

NANOTRON TECHNOLOGIES GMBH

STANDARD TERMS AND CONDITIONS [FOR THE SALE OF PRODUCTS]

I. Preamble

These Standard Terms and Conditions shall exclusively apply, save as varies by express agreement accepted in writing by both parties. The offer, order acknowledgement, order acceptance of sale of any products covered herein are conditioned upon the terms contained in this instrument. Any conditional or different terms proposed by the buyer are objected to and will not be binding upon the seller unless assented in writing by Nanotron.

These conditions shall govern any future individual contract of sale between Nanotron and the buyer to the exclusion of any terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or is purported to be made, by the buyer. The provisions of these Standard Terms and Conditions extend to standard contract conditions, which are used in a contract with the merchant in the course of business only.

II. Orders and Specifications

No order submitted by the buyer shall be deemed to be accepted by Nanotron unless and until confirmed in writing by Nanotron within ten [10] days after submittal.

The quantity, quality and description of and any specification for the products shall be those set out in Nanotron's quotation (if accepted by the buyer) or the buyer's order (if accepted by Nanotron).

The buyer shall be responsible for Nanotron for ensuring the accuracy of the terms of any order submitted by the buyer, and for giving Nanotron any necessary information relating to the products within a sufficient time to enable Nanotron to perform the contract in accordance with its terms.

If the goods are to be manufactured or any process is to be applied to the products by Nanotron in accordance with a specification submitted by the buyer, the buyer shall indemnify Nanotron against all losses, damages, costs, expenses awarded against or incurred by Nanotron in connection with or paid or agreed to be paid by Nanotron in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights or any other person which results from Nanotron's use of the buyer's specification.

Nanotron reserves the right to make any changes in the specification of the products which are required to conform with any applicable statutory requirements if they do not materially affect their quality or performance.

III. Price of Products

The price for the goods shall be Nanotron's quoted price or, where no price has been quoted, the price listed in Nanotron's published price list current at the date of acceptance of the order. Where the products are supplied to export from Germany, Nanotron's export price list shall apply.

Nanotron reserves the right, by giving notice to the buyer at any time before the delivery, to increase the price of the products to reflect increase in the cost to Nanotron which is due to any factor beyond the control of Nanotron (such as foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of materials or other costs of manufacture) or any change in delivery dates.

Except as otherwise stated under the terms of any quotation or in any price list of Nanotron, and unless otherwise agreed in writing between Nanotron and buyer, all prices are given by Nanotron on an ex works basis, and where Nanotron agrees to deliver the products otherwise than at Nanotron's premises, the buyer shall be liable to pay Nanotron's charges for transport, packaging and insurance.

The price is exclusive of any applicable value added tax, which the buyer shall be additional liable to pay to Nanotron.

IV. Terms of Payment

The buyer shall pay the price of the products within 14 days of the date of Nanotron's invoice. Payment shall be effected by interbank payment transaction only; no cheque or bill of exchange will be considered as fulfillment of the payment obligation. If the buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to Nanotron, Nanotron shall at its discretion be entitled to: (i) cancel the contract or suspend any further deliveries to the buyer; or (ii) charge the buyer interest on the amount unpaid, at the rate of 7 % per annum above European Central Bank reference rate from then being valid, until payment in full is made. The buyer shall be entitled to prove that the delay of payment caused no or little damage only. Nanotron will charge return & shipping costs with 350,- €.

V. Delivery

Delivery of the goods shall be made by the buyer collecting the goods at Nanotron's premises at any time after Nanotron has notified the buyer that the goods are ready for collection or, if some other place for delivery is agreed by Nanotron, by Nanotron delivering the goods to that place. Where delivery of the goods is to be made by Nanotron in bulk, Nanotron reserves the rights to deliver up to 3 % more or three percent less than the quantity ordered without any adjustment in the price, and a quantity so delivered shall be deemed to be in the quantity ordered.

If a fixed time for delivery is provided for in the contract, and Nanotron fails to deliver within such time or any extension thereof granted, the buyer shall be entitled, on giving Nanotron within a reasonable time notice in writing, to claim a reduction of 3 % per week of the price payable under the contract, unless it can be reasonably concluded from the circumstances of the particular case that the buyer has suffered no loss. This time limit shall not apply if the business had to be settled on a fixed date or if Nanotron, its agents or representatives, caused the delay negligently or intentionally or if there is any further breach of essential contractual obligation.

If for any reason whatever Nanotron fails within such time of effect delivery, the buyer shall be entitled by notice in writing to Nanotron to fix a deadline after the expiry of which the buyer shall be entitled to terminate the contract. The buyer may also recover from Nanotron any loss suffered by the buyer by reason of the failure of Nanotron. The buyer may only claim for damages if Nanotron (or its representatives) intentionally or negligently failed to fulfil this contract. Nanotron shall nevertheless be held responsible for not fulfilling any further essential contractual obligations.

If the buyer fails to accept delivery on due date, he shall nevertheless make any payment conditional on delivery as if the goods had been delivered. Nanotron shall arrange for the storage of the goods at the risk and cost of the buyer. If required by the buyer Nanotron shall insure the products at the cost of the buyer.

30 days prior to the requested delivery date a given order becomes non-cancellable and non-changeable. Buyer assumes 100% liability. Buyer may request Nanotron to change the delivery request date of a given order once at the terms set out below. If changed once this order becomes non-cancellable and non-changeable. Buyer assumes 100% liability.

Providing buyer has not, yet, requested Nanotron to change the requested delivery date, Nanotron may accept a cancellation of this order with the following liability assumed by the buyer: 90 to 60 days prior to the scheduled delivery 50%, 60 to 30 days prior to the scheduled delivery 75% and less than 30 days prior to the scheduled delivery 100% of the product price times the quantity cancelled

VI. Transfer of Risk

Risk of damage to or loss of the products shall pass to the buyer as follows: (i) in the case the products have to be delivered otherwise than at Nanotron's premises, at the time of delivery or, if the buyer wrongfully fails to take delivery of the goods, the time when Nanotron has tendered delivery of the goods; (ii) in the case the products are to be delivered at the premises of Nanotron ("ex works", INCOTERMS 2000) at the time when Nanotron notifies the buyer that the goods are available for collection.

VII. Retention of Title

Notwithstanding delivery and passing of the risk in the products, or any other provision of these conditions, the property in the products shall not pass to the buyer until Nanotron has received payment in full of the price of the products and all other products agreed to be sold by Nanotron to the buyer for which payment is then due. Nanotron shall have the absolute authority to retake, sell or otherwise deal with or dispose of all or any part of the products in which the title remains vested in Nanotron.

Until such time as the property in the products passes to the buyer, the buyer shall hold the products as Nanotron's fiduciary agent, and keep the products properly stored, protected and insured.

Until that time the buyer shall be entitled to resell or use the products in the ordinary course of its business, but shall account to Nanotron for the proceeds, and shall keep all such proceeds of sale or otherwise of the products including insurance proceeds, and shall keep all such proceeds separate from any moneys or properties of the buyer and third parties.

If the products are processed or reshaped by the buyer and if processing is done with products that Nanotron has no property in, Nanotron shall become co-owner of the products. The same shall apply if Nanotron's products are completely reshaped and mixed with other products.

If third parties take up steps to pledge to otherwise dispose of the goods, the buyer shall immediately notify Nanotron in order to enable Nanotron to seek a court injunction in accordance with § 771 ZPO. If the buyer fails to do so in due time he will be held liable for any damages caused.

Nanotron shall on demand of the buyer release any part of the collateral if the value of the collateral held in favour of Nanotron exceeds the value of the claims being secured. It is to Nanotron's decision to release those parts of the collateral suitable for Nanotron.

VIII. Warranties and Exclusion Clauses

The buyer shall examine the products as required by German Law (§ 377 HBG) and in doing so check every delivery in any respect.

Nanotron warrants that all items delivered under this agreement will be free from defects in material and workmanship, conform to applicable specifications, and, to the extent that detailed designs have been furnished by the buyer, will be free from design defects and suitable for the purposes intended by the buyer.

Nanotron shall not be liable for the products being fit for a particular purpose unless otherwise agreed upon, to which the buyer intends to put them.

The above warranty is given by Nanotron subject to the following conditions: (i) Nanotron shall not be liable in respect of any defect in the products arising from any design or specification by the buyer; (ii) Nanotron shall not be liable under the above warranty if the total price for the products has not been paid by the due date for payment; (iii) the above warranty does not extend to parts, materials or equipment manufactured by or on behalf of the buyer unless such warranty is given by the manufacturer to Nanotron.

This warranty does not cover defects in or damage to the products, which are due to improper installation or maintenance, misuse, neglect or any cause other than ordinary commercial application. Any discharge from liability will be void if a defect results from a negligent or intentional breach of contract on the part of Nanotron. The same applies if Nanotron may be held responsible for the breach of any further fundamental contractual obligation.

Any claim by the buyer, which is based on a defect in the quality or condition of the products or the failure to correspond with specification, shall be notified to Nanotron within six months from the date of delivery.

The buyer is entitled to demand the delivery of any substitute product, or repair or reduction of the purchase price as set forth within the terms of each individual contract of sale.

Where any valid claim in respect of any product which is based on any defect in the quality or condition of the products or their failure to meet specification is notified to Nanotron in accordance with these Conditions, Nanotron shall be entitled at Nanotron's sole discretion to either replace the products free of charge or to repair the products. If Nanotron is neither ready nor able to repair or replace the products the buyer shall be entitled at the buyer's sole discretion to claim for a reduction of price or the cancellation of the contract.

IX. Miscellaneous Clauses

Nanotron reserves the right to improve or modify any of the products without prior notice, provided that such improvement or modification shall not affect the form and the function of the product.

This agreement supersedes and invalidates all other commitment and warranties relating to the subject matter hereof which the parties may have made either orally or in writing prior to the date hereof.

This agreement shall not be assigned or transferred by either party except with the written consent of the other.

X. Choice of Law: Place of Jurisdiction

This agreement shall be governed by and construed in accordance with German law, and each party agrees to submit to the jurisdiction of the courts having jurisdiction for Nanotron.

Nanotron shall have the right to bring a claim before a court at the buyer's principal place of business or at its discretion before any other court being competent according to any national or international law.