

# STANDARD TERMS AND CONDITIONS OF SALES

## 1. Contract

These Conditions set out the conditions pursuant to which **Nanotech Products Pty Ltd** ("the Company") has agreed to sell and deliver goods to the buyer, and should be read in conjunction with the key commercial terms agreed between the parties, such as, without limitation, the description of the goods, the place and terms of delivery, the price, currency and terms of payment, and any special conditions. Such commercial terms, together with these Conditions, shall constitute the contract between the parties ("the Contract").

## 2. Quotations and Acceptance of Orders

Orders shall be deemed to be an offer by the buyer, and are only binding on the Company on the earlier of

- (i) the Company sending the buyer an acknowledgement of order in writing, or
- (ii) the Company dispatching of goods in order to fulfil the order. Any quotations made by the Company are without obligation.

## 3. Quality

3.1 The Company warrants that at the time the goods leave the Company's factory or warehouse they will comply with the standard specification of the Company agreed by the parties. The Company shall not be liable for breach of this warranty unless the Company receives from the buyer written notice of the breach within [21] days after delivery of the goods, and the Company is given a reasonable opportunity thereafter to examine the goods.

3.2 The Company shall not be liable for any breach of the warranty contained in clause 3.1 to the extent that:

- (i) the buyer makes any further use of the goods after giving notice pursuant to clause 3.1; or
- (ii) any defect leading to such breach arises because the buyer has breached clause 7.

3.3 Buyer shall inspect and conduct appropriate quality control checks on the goods within [21] days of delivery after which they are deemed delivered in full pursuant to the required specification.

## 4. Prices and Payment Guarantee

4.1 Buyer shall make payment to the Company in accordance with the law applicable from time to time against receipt of an appropriate invoice.

4.2 Prior to delivery the Company can demand advance payment or a payment guarantee in a form required by the Company.

4.3 Payment shall be made in full and in cleared funds within the period stated on the invoice or in the Contract. Late payment shall entitle the Company to terminate the Contract in whole or in part.

4.4 The buyer may not for any reason suspend payment or make any deduction by way of set-off.

4.5 Where credit terms have been approved in writing by the Company in respect of the Buyer payment is required prior to the end of the calendar month following that in which the invoice for the goods is raised.

4.6 If payment is not made in accordance with clause (4.3) the Company reserve the right to charge a service fee of 1.5% on the outstanding amount per month until payment is received.

4.7 The Company reserves the right to withhold delivery of any further order until any amount which is not paid within the approved period is paid.

4.8 A Buyer who has not completed the application for credit required by the Company in full and has not been approved by the Company in writing will not be recognised by the Company as being entitled to credit terms.

4.9 Any legal expenses and fees incurred by the Company in the recovery of any moneys owing in respect of the supply of goods shall be paid by the Buyer.

4.10 The Buyer acknowledges that failure to comply with the Company trading terms as set out herein may result in termination of credit facilities

## 5. Delivery

5.1 The Company will arrange delivery of the goods to, and the buyer will accept delivery of the goods at, the agreed place of delivery and according to the terms of delivery set out in the Contract.

5.2 Delivery dates are estimates only and (subject to clause 8) late delivery shall only entitle the buyer to terminate the Contract and/or claim damages if the buyer has served notice, such notice demanding delivery of the late goods within not less than 15 days from the estimated delivery date, and the Company has failed to comply with such notice.

5.3 Each delivery of goods shall constitute a separate contract and any breach thereof shall not entitle termination of the Contract as a whole.

## 6. Ownership and Risk

6.1 The goods are at the risk of the buyer from the time of delivery.

6.2 Title in all goods supplied by the Company shall remain in the ownership of the Company and be held by the buyer only as bailee until the buyer has paid in full the price to the Company (and any GST). This bailment continues in relation to each of the goods until the price of the goods has been paid in full. The buyer may resell or process the goods as part of the normal conduct of its business, unless the Company has asked the buyer to return the goods.

6.3 The buyer and the Company agree that pending payment in full for the goods, the buyer:

- (i) must not supply any of the goods to any person outside of its ordinary or usual course of business;
- (ii) must not allow any person to have or acquire any security interest in the goods;
- (iii) must insure the goods for their full insurable or replacement value with an insurer licensed or authorised to conduct the business of insurance in the place where the buyer carries on business

6.4 Despite clause 6.2, if the buyer supplies any of the goods to any person before all moneys payable by the buyer have been paid to the Company, the buyer agrees that:

- (i) it holds the proceeds of re-supply of the goods on trust for and as agent for the Company immediately when they are receivable or are received;
- (ii) it must either pay the amount of the proceeds of re-supply to the Company immediately when they are received or pay those proceeds into an account with a bank or a financial institution or deposit-taking institution as trustee for the Company;
- (iii) if the buyer fails to pay for the goods within the period of credit (if any) extended by the Company to the buyer, the seller may recover possession of the

goods at any site owned, possessed or controlled by the buyer and the buyer agrees that the Company has an irrevocable licence to do so.

6.4 All intellectual property rights in and relating to the goods, their manufacture, development or creation (including improvements thereto) shall be or remain vested in the Company (whether or not commissioned by the buyer) and the buyer will, at the request and cost of the Company, do any act and execute any documents necessary to confirm such rights in or transfer such rights to the Company.

6.5 It shall be lawful for the Company without previous notice to repossess the goods supplied to enter any premises for the purposes of such repossession where the buyer fails to make any payment when due or commences to be wound up or is placed under official management or suffers a receiver or manager to be appointed or becomes insolvent or bankrupt or commits an act of bankruptcy

## 7. Duty of care

The buyer shall at all times handle the supplied goods with reasonable care and in conformity with the Company's oral or written instructions as to storage, use or maintenance of the goods, and shall perform no actions which might affect the quality or safety of the goods or the reputation of the Company's brands. Buyer fully accepts all risks associated with overseas use and sale of the goods including compliance with such applicable laws and regulations.

## 8. Liability

8.1 The Company's total liability for any claim however arising in connection with the performance or non-performance of this Contract shall be limited to an amount equal to the value of the goods in relation to which the claim arises, net of value added tax or any equivalent sales tax.

8.2 The Company shall not be liable for any claim however arising for: (i) loss of profits, goodwill, production, business, and anticipated savings and third party contracts; or (ii) for consequential or indirect loss.

8.3 The buyer shall indemnify the Company against all third party claims, losses, costs (including legal costs), penalties and damages brought against, suffered or incurred by the Company in relation to the goods arising directly or indirectly out of any acts or omissions of the buyer, its employees or agents.

8.4 All warranties, representations, guarantees, conditions and terms, other than those expressly set out in the Contract, whether express or implied by statute, common law, trade usage or otherwise, and whether written or oral, are hereby expressly excluded to the fullest extent permissible by law.

8.5 Representations about the goods, directions for their use, and marketing claims that can be made about the goods, are made in good faith, but the Company shall not be liable for such representations. It is for Buyer to be satisfied (by trial processing if necessary) as to fitness or suitability of goods for any particular purpose. Save that the Goods will comply with the specifications no warranty is given by the Company as to their quality or fitness for any particular purpose.

## 9. Confidentiality

9.1 The buyer shall not disclose to any other party any confidential information belonging to the Company or any associated company of the Company (including, without limitation, specifications, samples, formulae, manufacturing processes, know-how and any technical or economic information), or use such information for any purpose except as expressly authorised in writing by the Company, during the Contract and for ten years thereafter.

9.2 In order to protect the proprietary and confidential nature of the Company's goods the following restrictions apply to the use of its goods: (i) save as may be reasonably required for safety purposes the buyer shall not analyse or have analysed, or permit or knowingly facilitate the analysis of, any sample or good supplied to buyer pursuant to the contract, and (ii) buyer shall not copy or permit the copying of the goods.

## 10. Force Majeure

10.1 If, as a result of force majeure (as defined in clause 10.2), the Company is not able to comply with its obligation to deliver, then the Company shall be entitled, without being in default, to postpone delivery of the goods until such time as the force majeure has terminated.

10.2 Force Majeure means any event which is beyond the reasonable control of the party affected such as, without limitation, acts of God, war, hostilities, riot, fire, explosion, accident, flood, sabotage, lack of adequate fuel, power, raw materials, containers, transportation or labour, strike, lockout or injunction, compliance with laws or regulations and breakage of machinery or apparatus.

## 11. Termination

The Company may terminate, without prejudice to accrued rights, all or part of the Contract (i) by 30 days written notice, or (ii) by written notice with immediate effect if the buyer is in arrears of any amount owed to the Company; or the buyer becomes bankrupt or insolvent, or the buyer is in breach of contract and does not remedy such breach (if remediable) within 30 days of receiving notice of the breach.

## 12. General

12.1 If any provision of the Contract is found by any court of competent jurisdiction to be wholly or partly illegal, invalid, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

12.2 Failure or delay by the Company in enforcing any provision of the Contract will not be a waiver of any of its rights under the Contract.

12.3 Any variation or amendment to these Conditions shall be in writing and signed by the relevant the Company salesman and a member of the Company's Legal Department.

12.4 The buyer shall not be entitled to assign any of its rights or obligations under the Contract, without the prior written consent of the Company.

## 13. Law and Jurisdiction

The Conditions shall be governed by the law of Australia. Any dispute, claim or question arising out of or in connection with the Contract shall be settled through negotiations amongst the parties. If no agreement can be reached, any party is entitled to initiate the dispute to a Court of Law in Victoria, Australia