

NanoFocus AG

GENERAL TERMS AND CONDITIONS OF SALE

Status: October 11, 2011

Article 1: Scope of applicability

1. These General Terms and Conditions of Business shall apply to all bids and quotations submitted by NanoFocus, and to all other declarations relating to legal transactions, including advisory, consulting and Research & Development services. These General Terms and Conditions of Business shall apply exclusively. Where no express written agreement to the contrary is made, any and all contrary and/or divergent conditions shall be deemed not to have been acknowledged. These conditions shall also apply in cases in which NanoFocus, having knowledge of a customer's/customers' divergent conditions, nonetheless supplies without reservation.
2. In the case of existing business relations, these conditions shall, where no express agreement to the contrary has been made, also apply to all future transactions with the existing customer.

Article 2: Making of the contract, object of the contract, scope of supply, packing

1. All bids and quotations submitted by NanoFocus shall be deemed to remain subject to confirmation. Any and all drawings, illustrations, weights, quantities and other data included in or attached to the quotation or bid or included in catalogues and/or brochures shall be deemed to contain approximate data only.
2. Any and all contracts between the Purchaser and NanoFocus as the Vendor shall be deemed to come into existence only upon written confirmation of order by NanoFocus. The same shall also be deemed to apply to all agreements and orders uttered to and by representatives, agents and sales companies commissioned by NanoFocus. The written confirmation of order by NanoFocus shall be deemed to be definitive for the content of the contract. Any and all amendments and augmentations to the contract shall be deemed to require the written confirmation of NanoFocus in order to attain validity.
3. NanoFocus shall be deemed to supply "ex-works" and to act in obtaining shipment as an agent for and on behalf of the customer.
4. NanoFocus AG shall be deemed during the delivery period to retain the right of design and formal changes always provided the object of supply and its function and appearance are not thus modified fundamentally and always provided that such modifications can be deemed acceptable to the customer. Section F2 of these conditions shall apply with respect to any price changes.
5. The customer undertakes not to provide access to cost estimates, quotations, bids, drawings and similar documents and their contents to third parties.
6. Costs for transportation and packing and, in particular, any costs for special packing (such as seaworthy packing and packing for airfreight, for example) will be charged at cost price to the customer. Shipment, customs and packing costs will be invoiced separately following shipment of the equipment.

Article 3: Delivery periods and delivery date

1. All stated delivery dates and delivery periods shall be deemed to have been agreed as approximate. Where a delivery period (= delivery within a stated week or month) has been agreed, such delivery period shall be deemed to commence upon receipt by the customer of a confirmation of order by NanoFocus, but in no case prior to the provision of the documentation, data, facts, approvals, and releases to be furnished in accordance with the agreement by the customer and in no case prior to receipt by NanoFocus of any agreed downpayment. The delivery period

shall also be deemed not to commence prior to the clarification of any and all significant technical matters associated with the order. Where these preconditions are not fulfilled in good time, the delivery period shall be deemed to be correspondingly extended by the amount of time of the delays which have occurred. The same shall also apply to any agreed delivery date (= fixed calendar week/calendar day; also referred to as "delivery deadline").

2. The delivery period/delivery date shall be extended by the period necessary for the implementation of any additional requirements and/or modifications to the object of supply where such are required by the customer after placement of his order.
3. Delivery periods and delivery deadlines shall be deemed to have been met provided readiness for shipment or handover of the object of supply has been notified to the customer prior to the expiry of the agreed delivery period or delivery deadline.
4. The delivery period shall be deemed to be appropriately extended in case of industrial dispute and in case, in particular, of strikes and lock-outs, and in case of the occurrence of Force Majeure, official orders and, where such hindrances demonstrably have a not insignificant influence on the completion and/or the delivery of the object of supply, in case of the occurrence of unforeseen hindrances beyond the control of NanoFocus. This provision shall also be deemed to apply in cases in which the above-mentioned circumstances are encountered by sub-suppliers. NanoFocus shall also be deemed not to bear responsibility for the above-mentioned circumstances in cases in which they occur after delay in delivery has already been incurred. NanoFocus undertakes in important cases to notify the customer as promptly as possible concerning the start and termination of such hindrances. In addition to the exercise of its statutory rights, NanoFocus shall be deemed entitled to withdraw from the contract in cases in which the completion of the object of supply is or becomes impossible as a result of such unforeseen circumstances or is or becomes possible only at significantly greater economic expense.

Article 4: Delays in delivery

1. The customer shall in cases in which NanoFocus incurs delay in furnishing its contractual obligation be deemed entitled to set for NanoFocus an appropriate period for subsequent performance with an express declaration that the customer intends to refuse acceptance of the goods and/or services upon expiry of the period set. The customer shall in cases in which this period, for reasons for which NanoFocus is responsible, expires without satisfactory result be deemed entitled to withdraw from the contract. Exercise of this right of withdrawal shall require to be uttered in writing to NanoFocus within two months from the expiry of the period set.
2. The Purchaser's entitlement to liquidated damages in case of delay in performance and/or impossibility of furnishing of the goods and/or services shall be deemed to be restricted solely to the reimbursement of foreseeable loss and/or damage. This restriction on liability shall be deemed not to apply in cases in which the delay in and/or impossibility of performance is the result of intent or of gross negligence on the part of an officer, legal representative or servant of NanoFocus.

Article 5: Acceptance of delivery, acceptance, delayed acceptance, revocation of order

1. The customer shall in case of "ex works" supply be deemed obliged to acceptance of a shipment from the time onward at which readiness for shipment is notified to him; otherwise, upon delivery. The risk of accidental loss of the purchased object shall be deemed to pass to the customer at this time.
2. The customer shall in cases in which he fails to meet his obligations in accordance with (1) above be deemed to be obliged to bear any and all extra costs thus arising (e.g. storage and maintenance costs). NanoFocus shall upon expiry of an appropriate period set by NanoFocus be deemed entitled to withdraw from the contract without prejudice to any more

extensive claims and to dispose at its discretion of the object of supply and to lodge claims for liquidated damages. The setting of such a period shall be deemed not to be necessary in the case of the serious and final refusal of acceptance by the customer. The risk of accidental loss and/or accidental impairment of the object of supply shall in both the above cases be deemed to pass to the customer at the time at which he incurs delay in acceptance.

- Where work commissioned by the customer is discontinued at the wish of the customer, the customer shall be deemed to be obliged upon issue of the relevant invoice to payment for the goods and/or services furnished up to such point less payments already made.

Article 6: Prices, terms of payment, Value Added Tax (VAT)

- All prices are to be understood "ex works" and net of Value Added Tax at the rate legally applicable on the day of invoicing and net of subsidiary costs in the sense of Section (3) below. Where no agreement to the contrary has been made, all invoice amounts shall be deemed payable without deduction within thirty days from the date of invoice.
- Where changes to the NanoFocus price lists occur following receipt by the customer of the confirmation of order, the list prices applicable on the day of delivery shall apply in all cases in which a period of more than four months has elapsed between the making of the contract and the delivery day and provided any delay in delivery is not due to reasons for which NanoFocus is responsible.
- All subsidiary costs, such as those for transportation insurance, loading/unloading, handling, custom duties, etc., shall be borne by the customer.
- The customer shall be deemed to incur arrears in all cases in which he fails to settle the invoice amount without deduction within the agreed period. The crediting of the invoice amount to NanoFocus's account shall be deemed definitive for this purpose. NanoFocus shall from the inception of arrears onward be deemed entitled to charge interest on arrears at a rate of 8 % above the base rate applicable at the relevant time. NanoFocus reserves the right to charge a higher rate of interest where such is demonstrably justified. The customer shall be deemed entitled to demonstrate to NanoFocus a lower level of loss.
- NanoFocus shall in the case of first-ever orders and development agreements be deemed entitled to require prepayment/an appropriate downpayment prior to delivery/supply.
- The customer shall be deemed entitled to set off or withhold payment of invoices submitted to him only in cases in which his counterclaims have been legally ascertained, are undisputed or have been recognised by NanoFocus.
- The customer shall not make payments to NanoFocus's salespersons or representatives. Payment shall in all cases be deemed to have been made only upon crediting of the invoice amount to NanoFocus's bank account.
- Bills will be accepted only on the basis of special agreements. Where no written agreement to the contrary has been made, cheques and/or bills shall be deemed to have been accepted as payment only upon their encashment. Where in individual cases no written agreement to the contrary has been made, the customer shall bear all bank charges and fees, all costs resulting from rejected direct debits and all processing costs.

Article 7: Retention of title

- NanoFocus reserves the right to retain ownership of ("title to") all objects of purchase until payment in full of all amounts receivable arising from the business relations with the customer. In the case of running accounts, the entire reserved-title goods shall be deemed to serve the purpose of securing the amounts receivable.
- Where the customer uses the object of supply in his own business, he shall for the duration of retention of title be deemed not to be entitled to dispose of, permit seizure of or to assign as

security the object of supply in part or in whole without the express written permission of NanoFocus.

- Where a customer has acquired an object for the purpose of selling it on, onward disposal in the normal course of business shall be deemed to be permitted.
- The customer shall in all cases of selling on of an object subject to retention of title be deemed even now to transfer to NanoFocus all his future claims against his Purchaser from such transaction. NanoFocus hereby accepts such transferral. The customer shall be deemed to remain entitled to recover his claims against such Purchaser. NanoFocus shall also be deemed to enjoy this right; NanoFocus undertakes to exercise this right only in cases in which the customer fails to meet his obligations to payment and/or in cases of the occurrence of serious deterioration in the financial situation of the customer which would significantly jeopardise the fulfilment of his obligations to payment. Such is the case, for example, in cases in which the customer lodges an application for insolvency. The customer undertakes in such a case to provide upon first request all information and all documentation necessary for recovery of the amount(s) outstanding.
- Where the value of the securities existing for NanoFocus exceeds the amounts receivable from the customer by more than 20 % NanoFocus shall be deemed obliged upon the customer's request to release securities as nominated by the customer.
- The customer undertakes for the duration of the retention of title to keep the object of supply adequately insured against damage by fire and/or water and against theft.
- The customer undertakes to notify NanoFocus in writing immediately concerning any and all seizures of any property which is subject to retention of title and to forward copies of writs of attachment and reports of attachment to NanoFocus. The customer further undertakes to take all action within his powers to avert execution of seizure orders. Where NanoFocus lodges a third-party motion to vacate in accordance with Article 771 ZPO (German Code of Civil Procedure), the customer undertakes to reimburse to NanoFocus all court and out-of-court costs, should the third-party involved not be capable of this.
- NanoFocus shall be deemed entitled to set an appropriate period for payment/subsequent performance in cases in which the customer incurs arrears in payment of the purchase price and/or in cases in which the customer fails to meet his obligations arising from retention of title. NanoFocus shall in addition be deemed upon expiry of such period without satisfactory result to be entitled to withdraw from the contract and to repossess the goods supplied. Where such property is at the relevant time in the possession of a third-party, the customer undertakes to communicate to NanoFocus upon first request by NanoFocus the whereabouts of the property and hereby declares his agreement to NanoFocus also repossessing the property in such cases.

Article 8: Performance of development work

- Research & Development work shall be performed in accordance with Articles 611 ff BGB (German Civil Code).
- NanoFocus undertakes to perform any and all development work to the best of its abilities and with adherence to the generally acknowledged rules on the basis of the prevailing state-of-the-art. NanoFocus accepts no guarantee liability for the achievement of the Research & Development target or targets. The result(s) of development shall be made available in accordance with the bid submitted.
- The customer undertakes to provide NanoFocus without delay with all information and documentation necessary for the development work.
- Any and all results of development (including know-how, test and development reports, designs, drafts, samples, etc.) shall upon completion of the development work remain the property of NanoFocus. Where necessary for the achievement of the contractually agreed aims, the customer shall be granted against appropriate consideration an exclusive right of utilisation restricted to a period of two years.

5. NanoFocus undertakes to disclose to the Purchaser any and all third-party industrial property rights known to it and attaching to Research & Development work furnished by NanoFocus.

Article 9: Notification of defects and/or deficiencies, guarantee

1. NanoFocus shall in the case of defects and/or deficiencies for which NanoFocus is responsible be deemed entitled at its own option to repair or to replacement supply. This provision shall not apply in cases of only insignificant defects/deficiencies. NanoFocus shall in the case of repair bear all transportation, labour and material costs necessary for repair but not costs resulting from the removal of the goods supplied to a location other than the place of fulfilment.
 - a. NanoFocus shall be deemed entitled to refuse subsequent performance in cases in which one or both variants of such subsequent performance is/are not possible or not reasonable.
 - b. NanoFocus shall in addition be deemed entitled to refuse subsequent performance until such time as the Purchaser has met his obligation to payment in an amount appropriate to that part of the supply which is free of defects and deficiencies.
2. The Purchaser shall be deemed to be entitled to require the reduction of the price or to withdraw from the contract in cases in which repair or replacement supply is not accomplished within an appropriate period, taking account of the supply possibilities available to NanoFocus and in cases in which repair and/or replacement supply fail to achieve the desired result.
3. The Purchaser's rights in case of defect and/or deficiency shall apply only provided the Purchaser has correctly and completely fulfilled his obligations to investigation and notification of defects and/or deficiencies in accordance with Article 377 HGB (German Commercial Code).
4. Where no provisions to the contrary are contained below (Para. 6), any and all other claims on the part of the Purchaser (and, in particular, any and all claims arising from the infringement of principal and subsidiary contractual obligations, reimbursement of expenses, with the exception of that governed by Article 439 II BGB [German Civil Code], tort and other tort liability) shall irrespective of their legal basis be deemed to be excluded; this provision shall be deemed to apply in particular to loss and/or damage not occurring directly to the property supplied itself and to claims for reimbursement of lost profit; it shall also extend to claims not deriving from the defective and/or deficient condition of the property.
5. The above provisions shall also be deemed to apply in the case of supply of a different item and/or of a lesser quantity.
6. The exclusion of liability governed by Para. 4 above shall not apply in cases in which the exclusion or limitation of liability for bodily injury and/or death and/or impairment of health resulting from the intentional or grossly negligent infringement of obligations by the user and/or from an intentional or grossly negligent infringement of obligations by an officer, legal representative or servant of the user has been agreed; it shall, in addition, also be deemed not to apply in cases in which the exclusion or the limitation of liability for other loss or damage arising from the intentional or grossly negligent infringement of obligations by an officer, legal representative or servant of the user has been agreed.
 - a. Where NanoFocus culpably infringes an essential contractual obligation, liability shall be deemed not to be excluded but shall instead be deemed to be restricted to foreseeable loss and/or damage typical for such transactions; liability shall in all other instances be deemed excluded in accordance with Para. 4.
 - b. Exclusion of liability shall also be deemed not to apply in cases in which liability under the Product Liability Act exists for harm to persons and/or loss of or damage to privately used property in the case of defects/deficiencies in the object of supply.

- c. The provision shall also not be deemed to apply in the case of acceptance of guarantee liability and in case of the assurance of a particular property, in cases in which a defect/deficiency thus covered is the grounds for liability on the part of NanoFocus.
 - d. The above shall apply correspondingly to the reimbursement of expenses.
7. NanoFocus accepts no liability whatsoever for loss or damage resulting from improper and/or incorrect use, incorrect installation by the Purchaser and/or by third-parties, natural wear and tear, incorrect and/or negligent treatment, and/or incorrect modifications and/or repair work performed without the prior approval of NanoFocus by the Purchaser and/or by third-parties.
8. Any and all claims for subsequent performance, liquidated damages and compensation for loss of use shall be deemed statutory barred one year from delivery of the object of supply.
 - a. This provision shall be deemed not to apply in the case of items which, in accordance with their customary manner of use have been used for a building or structure and have caused the defectiveness and/or deficiency of such; statutory barring shall in such cases be deemed to occur only after five years.
 - b. Claims for reduction of price, and the exercise of any right of withdrawal from the contract, shall be deemed excluded once the right of subsequent performance has been statutory barred.
 - c. The Purchaser shall, however, in the case of Sentence b above be deemed to be entitled to refuse payment of the purchase price to the extent to which he would be entitled thereto on the basis of withdrawal or of price reduction; NanoFocus shall in the case of exclusion of withdrawal and subsequent refusal of payment be deemed to be entitled to withdraw from the contract.
9. Any and all claims resulting from recourse against manufacturer shall be deemed not to be affected by the above article.

Article 10: Liability

1. Liability on the part of NanoFocus for negligent infringement of obligation(s) shall other than in cases involving essential contractual obligations, bodily injury, death or impairment of health and/or guarantees and/or claims under the Product Liability Act, be deemed excluded. The same shall also be deemed to apply to infringement(s) of obligation(s) on the part of the officers, legal representatives and servants of NanoFocus. Liability for intentional and/or grossly negligent infringement(s) of obligation(s) shall be deemed not to be excluded. The liability borne by NanoFocus shall in all cases be restricted to foreseeable loss or damage typical for such transactions.

Article 11: Assignment

1. Claims against NanoFocus by the customer may not be assigned to any other person.

Article 12: Place of fulfilment, legal venue and applicable law

1. The domicile of NanoFocus shall be the place of fulfilment.
2. The legal venue for all disputes shall, where the customer is a registered business person, a public-law entity or a public-law corporation, or where the customer has no legal venue within Germany, be Duisburg.
3. Where no provision to the contrary has been made above, the uniform substantive law of the UN Convention on Contracts for the International Sale of Goods (CISG) shall apply to legal transactions between NanoFocus and legal persons not possessing a domicile in Germany.