



## **FIRST NANO - TERMS & CONDITIONS OF SALE**

**1. AGREEMENT.** The terms and conditions set forth in this Agreement shall constitute the entire agreement between First Nano and the Buyer and supersede all other agreements and understandings, whether written or oral, between the parties with respect to the subject matter hereof. First Nano's acceptance of any offer by Buyer is expressly made conditional upon Buyer's assent to the terms and conditions hereof, and none of the Buyer's additional or different terms shall apply. Acceptance of FIRST NANO's offer to sell is expressly limited to acceptance to the terms and conditions hereof, and no other terms or conditions shall apply unless expressly agreed to by FIRST NANO in writing.

**2. ORDERS.** All orders are subject to acceptance by FIRST NANO in its' sole discretion at its general offices in Ronkonkoma, New York, U.S.A. even if the order is taken elsewhere by any sales representative or agent of FIRST NANO.

**3. CANCELLATION, CHANGES, REDUCTION, SUSPENSION & RETURN OF PRODUCT.** After acceptance by FIRST NANO, Buyer's order shall not be subject to cancellation, change, reduction in amount, suspension by Buyer of deliveries or return of product without FIRST NANO's prior written consent.

**4. PRICE.** All prices exclude federal, state and/or local taxes, custom, duties, charges, consular fees, permit and license fees. Any taxes, fees and/or other expenses that FIRST NANO has the legal obligation to collect or pay will be added to the price or billed separately to Buyer. Unless FIRST NANO's written quotation indicates otherwise, prices in quotations are subject to **CHANGE WITHOUT NOTICE**. Prices may increase as a result of delays due to changes requested by Buyer or Buyer's failure to furnish information requested. FIRST NANO reserves the right to charge at any time a monthly service charge of one and one-half percent (1.5%) or the highest rate of interest allowed by law, whichever is lower, on accounts outstanding more than thirty (30) days from the date of FIRST NANO's invoice, effective as of the thirty-first (31<sup>st</sup>) day from the date of the invoice.

**5. DOMESTIC PAYMENT TERMS.** Unless specified otherwise on the face hereof, payment terms for domestic sales are one-half percent (1/2%) ten (10) days, net thirty (30) days from the date of FIRST NANO's invoice, except for progress billings that are due upon receipt of invoice. If Buyer fails to fulfill the terms of payment or if FIRST NANO shall have any doubt at any time as to Buyer's financial condition, FIRST NANO, in its sole judgment, may decline to make further deliveries except upon receipt of cash or satisfactory security. This requirement will not release the Buyer from any previous obligation. FIRST NANO's rights under this Section shall be in addition to all other rights and remedies available to FIRST NANO upon Buyer's default. If the Buyer delays shipments, Invoices shall be issued on the date when FIRST NANO is ready to make shipment.

**6. EXPORT PAYMENT TERMS.** Unless specified otherwise on the face hereof, payment terms for export sales are 100% net cash in United States currency upon presentation of invoices, bills of lading, or other appropriate shipping documents covering each shipment of products. In addition, unless otherwise agreed to in writing by FIRST NANO, Buyer is to establish an Irrevocable Letter of Credit in favor of FIRST NANO, drawn on a New York bank, in an amount sufficient to cover the price of goods and all related expenses which are for the Buyer's account, and to include such other terms and conditions as are acceptable to FIRST NANO. This Letter of Credit shall by its terms remain in full force and effect for a period agreed to by FIRST NANO and is sufficient for FIRST NANO to complete its performance of the Sales contract and shipment of the products to Buyer. If the Letter of Credit should expire prior to completion of the order, Buyer is obligated to extend the Letter of Credit on terms acceptable to FIRST NANO. Any and all bank financing charges, taxes and other expenses related to such Letters of Credit shall be for the Buyer's account.

**7. DELIVERY TERMS.** Unless otherwise stated on the face of this Agreement, all deliveries shall be F.O.B. FIRST NANO's factory, Ronkonkoma, New York and all risk of loss shall pass to the Buyer upon delivery of the goods to the carrier at FIRST NANO's factory. All delivery expenses, including transportation, freight, insurance, risk of loss and any other shipping costs, shall be for the account of the Buyer. Unless otherwise instructed, selection of carrier and routing of all shipments shall be at FIRST NANO's discretion. All boxing and packaging charges for export sales shall be added to the price. When special packaging is specified for domestic or export sales involving greater expense than that customarily supplied, a charge may be made to cover such extra expense. Shipment dates are approximate and are subject to receipt of all necessary Buyer information, Letters of Credit, and all necessary licenses, permits and other documents.



**8. FORCE MAJEURE.** FIRST NANO shall not be liable for any delays in the delivery of orders, due in whole or in part, directly or indirectly, to fire, act of God, strike, shortage of raw materials, supplies, components, fuel, labor, retooling, upgrading of technology, delays of carriers, embargo, government order or directive, or any circumstance beyond FIRST NANO's control. Buyer agrees that FIRST NANO shall not be liable for any direct, indirect, consequential, or special damages that may result from any such delays.

**9. INSPECTION & ACCEPTANCE.** Buyer must inspect delivered goods and report claims for defects, damages or shortages in writing within ten (10) days of delivery, or the goods shall be deemed irrevocably accepted and such claims shall be deemed waived.

**10. EXPORT REGULATIONS.** Buyer will comply with the provisions of the United States Government's Export Administration regulations and related documentation requirements and internal control procedures. This will include the proper notifications that no person in the United States or a foreign country may export or re-export any commodity or technology, directly or indirectly, without prior specific authorization in writing by the United States Office of Export Licensing. Buyer shall be responsible for obtaining any necessary export or import licenses and permits.

**11. INSTALLMENT.** FIRST NANO's failure to deliver, or nonconformity of, any installment of this Agreement shall not be a breach of the entire Agreement.

**12. APPLICABLE LAW.** This Agreement shall be governed by and construed in accordance with the internal laws (and not the laws of conflicts) of the State of New York, U.S.A.

**13. LIMITATION OF ACTIONS.** Any actions or claims by Buyer under this Agreement shall be brought within one (1) year of the date the cause of action accrues.

**14. VALIDITY.** If any provision of these Terms and Conditions of Sale is found to be invalid or unenforceable in any respect, the validity and enforceability of the remaining Terms and Conditions of Sale shall not be affected.

**15. CONFIDENTIAL INFORMATION.** Buyer agrees that all drawings, manuals, and other information furnished hereunder to Buyer by FIRST NANO is proprietary to FIRST NANO and such information shall be held in confidence and shall not be used or disclosed by Buyer without FIRST NANO's prior written consent, except for the fulfillment of this Agreement.

**16. SOFTWARE LICENSE.** If computer software is included in or among the products to be transferred hereunder, FIRST NANO hereby grants to Buyer, effective upon sale of the items covered hereunder, a perpetual, non-exclusive, non-transferable license to use such software, provided that such use shall be only for the Buyer's own business and shall be limited to use on the single machine provided by FIRST NANO. Title to and ownership of the software shall at all times remain with FIRST NANO. Buyer may copy the software into any machine-readable or printed form only to the extent that it is needed for backup or modification purposes in support of Buyer's use of the program on the single machine and Buyer may modify and/or merge it into another program only for Buyer's use on the single machine, provided that Buyer shall reproduce and include any applicable copyright notice on any such copy, modification or portion merged into another program. Buyer shall not (i) permit any parent, subsidiary, affiliated entity or third party to use the software, (ii) sublicense, assign or transfer the license or the software, (iii) process or permit to be processed the data of any other party through use of the software, (iv) use the software in the operation of a service bureau, (v) allow access to the software through more than one terminal or machine, except where expressly provided as part of the basic system design, (vi) use, copy, modify, or transfer the software program, or any copy, modification or merged portion, in whole or in part, except as expressly provided for in this Agreement. If Buyer transfers possession of any copy, modification or merged portion of the software program to another party, or in any other way violates the terms of this Section, Buyer's license shall be automatically terminated.

**17. LIMITED WARRANTY AND REMEDIES.** Subject to the terms of Section 18 below, FIRST NANO warrants to the original purchaser the products hereunder to be free from defects in material and workmanship upon delivery. If such products are not as warranted and Buyer notifies FIRST NANO during the warranty period applicable to the products sold hereunder, FIRST NANO will, at its option, repair, replace or refund the purchase price of any products that prove defective within the warranty period. The warranty period shall be one (1) year from the date of shipment



of the product or such different period specified on the FIRST NANO quotation or sales order applicable to such product. **REPAIR OR REPLACEMENT OF THESE PRODUCTS OR REFUND OF THE PURCHASE PRICE AS PROVIDED UNDER THIS WARRANTY, IS THE BUYER'S EXCLUSIVE REMEDY.** This exclusive remedy will not be deemed to have failed of its essential purpose as long as FIRST NANO is willing and able to repair or replace any defective product, or refund the purchase price, in the prescribed manner. **THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, INFRINGEMENT AND FITNESS FOR A PARTICULAR USE.** FIRST NANO makes no other warranties of any kind and any repair or attempt to repair goods by anyone other than an authorized representative of FIRST NANO automatically voids any warranty on those goods. Warranty is also void if goods are misused or abused. Any oral or written statement concerning goods inconsistent with the warranty contained herein shall be of no force or effect.

**18. LIMITATIONS ON WARRANTY.** Products which are purchased from other equipment manufacturers and sold by FIRST NANO as part of a system will bear only the original manufacturer's warranty. The above warranty shall not apply to fuses, lamps, or other items that are expendable by nature, unless otherwise provided. Unless otherwise agreed in writing by an authorized representative of FIRST NANO at FIRST NANO's headquarters in Ronkonkoma, New York, the products sold hereunder are not intended for use in connection with any nuclear facility or activity. If so used, in the event any damage, injury or contamination occurs, FIRST NANO disclaims any responsibility of every kind and the user of the products shall indemnify FIRST NANO and hold FIRST NANO harmless from any and all liability for any such damage or contamination whatsoever arising out of any such use, including liability in tort or strict liability.

Under no circumstances shall FIRST NANO be liable for any indirect, consequential, collateral, special or incidental damages (including, without limitation, loss of profits or goodwill) whether such claim is based on contract, negligence, strict tort, warranty or any other basis. Goods may be returned only with prior written approval from FIRST NANO. Any goods returned will be returned at Buyer's expense and no allowance for, nor replacement of, defective goods covered by warranty will be made unless the alleged defects are established to the satisfaction of FIRST NANO after it tests and inspections. If any such defect is so established, FIRST NANO will either replace or repair the product involved or refund the purchase price to Buyer. FIRST NANO's sole liability shall, in no event, exceed the purchase price of the particular goods with respect to which a claim is made.

**19. MISCELLANEOUS.** All clerical errors are subject to correction. The failure of FIRST NANO to enforce at any time any of the provisions of this Agreement shall not be construed to be a waiver of such provisions nor the right of FIRST NANO to enforce such provisions in the future. Buyer may not assign any rights under this Agreement without the consent of FIRST NANO. FIRST NANO may subcontract the furnishing of any products sold hereunder or any portion thereof. All disputes arising under this Agreement shall be resolved, if not sooner settled, by a court of competent jurisdiction in the county of Suffolk, state of New York, U.S.A.