

## TERMS AND CONDITIONS OF TRADE

Effective: 22<sup>nd</sup> June 2021

1. **These Terms and Conditions:**
  - a. apply to any customer accepting goods and/or services from Nano Vacuum Pty Ltd ('NV')
  - b. are, together with Australian consumer law, the only conditions which are binding on the company
  - c. prevail over any other conditions specified by NV or a customer (see also 1.d. below)
  - d. may only be varied or deemed non-applicable in part or in whole by a director of NV in writing
  - e. may be updated from time to time, the version displayed on the company website [www.nanovactech.com](http://www.nanovactech.com) being the version currently in effect. NV does not provide notifications when updates are made
  - f. would have any dispute concerning their content or application resolved according to the laws of New South Wales, Australia.
2. **Quotations** are provided by NV to describe a good and/or service of potential interest to a customer. Quotations:
  - a. are valid for 30 days from the date of quotation unless otherwise specified
  - b. are subject to variation or withdrawal during the validity period
  - c. are confidential and exist for the benefit of the intending purchaser only
  - d. may contain text, illustrations, and attachments as description of the goods and/or services to be supplied. These may be general in nature. The precise items to be supplied are those documented in the 'SKU' and 'Description' columns in the quotation
  - e. prevail over any other representation, promise, statement, or description made by NV to the customer
  - f. provide information to a customer that allows a customer to use their own skill, knowledge, and judgement to make a purchasing decision. If a customer has insufficient information to decide, it is their responsibility to contact NV for assistance prior to placing an order based on that quotation.
3. **Pricing** (provided in a quotation or otherwise):
  - a. is provided exclusive of GST. If GST is applicable to the purchaser, the GST amount will also be specified and this amount is payable by the customer to NV
  - b. may be subject to an exchange rate variation (ERV). The potential for an ERV is shown on a quotation when a foreign currency is referenced with a conversion rate to the Australian dollar (AUD). An ERV will be applied to a customer's invoice when, at the time the goods and/or services are supplied, the AUD has declined in value by 2.5% or more against the referenced foreign currency. The ERV is calculated as:  $((\text{quoted price}/\text{quotation exchange rate}) * \text{current exchange rate})$ . A customer may request the details of how an ERV has been calculated. Exchange rates are determined from <https://www.nab.com.au/personal/travel-and-overseas-banking/foreign-exchange-rates#/calculator>
  - c. will not include any provision for freight, installation, commissioning, or user training unless these are separately specified OR are stated to be included in an overall 'package price'
  - d. will be subject to a surcharge of 2% of the value for an amount paid by credit card if not ordered via with NV website [www.nanovactech.com](http://www.nanovactech.com), although NV may decline to accept a credit card for any intended purchase
  - e. will not include local duties or taxes applicable to supply to a location that is not in Australia (therefore such charges are the customer's responsibility).
4. **Purchase Orders** provided by a customer to NV and received by NV via email, fax, post, or the NV website:
  - a. are deemed by NV to show the customer has accepted these Terms and Conditions
  - b. must contain the customer's company ABN (or, an equivalent business identification number if the company is located overseas)
  - c. are not subject to cancellation unless –
    - i. NV accepts the cancellation in writing; and
    - ii. the customer indemnifies NV for any loss NV incurs or is liable for because of the cancellation
  - d. are subject to cancellation if a pre-payment is required and that pre-payment is not received by NV within 1 month of a written request for payment.
5. **Terms of Payment**
  - a. payment of NV invoices is due within 30 days of the invoice being issued, unless otherwise specified by NV
  - b. may include progressive payments based on agreed milestones (e.g. shipment from factory, delivery to customer site)
  - c. if the milestone of the final progressive payment (e.g. completion of installation and commissioning) is delayed more than 90 days from the originally planned date through the customer having failed to complete agreed work(s) and their being no fault on the part of NV, the final progressive payment is then due and payable to NV. NV remain obligated to complete the agreed works in a timely manner upon the customer having completed the required preparatory work(s).
6. **Customers who do not make payments** by the invoice due date or **who breach these Terms and Conditions** or **who become insolvent** or are reasonably suspected by NV to be insolvent are liable, without limiting NV's ability to action other rights or claims, to the following actions at NV's discretion:
  - a. the charging of late payment fees, calculated on the overdue amount at the rate of 2% per month, calculated daily
  - b. a call for full payment of all items or services which have been ordered even if complete delivery has not been made, if it is not possible to cancel the delivery of the outstanding items or services
  - c. cancellation or suspension of any unfulfilled orders if these options are available to NV at no cost to NV
  - d. cancellation of any discount or credit arrangements or other commercial agreements (including contracts) existing between NV and the customer
  - e. lodgement of a caveat or similar title over any customer property, at the expense of the customer

- f. entry by NV or any authorised agent of NV into the customer's premises in which NV's goods are located to enable NV to inspect or reclaim the goods without liability for trespass, negligence, or payment of any compensation.
7. **Goods and Services are provided** to the customer on the basis that:
- a. NV has no responsibility to refund monies or to accept liability or to accept the return of a Good ('item') incorrectly ordered by the customer or otherwise found to be unfit for purpose, including the non-compliance to any regulatory or statutory requirement that had not been brought to NV's attention prior to the order being placed by the customer on NV
  - b. NV does not accept any liability to the customer or any third party for any consequential loss the customer or the third-party suffers or is liable for as a result of the customer's purchase decision
  - c. In the event where a supplied good or service does not meet the purpose for which it was ordered, NV may, at its sole discretion
    - i. accept the return of an item, subject to clause 8 below, or
    - ii. where possible, make changes to the goods or services to meet the specifications, such changes to be agreed in writing between NV and the customer with any associated costs to be payable by the customer to NV
  - d. supply is subject to availability, which is impacted by goods or services being discontinued, prior purchases from other customers, manufacturing delays and delays in shipping
  - e. any promised delivery date or service date is an estimate
  - f. NV does not accept orders under penalty for late delivery and the customer will waive any such penalties should they be applied
  - g. upon delivery, the customer has seven (7) days to report in writing any missing or incorrectly supplied items or to report any damage; if NV is not so notified in that period then the customer is deemed to have accepted the goods in full, in good order and condition
  - h. goods are not exported from the customer's country without the prior consent of NV
  - i. NV may engage other personnel or entities to supply the goods and/or services in part or in full
  - j. the customer will indemnify and release NV and keep NV fully indemnified against any loss of or damage to any property or injury to or death of any persons caused by any negligent act or omission or wilful misconduct of the customer, its employees, agents or sub-contractors or by any breach of its contractual obligations arising out of these Terms and Conditions.
8. **Return of Goods:**
- a. customers must have prior written authority from NV before returning goods. NV does not accept any responsibility for goods returned without written authority.
  - b. will incur a re-stocking fee of 20% of the original invoiced value, unless waived by a director of NV
  - c. shipment costs back to NV are the responsibility of the customer
  - d. returned goods that are not in as-new condition in original packaging will incur additional fees on the customer to fully reflect their written down value
  - e. must be returned within 10 business days of NV authorising the customer to return the goods. If not returned within this period, unless the shipment was lost or damaged as documented in the shipment tracking information, the authority to return the goods is cancelled and the full value of the original invoice is due and payable
  - f. goods that have been custom made for the customer by NV are not returnable in any circumstances.
9. Where **Software** is incorporated or forms part of the Goods:
- a. the software is licensed and not sold to the customer
  - b. the customer has a royalty free, non-exclusive, and non-transferable licence for the software
  - c. the customer is not entitled to sublicense the software or make it available to third parties
  - d. the software must not be reverse engineered, nor may it be modified other than via the manufacturer's provided default interface.
10. **Risk and Title:**
- a. the risk of loss or damage to goods passes to the customer on dispatch of the goods from NV premises unless the goods are being forwarded via a NV approved freight forwarder to the customer's premises, in which case the risk of loss or damage passes to the customer at the point the goods arrive at those premises. Accordingly, damage caused by the customer unloading the goods at the point of delivery is the customer's responsibility.
  - b. title to the goods remains solely with NV until the customer has paid in full the amount(s) owing for the goods, notwithstanding that the goods may be in the possession of the customer
  - c. until the full amount(s) owing for the goods is / are paid, the customer holds the goods as bailee of the company and must:
    - i. not encumber the goods
    - ii. be able to identify the goods so they are distinguishable from the customer's other goods
    - iii. allow NV access to the goods if they are to be reclaimed by NV because of the customer's breach of these Terms and Conditions
    - iv. not dispose of the goods unless the goods are of a consumable nature and are consumed in the ordinary course of the customer's business
    - v. not sell the goods unless it is to a purchaser who is a part of the customer's ordinary business.
11. The NV **website** [www.nanovactech.com](http://www.nanovactech.com):
- a. provides general information only, and no warranty or guarantee is provided as to the accuracy, timeliness, performance, or suitability of any content for any purpose
  - b. is subject to change without notice
  - c. contains material, including its design, which is owned or licensed to NV. This material must not be reproduced

- d. provides links to other websites to provide further information on topics thought relevant to the reader. Provision of these links does not signify that NV endorses or takes any responsibility for the linked content.
12. **Services**, including **repair or installation services**, provided by NV personnel are offered on the basis that:
- a. NV will not be liable to the customer or any third party for a failure of the Service(s) to fit the purpose for which they were ordered and the customer indemnifies NV against any loss any party (including the customer) suffers
  - b. The customer is responsible for:
    - i. providing a safe working environment to NV personnel
    - ii. preparing the work site for the proposed work(s), including –
      1. provision of any services (electricity, water, wastewater, gasses, etc.)
      2. completion of any site preparation
    - iii. transporting goods to the place of installation, including enabling adequate access for the goods and personnel
    - iv. providing, or paying any costs associated with providing, special transport or handling or lifting equipment, including the cost of retaining specialist equipment handling personnel if required.
  - c. Any quotation on services is an estimate based on Nano Vacuum's (NV's) understanding of the job requirements ('works'). In the event additional labour or parts are required, NV will raise a new quotation. In this event, if the customer declines to proceed with the works, the customer agrees to pay as an inspection fee the labour hours already consumed by the works, as well as the cost of any parts or consumables specifically purchased for the intended works (less any credit available from the supplier of the parts or consumables, upon their return).
  - d. Communications to NV relating to services can be made by email to: [service@nanovactech.com](mailto:service@nanovactech.com)
  - e. Freight charges from the customer to NV, and the return from NV to the customer, are chargeable at cost to the customer.
  - f. NV reserves the right to dispose of used parts unless otherwise advised by the customer prior to the works commencing.
  - g. You (the customer) must notify us prior to the commencement of the works if the equipment to be repaired or serviced is contaminated. If any substances are present that could present a health hazard, you must, prior to shipment or attendance of our service engineer-
    - i. Provide a list of the substances involved, and submit this list to NV together with the Safety Data Sheet applicable to each substance, and
    - ii. Decontaminate the equipment, and provide details of the decontamination procedure (with a decontamination certificate, if applicable), and
    - iii. Ensure the equipment is appropriately packed and labelled, if it is to be handled by a freight transportation company. This includes ensuring any ports, flanges or openings are appropriately sealed.
13. NV provides a **Warranty on goods or services** supplied, and accepts **Liability**, only as follows, unless otherwise provided for by Australian Consumer Law:
- a. new products are warranted for 12 months from the date of invoice against defective parts and faulty workmanship
  - b. consumable products (eg light sources, filters, rechargeable batteries) are warranted for 6 months from the date of invoice
  - c. service and repair work is warranted for 3 months on labour, 12 months on parts, from the date of the service or repair and this is only applicable to the actual service or repair work that was done and not to unrelated parts or software
  - d. in the event of a warranty claim, NV's liability is limited to one or more of the following –
    - i. replacement of the goods
    - ii. supply of equivalent goods
    - iii. repair of the goods
    - iv. supplying the service again  
-with the selection of the appropriate remedy or remedies being as agreed between NV and the customer and noting that the actions shown above from 13.d.1. to 13.d.iv are not displayed in order of priority nor of implementation
  - e. in no event will NV's total liability in respect to an event or series of connected events exceed the total price paid for the purchase of the relevant goods and / or services
  - f. any warranty claim is specifically excluded if the defect, damage, or malfunction is the result of –
    - i. normal wear and tear
    - ii. accidents, improper use, or abuse
    - iii. operation other than in accordance with the manufacturer's recommendations (including any specified consumables) and the required environmental conditions
    - iv. inundation, fire in the surrounding area, infiltration of pests or other foreign particles or material
    - v. modification, movement, or servicing of the goods that was not performed by NV or was not authorised by NV
    - vi. a failure by the customer to update or modify software or hardware as instructed by NV in writing
  - g. NV does not accept liability in any circumstances for any consequential loss to a customer or to a third party. Such losses could include, but are not limited to, financial loss or expense, loss of opportunity, loss of profits or goodwill arising directly or indirectly out of, or attributable in any way to, the supplied goods and / or services, their delivery, or the performance of any contract
  - h. the customer indemnifies NV against any loss NV suffers, incurs or is liable for if:
    - i. the customer breaches these Terms and Conditions
    - ii. the customer acts negligently
    - iii. NV exercises any of its rights under Australian law or under these Terms and Conditions
14. NV is not **obligated** to any provision in these Terms and Conditions where:

- a. the customer fails to comply with a term of the contract, until that breach is remedied in full
  - b. the failure of NV to observe its obligations is substantially or wholly due to a force majeure event (for example, industrial action, war, sabotage, terrorist activity, national emergency, blockade, government action or a pandemic).
15. **Errors and Omissions** may occur. To the extent permitted by law:
- a. Any typographical, clerical, or arithmetic error or omission in company provided literature is subject to correction without any liability on the part of NV.
16. **Definitions** in these Terms and Conditions:
- a. 'NV' means Nano Vacuum Pty Ltd with ABN 656 271 99 786
  - b. 'Customer' means any person, entity, company, body, or purchaser that orders or purchases goods and / or services from NV
  - c. 'Purchaser' means a customer who has raised, or who intends to raise, a purchase order
  - d. 'Goods' means products quoted by or ordered from NV; the meaning includes 'items' and 'services' if applicable to the context
  - e. 'Purchase Order' means the order for the goods and / or services that is created by the customer and sent to NV for fulfilment
  - f. Singular includes the plural, and vice versa
  - g. Letter capitalisation and use of **bold text** is to provide clarity for reading and has no other significance.