

## **NanoFocus AG GENERAL TERMS AND CONDITIONS OF PURCHASING**

Status: October 11, 2011

### **Article 1: Offers, quotations and bids – Bid documentation**

1. The Supplier undertakes to accept or decline orders placed by NanoFocus within a period of two weeks and to notify NanoFocus of this in writing in the form of a confirmation of order. NanoFocus reserves the right of revocation of any order without the occurrence of any expense for NanoFocus in all cases in which the confirmation of order is not received at NanoFocus within a period of two weeks.
2. NanoFocus reserves all rights of ownership and copyright with respect to all illustrations, drawings, calculations and any and all other documents; such documents, etc., may not be made accessible to third-parties without the express written agreement of NanoFocus. They shall, instead, be used solely for production on the basis of orders placed by NanoFocus and shall be returned to NanoFocus without request after completion of the order. All such documents, etc., shall be kept secret from all third-parties.
3. The NanoFocus terms and conditions of purchasing shall upon the Supplier's acceptance of the order be deemed automatically to become an integral component of the contract.

### **Article 2: Industrial property rights**

1. The Supplier hereby accepts liability for any and all infringements of third-party industrial property rights resulting from the supply and/or use of the object(s) of supply. The Supplier further hereby gives assurance that the materials ordered and, in particular, processes and procedures for their production and use are free of third-party industrial property rights. Where the Supplier holds his own industrial property rights with respect to the materials supplied he hereby undertakes to notify NanoFocus of this circumstance in good time; the same provision shall be deemed to apply to any existing third-party industrial property rights. The Supplier hereby undertakes to indemnify and hold NanoFocus harmless from any and all claims made in this respect by third-parties.
2. The working results of any and all Research & Development work shall be deemed to become in their entirety the property of NanoFocus for exclusive use and exploitation by NanoFocus. The term "working results" shall be deemed to constitute all results and, in particular, know-how, inventions, data, documentation, reports, copyright-protected works, etc..
3. NanoFocus shall where new inventions susceptible to industrial property right protection occur ("new industrial property rights") be deemed to possess the right to file for granting of patent(s) for them. The Supplier shall thus be deemed to transfer all rights to NanoFocus and shall by means, in particular, of unrestricted claiming of the invention or inventions assure such transfer by means of agreement with his employees.

### **Article 3: Prices / Terms of payment**

1. The price stated in the order shall be binding. Where no written agreement to the contrary has been made, the price shall be deemed to include complete free-of-charge delivery, including packing. Where disposable packaging is not used, the costs of return of empty containers and packaging materials shall be borne by the Supplier.
2. The prices stated are net prices to which Value Added Tax (VAT) at the rate legally applicable at the relevant time must be added.
3. NanoFocus is able to process invoices only provided these are submitted to NanoFocus separately from the delivery and state the order number in accordance with the information on the

order; the Supplier shall, where he is unable to demonstrate that he is not responsible for such failure to adhere, bear responsibility for any and all consequences arising from failure to adhere to this obligation.

4. Where no written agreement to the contrary has been made, NanoFocus undertakes to pay the purchase price deducting 2% discount in the case of payment within fourteen days from receipt of invoice or the net invoice amount without deduction in the case of payment within thirty days from receipt of invoice.
5. NanoFocus shall be deemed to enjoy all legal rights of setting off and retention without restriction. NanoFocus shall also be deemed entitled without the approval of the Supplier to assign any and all claims and receivables arising from the purchase agreement. The Supplier shall be deemed not to be entitled without the prior written agreement of NanoFocus to assign to third-parties claims and/or receivables arising from the contractual relationship.

### **Article 4: Delivery / Delivery time**

1. The Supplier undertakes to himself furnish the product and/or service. The Supplier shall be deemed entitled to sub-contract only with the express written agreement of NanoFocus.
2. The execution, scope and subdivision of the supplies must accord with the order.
3. NanoFocus shall in the case of orders which have not yet been fulfilled be deemed entitled where NanoFocus has a demonstrable interest in such change or changes, the Supplier is technically capable of such change or changes and the Supplier can reasonably be expected to comply with such change or changes to require changes in the design, the delivery and/or the delivery time.
4. Agreed delivery deadlines shall be deemed binding; the Supplier hereby accepts guarantee liability for his ability to deliver on time.
5. NanoFocus shall in case of delay in delivery be deemed to enjoy all statutory rights and claims. Irrespective of this, NanoFocus shall also be deemed entitled to require from the Supplier liquidated damages of 0.5% per week and part thereof up to a maximum of 10% of the total order value for the delivery, calculated from the time at which delay in delivery is incurred. NanoFocus expressly reserves the right to raise claims for more extensive loss and/or damage. Where NanoFocus does not upon acceptance of delayed delivery expressly reserve the right to claim liquidated damages, it shall nonetheless be deemed possible for a claim for the accumulated liquidated damages to be raised within an exclusion period of ten working days.
6. Any and all additional carriage costs incurred for urgent and express shipment resulting from failure to adhere to the agreed delivery time shall be borne by the Supplier.
7. The Supplier hereby undertakes to inform NanoFocus immediately in cases in which circumstances which would prevent the meeting of the agreed delivery time occur or become foreseeable for the Supplier.

### **Article 5: Passing of risk, documents, shipment, delivery, export controls**

1. Where no provision to the contrary is made in these Terms and Conditions of Purchase, all deliveries shall be effected in accordance with Incoterms 2010.
2. The Supplier undertakes to state the NanoFocus order number accurately on all shipping documents and delivery notes; NanoFocus is unable to accept any responsibility whatsoever for any delays in processing where the Supplier fails to comply with this provision.
3. NanoFocus will accept part deliveries only upon express agreement.
4. The Supplier shall pack the goods to be supplied only in environmentally friendly packaging material and in such a way that transportation damage cannot occur.

5. The Supplier shall at his own expense insure the delivery against loss and/or damage during transportation and shall on request submit to NanoFocus proof of the existence of such insurance.
6. The Supplier undertakes to inform NanoFocus immediately in cases in which a supply and/or service is subject in part or in whole to export restrictions under German law and/or under the law of another state.

**Article 6: Quality**

1. The Supplier hereby guarantees that his goods and services possess the properties and quality features scheduled in the order and conform to the specifications, drawings, samples and other descriptions specified by NanoFocus.
2. The Supplier undertakes to implement Quality Control on the basis of the latest state-of-the-art and appropriately to the nature and scope of the products and/or services to be furnished.
3. The Supplier may where initial samples / selection samples have been required commence series production only upon receipt of the express written approval of NanoFocus.
4. NanoFocus expects that the Supplier will at all times orientate the quality of his products to be supplied to NanoFocus around the latest state-of-the-art and will draw the attention of NanoFocus to possible improvements and technical modifications. Any and all modifications to the object of supply shall, however, in all cases be deemed to require the prior written agreement of NanoFocus.
5. The Supplier hereby gives guarantee and assurance of the fulfilment of all safety and environmental regulations of the Federal Republic of Germany.

**Article 7: Inspection for defects and deficiencies / Liability for defects and deficiencies**

1. NanoFocus undertakes to inspect the goods for recognisable deviations in quality and/or quantity within an appropriate period; claims concerning defects and/or deficiencies shall be deemed to have been lodged in good time provided they are received by the Supplier within ten working days calculated from the date of receipt of the goods or, in the case of concealed defects and/or deficiencies, from the date of discovery.
2. The mere receipt of the goods shall be deemed neither to constitute approval or acceptance by NanoFocus of the delivery nor the waiving by NanoFocus of claims concerning defects and/or deficiencies.
3. NanoFocus shall be deemed to enjoy without restriction all statutory rights and claims in case of defects and/or deficiencies; NanoFocus shall in all cases be deemed entitled to require from the supplier at its option elimination of all defects and/or deficiencies or the supply of a new good free of defects and deficiencies. The right to claim liquidated damages and, in particular, to require liquidated damages in place of the supply and/or service shall be deemed expressly reserved.
4. NanoFocus shall be deemed entitled to itself eliminate defects and/or deficiencies at the Supplier's expense in cases of exigent circumstance and in cases of particular urgency.
5. The period for statutory barring shall be thirty-six months calculated from the passing of risk. The guarantee period for services and documentation shall be twenty-four months.

**Article 8: Product liability / Indemnification / Third-party liability insurance cover**

1. The Supplier undertakes, where he bears responsibility for a product claim, upon first request to indemnify and hold NanoFocus harmless from third-party claims for reimbursement of loss and/or damage to the extent that the cause of such loss/damage is seated in his domain and sphere of organisation and he himself bears liability vis-à-vis third parties.
2. The Supplier further undertakes within the framework of his liability for cases of loss and/or damage in the sense of Para. 1

above to reimburse to NanoFocus any and all expenses in accordance with Articles 683 and 670 BGB (German Civil Code) and in accordance with Articles 830, 840 and 426 BGB (German Civil Code) resulting from or in conjunction with a recall campaign necessarily implemented by NanoFocus. NanoFocus undertakes to the extent possible and reasonable to inform the Supplier concerning the content and scope of any recall measures to be implemented and to provide the Supplier with an opportunity of responding. This provision shall be deemed to be without prejudice to any and all other legal rights and claims.

3. The Supplier undertakes to maintain product liability insurance with a cover of 5 million € per case of harm to persons / damage to property as a lump sum; this provision shall be deemed not to affect any and all more extensive claims by NanoFocus for reimbursement of loss/damage.

**Article 9: Confidentiality**

1. The parties to the contract hereby undertake where such information is not already in the public domain and/or has not already been legally acquired by third-parties to keep strictly secret all information arising from their co-operation and to use such information solely for the purposes of the contract. The information protected by this provision shall, in particular, include technical data, prices, information on products and product developments, and all corporate data of the respective other party to the contract.
2. The Supplier further undertakes to keep strictly secret all illustrations, images, drawings and other documentation which he has received and, where the information contained in such is not already in the public domain, to disclose such to third-parties only with the written agreement of NanoFocus.

**Article 10: Extra costs**

1. The Supplier undertakes to notify NanoFocus immediately in all cases in which it becomes apparent during implementation of the contract that deviations from the originally agreed specification are necessary or would be advantageous. NanoFocus undertakes to then state in writing whether and, where appropriate, which modifications to the supply and/or service vis-à-vis the original order are to be implemented. Both NanoFocus and the Supplier shall be deemed entitled to require corresponding adjustment of the remuneration receivable by the Supplier in cases in which such modification(s) alter the costs incurred by the Supplier for implementation of the contract.
2. NanoFocus shall where such can reasonably be expected from the Supplier be deemed entitled even after signature of the contract to require changes to the product and/or service. Both parties to the contract hereby undertake to take appropriate account in case of such contract changes of increased or reduced costs and delivery dates, in particular.

**Article 11: Cancellation**

1. NanoFocus shall be deemed entitled even without fault on the part of the Supplier to rescind the order in part or in whole. NanoFocus undertakes in such cases to pay to the Supplier the contract price proportionate to the supplies and services already furnished and, in addition, to reimburse verified direct costs for supplies and services under preparation and/or for the cancellation of sub-contracted orders. The Supplier undertakes upon declaration of rescindment by NanoFocus to make all efforts to keep the costs to be reimbursed by NanoFocus to the minimum possible. Any and all further or more extensive rights and claims shall be deemed excluded, irrespective of their legal basis.

**Article 12: Prohibited substances**

1. The Supplier undertakes in supplying the products to adhere to all regulations concerning prohibited substances. NanoFocus hereby demands the freedom of all products procured from harmful and pollutant substances in accordance with RoHS (2002/95/EC).
2. The Supplier shall demonstrate adherence to the REACH regulations (1907/2006/EC).

**Article 13: Legal venue / Place of fulfilment / Applicable law**

1. The place of fulfilment and sole legal venue for all supplies and payments (including payments by cheque) and for all disputes arising between the parties from the contract made between them shall where the Supplier is a businessperson in the sense of the "Handelsgesetzbuch" (German Commercial Code) be the business domicile of NanoFocus AG. NanoFocus shall, however, also be deemed to be entitled to raise suit against the Supplier at the place of his business domicile.
2. The contract shall be governed by the Law of the Federal Republic of Germany with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods dated April 11, 1980 (CISG).
3. Where a provision or provisions of these General Terms and Conditions of Business is/are or prove(s) to be invalid or unenforceable, such circumstance shall be deemed not to affect the validity of these General Terms and Conditions of Purchasing as a whole.