

§ 1 General

(1) The following terms and conditions only shall apply to deliveries and services of NanoAnd-More GmbH ("NAM") in so far as the Buyer is a merchant, or a legal entity under public law. Any terms of the Buyer which contradict or deviate from the terms and conditions below shall not apply except where NAM has expressly agreed to the same in writing. Any unconditional supply of goods, performance of works or acceptance of payments shall not be construed as an acknowledgement of terms which deviate from the aforesaid

(2) These terms and conditions shall apply to all future supplies to the Buyer.

(3) Insofar as is necessary for the handling of its business we NAM shall be entitled to store and process the Buyer's data in electronic form to the extent permitted by data protection laws (in particular §28 of the German Data Protection Act).

§ 2 Contractual Representations

(1) Offers made by NAM are subject to change without notice with regard to prices, quantity, delivery date and delivery prospects.

(2) The order acknowledgement submitted by NAM in text form shall govern exclusively the acceptance of an order, the scope of delivery and the time of delivery.

(3) Any changes, supplements and/or cancellation of a contract must be in writing.

(4) NAM reserves the right to vary product descriptions and information in literature and catalogues and in other written documentation from a technical point of view and/or layout as well as to make changes to models, construction and materials, based on technical progress and shall not incur any liability towards the Buyer in relation thereto.

§ 3 Prices, Payment Terms, Set Off

(1) The price shall be based on the price list in force on the date the contract is made except where otherwise agreed. The prices are EXW (Incoterms 2010) plus packing, freight, customs duties, import duties, insurance and VAT. Where applicable NAM shall invoice VAT at the rate in force on the date of performance. Except where otherwise agreed NAM shall invoice the cost of assembly, installation and commissioning of equipment and the training of the Buyer's staff on a time and material basis.

(2) Where the delivery or performance date is more than 3 months after the contract date NAM shall be entitled upon timely notification to the Buyer and prior to delivery or performance to adjust the price in such a manner as is necessitated by any general price development beyond our control (e.g. exchange rate fluctuations, currency regulations, customs duties changes, increases in material and production costs) or by changes of suppliers. For supplies of goods or services within three months from the contract date the contract price shall apply in any event. In relation to framework agreements with a price clause the three month period shall begin to run upon the effective date of the agreement.

(3) Except where otherwise agreed the Buyer shall remit the invoice amount immediately upon receipt of the goods or within 30 days of the invoice date. Upon the expiration of the deadline aforesaid the Buyer shall be deemed in default of payment in accordance with section § 286 subsection.2 Nr. 2 of the German Civil Code (BGB).

(4) The Buyer may only set off undisputed counterclaims or counterclaims against which NAM has no further recourse to appeal. The Buyer shall only be entitled to rights of retention in so far as these are based on the same legal transaction

§ 4 Time of Performance

(1) The commencement of the delivery term quoted by NAM shall be subject to clarification of all technical matters and proper and timely performance by the Buyer of his obligations.

(2) Where NAM fails to deliver upon an agreed delivery date and such failure is caused by an act or omission by NAM the Buyer shall grant NAM a reasonable extension in writing of not less than 2 weeks. Where upon the expiry of the grace period, delivery is still not forthcoming and the Buyer desires to rescind the contract or demand damages in lieu of performance, the Buyer shall prior thereto set a final and reasonable deadline in writing expressly indicating his intention. The Buyer is obliged where requested by NAM to declare within a reasonable period whether he shall rescind the contract due to the delay in delivery and/or demand damages in lieu of performance or insist upon performance.

§ 5 Shipment, Risk

(1) Delivery shall be Ex Works (EXW – Incoterms 2010). The risk of destruction, loss of or damage to the goods shall transfer to the Buyer upon loading of the goods from NAM's stores or where the goods are unable to be shipped or are to be collected upon notification of readiness for shipment. The aforesaid shall also apply, where delivery is made by installment or where NAM has undertaken other services such as shipment or delivery on site and assembly.

(2) NAM reserves the right to select the transport route and the type of transport. Where it is customary in the trade the goods shall be supplied with packaging. NAM shall select packaging, protection aids and /or means of transportation on the basis of its experience at the expense of the Buyer. Packaging materials and protection and shipment aids are non-returnable except where otherwise agreed in writing. Extra costs caused by the Buyer's special shipping requirements shall be for the account of the Buyer. This shall also apply to increases in freight charges that occur after the contract is concluded, any additional costs for re-routing, warehouse charges, etc., unless carriage paid delivery is agreed.

(3) NAM reserves the right to deliver by installment and to invoice the same except where this is unreasonable for the Buyer.

§ 6 Act of God

In the event of force majeure NAM shall be entitled to suspend performance of its obligation to deliver. Where there is a considerable change in the circumstances prevalent at the formation of the contract, NAM reserves the right to rescind the contract. This shall also apply to energy or raw material shortages, labour disputes, decrees issued by authorities, transport or operational disturbances, or if subcontractors fail to supply NAM on time or with the correct quantity or at all for any of the above reasons.

§ 7 Retention of Title

(1) Goods sold shall remain the property of NAM until payment of all claims under the business relationship has been received from the Buyer (Reserved Goods).

(2) If the Buyer works or processes the goods NAM's reservation of title shall be extended to cover the whole of the new article. In the case of processing, combining or mixing with external goods by the Buyer NAM shall acquire title in the fraction that corresponds to the invoice value of the goods supplied by NAM to that of the other objects used by the Buyer at the time the processing, combining or mixing took place.

(3) If the goods subject to reservation of ownership are combined or mixed with a principle good belonging to the Buyer, the latter hereby assigns in addition his rights in the new good to NAM. If the Buyer combines or mixes the goods subject to reservation of title with a principle good belonging to a third party against payment, he hereby assigns his claims for payment against the third party to NAM.

(4) The Buyer may resell goods subject to reservation of ownership in the framework of due business activities. If the Buyer sells these goods without receiving the full purchase price in advance or contemporaneously with the surrender of the item purchased, he shall agree a reservation of title with his customers in accordance with these conditions. The Buyer hereby assigns to NAM his claims under this resale and the rights under the reservation of title agreed. Where requested by NAM he agrees to notify the assignment to Buyers and to provide NAM with the information required to claim its rights against the Buyers and to hand over documents. Irrespective of the assignment the Buyer shall only be authorised to collect payments under the resale as long as he complies duly with his obligations to NAM.

(5) If the value of the securities provided to NAM exceeds its claims by more than 20 percent, NAM undertakes to release securities of its choice on demand by the Buyer. If NAM claims reservation of title this shall only be deemed to be a withdrawal from the contract as well if NAM declares this expressly in writing beforehand.

(6) In the event that the above retention of title clauses are void or unenforceable according to the law of the state/country in which the goods are situated, the collateral security which corresponds to the retention of title in that state/country is deemed to be agreed

§ 8 Intellectual Property Rights, Licenses

(1) NAM shall grant the Buyer a simple licence to use any industrial property rights and copyright, required by the Buyer for the purpose of performance of his contractual obligations. Such licence shall apply during the term of the contract only and shall not comprise a licence to process or reproduce unless otherwise agreed below.

(2) Unless expressly agreed otherwise the aforesaid licence shall only be granted for the country in which the Buyer has its principal place of business.

(3) Any licence relating to the use of software shall be granted for the use by one named person at their respective computer workplace only. The Buyer is authorized to use the software for the purpose of the contract only. The Buyer shall be entitled to make back-up copies to the extent required in accordance with the generally accepted rules of technology. The Buyer shall only be authorized to change, extend or adapt the software within the meaning of § 69 c) Nr. 1 the German Copyright Act (UrhG) where it is deemed by law to be indispensable or where the agreed contractual purpose expressly provides for the same. The Buyer shall only be entitled to decompile the software within the constraints of § 69 e) of the German Copyright Act (UrhG)- and not before NAM has failed to provide the required data and/or information within a reasonable pe-

riod having been requested to so in writing – in order to establish interoperability with other hard and software. Where NAM provides the Buyer with supplementary software (e.g. patches, supplements to the user manual) or a new version (e.g. an update, upgrade) which replace software previously provided, these shall be subject to the terms of this agreement. Licenses acquired in relation to software previously provided shall expire upon commencement of use of the new version.

(4) The transfer of the rights set out aforesaid is subject to NAM having received the purchase price / or license fee in full.

§ 9 Buyer's Rights in the case of Defects

(1) The goods supplied by NAM correspond to the German regulations and standards currently in force. NAM gives no guarantee that the goods comply with other national regulations. Where the goods are to be put into operation overseas it is the responsibility of the Buyer to ensure that the goods are in conformity with the relevant legal requirements and standards and where required to make appropriate adaptations.

(2) The Buyer shall not be entitled to make a claim based on defective delivery or performance where the reduced value or merchantability of the goods delivered or services supplied is nominal.

(3) Where the goods delivered by NAM are defective and the Buyer has immediately notified NAM of the same in writing not later than 28 days after the delivery date NAM shall at its option deliver a replacement or remedy the defect. The Buyer shall grant NAM a reasonable period of not less than 15 working days to carry out the same.

(4) The Buyer is entitled to demand reimbursement of the costs incurred by reason of the replacement delivery or remedying of the defect insofar as such costs are not increased due to the subsequent transportation of the goods delivered to a location other than the original shipment location unless the purpose for which the goods are intended requires the same.

(5) In the event that NAM is not in a position to remedy the defect or deliver a replacement the Buyer is entitled to rescind the contract or to demand a reasonable reduction in the purchase price. Rescission of the contract is only permissible where the Buyer prior thereto sets a final and reasonable deadline in writing expressly indicating his intention.

(6) The Buyer shall retain a right of recourse against NAM within the meaning of §478 of the German Civil Code (BGB) insofar as the Buyer has not agreed terms with its customer which exceed the statutory liability for defects.

§ 10 Damages

(1) Except where otherwise provided below any claim of the Buyer for damages other than those claims set out in § 9 aforesaid are hereby excluded irrespective of the legal grounds upon which it is based. Accordingly NAM does not accept liability for any damage not incurred by the goods themselves nor does NAM accept any liability for loss of profit or any other pecuniary loss suffered by the Buyer. To the extent that NAM's contractual liability is excluded or limited, such exclusion or limitation shall apply in relation to the personal liability of employees, representatives and vicarious agents.

(2) The aforesaid limitation of liability shall not apply where the damage incurred has been caused by willful default or by gross negligence, where personal injury has been suffered or

where the damages claim is based on product liability law. It shall further not apply where NAM has given a guarantee of quality in relation to the products supplied.

(3) Where NAM is in negligent breach of a material term of the contract its liability to compensate damage to property shall be limited to such loss as was typically foreseeable at the time the contract was made. A material term of the contract shall be any term which places the Buyer in the legal position provided for under the contract in terms of its content and purpose and any term which must be complied with in order to ensure proper performance of the contract and upon the performance of which the Buyer relied or could be reasonably expected to rely.

(4) Beyond the aforesaid NAM shall only be liable to the extent of its insurance coverage insofar as it is insured against the damage which has been incurred and subject to payment of the insurance benefit.

(5) Any other liability in damages is hereby excluded.

(6) Any assignment of the Buyer's claims provided for in §§ 9 and 10 above is not permitted. Section 354 a of the German Commercial Code (HGB) shall remain unaffected.

§ 11 Limitation

The limitation period for claims based on paragraphs 9 and 10 aforesaid is 1 year. The limitation period aforesaid shall not apply in relation to claims brought under § 11 sub-paragraph 2 (Liability for wilful default, gross recklessness, for personal injury claims and claims under product liability laws) and where longer limitation periods are prescribed by law (e.g. for structures §§ 438 s.1. No. 2 (BGB), rights of recourse § 479 (BGB) and building defects § 634a s.1 No.2 (BGB)).

§ 12 Disposal of old Electrical Appliances

(1) Except where otherwise agreed the Buyer undertakes, upon completion of use of the products supplied by NAM, to dispose of the same at his own expense and in accordance with the legal requirements.

(2) In the event of resale or any other transfer of the products the Buyer undertakes to contractually bind his customer to comply with sub-paragraph 1 aforesaid.

(3) The Buyer shall indemnify NAM against all claims imposed by Paragraph 10, sub-paragraph 2 of the German Electrical and Electronic Equipment Act (ElektroG), including the manufacturer's obligation to take back electrical and electronic equipment and any third party claim in relation thereto.

(4) All claims to which NAM may be entitled against the Buyer in accordance with sub-paragraphs (1) – (3) aforesaid shall be time barred two years after completion of use by the Buyer and corresponding written notification thereof to NAM.

§ 13 Jurisdiction, Choice of Law

(1) For Buyers whose principle place of business is situated in the European Union all disputes arising out of these terms and conditions shall be resolved before the courts in Wetzlar, Germany. NAM reserves the right to sue the Buyer at its principle place of business.

For Buyers whose principle place of business is situated outside the European Union all disputes arising out of these terms and conditions shall be finally settled in accordance with the Rules of the German Institution of Arbitration e.V. (DIS) without recourse to the ordinary courts of law. The place of arbitration shall be Frankfurt am Main, Germany. The arbitral tribunal shall consist of three arbitrators. The arbitration shall be English

(2) The laws of the Federal Republic of Germany shall govern all the legal relationships between the Buyer and NAM.

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