

## GENERAL TERMS AND CONDITIONS

### - nanoSaar Lab Machine -

#### 1. Scope

1.1. The performance of all Contracts (as defined in Clause 2) of nanoSaar AG, a corporation organized under the laws of Germany and having its place of business located at Würmstraße 4, 82319 Starnberg, Germany and/or its affiliates (separately and jointly referred to as "nanoSaar") with the commercial business customer in the meaning of Section 14 German Civil Code (*Bürgerliches Gesetzbuch – "BGB"*) ("Customer") identified on nanoSaar's Confirmation (as defined in Clause 2) in relation to the sale and use of:

- nanoSaar Lab Machine as further described in the Invitatio and/or the Confirmation (each as defined in Clause 2) (separately and collectively referred to as "Machine"), and
- the documents, data, patterns and/or samples, including but not limited to offers, Confirmation, illustrations, drawings, calculations, technical specifications and manuals, concerning the Machine ("Documents")

shall be solely governed by these General Terms and Conditions ("Terms").

1.2. These Terms take precedence over any other terms and conditions which may be included in a Customer's order concerning the Machine and the Documents ("Order"), or otherwise, which shall be of no binding force or effect and to which notice of objection is hereby given.

1.3. nanoSaar reserves the right at any time to amend these Terms as deemed necessary due to an extension of services or legal system changes. nanoSaar shall notify the Customer in writing of any amendments to these Terms and of the fact that Customer shall have two (2) months from the date of notice to object to the amendments. A failure to object within such two (2) months shall be deemed as consent to the amendment of these Terms by the Customer.

#### 2. Conclusion of Contract

nanoSaar shall make an invitation of an offer (*invitatio ad offerendum*; "Invitatio") to the Customer concerning the purchase of the Machine and the Documents. The Customer shall submit a written Order to nanoSaar which shall be constituted an offer made to nanoSaar. The contract concerning the ordered Machine and the Documents ("Contract") shall only be formed and become effective upon the issuance of nanoSaar's written confirmation of the Order ("Confirmation").

#### 3. Warranty; Machine and Document treatment

3.1. All processes for the production of the Machine by nanoSaar or a third party commissioned by nanoSaar shall be carried out according to recognized scientific standards. Due to the complexity of the MJR® (MicroJet Reactor) technology, nanoSaar will not warrant, guarantee or be held liable for achieving the Customer's individual intended results of the suitability of the Machine and the Documents.

3.2. nanoSaar's warranty shall be limited to the functional specifications, contained in the Invitatio and/or Confirmation, describing the condition and agreed purpose of use of the Machine and the Documents. This includes the limited use of the Machine according to Clause 7.3.

#### 4. Pricing and payment

4.1. The purchase price of the Machine and the Documents as well as the terms of payment and the payment plan, if any, are specified in the Contract.

4.2. If not otherwise stated, the prices in the Contract exclude value added tax (VAT; *Umsatzsteuer*). Additional costs such as delivery costs, cost for packaging material, insurance costs, customs duties or any other costs and expenses related to the purchase of the Machine and the Documents shall only be charged to the Customer, if agreed upon by the Parties. Such additional costs and the legally applicable rate of VAT on the invoice date, if applicable, shall be charged to the Customer separately.

4.3. All payments to be made by the Customer to nanoSaar under these Terms shall be in Euro and shall be by way of wire transfer to an account at a commercial bank designated by nanoSaar in its invoice.

4.4. Default interest shall be charged at a rate of nine (9) percentage points (per annum) over and above the prevailing twelve-month (12-month) European Central Bank base interest rate. Without prejudice and in addition to the charging of default interest, nanoSaar reserves the right to claim damages against the Customer. The Customer shall be entitled to prove that nanoSaar has suffered no damage or only a minor loss as a result of the delay in payment.

4.5. If the Customer is in default with any payment, without prejudice and in addition to any rights or remedies available to it (including but not limited to the right to charge default interest and claim damages), nanoSaar shall be free to withhold any additional deliveries or to require an advance payment prior to such additional deliveries.

#### 5. Delivery and delay in delivery

5.1. nanoSaar shall deliver the Machine to the Customer. Unless otherwise agreed in writing and technically possible, the Customer shall receive the Documents as electronic document in German and English.

- 5.2. Unless otherwise agreed in writing and insofar as it is reasonably possible to do so, nanoSaar shall be entitled to make partial deliveries. If nanoSaar makes a partial delivery, nanoSaar shall bear any additional costs resulting from the partial delivery.
- 5.3. Unless otherwise agreed in writing, the Machine will be sent "Ex Works" (Incoterms® 2010 EXW) from nanoSaar's place of business or from a commissioned third party's place (e.g. nanoSaar's plant manufacturer) to the designated place of delivery being stated in the Confirmation. The Parties will comply with applicable German, European or other applicable export laws.
- 5.4. Upon handing over the Machine to the carrier, the risk (*Gefahrübergang*) concerning the Machine will pass to the Customer. nanoSaar will not secure transportation related insurance but shall undertake, upon request by the Customer, to take out such insurance in the name and at the costs of the Customer
- 5.5. If the Customer is in default with the acceptance of delivery or by the omission of cooperative actions, the risk of accidental loss or accidental deterioration of the Machine (*Gefahr des zufälligen Untergangs*) shall pass to the Customer at the time of such default. nanoSaar shall be entitled to demand compensation for damages and additional costs resulting from accidental loss or accidental deterioration of the Machine as a result of such default. Further claims of nanoSaar remain unaffected.
- 5.6. The place of performance (*Erfüllungsort*) for nanoSaar is the place of business of nanoSaar.
- 5.7. Delivery dates, whether specified by nanoSaar or the Customer, are, in principle, non-binding until confirmed in writing by nanoSaar as binding. If a binding delivery date has been agreed, the delivery shall be deemed timely if the Machine is provided by nanoSaar to the carrier on the agreed date.
- 5.8. nanoSaar's compliance with any agreed delivery date shall be subject to the timely and proper fulfillment by the Customer of its obligations, which includes, but is not limited to, the provision by the Customer of any necessary documents, technical details or internal approvals, and, if an advance payment is agreed in writing, the making of such payment according to Clause 4.
- 5.9. If nanoSaar fails to meet the agreed delivery date, other than due to a Customer failure to fulfil its obligations or otherwise as a result of events covered by Clauses 5.8 or 5.10 hereof, the occurrence of a delay in delivery (*Verzugseintritt*) by nanoSaar is determined in accordance with the statutory provisions. In any case, the Customer shall provide nanoSaar with a reasonable cure period (*Fristsetzung nach Mahnung*) during which nanoSaar can deliver the Machine and/or the Documents, unless extraordinary circumstances affecting nanoSaar (such as impossibility of fulfilling its obligations) make such cure period dispensable or inapplicable.
- 5.10. If nanoSaar is unable to deliver the Machine and/or the Documents due to the occurrence of any event that is unforeseeable by and/or beyond the reasonable control of nanoSaar (including but not limited to any act of God, civil commotion, riot, war, actions or omissions of governmental authorities, embargoes, shortage of labour or materials, operational disruption, epidemics, storms, floods, fires, earthquakes or nuclear disasters, strikes, or lockouts or other labour disputes) (*höhere Gewalt und Ähnliches*; "Force Majeure Event"), the delivery period shall be extended by the duration of such Force Majeure Event. The Customer shall have no rights or claims against nanoSaar for the delay in delivery which is due to the occurrence of any Force Majeure Event. This also applies to the occurrence of any Force Majeure Event affecting a supplier or sub-supplier of nanoSaar. If there already exists a delay in delivery at the time of the occurrence of any Force Majeure Event, nanoSaar's responsibility for delay, if any, does not continue to have effect during the occurrence of any Force Majeure Event. Where the Customer is not responsible for the delay in delivery, and if such delay in delivery is for more than six (6) weeks, the Customer shall be entitled to withdraw from (*zurücktreten*) the Contract. In such case Clauses 10.6 and 10.7 apply.
- 5.11. If nanoSaar is responsible for any delay in delivery, any claims for damages caused by delay by the Customer shall be subject to the limitations set forth under Clause 12.
- 5.12. nanoSaar shall have no rights or claims against the Customer for the delay in fulfillment of its obligations and payment which is due to the occurrence of any Force Majeure Event.

## 6. Further services

- 6.1. After delivery, the Machine shall be assembled by nanoSaar or a third party commissioned by nanoSaar at the location of the Customer as agreed in the Contract. To ensure the proper use of the Machine, nanoSaar will provide initial technical training to the Customer's employees on the use of the Machine.. The Customer may also request nanoSaar to provide other training and services (e.g. maintenance services) to the Customer. The terms and conditions relating to such training or other services shall be separately agreed in writing between the Parties.

## 7. License

- 7.1. Intellectual Property Rights ("IP-Rights") shall mean any and all rights in relation to inventions, patents, utility models, designs, supplementary protection certificates, copyrights and associated intellectual property rights, trademarks as well as comparable proprietary rights – registered or not – existing anywhere in the world as well as any Know-how (as defined below) and confidential information with regard to nanoSaar and its technology, including but not limited to the MJR® technology. "Know-how" shall mean the knowledge obtained by experience and trials, which (i) is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question, (ii) has commercial

value because it is secret, and (iii) has been subject to reasonable steps under the circumstances, by the Party lawfully in control of the information, to keep it secret.

- 7.2. nanoSaar remains the owner of any IP-Rights contained and reflected in the Machine and Documents. The Customer shall respect and not infringe these IP-Rights. The Documents and the IP-Rights contained and reflected in the Machine and in the Documents are subject to the confidentiality obligations of Clause 13, if applicable. The Customer shall ensure that when selling the Machine and the Documents to a third party, such third party shall abide to the same obligations and duties, including compliance with all laws and regulations, as agreed herein.
- 7.3. Upon delivery of the Machine and Documents to the Customer, nanoSaar grants to the Customer a non-exclusive, royalty-free, non-sublicensable right of use concerning the IP-Rights contained and reflected in the Machine and Documents. The right of use is limited to its pure application in connection with the Machine and Documents and the types of use required for the internal use for research and development purpose as agreed in the Contract.. The right of use explicitly does not include use for production purposes. Such right of use mentioned in sentence 2 is attached (*akzessorisch*) to the Machine and Documents and may only be transferred together with the sale of the Machine and Documents. Unless otherwise stipulated in the Invitatio or the Confirmation, the right of use does not include the processing, further development, reproduction and publication of the IP-Rights contained and reflected in the Machine and the Documents . For the avoidance of doubt, the IP-Rights contained and reflected in the Machine and the Documents may not be copied, revised, altered, decompiled or disassembled into its individual parts, further developed or reengineered without the prior written consent of nanoSaar, unless this is part of the intended use or required by law.

## **8. Offsetting, retention rights and assignment**

- 8.1. The Customer shall only be entitled to offset counterclaims that have been legally ascertained, are uncontested or have been accepted by nanoSaar, against amounts which are owing by the Customer to nanoSaar.
- 8.2. The Customer shall exercise its rights of retention only to the extent that its counterclaim (i) has been legally ascertained, is uncontested or has been accepted by nanoSaar, or (ii) is based on the same contractual relationship (i.e. the Contract). With regard to (ii), the Customer may exercise its right of retention in an appropriate extent due to a notice of defects.

## **9. Retention of title**

- 9.1. Pending nanoSaar's receipt of the payment of the complete purchase price and all other payments due from the Customer under the Contract, nanoSaar reserves and retains the title to the Machine and Documents ("Retained Machine") (Section 449 para. 1 BGB), notwithstanding that the Retained Machine has been delivered to the Customer. In the event of a breach of the Contract by the Customer, nanoSaar shall be entitled to recover the already delivered Retained Machine following an unsuccessful expiration of a cure period of thirty (30) calendar days or such longer periods as agreed by nanoSaar. In this case, the Customer shall be obliged to release and return the Retained Machine to nanoSaar. The recovery of the Retained Machine by nanoSaar shall be deemed to be a withdrawal (*Rücktritt*) from the Contract. In such case Clauses 10.6 and 10.7 apply.
- 9.2. Unless otherwise agreed in writing, before the title to the Machine and Documents passes unconditionally to the Customer, the Customer shall not, and shall not purport to, grant, transfer or dispose of any rights in respect of the Retained Machine without the written consent of nanoSaar. However, on the effective date of the Contract, the Customer shall assign to nanoSaar any and all claims accruing to nanoSaar from a potential resale of the Machine and Documents to a third party in the amount of nanoSaar's final invoice (including VAT and any other invoiced costs). The Customer shall remain entitled to collect the purchase price from such third party. If the Customer does not collect or does not pass such collected purchase price to nanoSaar up to the amount of nanoSaar's final invoice (including VAT and any other invoiced costs), nanoSaar shall be allowed to collect the remaining purchase price, if any, directly from the debtor (third party). In any case, nanoSaar shall be entitled to request from the Customer information regarding the assigned claim and the debtor (third party), any and all information required for collection, to surrender the appertaining documents and to notify the debtor (third party) about the assignment. Any further rights of nanoSaar in connection with the Contract shall remain unaffected.

## **10. Notifications of defects in quality, liability on defects (*Gewährleistung*)**

- 10.1. The Customer shall inspect the Machine and Documents immediately after delivery by nanoSaar (pursuant to Section 377 HGB). The Customer must notify nanoSaar in writing of any recognizable defects within ten (10) calendar days from receipt of the Machine and Documents. The notice must include a description of the defects and evidence in the form of hard copies or other documents demonstrating the defects.
- 10.2. The Machine and Documents shall be substantially in accordance with the product description in the Contract (see Clause 3). Subject to applicable laws, nanoSaar shall not be liable for any defect which does not significantly reduce or limit the value or usability of the Machine and Documents (being minor or immaterial deviations from the agreed or assumed characteristics, or slight impairment of use), unless separately agreed in writing.
- 10.3. In the event of a defect for which notification has been timely provided, and which not only insignificantly reduces or limits the value or usability of the Machine or the Documents, nanoSaar may, at its option, deliver a replacement or carry out repairs on the delivered Machine or Documents.
- 10.4. If the defect is caused by a defective product of nanoSaar's supplier (or sub-supplier), whereby the supplier (or sub-supplier) is not engaged by nanoSaar to assist with the performance of the Contract, and nanoSaar is merely passing on such third party product to the Customer, the Customer shall, in the first instance, be entitled to require nanoSaar to assign

its rights against the supplier (or sub-supplier) to the Customer, such that the Customer can bring a claim against the supplier (or sub-supplier). This shall not apply if the defect is caused by improper handling of the supplier's product (or sub-supplier's product) for which nanoSaar is responsible. In the event that the Customer is unable to claim against the supplier (or sub-supplier) for the defect, nanoSaar shall be liable to the Customer.

- 10.5. If nanoSaar does not comply with its obligation to subsequent performance (*Nacherfüllung*) within a reasonable period set by the Customer, the Customer may, under the statutory conditions, either withdraw from the Contract or reduce the order price stated in the Confirmation and claim damages from nanoSaar.
- 10.6. In the event of withdrawal (*Rücktritt*) or other termination of the Contract, the Customer is obliged to return the Machine and the Documents and all copies thereof to nanoSaar. In such event, the Customer shall permanently delete and/or destroy any copies of the Documents.
- 10.7. In the event that the Machine is returned, the costs of shipping, shipping insurance, packaging and/or customs duties shall be initially borne by the Customer. If the Machine is returned due to a not only insignificant defect (see Clause 10.2 sentence 2), the costs of shipping, completed shipping insurance, packaging material and/or customs duties will be borne by nanoSaar. Damage to the Machine, which is attributable solely to improper packaging during the return of the Machine, shall be borne by the Customer. Any previous damages and defects in the Machine shall also be taken into account in assessing damages to be borne by the Customer.
- 10.8. Claims for defects shall become barred one (1) year after the date of delivery of the defective Machine and/or Documents, save for defects which are fraudulently concealed or caused by willful intent or gross negligence. Sections 478, 479 BGB remain unaffected.
- 10.9. nanoSaar shall not be responsible for defects which are caused by
- improper use or improper operation (including but not limited to any storage, operation or servicing of the Machine which is not in accordance with the handling instructions provided by nanoSaar, or any repair of the Machine by unqualified persons),
  - the use of unsuitable means of operation by the Customer (including but not limited to any exposure to direct sunlight, contact with water, fire or heat, charged to a faulty electrical connection), as well as
  - usage beyond the possibly agreed purpose of the Machine.

The limitation of liability applies to nanoSaar only to the extent that there has been no willful or grossly negligent behavior on its part, which is in conflict with the terms of Clause 10 above.

- 10.10. A Machine or Document which is free of defects shall only be returned or exchanged by nanoSaar upon the prior written agreement between the Parties.
- 10.11. Any claims for damages of the Customer are subject to the limitations set forth under Clause 12.

## 11. Third party claims on and defect in title

- 11.1. In the event of any third party claim or legal defect in respect of the title of the Machine, the Documents and/or the IP-Rights reflected and contained therein, the Customer shall inform nanoSaar in writing immediately (without undue delay) of the claiming of such rights by third parties and shall give nanoSaar all powers of attorney and authorizations which are necessary in order to defend the Machine, the Documents and/or the IP-Rights against the rights claimed by third parties.
- 11.2. In the event of a third party claim regarding the IP-Rights reflected and contained in the Machine and/or the Documents which has been immediately notified to nanoSaar and which are based on the contractual use of the Machine and/or the Documents by the Customer, within its obligation to subsequent performance (*Nacherfüllung*) nanoSaar is entitled at its option to either (i) take legitimate measures to remove, dispute or challenge the third party rights, which impair the contractual use of the Machine, the Documents and/or the IP-Rights reflected and contained therein, or (ii) remedy the enforcement of such claims; or (iii) change or replace the Machine, the Documents and/or the IP-Rights reflected and contained therein in such a manner, that it no longer infringes the rights of third parties, provided and to the extent that this does not substantially impair the agreed functionality of the Machine and/or the Documents.
- 11.3. In all other respects Clauses 10.5 to 10.11 shall apply accordingly.

## 12. Limitation of Liability

- 12.1. If not otherwise stipulated below and under consideration of Clause 3, nanoSaar shall only be liable for damages that nanoSaar or its performing and vicarious agent, executive employees and/or representatives have caused by gross negligence and/or willful misconduct.
- 12.2. In the case of violation of the essential duties described in the Contract (*wesentliche Pflichten; Kardinalpflichten*), nanoSaar shall also be liable for negligence, whereby this liability is limited to the foreseeable, contractual typical damages, which would have been reasonably foreseeable on the date the Contract is concluded or on the date when the breach of duty was committed. Essential obligations are those whose fulfilment is essential for the proper execution of the Contract by nanoSaar and on whose compliance the Customer can regularly rely and trust.
- 12.3. Claims for damages under the German Product Liability Act (*Produkthaftungsgesetz – ProdHaftG*), t) and all other applicable mandatory law as well as claims for the injury and damage to life, body and health and in the event of an assumption of guarantee (*Garantie*), shall remain unaffected by any limitation of liability, as far as applicable.

12.4. Notwithstanding Clause 12.3, nanoSaar shall not be liable for damages resulting from improper handling or improper use of the delivered Machine and/or Documents.

12.5. The exclusions and limitations concerning the liability for damages by nanoSaar according to these Terms shall also apply to personal liability for damages of nanoSaar's employees, executive employees, representatives and vicarious agents.

### **13. Confidentiality**

13.1. The non-disclosure agreement concluded separately between the Parties for the purpose of contract negotiations shall also apply to confidential information exchanged during the term of the Contract. The obligation to maintain secrecy shall apply mutually to any confidential information exchanged. In the event of contradictory provisions, these Terms shall take precedence over the non-disclosure agreement concluded. The sale and contractual use of the Machine shall not be restricted by this Clause 13.

13.2. The Party receiving confidential information acknowledges that such confidential information disclosed or to be disclosed by the other Party represents valuable property of the other Party and is intended to be maintained in perpetuity as trade secret property. Accordingly, the obligations under this Clause 13 shall survive for a period of ten (10) years following the effective date of the Contract.

### **14. Governing law, dispute resolution and venue**

14.1. These Terms shall be governed and construed in accordance with the laws of Germany. These Terms shall not be governed by the United Nations Conventions for the International Sale of Goods, the application of which is expressly excluded.

14.2. The regional courts (*Landgericht*) of Munich, Germany shall have exclusive jurisdiction and venue over all disputes arising out of or in connection with these Terms, provided that the Customer is a merchant within the meaning of the HGB, a legal entity under public law or if upon the commencement of legal proceedings, the Customer has no place of business or ordinary residence in Germany.

### **15. Miscellaneous**

15.1. Personal data (such as contact details) of the Customer which is received by nanoSaar shall be collected, used and processed by nanoSaar, solely for the purposes of performing the Contract, in accordance with the applicable data protection laws.

15.2. Either Party may only advertise the business relationship with the other Party, in particular by mentioning or using the company name and/or company logo of the other Party, with the prior written consent of such other Party.

15.3. Oral collateral agreements do not exist. These Terms and the Contract may only be amended, replaced or amended in writing.

15.4. Any reference to any written form requirement within these Terms shall be understood as "text form" in the meaning of Section 126b BGB; i.e. in particular that facsimile or email submission shall suffice.

15.5. Any headings used in these Terms are for convenience purposes only and shall not have any effect on the interpretation of the Terms.

15.6. If any provision of these Terms is legally invalid or unenforceable, this will not affect the validity or enforceability of any other provision of these Terms. In such case, the Parties shall replace the invalid provisions or unenforceable provision by a valid and enforceable provision which comes as close as possible to the economic scope of the invalid or unenforceable provision.