

## GENERAL TERMS AND CONDITIONS

### - nanoSaar R&D Project -

#### 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) (nanoSaar and the Customer are hereinafter also separately referred to as "Party" and jointly referred to as "Parties") with respect to the performance of research and development projects, carried out by nanoSaar or a third party commissioned by nanoSaar as described in the Invitation and/or the Confirmation (see definition in Clause 2, ("R&D Project")) 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 R&D Project ("Order"), or otherwise, which shall be of no binding force or effect and to which notice of objection is hereby given. Where the following Terms do not provide an own regulation, the provisions of service contract law (*Dienstvertragsrecht*) according to Sections 611 et seq. BGB shall apply to all R&D Projects.
- 1.3. In absence of any separate, written agreement between the Parties or any written notice by nanoSaar to the contrary, these Terms shall also apply in respect of any future Orders with nanoSaar in relation to R&D Projects. These Terms cover only the use of the R&D Results (see definition in Clause 4.1) and the IP-Rights (see definition in Clause 5.1) contained and reflected therein in the field of research and development. The use of the R&D Results and the IP-Rights contained and reflected therein also for production purposes may be agreed between nanoSaar and the Customer in a separate written license agreement.
- 1.4. 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 performance of the R&D Project. The Customer shall submit a written Order to nanoSaar which shall be constituted an offer made to nanoSaar. The contract concerning the ordered R&D Project ("Contract") shall only be formed and become effective upon the issuance of nanoSaar's written confirmation of the Order ("Confirmation").

#### 3. Pricing and payment

- 3.1. The price for the performance of the R&D Project, the terms of payment and the payment plan, if any, are specified in the Contract.
- 3.2. If not otherwise stated, the prices in the Contract include value added tax (VAT; *Umsatzsteuer*). Additional costs, such as the delivery costs, cost for packaging material, insurance costs, customs duties or any other costs and expenses related to the performance of the R&D Project 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.
- 3.3. 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.
- 3.4. 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.
- 3.5. 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.

#### 4. Delivery and delay in delivery

- 4.1. nanoSaar shall deliver the results from the R&D Project (i.e. reports, documents, feasibility studies, samples, specimens, etc.; "R&D Results"), as far as achieved, to the Customer. Unless otherwise agreed in writing and insofar it is technically possible, the Customer shall receive the R&D as electronic document in English and German.
- 4.2. In cases where an R&D Project cannot be sent to the Customer as an electronic document and unless otherwise agreed in writing, the R&D Results will be sent "Ex Works" (Incoterms® 2010 EXW) from nanoSaar's place of business or from a commissioned third party's place to the designated place of delivery being stated in the Confirmation. The parties will comply with applicable German, European or other applicable export laws.

- 4.3. Upon handing over such R&D Results to the carrier, the risk (*Gefahrübergang*) concerning the R&D Results 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.

The place of performance (*Erfüllungsort*) for nanoSaar is the place of business of nanoSaar.

- 4.4. 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 9.

## 5. License

- 5.1. 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.
- 5.2. nanoSaar remains the owner of any IP-Rights which are already owned by nanoSaar. Unless otherwise stipulated in the Contract, any IP-Rights arising during the performance of the R&D Project shall be the property of nanoSaar. The Customer will respect and not violate these IP-Rights. The R&D Results and nanoSaar's IP-Rights contained therein are subject to the confidentiality obligations set forth in Clause **Error! Reference source not found.** and may not be disclosed or provided to third parties without nanoSaar's prior written consent, unless related to the sale of the R&D Results to a third party, provided that the Customer shall ensure that such third party undertakes to abide the same obligations and duties, including compliance with all laws and regulations, as agreed herein.
- 5.3. Unless otherwise provided in the Contract, upon delivery of the R&D Results to the Customer, nanoSaar grants to the Customer a non-exclusive, royalty-free, non-sublicensable right of use the IP-Rights contained and reflected in the R&D Results, only in connection with the use of the R&D Results as defined in the Contract for research and development purpose (not also production purposes). If according to the Contract the Customer is to be granted the right of use referred to in sentence 1 exclusively in relation to a field of application, the Parties shall define such field of application in the Contract. Such right of use mentioned in sentences 1 and 2 is attached (*akzessorisch*) to the R&D Results and may only be transferred together with the sale of the R&D Results. Unless otherwise stipulated in the Invitation or the Confirmation, the right of use does not include the processing, further development, reproduction and publication of the IP-Rights contained in the R&D Results. For the avoidance of doubt, the IP-Rights contained and reflected in the R&D Results may not be copied, revised, altered, decompiled or disassembled into its individual parts, further developed or reengineered without the prior written consent of nanoSaar.

## 6. Offsetting, retention rights and assignment

- 6.1. 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.
- 6.2. 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.

## 7. Special conditions for purchase contracts (*Kaufverträge*) and contracts for work and services (*Werkverträge*)

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

- 7.1. Provided that the owed R&D Results represent, in exceptional cases, accepted state-of-the-art work products, in the case of defects the relevant provisions for sales contracts (*Kaufrecht*) and contracts for work and services (*Werkvertragsrecht*) shall apply to the following provisions.
- 7.2. The Customer shall inspect the R&D Results 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 R&D Results. The notice must include a description of the defects and evidence in the form of hard copies or other documents demonstrating the defects.
- 7.3. The R&D Results shall be substantially in accordance with the performance description in the Contract. Subject to applicable laws, nanoSaar shall not be liable for any defect which does not significantly reduce or limit the value or the agreed and permitted fitness for usability of the R&D Results (being minor or immaterial deviations from the agreed or assumed characteristics, or slight impairment of use), unless separately agreed in writing.
- 7.4. In the event of a defect for which notification has been timely provided, and which not only insignificantly reduces or limits the value or the agreed and permitted fitness for usability of the R&D Results, nanoSaar may, at its option, deliver a replacement or carry out repairs on the delivered R&D Results.
- 7.5. 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 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.

- 7.6. 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.
- 7.7. In the event of withdrawal (*Rücktritt*) or other termination of the Contract, the Customer is obliged to return the R&D Results and all copies thereof to nanoSaar. In such event, the Customer shall permanently delete and/or destroy any copies of the R&D Results. Upon nanoSaar's request, the Customer shall confirm in writing such permanent deletion and/or destruction and that no documents or copies containing or reflecting the R&D Results were retained.
- 7.8. In the event that the R&D Results are returned, the costs of shipping, shipping insurance, packaging and/or customs duties shall be initially borne by the Customer. If the R&D Results are returned due to a not only insignificant defect (see Clause 7.3 sentence 2), the costs of shipping, completed shipping insurance, packaging material and/or customs duties will be borne by nanoSaar.
- 7.9. Claims for defects shall become barred one (1) year after the date of delivery of the defective R&D Results, save for defects which are fraudulently concealed or caused by willful intent or gross negligence. Sections 478, 479 BGB remain unaffected.
- 7.10. nanoSaar shall not be responsible for defects which are caused by
- improper use or improper operation,
  - the use of unsuitable means of operation by the Customer, as well as
  - usage beyond the possibly agreed purpose of the R&D Results.

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 7 above.

- 7.11. A R&D Result which is free of defects shall only be returned or exchanged by nanoSaar upon the prior written agreement between the Parties.
- 7.12. Any claims for damages of the Customer are subject to the limitations set forth under Clause 9.

#### Defects of title (warranty)

- 7.13. In the event of any third party claim regarding the IP-Rights reflected and contained in the R&D Results, the Customer shall inform nanoSaar in writing immediately (i.e. 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 such IP-Rights against the rights claimed by third parties.
- 7.14. In the event of a third party claim regarding the IP-Rights reflected and contained in the R&D Results which has been immediately notified to nanoSaar and which are based on the contractual use of the R&D Results 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 IP-Rights reflected and contained in the R&D Results, or (ii) remedy the enforcement of such claims; or (iii) change or replace the IP-Rights reflected and contained in the R&D Results 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 R&D Results.
- 7.15. In all other respects Clauses 7.6 to 7.12 shall apply accordingly.

## **8. Third party claims**

- 8.1. nanoSaar is not aware that the use of the R&D Results by the Customer conflicts with the intellectual property rights of third parties. nanoSaar shall inform the Customer immediately of any intellectual property rights of third parties that might conflict with the agreed use of the R&D Results and any IP-Rights contained therein.
- 8.2. nanoSaar shall be liable in the event of infringement of the intellectual property rights of third parties under the conditions set out in Clause 9 if nanoSaar has violated the duty to notify as set out in Clause 8.1. Otherwise, liability is excluded subject to Clause 9.

## **9. Limitation of liability**

- 9.1. All of nanoSaar's research and development processes within the R&D Project are run by nanoSaar or a third party commissioned by nanoSaar 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 R&D Results .

- 9.2. Subject to Clause 9.1 and if not otherwise stipulated below, 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.
- 9.3. 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.
- 9.4. Claims for damages under the German Product Liability Act (*Produkthaftungsgesetz – ProdHaftG*) 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 the assumption of a guarantee (*Garantie*) shall remain unaffected by any limitation of liability, as far as applicable.
- 9.5. Any contributory negligence of the Client shall be taken into account in the case of liability. For example, nanoSaar shall not be liable for damages resulting from improper handling or improper use of the delivered R&D Results.
- 9.6. 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.

## 10. Confidentiality

- 10.1. 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, in particular with regard to the granting of rights of use, these Terms shall take precedence over the non-disclosure agreement concluded.
- 10.2. 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 **Error! Reference source not found.** shall survive for a period of ten (10) years following the effective date of the Contract.

## 11. Termination

- 11.1. Notwithstanding Clause 7.6, the Contract may only be terminated for good reason. Good reason is considered to exist in particular, though not exclusively:
  - a) in case of a major breach under any terms or conditions of these Terms, and if the breaching or defaulting Party does not cure or commence to cure any such breach or default within forty-five (45) calendar days after receipt of written notice by the non-breaching or non-defaulting Party;
  - b) in case that no essential progress in work has been achieved within a significant period of performance, provided that the Contract has already been running for fix (6) months.
- 11.2. Each notice of termination of the Contract has to be given in writing in order to be legally effective.
- 11.3. The termination of the Contract shall not discharge, affect or modify any rights or obligations which accrued or were incurred prior to the date of termination. Without limiting the foregoing, payments owed prior to the effective date of termination pursuant to Clause 3 remain unaffected.
- 11.4. Subject to Clause 11.3, no sums or other forms of compensation shall be due from either Party to the other Party by reason of severance, compensation, goodwill, loss of future profits, reimbursed investment or any similar concept or form of termination indemnity.

## 12. Governing law, dispute resolution and venue

- 12.1. 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.
- 12.2. The regional courts (*Landgericht*) of Munich I, 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.

## 13. Miscellaneous

- 13.1. 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.
- 13.2. 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.
- 13.3. Oral collateral agreements do not exist. These Terms and the Contract may only be amended, replaced or amended in writing.

- 13.4. 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.
- 13.5. Any headings used in these Terms are for convenience purposes only and shall not have any effect on the interpretation of the Terms.
- 13.6. 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.