

General Terms and Conditions for Sale & Delivery

1 Scope

1.1 Nanotec's products (including those in Nanotec's online shop) are offered for sale exclusively to commercial customers as defined in Clause 14 of the German Civil Code (Bürgerliches Gesetzbuch - BGB). Private consumers (as defined in Clause 13 of the German Civil Code) are excluded. These General Terms and Conditions for Sale & Delivery therefore apply only to commercial sales.

1.2. These General Terms and Conditions for Sale & Delivery shall apply exclusively; conflicting or deviating terms or conditions referred to by the Customer shall not apply, unless expressly agreed in writing. These General Terms and Conditions for Sale & Delivery shall apply even if Nanotec is aware of conflicting or deviating terms and conditions, and supplies shall be made to the Customer without reservation.

1.3 All other agreements between Nanotec and the Customer for the purposes of contract fulfillment shall be made in writing.

1.4 All future transactions with the Customer shall be subject to the respective current version of these General Terms and Conditions for Sale & Delivery .

2 Quotations / Orders, Contract Fulfillment

2.1 Quotations are non-binding. A binding sales agreement shall only be formed by Nanotec's written order confirmation or other valid means. Valid quotations as defined in Clause 145 of the German Civil Code shall remain valid for four weeks. All additional agreements and obligations become effective only through inclusion in the order confirmation or by written confirmation, particularly in cases of service and delivery deadlines. Quality specifications may exceptionally apply as guarantees (according to Clause 443 of the German Civil Code), only to the extent that they are expressly designated as such by Nanotec. The same shall apply to the assumption of procurement risk.

2.2 Orders placed in writing which repeat a preceding telephone order without explicit reference to such repetition shall be considered new orders.

2.3 In the case of a large order Nanotec reserves the right to arrange delivery in separate batches.

2.4 Publicly available product information (in particular, in product catalogs and online) concerning availability, features (including pictures, diagrams, weights, dimensions, performance and other specifications) and prices may be updated or corrected without notice; such information shall not be considered a guarantee or a binding agreement. If, for any reason, an order is received with incorrect pricing Nanotec reserves the right to reject the order or contact the Customer.

Cancellation Policy: In cases of writing, printing and calculation errors in product information, quotations, order confirmations or any additional contractual component, Nanotec reserves the right to terminate the respective contract. Damage claims by the Customer shall be excluded in such cases.

3 Pricing & Payment

3.1 All prices are stated in EUR. Unless expressly agreed otherwise, prices are quoted on the basis of FCA Feldkirchen (Incoterm 2020), with export costs borne by the Customer, plus Sales Tax / Value Added Tax at the statutory rate.

3.2 In the event of time limits in a Framework Supply Agreement being exceeded, Nanotec reserves the right to apply a price adjustment (see Clause 5.3 of these General Terms and Conditions for Sale & Delivery).

3.3 Nanotec shall not be obliged to apply previously agreed pricing to new or repeat orders.

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3.4 Unless otherwise agreed, the net purchase price (without deductions) is payable within thirty days of the invoice date, or ten days with a 2% early settlement discount.

In the event of late payment, the Customer shall be charged interest at the statutory rate, without prejudice to further claims for damages incurred due to the default.

3.5 The Customer may only offset claims asserted by Nanotec that are undisputed or legally established. The Customer shall only exercise right of retention to the extent that their counter-claim is based on the same contract and is uncontested or legally established.

3.6 If, after the conclusion of a contract, a significant deterioration should occur in the financial circumstances of the Customer (repeated late payments; bounced checks; enforcement measures; insecure credit rating; insolvency proceedings etc.) which may appear to endanger the claims of Nanotec, or Nanotec becomes aware of such circumstances which had previously existed, Nanotec shall be entitled to deny the contractual services or supplies to the Customer, or to request prepayment or a security deposit. If the Customer fails to respond to such a request within a reasonable period, Nanotec shall be entitled to fully or partially terminate any open contracts and claim damages.

3.7 Nanotec reserves the right to request prepayment or cash on delivery from new customers.

4 Delivery

4.1 Unless otherwise agreed, deliveries shall be made according to FCA Feldkirchen (Incoterm 2020), with export costs borne by the Customer. Partial deliveries shall be permissible if reasonable for the Customer. Risk shall pass to the Customer as soon as the goods leave Nanotec's premises, even in cases of partial delivery.

4.2 Specific delivery times (calendar week or day) shall only be binding when individually agreed in writing. Clause 2.1 of these General Terms and Conditions for Sale & Delivery shall remain unaffected. Compliance with a delivery time is subject to timely and correct supply by Nanotec's suppliers (without assumption of procurement risk). Nanotec shall not be held responsible for delays caused by disrupted supply (i.e. fault of Nanotec's suppliers), and the respective delivery time shall be extended according to the duration of the disruption. To the extent that a delay is foreseeable, Nanotec shall inform the Customer as soon as possible.

4.3 Should the Customer demonstrably incur damage due to culpable failure on the part of Nanotec to achieve timely contract fulfillment, a lump sum compensation claim can be made. For each complete week of delay, 0.5% of the net price of the respective supply or service can be claimed, to a maximum value of 5% as compensation for the Customer being unable to use the goods on time or according to the contract due to the delay. Further compensation claims by the Customer in cases of delayed fulfillment by Nanotec, either alongside or in lieu of fulfillment according to Clause 9 of these General Terms and Conditions for Sale & Delivery and are also excluded.

4.4 Additional rights and claims of the Customer (e.g. termination) in accordance with statutory provisions shall remain unaffected.

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5 Framework Supply Agreement

5.1 When a Framework Supply Agreement is concluded, its duration shall be determined according to the final day of the contractually designated acceptance period, unless otherwise agreed in writing. The total order volume specified in the Framework Supply Agreement is binding. Insofar as no other divisions have been agreed, after acceptance of the first partial delivery the remaining quantities shall be supplied in linear partial deliveries over the maturation of the Framework Supply Agreement.

5.2. The Customer is obliged to take the final partial delivery before the end of the acceptance period, taking into account the usual time that Nanotec requires for delivery (FCA Feldkirchen, see Clause 3.1) within the acceptance period (main obligation of the Customer). If the Customer fails to request all (part) deliveries by the end of the acceptance period, Nanotec shall be entitled to provide the remaining goods for immediate payment (prices subject to change – see Clause 3). Nanotec shall not be obliged to provide back-to-back deliveries simultaneously. However, Nanotec shall continue to offer outstanding deliveries to the buyer (subject to receipt of full payment), and shall issue a retrieval deadline including a delivery date; on the fruitless expiration of a retrieval deadline after the acceptance period, Nanotec shall be discharged of its obligation to deliver. Nanotec reserves the right to legally claim compensation for additional expenses.

5.3 Should the Customer fail in their obligation to maintain a timely delivery schedule within the acceptance period of the Framework Supply Agreement and thereby exceed the acceptance period, Nanotec reserves the right to accordingly adjust pricing as set out in Clause 2 if price-determining cost factors have changed, in particular regarding raw materials, materials, energy, labor, costs arising from adjusted delivery volumes and currency fluctuations. Evidence of applicable cost changes shall be demonstrated to the Customer on request. In accordance with Clause 2, Nanotec shall adjust the residual purchase price after the acceptance period with legitimate price adjustments due to non-timely delivery.

5.4 Acceptance dates agreed by the Customer are binding and shall be observed. Individual deliveries can be postponed to a maximum of two months. Should the Customer reschedule an agreed delivery more than once, Nanotec shall charge the Customer a flat rate fee of 50 EUR per rescheduling. Should the acceptance period be exceeded as a result of the rescheduling, price changes may be applied according to Clause 5.3.

6 Retention of Title

6.1 Nanotec shall retain title over delivered goods until the Customer has made all currently due and pending payments. In the case of open accounts, retention of title serves as security for the outstanding balance. Nanotec shall be entitled to reclaim goods in the case of a breach of contract, particularly in the case of late payment; the Customer shall be obliged to surrender such goods. Goods reclamation by Nanotec shall always constitute a contract termination, as well as seizure of the goods themselves. The Customer shall inform Nanotec immediately in writing of third party enforcement measures to enable action pursuant to Clause 771 of the German Code of Civil Procedure (Zivilprozessordnung – ZPO).

6.2 The Customer shall be entitled to resell the goods in the ordinary course of business, and shall automatically cede all claims to Nanotec amounting to the sum of the final invoice sum (including Sales Tax / Value Added Tax), to which the Customer is entitled as a result of the sale to their buyer or to third parties, regardless of whether the purchased goods have been resold with or without further processing. Nanotec shall accept such transfers. The Customer shall retain authority to collect resulting receivables, even after the transfer. Nanotec's claims to the receivables shall remain unaffected. However, Nanotec undertakes not to collect the receivables as long as payment obligations from the collected receivables are met by the Customer and do not fall into arrears and, in particular, no application for insolvency or bankruptcy exists. If this is the case, Nanotec shall be entitled to demand that the Customer make known the assigned receivables and their debtors, provide all information necessary for the collection, submit the associated documents and inform the debtors (third parties) of the assignment.

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6.3 Any processing or transformation of the goods by the Customer shall always be carried out for (and on behalf of) Nanotec. In these cases, the expectant rights of the Customer to the altered items shall endure. If the goods are processed (combined or mixed) with other items not belonging to Nanotec, Nanotec shall acquire joint ownership of the new item in proportion to the value of the merchandise with the other processed items at the time of processing.

6.4 In the case of enforcement under retention of title the Customer shall permit entry into their premises for the purpose of reclaiming goods.

7 Warranties

7.1 The warranty rights of the Customer require that the obligations of inspection and notification according to Clause 377 of the German Commercial Code (Handelsgesetzbuch - HGB) are properly fulfilled.

7.2 The specifications of a product are those which are agreed in the order and order confirmation with a respective item number, and optionally in conjunction with an associated data sheet (with technical specifications). Other specifications listed in catalogs, offers, illustrations on the internet, drawings, weights, measurements, performance and other design details to which a respective item number which is valid at the time of order confirmation is attached may deviate from or exceed the scope of the quality agreement pursuant to Clause 1, and are exceptionally binding only if expressly agreed in individual cases. The Customer shall remain solely responsible for the use of the ordered items, especially concerning their suitability for use in individual environments. In particular, Nanotec shall accept no liability in cases of: unsuitable or inappropriate application; faulty installation or operation by the Customer or a third party on their behalf; natural wear and tear; faulty or improper handling; improper maintenance; unsuitable equipment; chemical, electrochemical or electrical influences - unless Nanotec should be responsible for such cases.

7.3 If the purchased goods are found to be defective, Nanotec reserves the right to choose whether to correct the faults or replace the defective goods. If Nanotec is unable or unwilling to correct the faults or replace the goods, or culpably fails to provide such remedial action within a reasonable period, the Customer shall be entitled to terminate the contract or demand a corresponding reduction of the purchase price.

7.4 With the exception of the circumstances indicated below, further claims on the part of the Customer - irrespective of legal grounds - are excluded. Therefore, Nanotec shall not be held liable for any damages that have not occurred to the delivered items themselves; in particular, Nanotec shall not be held liable for lost profits or other financial losses. These limitations shall not apply if Nanotec is subject to mandatory liability according to Clause 9 of these General Terms and Conditions for Sale & Delivery or in accordance with statutory requirements.

7.5 The warranty period is twelve months from the transfer of risk.

8 Incorrect Orders

8.1 The Customer shall only be entitled to return delivered goods to Nanotec if these are returned in their original condition and in their original packaging with the prior written agreement of Nanotec. If goods are returned on the basis of Customer error (wrong order, double orders, package quantity ignored etc.), Nanotec shall be entitled to charge the Customer for delivery costs and other incurred expenses.

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9 Total Liability

9.1 Nanotec shall only be held liable for damages beyond those which occur to the delivered items themselves, insofar as these damages are regulated by these General Terms and Conditions for Sale & Delivery (Clause 4, Clause 7) and for personal injury (loss of life, bodily harm and damage to health) resulting from (a) intent, (b) gross negligence, (c) fraudulent concealment or transfer of a guarantee, (d) culpable violation of an essential contractual obligation (cardinal duty) and (e) irrespective of fault according to the German Product Liability Act (Produkthaftungsgesetz - ProdHaftG).

9.2 In the case of negligent or culpable breach of contract, Nanotec's liability shall be limited to reasonably foreseeable typical contractual damage.

9.3 Any further liability is excluded.

9.4 Except for cases of personal injury or willful misconduct, liability claims against Nanotec shall lapse one year after knowledge of the damage emerges, unless a longer limitation period is applicable under law.

9.5 Nanotec's exclusion or limitation of liability shall extend to any personal liability of Nanotec's legal representatives, employees and vicarious agents.

10 Export Control

10.1 In accordance with American and other applicable export control legislation (in particular, German), the Customer is obliged to obtain all necessary export licenses or other documentation at their own cost prior to the export of products or technical information received from Nanotec.

10.2 The Customer commits to sell, deliver or otherwise disclose such products or technical information directly or indirectly to any person or firm, or to export or re-export to any country, unless this is contrary to American or other (especially German) laws or regulations. The Customer undertakes to inform all recipients of such products or technical information about the need to comply with these laws and regulations. The Customer shall procure at their own expense all licenses and export and import documents which are necessary for the use of the products. The refusal of an export license does not entitle the Customer to terminate the contract or to claim damages.

11 Fulfillment Location, Jurisdiction

11.1 If the Customer is a registered merchant, Nanotec's registered office shall be the place of jurisdiction; Nanotec reserves the right to also take legal action at the domicile of the Customer.

11.2 The UN Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

11.3 The assignment of claims incurred by the buyer which result from the business relationship with Nanotec shall be excluded.

12 Severability Clause

12.1 Should one or more individual Clause in this agreement be or become invalid, the validity of the remaining Clauses shall be unaffected. Nanotec's General Terms and Conditions for Sale & Delivery shall remain in force, and the ineffective Clause shall be replaced with an admissible Clause which matches as closely as possible the original intent of the agreement.

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