

Stand: 09/2021

General Terms and Conditions of Business and Delivery

**nanogy GmbH, Westerhaar 29,
58739 Wickede (Ruhr)**

1. General Provisions

1.01. Validity

1. All deliveries, services and offers on our part shall be made exclusively in consequence of these General Terms and Conditions of Business and Delivery (hereinafter referred to as GTC). These shall also be an integral part of all contracts and agreements, which we conclude with our contractual partners concerning the deliveries and services offered by us. They shall also apply to all future deliveries, services or offers to the contractual partner, even if they are not separately agreed again.

2. Our GTC shall be deemed to have been accepted and agreed at the latest when our customers accept the goods or services.

3. General Terms and Conditions of the contractual partners or third parties shall not apply, even if we do not separately object to their validity in individual cases. Even if we refer to a letter that contains or refers to the general terms and conditions of the contractual partners or a third party, this shall not constitute an agreement to the validity of the same. Our GTC shall also apply in particular if we perform our services without reservation in the knowledge that the General Terms and Conditions of the contractual partner contradict or deviate from our GTC.

1.02. Offers and Conclusion of Contract

1. All our offers are subject to change without notice and are non-binding, unless they are expressly marked as binding or contain a specific acceptance period. Orders or assignments of the contractual partners are binding and we can accept them within two weeks after receipt by us by means of an order confirmation or by way of execution of the order.

2. The scope of our deliveries and services as well as the legal relationship with our contractual partners shall be governed exclusively by the written contracts and agreements including our GTC. These fully reflect all agreements of the contractual partners on the subject matter and content of the contract. Verbal promises on our part prior to the conclusion of contracts are legally non-binding. In addition, the respective product conditions

developed for our products shall apply in the respective valid version. Verbal agreements of the contracting parties shall be replaced by written contracts and agreements, unless it is expressly stated in each case that they shall continue to be binding.

3. Supplements and amendments to the agreements made, including these GTC, must be in writing in order to be effective. With the exception of managing directors or authorized signatories, our employees are not entitled to make verbal agreements deviating from this.

4. Information provided by us on the subject of the delivery, services or offers, as well as our representation of the same, are only approximate, unless the usability for the contractually intended purpose requires an exact match. They are not guaranteed characteristics, but descriptions or identifications of the deliveries and services. Deviations customary in the trade, which are made by virtue of legal regulations or represent technical improvements, as well as the replacement by equivalent services, are admissible insofar as they do not jeopardise the usability for the contractually intended purpose.

5. We retain ownership and/or copyright of all offers, cost estimates, illustrations, drawings, calculations, brochures, catalogues, calculations and other documents submitted by us. The contractual partner may not make these items and documents, as such or in terms of content, available to third parties, disclose them, use them or use them through third parties, reproduce them or use them in any other form without our express consent. Upon our request, the contractual partner shall return these items and documents in full and destroy any copies made, if the contractual partner no longer requires them in the ordinary course of business or if negotiations do not lead to the conclusion of a contract.

2. Prices and Terms of Payment

2.01.

Our prices shall apply to the scope of services and delivery specified in the contracts. Additional or special services shall be charged separately. Our prices are quoted in Euro ex works plus packaging, storage costs, the statutory value added tax, in the case of export deliveries plus customs duties as well as fees and other public charges.

If deliveries or services are not provided within three months after conclusion of the contract, the price shall be adjusted at the request of one of the

contractual partners if the order-related costs on our side have changed significantly. A substantial change occurs, if the change amounts to more than 10% of our order-related costs. The adjustment of the price shall then be made in accordance with the percentage of the change.

2.02.

The offsetting of counterclaims of the contractual partner or the withholding of payments due to such claims shall only be permissible if and insofar the counterclaims are undisputed or have been legally established.

2.03.

We shall be entitled to perform or render outstanding deliveries or services only against advance payment or provision of security, if, after conclusion of the contract, we become aware of circumstances, which are likely to substantially reduce the creditworthiness of the customer and which are likely to jeopardize the payment of our outstanding claims by the contractual partner arising from the respective contractual relationship, including from other individual orders to which the same framework agreement applies. The same shall apply if our contractual partner defaults on a due payment or partial payment.

3. Delivery and Time of Delivery

3.01.

Deliveries and services shall be made from the factory.

3.02.

Deadlines and dates for deliveries and services promised by us are always only approximate, unless a fixed deadline or date has been explicitly guaranteed or stipulated. If shipment has been stipulated, delivery periods and delivery dates shall refer to the time of handover to the forwarding agent (including to our own transport company), the carrier or the third party otherwise commissioned with the transport.

3.03.

We may - regardless of our rights arising from default of the contractual partner - request from the contractual partner an extension of delivery and service deadlines or a postponement of delivery and service deadlines, precisely by the period of time during which the contractual partner does not meet his contractual obligations towards us, in particular if

the information, documents, necessary approvals and releases - to be provided by him - are not received by us or are not received in time.

3.04.

We shall not be liable for the impossibility of delivery or delays in delivery, if these are caused by force majeure or other events for which we are not responsible and that were not foreseeable at the time of the conclusion of the contract (e.g. operational interruptions of any kind, difficulties in procuring materials or energy, transport delays, strikes, lawful lockouts, shortages of labour, energy or raw materials, difficulties in procuring the necessary official permits, official measures or the failure of suppliers to deliver or to deliver correctly or on time). If such events make it considerably more difficult or impossible for us to deliver or perform and the hindrance is not only of temporary duration, we shall be entitled to withdraw from the contract. In the case of hindrances of temporary duration, the delivery or service deadlines shall be extended or the delivery or service deadlines shall be postponed by the period of the hindrance plus a reasonable start-up time. If the contractual partner cannot reasonably be expected to accept the delivery or service because of the delay, the contractual partner may withdraw from the contract by giving us immediate written notice.

3.05.

We are entitled to make partial deliveries if the partial delivery is reasonable for the contractual partner.

3.06.

If we are in default with a delivery or service or if a delivery or service becomes impossible for us, for whatever reason, our liability for damages shall be limited in accordance with section 7 of these GTC.

3.07.

If the delivery is postponed at the request of the contractual partner by more than 1 month after notification of readiness for shipment, we may demand storage charges from the contractual partner for each month of in the amount of 0.5% of the agreed gross price of the delivery items ready for shipment, but no more than 5% of the agreed gross price of the delivery items ready for shipment. The contractual partner reserves the right to prove that no or lower storage costs were incurred by us. We may charge higher costs than the aforementioned lump sum against proof.

4. Place of Performance, Shipment, Packaging, Transfer of Risk, Acceptance

4.01.

The place of fulfilment and performance for all obligations arising from the contractual relationship shall be the registered office of our company, unless otherwise specified.

4.02.

The mode of delivery and the packaging are subject to our dutiful discretion within the scope of the legal obligation existing under the Packaging Act (in particular registration and notification obligations). Unless and insofar mandatory statutory regulations or ordinances to the contrary exist and no other contractual agreement has been made, the packaging/containers required for transport and shipment as well as their registration shall be charged to the contractual partner at cost price. If the contractual partner uses disposable containers, there is no obligation on our part to take back, credit or bear any disposal costs for the same.

4.03.

The risk shall pass to the contractual partner at the latest when the delivery item is handed over (whereby the start of the loading process shall be decisive) to the forwarding agent, carrier or other third party designated to carry out the shipment. This shall also apply if partial deliveries are made or if we have taken over other services (e.g. shipping or installation). If delivery or handover is delayed in consequence of a circumstance the cause of which lies with the contractual partner, the risk shall pass to the contractual partner from the day on which the delivery item is ready for shipment and we have notified the customer of this.

4.04.

We shall only insure the shipment against the usual insurable transport risks at the express request of the contractual partner and at his expense.

4.05.

Insofar as acceptance has to take place, the delivery or service shall be deemed to have been accepted in particular when

- the delivery or service has been completed,
- we have notified the contractual partner of this with reference to the fiction of acceptance and have requested him to accept the goods or services,

- 3 working days have passed since the delivery or the contractual partner has started using the delivery and
- the contractual partner has failed to accept the delivery within this period for a reason other than a defect notified to us which makes it impossible to use the delivery or significantly impairs its use.

5. Warranty, Material Defects

5.01.

The delivered items shall be inspected carefully immediately after delivery to the contractual partner or to the third party designated by him. With regard to obvious defects or other defects, which would have been recognizable in the course of an immediate, careful inspection, they shall be deemed to have been approved by the contracting party if we do not receive a written notice of defect immediately. With regard to other defects, the deliveries shall be deemed to have been approved by the contracting party if the notice of defect is not received by us immediately after the time at which the defect became apparent; however, if the defect was already apparent to the contracting party at an earlier time during normal use, this earlier time shall be decisive for the commencement of the period for giving notice of defect. At our request, a delivery item, which is the subject of a complaint, shall be returned to us carriage free. In the event of a justified complaint, the Seller shall reimburse the costs of the most favourable shipping route. This shall not apply if the costs increase because the delivery item is located at a place other than the place of intended use. In all cases, we shall have the right to collect the goods ourselves.

5.02.

In the event of material defects in the delivered items, we shall first be obliged and entitled to rectify the defect or to make a replacement delivery at our discretion within a reasonable period of time. In the event of failure, i.e. impossibility, unreasonableness, refusal or unreasonable delay of the rectification or replacement delivery, the contractual partner may withdraw from the contract or reasonably reduce the remuneration. Subsequent performance shall be deemed to have failed after the second attempt, unless the nature of the item or defect or other circumstances indicate otherwise. The statutory provisions of §§ 323 V, VI BGB shall be observed in the event of withdrawal.

5.03.

If a defect is due to our fault, the customer may claim damages under the conditions set out in section 7.

5.04.

Subject to the provision in clause 5.01., the warranty period shall be one year from delivery or, insofar as acceptance is required, from acceptance. The exclusion and shortening of the warranty period shall not apply to damages due to injury to life, body or health, which are based on a negligent or intentional breach of duty on our part or on a negligent or intentional breach of duty on the part of our legal representatives or vicarious agents. Furthermore, the shortening of the statute of limitations shall not apply to other damages based on an intentional or grossly negligent breach of duty on our part or a grossly negligent or intentional breach of duty on the part of our legal representatives or vicarious agents.

5.05.

In the event of defects of other manufacturers that we cannot remedy for licensing or factual reasons, we shall be entitled, at our choice, to assert our warranty claims against the manufacturers and suppliers for the account of the contractual partner or to assign them to the contractual partner. In the event of such defects, warranty claims against us shall only exist under the other conditions and in accordance with these GTC if the legal enforcement of the aforementioned claims against the manufacturer and supplier was unsuccessful or is futile, for example, due to insolvency. For the duration of the legal dispute, the statute of limitations for the relevant warranty claims of the contractual partner against us shall be suspended.

5.06.

The warranty shall lapse if the contractual partner modifies the delivery item or has it modified by third parties without our consent and the rectification of defects is thereby rendered impossible or unreasonably difficult. In any case, the contracting party shall bear the additional costs of remedying the defect resulting from the modification. The warranty shall also lapse if the contractual partner fails to observe or comply with instructions or directions given by us regarding the goods, products and services or for the treatment, handling, storage and safekeeping of the same, in particular those in the product specifications and the safety data sheets in accordance with Regulation EC No. 1907/2006.

5.07.

Insofar as products delivered by us are perishable or have a limited shelf life due to their nature, the shelf life date specified by us for this product or in the product specifications shall constitute an agreed quality.

5.08.

Any delivery of used delivery items agreed with the contractual partner in individual cases shall be made to the exclusion of any warranty for material defects.

5.09.

Subject to the provision in section 2.03., the contractual partner shall be entitled to withhold payments to the amount of a reasonable part of the remuneration in the event of a justified notice of defects.

5.10.

The assignment of warranty claims to third parties without our consent is excluded.

5.11.

Non-excludable claims under the Product Liability Act shall remain unaffected.

6. Property Rights

6.01.

Each contracting party shall notify the other contracting party in writing immediately if claims are asserted against it due to the violation of industrial property rights or copyrights.

6.02.

In the event that the delivery item violates an industrial property right or copyright of a third party, we shall, at our choice and at our expense, modify or replace the delivery item in such a way that the rights of third parties are no longer violated, but the delivery item continues to fulfil the contractually agreed functions, or procure the right of use for the contractual partner by concluding a license agreement. If we do not succeed in doing so within a reasonable period of time, the contractual partner shall be entitled to withdraw from the contract or to reduce the purchase price appropriately.

6.03.

In the event of violations of rights by products of other manufacturers delivered by us, we shall, at our choice, assert our claims against the manufacturers and sub-suppliers for the account of the contractual partner or assign them to the contractual partner. In such cases, claims against us shall only exist in accordance with this section 6 if the legal enforcement of the aforementioned claims against the manufacturers and sub-suppliers was unsuccessful or is futile, for example due to insolvency.

6.04.

The aforementioned rights of the contractual partner in section 6.02. and section 6.03. shall be excluded, if and to the extent, that the infringement of the property right is not caused by us but by the contractual partner, in particular, if it is caused by specifications of the contractual partner or by a use not foreseeable by us or by the fact that the delivery is modified by the contractual partner or is used together with products not delivered by us.

Any claims for damages on the part of the contractual partner shall also be subject to the limitations set out in Section 7 of these GTC.

7. Liability for Damages due to Negligence

7.01.

Our liability for damages, irrespective of the legal grounds, in particular due to impossibility, delay, defective or incorrect delivery, breach of contract, violation of obligations during contract negotiations and unauthorized action, insofar as culpability is relevant in each case, shall be limited in accordance with this Section 7.

7.02.

We shall not be liable in the event of simple negligence on the part of our executive bodies, legal representatives, employees or other vicarious agents, insofar as this does not involve a violation of material contractual obligations. Material contractual obligations are those obligations, which are necessary for the performance of the contract and on the performance of which the parties can therefore rely. These are in any case the obligation to produce and deliver the delivery item in due time, its freedom from defects that impair its functionality or usability more than insignificantly, as well as advisory, protective and custodial obligations that are intended to enable the contractual partner to use the delivery item in accordance with the contract or to protect the life and limb of the contractual partner's

personnel or to protect the contractual partner's property.

7.03.

Insofar as we are liable on the merits for damages in accordance with Section 7.02., this liability shall be limited to damages which we foresaw as a possible consequence of a breach of contract at the time of conclusion of the contract or which we should have foreseen if we had exercised due care. Indirect damage and consequential damage resulting from defects in the delivery item shall also only be eligible for compensation insofar as such damage is typically to be expected when the delivery item is used for its intended purpose.

7.04.

In the event of liability for simple negligence, our obligation to pay compensation for damage to property and further financial losses resulting therefrom shall be limited to the respective coverage amounts of our business and product liability insurance for each case of damage, even if it is a violation of essential contractual obligations. The amount of coverage shall be at least € 10,000,000.00 in each case. We will communicate the concrete amount of the respective sums insured at any time upon corresponding request of the customer.

7.05.

The aforementioned exclusions and limitations of liability shall apply to the same extent in favour of our executive bodies, legal representatives, employees and other vicarious agents.

7.06.

Insofar as we provide technical information or act in an advisory capacity and this information or advice is not part of the contractually agreed scope of services owed by us, this shall be provided free of charge and to the exclusion of any liability.

7.07.

The restrictions of this clause 7. do not apply to damages due to the violation of life, body or health, which are based on a negligent or intentional breach of duty on our part or on a negligent or intentional breach of duty of our legal representatives or vicarious agents.

Furthermore, the restrictions of this clause 7. shall not apply to other damages based on a malicious or grossly negligent breach of duty on our part or on a

grossly negligent or malicious breach of duty on the part of our legal representatives or vicarious agents. Claims under the Product Liability Act shall also remain unaffected.

8. Retention of Title

8.01.

The following stipulated retention of title serves as security for all existing current and future claims on our part against the contractual partner arising from the delivery relationship existing between us, including balance claims arising from a current account relationship limited to this delivery relationship.

8.02.

The delivery item delivered by us to the contractual partner shall remain our sole or joint ownership until full payment of all secured claims. The delivery item as well as the goods covered by the retention of title that take its place in accordance with the following provisions shall hereinafter be referred to as "goods subject to retention of title".

8.03.

The contractual partner shall store the reserved goods for us free of charge.

8.04.

The contractual partner shall be entitled to process and sell the goods subject to retention of title in the ordinary course of business until the case of realization occurs (clause 8.09.). Pledges and transfers of ownership by way of security are not permitted.

8.05.

If the goods subject to retention of title are processed by the contractual partner, it is agreed that the processing shall be carried out in our name and for our account as manufacturer in the amount of our ownership share and that we shall directly acquire ownership in this amount or - if the processing is carried out from materials of several owners or the value of the processed item is higher than the value of the goods subject to retention of title - the co-ownership (fractional ownership) in the newly created item shall pass to us in the ratio of the value of our ownership share to the value of the newly created item. In the event that we do not acquire such ownership, the contracting party hereby assigns to us as security its future ownership or - in the above-mentioned proportion - co-ownership of

the newly created item, which we hereby accept. If the goods subject to retention of title are combined with other items to form a uniform item, we shall, insofar as the main item belongs to us, transfer to the contractual partner pro rata co-ownership of the uniform item in the ratio specified in sentence 1.

8.06.

In the event of resale of the goods subject to reservation of title, the contracting party hereby assigns to us by way of security the resulting claim, including all subsidiary rights, against the purchaser - in the event of co-ownership on our part of the goods subject to reservation of title, pro rata in accordance with the co-ownership share - with priority over any further claims. The same shall apply to other claims, which take the place of the reserved goods or otherwise arise in respect of the reserved goods, such as insurance claims or claims in unauthorized action in the event of loss or destruction. We revocably authorize the contractual partner to collect the claims assigned to us in his own name. We may only revoke this direct debit authorization in the event of realization.

8.07.

If third parties gain access to the goods subject to retention of title, in particular by way of seizure, the contracting party shall immediately notify them of our sole or joint ownership and inform us thereof in order to enable us to enforce our ownership rights. If the third party is not in a position to reimburse us for the judicial or extrajudicial costs incurred in this connection, the contractual partner shall be liable to us for these costs.

8.08.

We shall release the goods subject to retention of title as well as the items or claims replacing them at the request of the contracting party insofar as their value exceeds the amount of the secured claims by more than 50%. The selection of the items to be released thereafter shall be at our choice.

8.09.

If we withdraw from the contract in the event of a breach of contract by the contractual partner - in particular default of payment - we shall be entitled to demand the return of the goods subject to retention of title to the extent provided for by law. The same shall also apply if there are well-founded indications suggesting the contractual partner's inability to pay as well as in cases where insolvency proceedings are opened against the contractual partner.

8.10.

The contractual partner shall be obliged to provide us at any time with the information required to assert our claims arising from this Section 8. and to hand over the documents relating thereto at our request.

8.11

Insofar as we have not already acquired sole or co-ownership of the delivery item by virtue of the law due to the processing or combination of the goods or the goods are goods subject to retention of title, we and the contracting party agree already now that the contracting party shall transfer to us co-ownership by way of security for the claims referred to in clause 8.1 at the time the delivery item is handed over to the contracting party (or a carrier or forwarder acting on the contracting party's behalf) in the amount of the share of the increase in value of the original goods due to our processing in the total value of the delivery item. We accept this transfer. The above provisions on the goods subject to retention of title under this clause 8 shall apply accordingly to our co-ownership by way of security.

9. Final Provisions

9.01.

If the contracting party is a merchant, a legal entity under public law or a special fund under public law or if it has no general place of jurisdiction in Germany, the place of jurisdiction for all disputes arising from the business relationship between the contracting party and us shall be, at our choice, 58739 Wickede (Ruhr).

9.02.

Exclusively German law shall govern the relationship between the contractual partner and us. The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) as well as any other conflict of law's provisions shall not apply.

9.03.

Insofar as the contract or these GTC contain regulatory gaps or invalid clauses, this shall not affect the validity of the contract and the GTC in other respects. Instead of these gaps or ineffective clauses, those legally effective provisions shall be deemed agreed upon which the contracting parties would have agreed upon according to the economic objectives of the contract and the purpose of these GTC if they had known about the regulatory gap or ineffective clause.

Notice:

The contractual partner acknowledges that we store data from the contractual relationship in accordance with Art. 6 Para. 1 lit. b DSGVO for the purpose of data processing and reserve the right to transmit the data to third parties (e.g. insurance companies) insofar as this is necessary for the fulfilment of the contract.