infringing upon industrial property laws. The purchaser is required to indemnify the supplier from third party claims.

11.4. The purchaser has no right to further or ulterior claims regarding infringements on third party industrial property laws. In particular, the supplier will not compensate for any consequential damages, such as loss of use or production as well as loss of profits. This does not apply as long as and to the extent that liability is compulsory by law. The purchaser's right for cancellation of the contract remains unaffected.

11.5. The purchaser does not acquire any claims to the usage of industrial property rights available to the supplier that concern the combination of the delivery item with other items.

12. Liability

As far as there are no differing, preceding provisions in these terms and conditions or by mutually signed written agreement between the parties, the supplier and his vicarious agents are liable for the purchaser's claims for damages arising from positive violation of contractual duty, infringement on duties regarding contract negotiations and illegal actions as follows:

- a) Liability for personal injury complies with the legal regulations
- b) Liability for property damage is limited to USD 10,000.00 per occurrence of damage and to USD 50,000.00 in total.
- c) IN NO EVENT SHALL SUPPLIER BE LIABLE FOR ANY PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH THE PURCHASE OF ITS PRODUCTS, EVEN IF SUPPLIER HAS BEEN ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES.
- d) Should purchaser purchase or use our product for any application in which failure of the product could result, directly or indirectly, in personal injury or death, purchaser shall indemnify and hold harmless supplier and its subsidiaries, subcontractors, affiliates and the directors, officers and employees of each against all claims costs, damages, expenses as well as reasonable attorneys' fees arising out of directly or indirectly, any claim of product liability, personal injury, or death arising in any way out of such an application, whether or not supplier or its subsidiaries, subcontractors, or affiliates were negligent in the design, manufacture, or warning of the product or any of its parts.

The limitation of liability does not apply as long as and to the extent that liability is compulsory by law.

13. Final provisions

13.1. As far as there are no differing, preceding provisions in these terms and conditions all agreements, be they reached during or after conclusion of the contract, need to be recorded in written form. Oral statements given by the supplier's staff are only valid when they have been confirmed by the supplier in written form.

13.2. The sale, resale and disposal of delivery items and services as well as the underlying technology or data may be subject to national and international export regulations. The resale to embargo countries or embargo persons as well as the resale to persons who might use the delivery items and services for military applications, NBC weapons or nuclear technology is subject to government approval. With his purchase order purchaser declares to conform to all applicable rules and regulations and agrees neither to resell nor deliver the delivery items and services directly or indirectly to countries or persons to which such a resale or delivery would be illegal or restricted.

13.3. This Agreement is subject to the laws of the State of Colorado exclusively without reference to its conflict of laws principles. The Hague Convention of June 1st 1964 on uniform laws on the international sale of movable items and the UN Convention of April 11th 1980 on contracts for the international sale of movable items do not apply.

13.4. Any disputes under this Agreement which cannot be amicably resolved shall be brought and resolved

solely and exclusively under the Rules of Arbitration of the International Chamber of Commerce. The arbitration shall take place in Boulder, Colorado, USA. The arbitration shall be conducted in English. The award of the arbitrator(s) will be final and binding upon the parties. Judgment upon the award may be entered in any court having jurisdiction. An application may be made to any such court for judicial acceptance of the award and an order of enforcement. Notwithstanding the foregoing, each party may, without waiving any right or remedy available to such party under this Agreement or otherwise, seek and obtain from any court of competent jurisdiction any interim or provisional relief that is necessary or desirable to protect the rights or property of such party. The expenses of the arbitration shall be borne equally by each party and each party shall bear its own legal fees and expenses..

13.5. If individual provisions are invalidated, the contract remains binding in its remaining parts. Should a regulation be partially or entirely invalid, the signatories will immediately try to reach a legally valid provision as close as possible to the original intent.