



General Terms and Conditions for Supplies and Services to Clients of

NanoTemper Technologies GmbH

10th of September 2020 Edition

PART A – General Conditions

§ 1 Scope of application, order of priority of Parts A, B and C

- (1) These General Terms and Conditions for Supplies and Services to Clients (“**GTC**”) form the basis of all contracts between the client (undertaking within the meaning of § 14 BGB [*German Civil Code*]) and NanoTemper Technologies GmbH (“**NTT**”) and also apply to all future contracts even if the contracting parties should not expressly agree to the application of these GTC in the future. All supplies and services by NTT, including supplies of goods, the performance of work and services, consultancy services, information and ancillary contractual services (hereinafter together called “**Performance**”), are therefore provided exclusively based on these GTC even if not explicitly stated.
- (2) These GTC have exclusive application. None of the client’s conflicting or supplementary contract terms or references to such contract terms are acknowledged by NTT even if NTT should not expressly object to them. Unreserved Performance by NTT or acceptance of collaborative action or payment by the client will not be deemed acknowledgement of the client’s contract terms. The client’s contract terms will not apply unless NTT expressly agrees to their application.
- (3) Individual agreements have priority over these GTC. Where the General Conditions in Part A conflict with the Special Conditions in Part B or Part C the relevant Special Conditions will have priority.

§ 2 Offer and acceptance, deadlines and periods of time, scope of Performance, descriptive details, ancillary agreements

- (1) NTT may revoke a binding offer up to conclusion of the contract. The client’s orders and commissions are generally binding.
- (2) Deadlines and periods of time stated in offers by NTT for the Performance to be rendered are based on estimates of the extent of the work notified by the client. Agreed deadlines and periods of time are to be considered approximates unless expressly said to be binding.
- (3) The scope of Performance due is fully determined from the content of the contract documents.
- (4) All Performance over and above the scope of Performance due which is requested by the client will be charged for by NTT plus the costs and disbursements incurred (e.g. materials, travelling expenses, fees).

- (5) Descriptive details of Performance (e.g. technical data, tolerances, measurements, weights etc.) and presentation thereof are purely descriptions and designations which are not binding unless expressly confirmed by NTT.
- (6) The right is reserved to make technical and constructive customary changes in Performance if they do not have an unreasonably adverse effect on the client and do not prejudice the serviceability of Performance.
- (7) NTT's sales staff is not authorized to enter into verbal ancillary agreements or to give assurances which extend beyond the content of contract documents. All of the terms are set out in the contract documents. There are no verbal ancillary agreements in existence.

§ 3 Prices, price adjustment, extra costs

- (1) Agreed prices are euro prices unless otherwise agreed. Prices encompass only the due scope of Performance and are quoted, in principle, ex works (Incoterms 2010). Statutory VAT due is not, in principle, included in prices any more than extra performance, such as loading, transportation, or packaging, unless expressly agreed. Collection is, in principle, for the client to arrange at its own expense. The costs of essential permits and papers, export licenses and customs duty as well as any agreed carriage insurance or other insurance cover is to be borne – subject to any other agreement – by the client.
- (2) Should no prices have been agreed on conclusion of the contract the prices current at the time of conclusion of the contract as per NTT's price list will apply, in principle; NTT will be happy to provide the client with the price list on request.
- (3) Where after conclusion of the contract there is a change in costs on which NTT's calculations are based, especially the cost of labor, materials, raw materials, transport or energy, NTT will make a price adjustment. The price adjustment will be made in accordance with NTT's original calculation. NTT will promptly inform the client of the price adjustment and provide a comprehensible explanation for it. No price increase may be made if the change in cost is due to circumstances for which NTT is responsible and which contradict the principle of due commercial care. If a price increase exceeds 10 % the client will have two weeks from receipt of notification by NTT in which to cancel the order concerned free of charge. Cancellation must be affected in writing. NTT is not obliged to take or seek out any measures which would result in a reduction in agreed prices.
- (4) The client will bear any extra costs arising from the fact that work is delayed or must be repeated or extended due to details being late, incorrect or incomplete or as a result of collaborative action not being properly carried out. This also applies where a fixed or maximum price has been agreed.

§ 4 Invoice, payment, default, right of retention, set-off

- (1) NTT will invoice the client for the payment owed as agreed.
- (2) Buyer will pay for the Product(s) within immediately after invoiced – unless otherwise agreed. No deductions or offsets are permitted. Amounts past due are subject to a service charge at the maximum rate of interest then-permitted by law until paid. Buyer will pay all of NTT's costs and expenses incurred in the collection of past due amounts, including reasonable collection agency or attorney's fees, court filing fees and other costs and disbursements.
- (3) Where a fixed price is agreed NTT may issue invoices in instalments according to the proportion of full Performance carried out unless the client is not interested in partial Performance. The same applies in the event of permissible partial Performance (see § 5 (2)).
- (4) NTT is not obliged to accept checks and bills of exchange. Credits for same are always effective subject to being honored (in payment, not in lieu of payment); they are effective on the date that their counter-value becomes available to NTT.
- (5) Bank charges and exchange fees for foreign transfers are borne by the client.
- (6) In the event of payment default statutory default interest becomes payable (§ 288 BGB [*German Civil Code*]). NTT has the right to ask for higher interest on other legal grounds. In the event of payment default NTT is also entitled to withdraw any agreed discounts, rebates and other privileges. In the event of payment default NTT is also entitled to only render further Performance against pre-payment. Furthermore, payment default or circumstances liable to diminish the client's credit standing will result in all of NTT's accounts receivable becoming immediately due and payable.
- (7) The offsetting by the client of any of its claims against NTT's accounts receivable or the exercise of a right of retention will be neither possible nor permissible unless the client's claim or counterclaim is uncontested or established as legally valid or has at least reached the decision stage. Offsetting or the exercise of a right of retention will also be possible provided that the client's claim and NTT's claim are based legally on a relationship of mutuality.
- (8) NTT will not accept any Product returns, unless it gives written consent in the form of a Return Authorization ("RMA").

§ 5 Mode of delivery and obstacles to delivery

- (1) All shipments are made EXW (Incoterms® 2010) NTT's shipping points. NTT will select the carrier. NTT may provide substitute Product(s) provided they are of equal or better performance criteria.

At Buyer's request, NTT may provide partial shipments which may be invoiced accordingly. The client must, in principle, obtain all essential permits and papers itself (e.g. for exports/imports).

- (2) Shipping dates are estimated delivery dates, and not a material term of this Agreement. NTT will make all reasonable efforts to meet the delivery date. Unless otherwise agreed, NTT may ship Product(s) earlier than the date originally quoted.
- (3) Partial Performance is permissible to a reasonable extent. Partial Performance will not be reasonable, for example, if the client is not interested in partial Performance or if only a small quantity (still) remains to be accomplished before partial Performance takes place or remains to be accomplished as a result of partial Performance.
- (4) Deadlines and periods of time agreed to be binding will be met if readiness for dispatch has been notified as agreed by the expiry of the agreed deadline or period or if Performance has left NTT's works.
- (5) Periods of time agreed to be binding begin, in principle, on the date of conclusion of the contract, although not before the provision of documents, permits, clearances and information to be obtained by the client and clarification of all technical issues, nor before accomplishment by the client of any collaborative action essential to Performance or before any advance payment due has been received. Deadlines agreed to be binding will be put back accordingly, where necessary.
- (6) On the occurrence of unforeseen obstacles for which NTT is not responsible and which NTT is unable to avoid despite taking every care reasonable in the circumstances – whether they occur at NTT or a subcontractor – for example, force majeure (e.g. wars, natural disasters, fires, strikes or lockouts) – deadlines and/or periods of time agreed to be binding will be put back by the length of the obstacle in question. NT will promptly inform the client of such circumstances. If an obstacle should lead to postponement for more than one-month NTT will have the right to withdraw from the contract as far as Performance affected by the obstacle is concerned. The client will have a similar right of withdrawal if it is no longer interested in Performance because of the postponement. If a contracting party withdraw from the contract § 346 et seq. BGB [German Civil Code] will apply.
- (7) In the event of delay in Performance NTT's liability in damages is governed exclusively by § 10 of these GTC.
- (8) If Performance should be delayed at the request or due to the fault of the client NTT will charge it for any storage costs incurred, beginning one week after notification of readiness for dispatch.

§ 6 Passage of risk

- (1) Where there is an obligation to collect the risk passes to the client when the goods are selected and provided as agreed. Where there is an obligation to dispatch the same will apply from the date that they are passed to the carrier. Where there is an obligation to deliver the risk passes on leaving NTT's site. The risk passes even in the event of failure to accept delivery.
- (2) NTT's responsibility ends on delivery of the Product(s) to the carrier, or such other point NTT designates. Buyer assumes all risk of loss for the Product(s) after NTT delivers the Product(s) to the carrier for shipment to Buyer, and Buyer's sole recourse for any loss of or damage to the Product(s) shall be against the carrier.

§ 7 Client's duty to collaborate, indemnity

- (1) The client warrants that it will promptly take all collaborative action free of charge that is necessary for Performance by NTT or for any rectification work to be carried out by NTT. This collaborative action must comply with all valid standards, especially safety regulations and accident prevention rules.
- (2) The client warrants that it holds the necessary copyright/exploitation rights for the documentation, data media, software, materials and other items of any kind whatsoever to be supplied by it and that they are free of defects.
- (3) The client warrants that it fulfils all duties imposed upon it by law or contract. The client is obliged, in particular, not to export or re-export goods or items supplied by NTT without obtaining any export permit required from the competent authority. The client will provide NTT with the export permit and all documents connected therewith without having to be asked for same.
- (4) The client warrants that it will apply NTT's Performance properly, safely and in accordance with both the rules applicable and NTT's valid specifications.
- (5) In the event of the client failing to fulfil its aforementioned obligations it shall compensate NTT for the loss or damage sustained and indemnify NTT from any third-party claims resulting from the breach of duty unless the client should not be responsible for such breach of duty. Where NTT and the client are liable under relevant product liability legislation – even where no fault is required – the client shall have liability towards NTT inter se in so far as the loss or damage sustained relates to breach of duty on the client's part.

§ 8 Rights to intellectual property, use for advertising purposes

- (1) NTT retains title to design drawings, models, cost estimates, information and all other NTT company property, both tangible and intangible (“**Knowhow**”), as well as all copyright, utility models, trademarks, patents and registered designs and other industrial property rights. The client undertakes in relation to Know-How not to assert any rights regarding intellectual property applications, prior use or licensing. The client must not make knowhow accessible to third parties without the express prior consent of NTT. In the event of a breach of such duty the client shall have full liability towards NTT pursuant to statute.
- (2) Use of the NTT name or trademarks is permissible only with the prior consent of NTT.

§ 9 Retention of title

- (1) Items that NTT provides to the client in the course of due Performance remain the property of NTT until all accounts receivable from the business relationship with the client have been paid (“**Retention Goods**”).
- (2) The client is obliged to treat Retention Goods carefully. The client is also obliged to adequately insure Retention Goods against theft, fire and water damage at replacement value at its own expense.

§ 10 NTT's limited liability in damages

- (1) If NTT, its legal representatives, staff or agents should be in willful or grossly negligent breach of duty, particularly under the contractual relationship, or if they should commit a tortious act either willfully or due to gross negligence NTT will be liable for the resultant loss to the client pursuant to statute.
- (2) If NTT, its legal representatives, staff or agents should be in breach of duty arising purely from simple negligence of any kind and on any grounds whatsoever, especially for breach of duty under the contractual relationship or in tort, the client's claims in damages against NTT will be excluded except in the case of a simply negligent breach of a fundamental contractual obligation. In such an eventuality NTT's liability is limited to foreseeable loss or damage typical of the contract concerned. For this purpose, a fundamental contractual obligation is one the fulfillment of which is a sine qua non and on the observance of which the client regularly relies and may rely.
- (3) The above exclusion and/or limitation of liability also benefits NTT's legal representatives.
- (4) The above exclusion and/or limitation of liability does not apply to culpable harm to life, limb or health, nor to liability under product liability legislation.
- (5) The statutory rules on burden of proof are not affected by the above provisions.

§ 11 Use of subcontractors; no assignment of entitlement to Performance

- (1) NTT has the right to engage subcontractors when rendering Performance and to have Performance rendered by same.
- (2) The client may only assign claims against NTT for Performance in whole or in part to a third party with the consent of NTT.

§ 12 Place of performance, jurisdiction, law applicable, burden of proof

- (1) The place of performance is NTT's company headquarters.
- (2) (The exclusive place of international jurisdiction is the Federal Republic of Germany. The exclusive place of local jurisdiction is Munich where the client is a trader, legal person or a special fund governed by public law. The same applies if the client should not have a place of general jurisdiction in Germany, if it should move its headquarters abroad after conclusion of the contract or if its headquarters should be unknown at the time that legal action is brought. NTT is also entitled to sue the client at other lawful places of jurisdiction.
- (3) All rights and claims under this contract are governed exclusively by the law of the Federal Republic of Germany to the exclusion of private international law and the UN Convention on the International Sale of Goods (CISG).
- (4) Allocation of the burden of proof by law or court order is not intended to be changed by any of the provisions of the GTC.

§ 13 Other general conditions

- (1) If any individual provisions of these conditions should be wholly or partially invalid the remaining provisions will not be affected thereby. The contracting parties undertake to agree a rule by which the commercial spirit and purpose of the invalid provision is as far as possible achieved.
- (2) NTT will use all client data solely for the purpose of conducting business and in accordance with the requirements of valid data protection law. The client is also afforded the right, on request, to be informed of its personal data gathered, processed and used by NTT.

PART B – Special conditions for contracts of sale, contracts for labor and materials and service contracts

Where there is in existence a contract of sale (§§ 433 et seq. BGB [*German Civil Code*]) (e.g. for the supply of consumables), a contract for labor and materials (§ 651 BGB [*German Civil Code*]) (e.g. for the manufacture and supply of measuring equipment) or a service contract (§§ 631 et seq. BGB [*German Civil Code*]) (e.g. a maintenance agreement) the following will apply as a supplement to the General Conditions in Part A:

§ 14 Liability for material defects and defective title in contracts of sale and contracts for labor and materials

Where there is in existence a contract of sale or a contract for labor and materials the following will apply regarding liability for material defects and defective title:

- (1) There will not be any warranty rights or warranty claims (§ 437 BGB [German Civil Code]) unless there is a material defect or defective title in the legal sense. There will be no material defect in the legal sense and hence no warranty claim either in the following instances, in particular: improper or unskilled usage, defective assembly, installation or implementation by the client or a third party, natural wear and tear and normal usage, improper or careless handling, excessive use, use of unsuitable equipment (especially outside equipment), chemical, electrochemical or electrical influences (unless NTT should be responsible for same), absence of power, improper modifications or repair work carried out by the client or a third party without NTT's consent. The quality due is governed exclusively by the expressly agreed performance characteristics. NTT does not give any warranty over and above the quality agreed (especially for an unforeseen type of use, for a specific period of use or for durability after the passage of risk) unless this has been specifically agreed. It is for the client itself on its own responsibility to check the use of goods for an unforeseen purpose. The risk of fitness for use and application therefore lies exclusively with the client in this respect. NTT is not, in principle, aware of the actual place of use or application of goods. It is therefore for the client itself to check whether there are any breaches of intellectual property or other rights at the place of delivery or use caused by the supply or application of goods and whether goods can also be deployed at the place of use.
- (2) The client must inspect goods immediately after delivery. If a defect should be revealed on inspection the client will be obliged to report same to NTT immediately and in any event within 12 calendar days (incl. weekends and public holidays) of receipt of the goods and to do so at least in text form (email or fax will suffice). Otherwise the goods will be deemed approved. If a defect should not be revealed until later on the client will be obliged to report the defect to NT immediately and in any event within 8 calendar days (incl. weekends and public holidays) of discovery of the defect and to do so at least in text form (email or fax will suffice). Otherwise the goods will be deemed approved notwithstanding the defect. The provision in § 377 HGB [German Commercial Code] will also apply.
- (3) In the event of a warranty claim (§ 437 BGB [German Civil Code]) NT may choose to either remedy the defect or supply non-defective goods (rectification). If one or other, or both, means of rectification should prove impossible or disproportionate NTT will be entitled to refuse it. NTT will, in principle, remedy defects at its own works. In order to ensure safe transportation to same, the client is obliged to keep the original packaging for the goods and use it for transportation purposes. If the client should be in breach of such duty the client will bear the resultant loss to NTT (especially extra costs) unless the client is not responsible for that breach of duty. If the client

should not use the original packaging for the goods for transportation purposes the client will bear the risk of any damage in transit. NTT may refuse to effect rectification as long as the client fails to meet its payment obligations towards NTT in the amount corresponding to the non-defective element of Performance provided that the client is interested in the non-defective element of Performance. NTT will bear the costs necessary for rectification purposes, especially the cost of transportation, travel, labor and materials. Liability for costs is excluded where extra costs are incurred due to goods being taken to a place other than the place of performance. Rectification does not cover dismantling and installation work or the cost thereof.

- (4) If rectification should fail the client will have the option to either reduce the purchase price accordingly or cancel the contract in accordance with the law. § 10 of these GTC applies regarding claims in damages.
- (5) The warranty period is one year from the delivery of goods. In the case of goods normally intended to be used for construction purposes which have caused such construction to be defective the limitation period will not expire until five years from delivery. Where NTT is liable in damages for a warranty under § 10 of these GTC the warranty period for the claim in damages is governed by statute. If NTT should fraudulently conceal a defect the warranty period for all warranty claims and warranty rights is governed by statute.
- (6) Guarantees and assurances are not valid unless expressly given by NTT.

§ 15 Liability for Software Computers

NTT does not warrant that the Product(s), Components or Software will be compatible or function as intended with Buyer's, or any third party, systems, computers, networks or software not purchased through NTT. NTT is not responsible for virus, malware or other similar system problems arising from Buyer's connection to the internet or from Buyer's internal networks. Software is not warranted to be error free or to operate without problems or interruptions. If a defect or bug is identified, NTT will use commercially reasonable efforts to produce a repair (e.g.: patch/fix), which may also include minor enhancements, provided at no charge, that improve the performance of the Software, or keep it current with operating systems and other software. NTT does not assure compatibility with updates to third party software or operating systems and will not be responsible for problems arising from such updates.

§ 16 Liability for material defects and defective title in service contracts

Where there is a service contract in existence the following will apply regarding liability for material defects and defective title:

- (1) Regarding any warranty rights or warranty claims (§ 634 BGB [German Civil Code]) the provisions in § 14(1), 14(3), 14(4) and 14(6) will apply mutatis mutandis to defects in Performance of service contracts.
- (2) The warranty period is one year from acceptance. This does not apply to construction work or works the success of which consists of the provision of planning or supervisory services; in this case the limitation period is five years. Where NTT is liable in damages for a warranty under § 10 of these GTC the warranty period for the claim in damages is governed by statute. If NTT should fraudulently conceal a defect the warranty period for all warranty claims and warranty rights is governed by statute.
- (3) The client is obliged to promptly effect acceptance. If the client should fail to comply with its duty of acceptance, then acceptance will be deemed effected two calendar days after Performance has been rendered.

§ 17 LICENSE FOR USE OF SOFTWARE

- (1) NTT grants Customer a non-exclusive, non-transferable license to use the Software, solely for Customer's internal uses. This license does not include the right to make copies of Software, extract, modify or incorporate any part of the Software, nor reverse engineer, decompile, or disassemble the Software. NTT does not have an obligation to supply software upgrades (i.e., new versions, or new, or in-line releases).
- (2) Unless otherwise stipulated in writing with the Licensor, the software product may only be used on up to two monitors that are connected to one and the same computer. The Licensee may only use the software on alternative systems in case of emergency.
- (3) If the Licensee wishes to use further on the Software Product, which was replaced by an update or an upgrade, parallel to the current Software Product, the Licensee needs the prior written approval of the Licensor.

§ 18 Proper disposal

- (1) Where NTT has a statutory duty to dispose of goods or items supplied by the client the latter must support NT in doing so free of charge. The client must, in particular, ensure that goods or items reach NTT by providing any necessary uninstallation or dismantling work and transportation.
- (2) Where the client resells or passes on to a third party any goods or items received from NTT and this increases the cost of disposal by NT as required by law the client will bear these increased costs.

PART C – Special conditions for contracts of service

Where there is in existence a contract of service (§§ 611 et seq. BGB) (e.g. in the case of training, technical support on site or a telephone service) the following will apply as a supplement to the General Conditions in Part A:

§ 19 No warranty, reference to § 10 GTC

- (1) NTT is not liable for any particular success. There is no statutory warranty.
- (2) § 10 of these GTC applies regarding claims in damages.

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