

INTERNATIONAL

NanoTemper Technologies Inc (NT)/ Terms and Conditions of Sale / International

January 2014

1. General

1.1 In these Terms and Conditions:

The Buyer means the person, firm, company or other organization who or which has ordered Products and/or Services from NT;

NT means the NanoTemper Technologies Inc referred to in the final written offer, quotation or order acknowledgement or, if none, the NanoTemper Technologies Inc making the supply;

The Contract means the contract for the sale and purchase of Products and/or Services between NT and the Buyer as may be further evidenced by NT's final written offer, quotation or order acknowledgement and no prior proposals, statements, representations or conditions will be binding on either party;

The Equipment means all electronic equipment, hardware and other electronic or mechanical items agreed to be supplied by NT, excluding any consumables and spare parts sold separately;

The Goods means all items agreed to be supplied by NT other than the Equipment and Software;

The Products means any Goods, Equipment or Software agreed to be supplied by NT; and

The Services means all advice given and services performed by NT; and

The Software means any firmware, software or data compilations (i) identified in the Contract or (ii) provided to Buyer by NT in connection with installation or operation of the Equipment. For the avoidance of doubt, Software shall not include any "open source" firmware, software or data compilations, as any such "open source" firmware, software or data compilations will be subject to the terms and conditions set out in the relevant "open source" license.

1.2 These Terms and Conditions shall be incorporated into the Contract and shall apply to the exclusion of any conditions of the Buyer. These Terms and Conditions may not be varied or waived except with the express written agreement of NT. The failure of NT to enforce its rights under the Contract at any time, for any period of time, shall not be construed as a waiver of any such rights.

2. Prices and Quotations

The price of the Products and/or Services will be NT's quoted price, with the incoterms DDP. All quotations issued by NT for the supply of Products and/or Services shall remain open for acceptance for the period stated in the quotation or, if none is stated, for sixty (60) days. In all other cases, prices payable are those currently in effect in NT's then current pricelist, which may not include charges for handling, freight, packaging, insurance and minimum orders.

3. Payment

3.1 Unless otherwise agreed in writing, payment in full shall be made to NT in the currency invoiced, no later than thirty (30) days from the date of invoice.

3.2 In the event of late payment, NT reserves the right:

- (i) to suspend deliveries and/or cancel any of its outstanding obligations; and
- (ii) to charge interest at the lower of (a) an annual rate equal to twelve (12) % and (b) any

applicable maximum statutory rate on all unpaid amounts calculated on a day to day basis until the actual date of payment.

3.3 Buyer shall, in addition to the other amounts payable under the purchasing agreement, pay all applicable customs, duties, sales, use, value added, withholding, or other taxes, federal, state or otherwise, however designated, which are levied or imposed by reason of the transactions contemplated by this Agreement, excluding only taxes based on NT's net income. If Buyer is compelled to make a deduction or set-off for any such taxes, Buyer will pay to NT such additional amounts as are necessary to ensure receipt by NT of the full amount which NT would have received but for the deduction. Buyer shall indemnify, defend, and hold NT its officers, directors, consultants, employees, successors and assigns harmless from all claims and liability arising from Buyer's failure to report or pay any such taxes, duties or assessments.

4. Changes and Returns

4.1 NT reserves the right, subject to prior written notice, to make any change in the specification of the Products, which does not materially affect the installation, performance or price thereof.

4.2 Products may only be returned with prior authorization from NT.

5. Delivery/Installation/Acceptance

5.1 Any term of delivery shall be construed according the latest edition of Incoterms. If no other term of delivery has been specified in the Contract the Products will be delivered DDP to Buyer's premises or to the agreed destination.

5.2 Partial deliveries shall be permitted. If the Buyer fails to accept delivery of the Products within a reasonable period after receiving notice from NT that they are ready for delivery, NT may dispose of or store the Products at the Buyer's expense.

5.3 NT will use all reasonable endeavours to avoid delay in delivery on the notified delivery dates. Failure to deliver by the specified date will not be a sufficient cause for cancellation, nor will NT be liable for any loss or damage due to delay in delivery.

5.4 The Buyer shall notify NT in writing within five (5) working days of delivery of any short delivery or defects reasonably discoverable on careful examination. NT's sole obligation shall be, at its option, to replace or repair any defective Products or refund the purchase price of any undelivered Products.

Where delivery of any Product requires an export license or other authorization before shipment, NT shall not be responsible for any delay in delivery due to delay in, or refusal of, such license or authorization.

Where the Equipment requires installation, the Buyer shall be responsible at its own cost for making the place where the Equipment will be located ready for installation in accordance with NT's instructions. Installation will not begin unless such responsibilities are completed. Following installation, and where applicable, NT will proceed with final testing using NT's published performance specifications and using its standard instruments and procedures. Upon the satisfactory completion of such final testing demonstrating compliance with the above specifications (with any permitted variations/tolerances) NT may issue a Test Certificate which shall be conclusive evidence of such compliance and thereupon installation of the Equipment shall be deemed to be complete and in compliance with NT's obligations under the Contract. In any event Buyer agrees that the Equipment is accepted (i) seven (7) days after the date on which NT notifies Buyer that final testing was successfully completed, or issues the Test Certificate or (ii) on the date Buyer first uses the Equipment for operational

use, whichever is earlier.

Buyer, at its reasonable request, shall be entitled to be present at and to witness the testing and shall not be entitled to raise any objection to testing carried out, or to the results thereof, if Buyer failed to attend when advised that testing was to take place.

5.9 Where Products are supplied by NT in returnable containers, these must be returned at the Buyer's expense and in good condition, if requested by NT. Title to these containers shall remain with NT at all times, but they shall be held at the risk of the Buyer until returned to NT. Failure by the Buyer to comply with the above provision shall entitle NT to invoice the Buyer for the full replacement value of the containers.

5.10 The Buyer must keep the containers that are used to ship the instrument to the Buyer. In case of a depot repair this container is used for shipment. In case the customer does not have the original container, NT will ship a new container at costs of Buyer.

6. Risk and Title

6.1 The risks of loss of and damage to the Products shall transfer to Buyer in accordance with agreed delivery term. Full title to the Goods and Equipment shall pass to the Buyer on full payment.

6.2 In relation to any Equipment used for clinical or diagnostic purposes, the Buyer shall keep adequate written records of the identity of any person or entity to whom the Equipment is transferred and of the location of such Equipment and shall procure that any purchaser of such Equipment is subject to the same requirement in respect of any onward sales.

7. Services

7.1 Where NT is to provide Services, the Buyer shall ensure that adequate and safe facilities exist at its premises and that NT is properly notified of any relevant regulations.

7.2 If the Buyer has purchased a Product or Service including remote access support, the Buyer shall permit NT to connect to the Products by remote access as may be beneficial to the performance of maintenance or repair activities as part of NT's warranty obligations or otherwise. This may include automatic software downloads and proactive monitoring and access to performance data related to the products, to gather and use products- and resource usage data in various ways such as product development, quality initiatives, benchmarking and reporting services. The data collected by NT will be used, during and after the term of this agreement, in accordance with all applicable laws and regulations and in a manner that will maintain confidentiality.

8. Restricted Use

8.1 With respect to certain Products, use restrictions are a condition of the purchase which Buyer must satisfy by strictly abiding by the restriction as set forth in NT's catalogue and/or on the Product and/or accompanying documentation. Buyer is solely liable to ensure compliance with any regulatory requirements related to the Buyer's use of the Products. Any warranty granted by NT to the Buyer shall be deemed void if any Products covered by such warranty are used for any purpose not permitted hereunder. In addition, the Buyer shall indemnify NT and hold NT harmless from and against any and all claims, damages, losses, costs, expenses and other liability of whatever nature that NT suffers or incurs by reason of any such unintended use.

8.2 With respect to Products regulatory approved for clinical and medical treatment and diagnostic use, any decisions relating to such treatment and use shall be at the risk of the Buyer and the respective healthcare providers.

8.3 Any warranty granted by NT to the Buyer shall be deemed void if the buyer is not using NT products for use in the instrument (i.e. Consumables provide by NT for the products)

9. General Warranty

9.1 Section 9.2-9.5 shall apply in the event no other specific warranty has been agreed in the Contract. As regards any Products covered by a warranty issued by a third party manufacturer, such warranty terms shall apply to the exclusion of Section 9.2-9.5.

9.2. Goods - NT warrants that its Goods meet NT's specifications at the time of delivery. All warranty claims on Goods must be made in writing within ninety (90) days of receipt of the Goods. NT's sole liability and Buyer's exclusive remedy for a breach of this warranty is limited to repair, replacement or refund at the sole option of NT.

9.3 Equipment - NT's Equipment of its own manufacture is warranted from date of delivery or NT completing any agreed installation works, if later, to be free of defects in workmanship or materials under normal usage for a period of one (1) year and any claim shall be submitted in writing within such period. NT's sole liability and Buyer's exclusive remedy for a breach of this warranty is limited to repair, replacement or refund at the sole option of NT. Such repairs or replacement will not extend the warranty period.

9.4 Software – NT warrants, for a period which is the longer of:

(i) three (3) months from the date of delivery or;

(ii) in the event the Software is intended to be installed and run on NT's Equipment of its own manufacture, twelve (12) months from the date of delivery,

that the Software substantially conforms to its published specifications and that the media on which the Software resides will be free from defects in materials and workmanship under normal use and any claim shall be submitted in writing within such period. NT does not warrant that the Software is error free or that Buyer will be able to operate the Software without problems or interruptions. NT's sole liability and Buyer's exclusive remedy in the event of breach of this warranty is limited to repair, replacement or refund, at the sole option of NT.

9.5 Services - NT warrants that all Services will be carried out with reasonable care and skill. NT's sole liability for breach of this warranty shall be at its option to give credit for or re-perform the Services in question. This warranty shall only extend for a period of ninety (90) days after the completion of the Services and any claim shall be submitted in writing within such period.

9.6 To the maximum extent permitted by applicable law NT hereby expressly disclaims, and Buyer hereby expressly waives, any warranty regarding results obtained through the use of the Products, including without limitation any claim of inaccurate, invalid, or incomplete results. All other warranties, representations, terms and conditions (statutory, express, implied or otherwise) as to quality, condition, description, merchantability, fitness for purpose or non-infringement (except for the implied warranty of title) are hereby expressly excluded.

9.7 Unless expressly agreed, NT is not obliged to carry out dismantling or re-installation of any Product in connection with any warranty claims.

9.8 NT warranty does not cover any transport costs for the shipment of the product to the site of repair.

10. Limitation of Liability

10.1 NT shall have no liability under the warranties contained in Section 9 in respect of any defect in the Products arising from: specifications or materials supplied by the Buyer; fair wear and tear; wilful damage or negligence of the Buyer or its employees or agents; abnormal working conditions at the Buyer's premises; failure to follow NT's use restrictions or instructions (whether oral or in writing); misuse or alteration or repair of the Products without NT's approval; or if the Buyer is in breach of its payment obligations under this Contract.

10.2 Subject to any express obligation to indemnify, neither party shall be liable for any indirect or consequential, or punitive damages of any kind from any cause arising out of the sale, installation, use or inability to use any Product or Service, nor for, without limitation, loss of profits, goodwill or business interruption.

10.3 The total liability of NT arising under or in connection with the Contract, including for any breach of contractual obligations and/or any misrepresentation, misstatement or tortious act or omission (including without limitation, negligence and liability for infringement of any third party intellectual property rights) shall be limited to damages in an amount equal to the amount paid to NT under the Contract.

10.4 The exclusion of liability in these Terms and Conditions shall only apply to the extent allowed according to applicable law..

11. Intellectual Property Rights

11.1 Where the Buyer supplies designs, drawings, and specifications to NT to enable it to manufacture non-standard or custom made Products, the Buyer warrants that such manufacture will not infringe the intellectual property rights of any third party.

11.2 All intellectual property rights in the Products and/or Services shall at all times remain vested in NT or its licensors.

12. Health and Safety

The Buyer shall ensure that:

- (i) the Products (provided such Products comply with its specifications) are suitable and safe for the Buyer's intended use;
- (ii) the Products are handled in a safe manner.
- (iii) containers, packaging, labelling, equipment and vehicles, where provided by the Buyer, comply with all relevant national and international safety regulations.

13. Indemnities

Except where a claim arises as a direct result of the negligence or breach of contract of NT, the Buyer shall indemnify NT in respect of any claim which may be made against NT:

- (i) arising in connection with the Buyer's unintended use of the Products;
- (ii) alleging that the Buyer's use of the Products infringes the intellectual property rights of any third party.

14. Insolvency

In the event that the Buyer becomes insolvent or applies for bankruptcy or, being a company, goes into liquidation (other than for the purposes of reconstruction or amalgamation), NT shall be entitled immediately to terminate the Contract without notice and without prejudice to any other rights of NT hereunder.

15. Force Majeure

15.1 A party shall not be liable in respect of the non-performance of any of its obligations to the extent such performance is prevented by any circumstances beyond its reasonable control including but not limited to, strikes, lock outs or labour disputes of any kind (whether relating to its own employees or others), fire, flood, explosion, natural catastrophe, military operations, blockade, sabotage, revolution, riot, civil commotion, war or civil war, acts or threats of terrorism, plant breakdown, computer or other equipment failure and inability to obtain equipment.

15.2 If an event of force majeure exceeds one (1) month a Party may cancel the Contract without liability.

16. Software License

16.1 Unless a separate software license agreement has been concluded concerning the Software, the Buyer is hereby granted a non-exclusive license to use the Software solely in object code format and solely for its own internal business purposes subject to the terms contained herein. The Buyer shall not (i) use the Software for purposes other than those for which it was designed; (ii) use the Software in connection with other manufacturers' products unless such connectivity is authorized in the Product documentation; (iii) grant, assign, transfer, or otherwise make available to third parties any right whatsoever in the Software; (iv) disclose to third parties any information contained in the Software; (v) copy or reproduce the Software (except for one copy for back-up purposes or as may otherwise be permitted by applicable law); (vi) alter or modify the Software; or (vii) reverse engineer, decompile, disassemble or create any derivative works based upon the Software except as expressly permitted by mandatory law.

16.2 If Buyer purchased the Software Update and Upgrade option he will receive updates and upgrades for the Analysis Software as long as they are offered by NT for the system of Buyer. There is no obligation for NT to provide, program or develop an update or upgrade for the system of Buyer.

17. Export control

The Buyer undertakes not to re-export the Products without the requisite export license from the relevant body of the United Nations or other similar international organization, the United States Government, the country of origin or the original country of export. The requirement to obtain a license may vary depending on the country of destination, the end user, the end use and other factors. Upon request from NT the Buyer shall furnish NT with copies of all documents relating to such re-export.

18 Waste Electrical and Electronic Equipment (WEEE)

18.1 Where the Buyer sells, disposes of or otherwise transfers the Equipment to any third party and where this would unreasonably increase the cost of the collection, treatment or recycling of the Equipment for NT under applicable WEEE legislation, Buyer shall be liable to NT and indemnify NT for such increased costs.

18.2 Should the Equipment that Buyer acquires from NT be Equipment, which is intended to replace on a 'like for like'-basis, any item of Buyer's existing equipment (e.g. the new Equipment is of an equivalent type or is fulfilling the same function as Buyer's existing equipment) Buyer must in respect of such existing equipment have clearly indicated to NT the following: the brand, type, age, condition, current use and the exact location and all other relevant information. In the event Buyer has not complied with such obligations, NT may charge Buyer such reasonable additional fees to reflect any related obligations it may have under national legislation regarding the recycling, reuse and/or disposal of such existing equipment and related costs it may incur.

18.3 Unless the relevant mandatory national legislation provides otherwise, or unless otherwise agreed in writing, NT's obligation does not include without limitation, creation of physical access to the equipment; de-installation; decoupling; disinfecting; craning/lifting; transportation to a ground level loading area or -ramp; packing; or any related similar activities; and Buyer agrees to perform such activities at its own cost as and when required.

19. Governing Law

This Contract shall be governed by and construed in accordance with the substantive laws of California.

20. Product-Specific Terms and Conditions

Additional terms and conditions govern the sale of certain Products and Services. These additional terms and conditions are available from the sales offices of NT and shall take precedence in the event of any inconsistency with these Terms and Conditions.

21. Translations and Local Variations

Translations of these terms and conditions are available from the sales offices of NT. In some territories, local variations to these Terms and Conditions may apply. If so, such variations shall take precedence in the event of any inconsistency with these Terms and Conditions.