

Terms and Conditions of Sale

These terms and conditions apply to and govern the purchase and sale of goods, products, equipment, and services (“goods”) from Nanotec Electronic U.S. Inc. (“Nanotec”), which includes the purchase and sale of goods through <http://us.nanotec.com> (the “Website”). By placing an order for any goods from Nanotec, through the Website or otherwise, you agree to be bound by and accept these terms and conditions. If you do not agree to these terms and conditions, you should not obtain goods from Nanotec. These terms and conditions are subject to change by Nanotec without prior written notice at any time, in Nanotec’s sole discretion. You should review these terms and conditions prior to purchasing any goods from Nanotec, through the Website or otherwise.

Article 1: Entirety

These terms and conditions constitute the entire agreement and understanding between you (the “Customer”) and Nanotec concerning the subject matter hereof and supersede all prior understandings, agreements, negotiations, and proposals with respect thereto. Any provision of an order form or other document submitted by the Customer that conflicts with these terms and conditions shall not be binding upon Nanotec. Any attempt to alter, supplement, or amend this document or to enter an order for goods that is subject to additional or altered terms and conditions shall be null and void, unless otherwise expressly agreed to in a writing signed by Nanotec and the Customer. To the extent that anything in or associated with the Website or otherwise known to Nanotec is in conflict or inconsistent with these terms and conditions, these terms and conditions shall take precedence.

Article 2: Order Acceptance

A. Nanotec reserves the right at any time after receipt of the Customer’s order, without any prior notice to the Customer, to accept, decline, limit, or adjust the order for any reason. Written order confirmation, following Nanotec’s validation of the Customer’s order, shall be sent via e-mail to the e-mail address indicated by the Customer on the order form. Should the Website experience technical difficulties, Nanotec is not responsible for orders that are not processed or accepted.

B. Acceptance by Nanotec of the Customer’s order shall give rise to a binding contract between the parties which may not be canceled, terminated, or modified by the Customer in whole or in part except with Nanotec’s express written consent and then only upon terms and conditions then to be agreed upon which shall include protection of Nanotec against all loss.

C. Upon Nanotec’s discovery of writing, printing, or calculation errors in production information, quotations, order confirmations, or any other documents related to an order from the Customer that has been accepted by Nanotec, Nanotec in its sole discretion may immediately terminate any contract with the Customer related to that order arising from these terms and conditions and may refuse to fulfill the order by refusing to deliver goods to the Customer, without prejudice to such other remedies as Nanotec may be entitled thereto. Any such termination will not prejudice Nanotec’s right to such amounts as are then due to Nanotec by the Customer pursuant to said contract. The Customer agrees that it may not assert any claim for damages against Nanotec arising from any such termination.

Article 3: Prices

All prices for goods are listed in United States dollars and do not include freight, handling fees, taxes, and/or duties, and are subject to correction or change without notice.

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Article 4: Payment Terms

A. Payment must be made by the Customer to Nanotec in United States dollars within thirty (30) days of the date of invoice. The Customer agrees, in addition to paying for all goods, to pay all freight, shipping fees, packaging charges, handling fees, taxes, and/or duties appearing on the invoice. Freight, shipping fees, packaging charges, and handling fees shall be calculated automatically in the sole discretion of Nanotec, depending on the weight of the goods and their destination. Nanotec reserves the right to request prepayment or cash on delivery from the Customer should Nanotec in its sole discretion deem the Customer to be a new Customer.

B. Nanotec reserves the right to refuse to make a delivery to the Customer or fulfill an order sent by the Customer where the Customer has failed to pay the full sum of a previous order or where there exists a dispute between Nanotec and the Customer concerning a payment. The Customer agrees that invoices not paid in full when due will bear interest at the lower of twelve (12) percent per annum or the maximum rate allowed by applicable law.

Any claims by the Customer will not impair Nanotec's right to payment when due, and any price adjustments granted by Nanotec regarding any such claims are contingent on full payment first received. The Customer has no right of setoff or any right to withhold payment of amounts due to Nanotec on any order based on any claims connected with that order, any prior order, transaction, or sale. In the event Nanotec is forced to initiate collection proceedings for amounts owed by the Customer to Nanotec, the Customer agrees that the Customer will be liable for all collection and other costs incurred by Nanotec including, but not limited to, reasonable attorneys' fees whether or not litigation is commenced.

C. Nanotec is under no obligation to provide the Customer with any discounts or incentives, including for payments in advance. Any discounts or incentives Nanotec may decide to offer or provide to the Customer are within the sole discretion of Nanotec and the terms thereof may be offered, extended, presented, amended, removed, altered, canceled, adjusted, suspended, or revoked by Nanotec in its sole discretion without any prior notice to the Customer.

Article 5: Changes In Goods And Pricing

The Customer agrees that Nanotec may discontinue goods at any time without notice. To the extent Nanotec provides information on the availability of goods, the Customer shall not rely on such information, and the Customer agrees that Nanotec will not be liable for any lack of availability of goods. All pricing for goods available from Nanotec, through the Website or otherwise, is subject to change in the sole discretion of Nanotec. For all prices and goods, Nanotec reserves the right to make adjustments due to changing market conditions, goods discontinuation or unavailability, manufacturer or supplier price changes, errors in advertisements, where the time limits set forth in any Framework Supply Agreement between the Customer and Nanotec are exceeded, and other extenuating circumstances.

Article 6: Delivery Terms And Retention Of Title

A. Shipment of all goods sold by Nanotec to the Customer, through the Website or otherwise, shall be made FCA (Free Carrier) Philadelphia, Pennsylvania according to Incoterms 2020. Partial deliveries shall be permitted. Upon delivery to the first carrier, risk of loss is transferred to the Customer, and all claims for damage in transit or for non-delivery shall be made by the Customer against the carrier, including in cases of partial deliveries. All goods sold by Nanotec to the Customer, through the Website or otherwise, shall be shipped to the shipping address the Customer indicates on the order form. All goods shall be shipped at the Customer's expense by the mode and carrier Nanotec selects.

B. Nanotec shall, if possible, comply with specified or requested shipping dates (if any). However, except where explicitly agreed upon as binding in a writing signed by Nanotec and the Customer, shipping dates are non-binding estimates only and Nanotec's non-compliance shall not entitle the Customer to claim damages or to terminate or cancel, in whole or in part, any order or shipment. Time is not of the essence with respect to the transactions governed by these terms and conditions, except with respect to the Customer's obligation to make all payments related to the purchase of goods from Nanotec.

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C. Nanotec may sell and ship to the Customer less than the full quantity of goods ordered according to available supply. Should reshipment or redelivery of goods become necessary because the Customer is not ready to accept delivery, Nanotec's and any of its suppliers' actual costs of storage, warehousing, freight, redelivery, restocking and/or re-handling shall be borne and paid for by the Customer. Nanotec shall not be liable for any failure or delay under any contract or order resulting from causes beyond Nanotec's or any of its suppliers' reasonable control.

D. Notwithstanding delivery and the passing of risk in the goods purchased from Nanotec to the Customer, or any other provision of these terms and conditions, title to all goods shall remain in Nanotec and not pass to the Customer until Nanotec has received payment in full of the price of the goods and all other goods agreed to be sold by Nanotec to the Customer for which payment is then due. Nanotec shall have absolute authority to retake, sell, or otherwise deal with or dispose of all or any part of the goods in which title remains vested in Nanotec. This applies particularly, but not only, where the Customer has breached any of these terms and conditions, including in the case of late payment. Exercise by Nanotec of its right to retake, sell, or otherwise deal with or dispose of any part of the goods in which title remains vested in Nanotec shall always constitute a termination of the agreement between the Customer and Nanotec for the purchase and sale of the goods for which Nanotec has exercised said right, as well as a seizure of the goods themselves. The Customer agrees to permit Nanotec entry to the Customer's premises in order to enable Nanotec to exercise its right to retake, sell, or otherwise deal with or dispose of any part of the goods in which title remains vested in Nanotec.

E. Until such time as title to the goods passes to the Customer, the Customer shall (i) maintain such goods in good condition; (ii) insure them against loss and damage at the Customer's expense for at least their full purchase price; and (iii) bear and pay all taxes, charges and expenses applicable to such goods while in the Customer's possession or control.

F. Until such time as title to the goods passes to the Customer, the Customer shall be entitled to resell or use the goods in the ordinary course of business. The Customer shall automatically assign all proceeds, interests, and claims to which the Customer is entitled based on its resale or use of any goods in which title remains in Nanotec to Nanotec, in an amount equal to the sum listed on the final invoice provided by Nanotec to the Customer, regardless of whether the purchased goods have been resold with or without further processing. Nanotec shall accept all such transfers from the Customer to Nanotec, and the Customer shall retain authority to collect receivables resulting from its resale or use of any goods in which title remains in Nanotec, even after any such transfers from the Customer to Nanotec occur. Nanotec's claims to the receivables shall remain unaffected. However, Nanotec agrees to not collect the receivables as long as payment obligations from the collected receivables are met by the Customer and do not fall into arrears, and no bankruptcy petition has been filed by the Customer. Nanotec shall be entitled to demand that the Customer make known the assigned receivables and their debtors, provide all information necessary for the collection of the receivables, submit the associated documents, and inform the debtors of any such assignments.

G. Until such time as title to the goods passes to the Customer, the Customer agrees that any processing, combining, mixing, or transformation of the goods by the Customer shall be done for the benefit of and on behalf of Nanotec and shall be subject to Nanotec's rights to and interests in the processed, combined, mixed, or transformed goods. If the goods are processed, combined, or mixed with items not belonging to Nanotec, including if done completely, Nanotec shall become co-owner of the goods but shall not incur any related legal obligations.

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Article 7: Security Interest

Until all amounts due or to become due hereunder by the Customer to Nanotec have been paid by the Customer to Nanotec, to secure all sales of goods from Nanotec to the Customer, the Customer hereby grants to Nanotec a first, best, and continuing security interest in all goods supplied by Nanotec to the Customer as well as in all accounts receivable and the proceeds thereof arising from the Customer's resale or other disposition of all such goods. The Customer and Nanotec agree that this paragraph constitutes a security agreement. Upon Nanotec's request, the Customer shall execute for filing at the Customer's expense one or more financing statements to perfect or maintain Nanotec's security interest in all such collateral. In addition, Nanotec is hereby authorized to sign and file financing statements consistent with the above in the Customer's name. Nanotec shall be entitled to exercise all rights and remedies available to a secured creditor under applicable law, including without limitation, upon five (5) days prior notice, repossession without benefit of judicial order. Any repossession and removal of goods shall be without prejudice to any of Nanotec's other remedies at law or in equity.

Article 8: Export Control

A. In the event the Customer's order calls for the shipment of goods or technical information received from Nanotec outside of the United States, the Customer agrees that it shall be the exporter of record and shall, at its own expense, be responsible for obtaining all export licenses that may be required to export the goods or technical information from the United States. Failure to obtain any export licenses that may be required to export the goods or technical information from the United States shall not entitle the Customer to terminate any contract with Nanotec, including any of the Customer's obligations under these terms and conditions, or to claim any damages against Nanotec.

B. The Customer agrees that it shall comply with all applicable export laws, regulations, orders, and national security controls. Specifically, but without limitation, the Customer agrees that it will not resell, reexport, or ship, directly or indirectly, any goods or technical information received from Nanotec in any form (i) to any countries or any persons which would violate applicable United States laws and regulations, and (ii) without obtaining appropriate export or reexport licenses from the United States Government. The Customer acknowledges that the applicable export laws, regulations, orders, and national security controls may differ from item to item and from time to time. The Customer further agrees to inform any recipient to whom the Customer intends to resell, reexport, or ship, directly or indirectly, any goods or technical information received from Nanotec, of the recipient's obligation to comply with all applicable export laws, regulations, orders, and national security controls.

Article 9: Blanket Orders

A. Where these terms and conditions are part of a Blanket Order between the Customer and Nanotec, the duration of that Blanket Order shall be determined according to the final day of the contractually designated acceptance period stated therein, unless otherwise agreed upon in a writing signed by Nanotec and the Customer. The total order volume specified in the Blanket Order is binding. Where the Customer accepts an initial partial delivery, the remaining quantities of goods that are to be supplied pursuant to the Blanket Order between the Customer and Nanotec shall be supplied in subsequent partial deliveries over the maturation of the Blanket Order, unless otherwise agreed upon in a writing signed by Nanotec and the Customer.

B. Where these terms and conditions are part of a Blanket Order between the Customer and Nanotec, the Customer agrees to be obliged to accept final partial delivery before the final day of the contractually designated acceptance period stated therein and delivery shall be made FCA (Free Carrier) Philadelphia, Pennsylvania according to Incoterms 2020. If the Customer fails to request delivery of the total order volume specified in the Blanket Order by the end of the acceptance period stated therein, Nanotec may deliver the remaining goods to the Customer for immediate payment, the amount of which shall be subject to correction or change by Nanotec without notice to the Customer. Nanotec shall not be obliged to provide back-to-back deliveries simultaneously.

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However, Nanotec shall continue to offer outstanding deliveries to the Customer under the Blanket Order between the Customer and Nanotec subject to receipt of full payment and shall provide the Customer with a retrieval deadline that includes a delivery date. Upon the expiration of a retrieval deadline after the acceptance period stated in the Blanket Order between the Customer and Nanotec, Nanotec shall be discharged of its delivery obligations to the Customer under the Blanket Order between the Customer and Nanotec. The Customer agrees to compensate Nanotec for any additional expenses Nanotec incurs as a result of the Customer's failure to request delivery of the total order volume specified in the Blanket Order by the end of the acceptance period stated therein.

C. Should the Customer fail to maintain a timely delivery schedule within the acceptance period stated in the Blanket Order between the Customer and Nanotec and thereby exceeds that acceptance period, Nanotec reserves the right to make price adjustments that the Customer agrees to pay where in Nanotec's sole opinion price-determining cost factors have increased, such as the price of raw materials, materials, energy, labor, and increased costs arising from adjusted delivery volumes and currency fluctuations.

D. Where these terms and conditions are part of a Blanket Order between the Customer and Nanotec, any acceptance dates agreed upon by the Customer in the Blanket Order are binding. Individual deliveries can be postponed up to a maximum of two months. Should the Customer reschedule an agreed delivery more than once, Nanotec shall charge the Customer, and the Customer agrees to pay, a flat rate fee of \$100.00 per rescheduling. Should the acceptance period stated in the Blanket Order between the Customer and Nanotec be exceeded as a result of the rescheduling requested by the Customer, Nanotec reserves the right to make price adjustments that the Customer agrees to pay where in Nanotec's sole opinion price-determining cost factors have increased, such as the price of raw materials, materials, energy, labor, and increased costs arising from adjusted delivery volumes and currency fluctuations.

Article 10: Returns

All returns or exchanges of goods will be subject to prior approval by Nanotec, which may be provided or denied in Nanotec's sole discretion. In the event goods are to be exchanged or returned, they must be sent by the Customer to Nanotec in their entirety and in their original packaging, at the Customer's expense and in their original condition, to the address that shall be provided by Nanotec. Returns are subject to a 20 percent restocking charge to be paid by the Customer. No returns sent carriage forward will be accepted.

Article 11: Warranty And Disclaimer And Limitation Of Liability

A. Goods available from Nanotec, through the Website or otherwise, may be covered by a warranty provided by a manufacturer or supplier other than Nanotec. Under no circumstances will Nanotec be liable to the Customer for any damages arising out of the failure of any other manufacturer or supplier to fulfill its obligations to the Customer under warranty, repair, customer support, or similar policies provided by any other manufacturer or supplier covering goods that the Customer purchases from Nanotec, through the Website or otherwise. Nanotec warrants only that the goods sold to the Customer shall have the characteristics in the agreed upon specifications by Nanotec and the Customer as set forth in the written order confirmation provided by Nanotec to the Customer with a respective item number, and, to the extent one is utilized in connection with a particular transaction between Nanotec and the Customer, an associated data sheet containing technical specifications provided by Nanotec to the Customer, and shall be free from defects in workmanship and materials under normal use and service in accord with said specifications for one (1) year from the date of Nanotec's sale thereof to the Customer. Other specifications listed in catalogs, offers, illustrations on the internet, drawings, weights, measurements, performance, and other design details to which a respective item number that is valid at the time of order confirmation is attached are expressly excluded from this limited warranty. If any failure to conform to this limited warranty is reported in writing to Nanotec during the warranty period, Nanotec, upon being satisfied of the existence of such defect or non-conformity, will repair or replace the non-conforming goods, as Nanotec may elect in its sole discretion.

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THIS WARRANTY DOES NOT APPLY TO DEFECTS OR DAMAGE CAUSED BY NATURAL WEAR OR TO ANY GOODS THAT HAVE BEEN ABUSED, ALTERED, MODIFIED, IMPROPERLY HANDLED, USED IN A MANNER NOT ORIGINALLY INTENDED, USED AFTER THE SHELF LIFE OF THE PRODUCT, STORED IN A MANNER CONTRARY TO NANOTEC'S WRITTEN INSTRUCTIONS, INCORRECTLY ASSEMBLED, IMPROPERLY MAINTAINED, OR RENDERED UNSUITABLE AS A RESULT OF CHEMICAL, ELECTROCHEMICAL, OR ELECTRICAL INFLUENCES.

B. THE FOREGOING NOTWITHSTANDING, ALL GOODS AVAILABLE FROM NANOTEC, THROUGH THE WEBSITE OR OTHERWISE, ARE PROVIDED "AS IS". NANOTEC MAKES NO REPRESENTATION OR WARRANTY WITH RESPECT TO THE GOODS SOLD HEREUNDER, AND NANOTEC DISCLAIMS ALL IMPLIED WARRANTIES INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND FREEDOM FROM PATENT INFRINGEMENT. WITHOUT LIMITING THE FOREGOING, NANOTEC MAKES NO WARRANTY THAT THE GOODS AVAILABLE FROM NANOTEC, THROUGH THE WEBSITE OR OTHERWISE, WILL MEET THE CUSTOMER'S REQUIREMENTS; THAT THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE GOODS WILL BE EFFECTIVE, ACCURATE OR RELIABLE; OR THAT THE QUALITY OF ANY GOODS WILL MEET THE CUSTOMER'S EXPECTATIONS. NO AGENT, EMPLOYEE, OR REPRESENTATIVE OF NANOTEC HAS ANY AUTHORITY TO BIND NANOTEC TO ANY AFFIRMATION, REPRESENTATION, OR WARRANTY EXCEPT AS STATED IN THIS AGREEMENT.

C. IN NO EVENT SHALL NANOTEC OR ITS PARENT, SUBSIDIARIES, AFFILIATED COMPANIES, AGENTS, SHAREHOLDERS, EMPLOYEES, OR OFFICERS (COLLECTIVELY, NANOTEC'S "AFFILIATES") HAVE ANY OBLIGATIONS OR LIABILITIES TO THE CUSTOMER OR ANY OTHER PERSON FOR LOSS OF PROFITS, FOR LOSS OF BUSINESS OR USE, OR FOR INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, STRICT LIABILITY, OR ANY OTHER THEORY OR FORM OF ACTION, EVEN IF NANOTEC OR NANOTEC'S AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY THEREOF, ARISING OUT OF OR IN CONNECTION WITH THE SALE, DELIVERY, USE, REPAIR, OR PERFORMANCE OF GOODS AVAILABLE FROM NANOTEC, THROUGH THE WEBSITE OR OTHERWISE. THESE LIMITATIONS ARE AGREED ALLOCATIONS OF RISK. NO EMPLOYEE OR REPRESENTATIVE OF NANOTEC IS AUTHORIZED TO MODIFY THESE LIMITATIONS.

D. UNDER NO CIRCUMSTANCES SHALL NANOTEC'S LIABILITY TO THE CUSTOMER WITH REGARD TO THE SALE, DELIVERY, USE, REPAIR, OR PERFORMANCE OF ANY GOODS EXCEED THE ACTUAL AMOUNT PAID BY THE CUSTOMER FOR THE GOODS.

Article 12: Force Majeure

In addition to any excuse provided by applicable law, Nanotec shall be excused from liability for nondelivery or delay in delivery of goods arising from any unforeseen circumstance or by force majeure. Unforeseen circumstance or force majeure means any event that is beyond the reasonable control of Nanotec, including the following events or circumstances: terrorism, acts of war, public disorder, insurrection, or rebellion; floods, hurricanes, earthquakes, lightning, storms, and other natural calamities; telecommunications network outages; inability to secure transportation; governmental act or regulation; explosions or fires; strikes, bans involving means of transport or fuel; work stoppages, or labor disputes; embargoes; and sabotage.

Article 13: Severability

Should any part, term, or provision of these terms and conditions be held by a court or tribunal of competent jurisdiction to be illegal, unenforceable, or in conflict with any law of a federal, state, or local government having jurisdiction over these terms and conditions, the remaining provisions of these terms and conditions remain in full force and effect, and shall be construed in such a manner as to achieve their original purposes in full compliance with the applicable laws and regulations.

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Article 14: Non-Waiver Clause

No failure of Nanotec to insist upon strict compliance by the Customer with these terms and conditions or to exercise any right accruing from any default of the Customer shall impair Nanotec's rights in case the Customer's default continues or in case of any subsequent default by the Customer. Failure by Nanotec to enforce compliance of the Customer with any provision in these terms and conditions will not be construed as or deemed to be a waiver or consent by Nanotec to a subsequent default or breach of that provision or any other provisions in these terms and conditions by the Customer.

Article 15: Effect Of Headings

The headings used in these terms and conditions shall not affect the construction of any provision in these terms and conditions.

Article 16: Privacy Statement

The Customer agrees that any information Nanotec may request from the Customer is necessary in order to process any orders by the Customer and may be communicated by Nanotec to any of its contractual partners involved in the fulfillment of the Customer's order.

Article 17: Dispute Resolution And Applicable Law

All claims, controversies and disputes arising directly or indirectly out of these terms and conditions or in connection with the goods supplied hereunder or any other sale of goods by Nanotec to the Customer, or the relationship between the parties, be they past, present or future, whether sounding in contract, tort or otherwise, shall be construed in accordance with, the laws of the State of Massachusetts without regard to its conflicts of law provisions. The Customer and Nanotec agree to first attempt in good faith to resolve any dispute informally through direct discussion. If the controversy or claim is not otherwise resolved through direct discussion, then, the Customer and Nanotec and their respective principals agree to engage in good faith in non-binding mediation governed by the mediation rules of the American Arbitration Association ("AAA") in Suffolk County, Massachusetts. The Customer and Nanotec agree to equally divide the mediation filing fees and mediator's charges. In the event that the controversy or claim is not resolved to the satisfaction of the Customer or Nanotec, the dispute shall then be exclusively submitted to binding arbitration before a single arbitrator in Boston, Massachusetts, such arbitration to be conducted under AAA commercial arbitration rules and guidelines. The Customer and Nanotec agree to equally divide the arbitration filing fees and the arbitrator's charges. Neither party shall be entitled to trial by jury or punitive damages for any claim.

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