General Terms and Conditions (GTC) for Products and Services of naneos particle solutions gmbh (naneos)

1. Scope
This agreement defines general terms and conditions which apply to all purchases of goods or services from naneos. These terms and conditions have priority over all other terms, including buyer’s purchase order terms, and may only be waived or amended by a document signed by representatives of both naneos and buyer.

2. Purchase orders
naneos has no obligation with respect to any purchase order until it is accepted by naneos. naneos quotes are based on current availability of materials and manufacturing capacity. If material availability of manufacturing capacity changes by the time a purchase order is placed, naneos has the right to change the lead time when accepting the purchase order.

3. Taxes and export charges
Prices quoted are exclusive of all sales, excise, value-added, use, and property (ad valorum) taxes and all customs and export charges, which are the responsibility of buyer. These will be added to the invoice and paid by buyer.

4. Shipment
naneos will provide at the expense of buyer standard commercial packaging to identify and protect products during shipment. In the absence of specific shipping instructions, naneos will ship by the method it deems most advantageous. Transport charges will be collected on delivery, or, if prepaid, will be invoiced to buyer. If buyer wishes transport insurance, naneos will obtain insurance and either invoice buyer or have insurance charges collected on delivery.

5. Delivery and Force majeure
naneos will use reasonable commercial efforts to deliver products to buyer on the delivery dates set forth in the contract. Delivery will be made F.O.B. naneos’ plant, Windsch, Switzerland. Title to such products shall pass to buyer upon delivery of the products by naneos to carrier. Buyer assumes all risk of loss or damage to the products after delivery to the carrier and during shipment, and shall file any damage claim forms required by the carrier or insurer. Shipping dates for the products are approximate, and the failure to perform shall not be considered a breach by naneos. Performance of naneos will be excused without liability during any period that performance is prevented or delayed by causes beyond the reasonable control of naneos.

6. Terms of payment, security interest, bankruptcy
All payments after credit approval are due net thirty (30) days after the original product shipment date. Past due payments will accrue interest at the rate of 1.5% per month until paid. If invoices are not paid within sixty (60) days of invoice date, naneos may suspend shipment of any further goods ordered by buyer.

7. Intellectual property
naneos retains all copyright, patent, ownership of software, and other proprietary rights in the products.

8. Limited warranty
naneos warrants that the products comply with applicable product specifications and that the products will operate properly under proper use and under normal conditions without defects in material and workmanship that prevent such operation for a period of one year from date of delivery to buyer. Defective goods may be returned freight prepaid after obtaining a customer return order number from naneos. If after testing and inspection any such returned product is determined by naneos to be defective, naneos shall promptly repair or replace the product and return it to buyer freight prepaid. Goods or parts that have been subject to any misuse or accident are not covered by warranty. Buyer has no other remedy for breach of warranty or failure to meet product specifications.

9. No additional warranties
This warranty is the only warranty made by naneos with respect to the products delivered hereunder. No warranty is made with respect to custom equipment or goods produced to buyer’s specifications except as specifically stated in writing by naneos in the contract for such custom goods. naneos disclaims all other express or implied warranties, including any warranty for non-infringement, merchantability, or fitness for a particular purpose. To the extent an implied warranty cannot be excluded, it is limited in duration to the warranty period.

10. Limitation of liability
naneos shall not be liable for injury to any property other than the products, including third-party claims, and shall be limited to the refund of the purchase price. In no event shall naneos be liable for any consequential or incidental damages. Buyer shall defend and indemnify naneos against any claims that are based upon any subsequent resale of the products by customer or upon any sale by customer of its goods that contain naneos products.

11. Limitation of liability for customer-owned parts
naneos shall not be liable for injury to any customer-owned property delivered to naneos unless specifically agreed in writing, and shall be limited to the refund of the purchase price. Customer must carry business insurance on all customer-owned material sent to naneos. In no event shall naneos be liable for any consequential or incidental damages. Buyer shall defend and indemnify naneos against any claims that are based upon any sale by customer of any of its goods that contain naneos’ products.

12. Cancellation
This agreement may be canceled by buyer only upon the payment of reasonable cancellation charges, which will include expenses already incurred for labor and material costs, overhead, commitments made by naneos, and a reasonable profit.

13. Intellectual property infringement defense and indemnities
naneos shall defend and indemnify buyer, with Buyer’s cooperation, against any claims that the manufacture or sale of the naneos product or that ordinary use of naneos’ product constitutes an infringement of a patent or Trademark. Buyer shall defend and indemnify naneos against any claims that manufacture or sale of products manufactured to Buyer’s specifications constitutes an infringement of any patents or trademarks. This agreement states naneos’ entire liability and obligation with respect to intellectual property claims.

14. Entire Agreement
The terms and conditions set forth herein constitute the entire agreement between naneos and buyer and supersede any other agreements or offers including any purchase order of buyer, naneos’ acceptance of any buyer purchase order is expressly conditioned on buyer’s assent to the agreement. This agreement may not be modified or interpreted by any trade usage or prior course of dealing not expressly made part of this agreement. Buyer hereby acknowledges that it has not entered into this agreement in reliance upon any warranty or representation unless specifically set forth herein.

15. Applicable law
This agreement, and any disagreement arising thereof, will be governed by the laws of Switzerland, with exclusive jurisdiction and venue in the courts of Aarau, Kanton Aargau, Switzerland. Buyer shall bring action relating to any dispute buyer may have hereunder within one (1) year of the accrual of such dispute.