



## GENERAL TERMS AND CONDITIONS OF SALE AND TRADE

### 1 DEFINITIONS AND INTERPRETATION

1.1 The following terms have the following meaning:

WORK ORDER means the Work being undertaken by I-nano for the Client as described in each schedule of the independently arranged service contracts and/or the work related to the sell of bio & nanomaterials goods and products according to the client specifications.

WORKING DAY means any day other than a Saturday, Sunday, public holiday in Auckland, New Zealand; excluding national and state holidays. Warehouse hours are 10:00 am to 3:00 pm Monday to Friday.

1.2 In this contract:

- (a) in addition to the definitions in clause 1.1, unless the context otherwise requires:
  - i. terms given a meaning in the Specific Terms shall have that meaning;
  - ii. terms given a meaning in each schedule shall have that meaning in relation to the Work Order that is the subject of that schedule; and
  - iii. terms given a meaning within the General Terms shall have that meaning.
- (b) These terms shall be included as part of the quote as an attachment;
- (c) words referring to the singular include the plural and the reverse.
- (d) a reference to a paragraph, section, clause, schedule or a party is a reference to that paragraph, section, clause or party in this contract.
- (e) where two or more persons are listed as a party to this contract, their liability is joint and several.
- (f) all monetary amounts are in USD dollars unless stated otherwise.
- (g) clause headings are for reference purposes only.
- (h) time is of the essence.

### 2 WORK

2.1 From time to time the Client will request I-nano to perform various pieces of Work.

2.2 For each requested piece of Work, I-nano and the Client shall agree the important details of the Work Order in a schedule to be attached to and form part of this contract. Each Work Order shall include:

- (a) A description of the Work;
- (b) the Deliverables and due dates for the Deliverables;
- (c) Warehouse reception/shipment hours and policy;
- (d) Start Date and End Date;
- (e) Fees; and
- (f) any other matters agreed by the parties in relation to the Work.

2.3 If there is any conflict between the Specific Terms or General Terms and a schedule, the provisions of the schedule shall prevail with respect to the Work that is the subject of that Work Order.

2.4 I-nano will (subject to the Client meeting its obligations under this contract):

- (a) start the Work on the Start Date;
- (b) exercise reasonable care and skill in carrying out the Work, consistent with standards generally accepted in the scientific and engineering professions in New Zealand and
- (c) use reasonable endeavors to complete the Work, or any part of the Work, in accordance with the Deliverable dates.

2.5 I-nano does not warrant that the objectives of the Work can be achieved to the fullest of the client expectations or that the Work or any Deliverable will be of any benefit to any other person.

2.6 The parties acknowledge that the nature of the Work is such that changes in the Work may be necessary and that any such changes may require amendments to the Fees, Deliverables and/or timetable for the Deliverables. The parties will act in good faith to discuss any such changes and amendments requested by a party provided that such changes and amendments will not be binding unless agreed expressly, in writing.

2.7 The Work or each part of the Work will be deemed to have been completed upon delivery of the applicable Deliverables (or where Deliverables are not defined, on delivery by I-nano of a report summarizing the Work).

2.8 I-nano may subcontract any part of the Work it thinks fit.

### 3 RESOURCES TO BE PROVIDED

3.1 The Client will provide the I-nano with:

- (a) such access to its own facilities and personnel, and such access to other facilities and personnel which it is within its power to facilitate, as I-nano reasonably requires for the purposes of carrying out the Work; and
- (b) the Client Contribution at such times and at the required standard (if any) as per the schedule or as reasonably required by I-nano to complete the Work or any part of the Work.

3.2 I-nano will not be responsible or liable to the Client or to any person for any delay in performing, or failure to perform, the Work (or any part of the Work) to the extent that such delay or failure is due to the Client failing to meet its obligations under clause 3.1.

### 4 GOODS

4.1 This clause 4 applies if any of the Work comprises the making and/or supplying of goods by I-nano to the Client.

4.2 The Client assumes all risk in the goods either (a) once they are delivered to the Client or (b) once the Client has been notified that the goods are ready for collection. If the goods are to be delivered to the Client, the costs of delivery, and insurance of the goods while in transit, will be met by the Client.

4.3 If the Client fails to take delivery of the goods within 7 Working Days of receiving written notification of their readiness for collection, I-nano may charge the Client for any costs incurred in storing the goods. I-nano will be entitled to sell or otherwise dispose of the goods after giving the Client a further 7 Working Days' notice. Any surplus upon a sale of goods pursuant to this clause after deducting I-nano storage costs and all of its costs incurred in selling the goods will be offset against moneys owing from the Client to I-nano any balance will be refunded to the Client. If the price received by I-nano is insufficient to cover all moneys owing to I-nano by the Client, including storage and selling costs, the Client will immediately pay the shortfall to I-nano.

4.4 Legal and equitable title in any goods supplied by I-nano pursuant to this contract will be retained I-nano until all amounts

payable to I-nano under this contract have been paid. If the goods have not been paid for in full within 14 Working Days of the date on which payment was due I-nano enter the Client's premises at any reasonable time and seize the goods.

- 4.5 I-nano warrants that clear title to any goods provided to the Client pursuant to this contract will pass to the Client when title passes pursuant to clause 4.4. To the extent allowed by law every other warranty or guarantee implied by custom or law in relation to the goods or Work provided by I-nano under this contract is excluded including, without limitation, any warranty that the goods or Work provided are fit for their intended purpose. The Client agrees that the Work and goods (if any) provided by I-nano are supplied for business purposes.

## 5 PAYMENT

- 5.1 I-nano shall invoice in arrears on a monthly basis (in equal instalments if the price is fixed) for Fees (plus GST, if any) and Expenses (plus GST, if any).
- 5.2 The Client will pay Fees (plus GST, if any) and Expenses (plus GST, if any) specified on an invoice by the 30th day of the month following the date of invoice. On termination of this contract all outstanding amounts will be payable immediately. I-nano may set-off any amount payable by it to the Client against any amount payable by the Client to I-nano under the terms of this contract. I-nano has the right to require payment by letter of credit or such other method of payment acceptable to I-nano
- 5.3 Interest will be payable on overdue amounts at a rate equal to 3 percent above the base lending rate of the National Bank of New Zealand from time to time from the due date until the date payment is received. Such interest will accrue on a daily basis.
- 5.4 Without limiting any of I-nano's other rights and remedies under this contract, if any payment under this contract is not made on the due date I-nano may suspend the Work or suspend the supply of Deliverables upon any Work Order (whether the overdue payment relates to that Work Order or not) until such overdue payment and any interest due on it is received.

## 6 LIABILITY

- 6.1 I-nano will not be liable to the Client for:
- (a) any loss or damage arising out of or in connection with any delay in completion of the Work;
  - (b) any loss of profits or any consequential, indirect or special loss or damage of any kind whatsoever;
  - (c) any loss suffered by the Client due to a claim against the Client by a third party; or
  - (d) any claim made by the Client against I-nano where notice of the claim is not made within a period of 12 months commencing on the date of completion of the Work relating to the particular Work Order in question or, if the Work is not completed, on the earlier of the date of termination of that Work Order or this contract.
- 6.2 Notwithstanding any other provision in this contract, the liability of I-nano (whether in contract, tort including negligence, or otherwise) to the Client for any loss or damage suffered by the Client (howsoever arising) will not, in aggregate, exceed the total amount of the Fees (exclusive of GST) paid by the Client to I-nano under the Work Order from which the liability arises, or such other amount specified in the Specific Terms (if any).
- 6.3 The Client indemnifies I-nano and its subsidiaries, officers, employees and subcontractors against any claim, proceeding, loss, cost (including legal costs on a solicitor/own client basis), damage or expense (Loss) incurred by I-nano arising from a breach of this contract by the Client or the Client's use of any Deliverable or any output of the Work, any product or process developed therefrom or incorporating the same, other than

where such Loss arises directly from a breach of this contract by I-nano.

## 7 INTELLECTUAL PROPERTY RIGHTS

- 7.1 Intellectual Property Rights means all intellectual and industrial property rights of any nature whether conferred by statute, common law or equity, including without limitation, all rights in any patent, copyright, trade mark, design, database, circuit layout, know-how, trade secret, Confidential Information, or right of confidence including all such rights or similar rights in any invention, device, material, data, drawing, sample, method, process, text, algorithm, schematic, software, hardware, firmware, get-up, any other original works or materials, or any component of the same, and any application to register the same, whether or not registered or capable of registration.
- 7.2 All Intellectual Property Rights existing in a party prior to this contract (Existing Intellectual Property Rights) will remain with that party. Except to the extent necessary to complete the Work or expressly stated otherwise, neither party grants any rights in its Existing Intellectual Property Rights to the other party.
- 7.3 Unless otherwise specified in the Specific Terms and/or in a schedule and subject to clause 7.4, all Intellectual Property Rights arising directly from the Work (Work Intellectual Property Rights) will, upon completion of the Work, vest in the Client, provided that the Client has complied with all of its obligations under this contract.
- 7.4 Notwithstanding clause 7.3, where I-nano makes any improvement to its Existing Intellectual Property Rights while undertaking the Work and that improvement:
- (a) relates to I-nano's tools of trade, meaning without limitation, any technical information, machine, device, method, process, technique, ingredient, recipe, manufacture, design, specification, composition of matter, formula, algorithm, pattern or program that I-nano uses in the ordinary course of its business; and
  - (b) was incidental to the purpose of the Work,

I-nano will retain ownership of any Intellectual Property Rights in that improvement provided that I-nano grants the Client a non-exclusive royalty free license to use such Intellectual Property Rights to the extent necessary to make use of the Client's Work Intellectual Property Rights.

## 8 CONFIDENTIALITY

- 8.1 Confidential Information means:
- (a) all information and materials relating to or arising from the Work in any form whatsoever, and
  - (b) information which is by its nature confidential or which the discloser advises the recipient is confidential and includes the terms of this contract, and
  - (c) includes anything disclosed before the date of this contract that relates to paragraph (a) or (b).
- 8.2 Confidential Information does not include:
- (a) information which at the date of this contract is in the public domain or subsequently enters the public domain without fault on the part of the recipient,
  - (b) information that is received in good faith by the recipient from a third party,
  - (c) information which is at the date of this contract, independently acquired or developed by, or already properly in the possession of, the recipient and which the recipient can demonstrate by written record to be previously known to the recipient.

- 8.3 The recipient of Confidential Information shall:
- (a) keep it in the recipient's possession and treat it as confidential regardless of when disclosed,
  - (b) not use any Confidential Information belonging to the other party for any purpose other than as required in terms of this contract,
  - (c) only disclose Confidential Information to employees, officers, approved subcontractors or professional advisers on a need to know basis and shall be liable to the discloser for any breach by those persons of these confidentiality obligations.

8.4 The restrictions in this clause 8 do not apply where disclosure is required by law or by a government agency or government authority.

8.5 The parties acknowledge that any breach of this confidentiality obligation may result in damages for which monetary compensation would not be an adequate remedy and that the affected party is entitled to specific performance or injunctive relief in addition to any other remedies at law or in equity.

8.6 No party gives any representation or warranty with respect to any information other than that it has the right to disclose such information.

## 9 PUBLICATION OF RESULTS AND USE OF I-NANO NAME OR PRODUCT BRANDS

9.1 Where the Client proposes to publish any test results or other information relating to the Work in any academic publication, the Client must make suitable reference to I-nano and/or its employees and seek prior written approval from I-nano as to the publisher and the contents of the publication, such approval not to be unreasonably withheld.

9.2 Except with the prior written approval of I-nano, the Client will not use the name I-nano or any other product brand or proprietary ingredient name or make any other reference to I-nano in conjunction with any proposed manufacture or marketing of goods or services.

9.3 The work orders can be provided under different brand names determined by I-nano, brand names constitute trademarks of I-nano and/or its licensors. The partner acknowledges that I-nano shall at all times retain ultimate discretion to determine the branding of the services, and shall have the unfettered discretion to alter such branding and subsequently to alter, replace or remove one or more of the trademarks forming part of such branding.

9.4 The client undertakes that it will only market the services under the brand names determined by I-nano. In no event may the client,

- (i) market the services under other brand names, or
- (ii) market the services under the brand names determined by I-nano in combination with any other trademark, trade name, domain name, word or symbol, "tag line", "endorsement line" or "enhancing statement", whether owned by the partner or a third party, including co-branding, double-branding or other combinations. Any exceptions require prior express written approval from I-nano.

9.5 The partner may only use the brand names of the services in print and online advertising and marketing materials specifically directed at marketing and resale of the services. Use of the brand names of the services on hardware or other equipment to be provided as part of the services requires prior express written approval from I-nano. In case of any such approval, all use shall be in compliance with the I-nano marketing guidelines.

9.6 The client grants to I-nano a right to use the partner's trade name and trademarks and refer to the partner as a reference

partner in customer listings and other marketing documentation and activities relating to the services, provided that such use is in accordance with good business practice and in a manner to promote the reputation and goodwill of said partner trade name and trademarks.

9.7 I-nano and its licensors are the exclusive owners of the trademarks which may be used by the partner hereunder. the client may only use such trademarks in accordance with the restrictions and limitations set forth in these marketing and branding terms. neither these marketing and branding terms nor the partner's use of such trademarks shall convey to the partner any right or title to said trademarks or affect in any way the exclusive ownership of I-nano and its licensors of said trademarks and of any registrations thereof, and all use of such trademarks and all goodwill arising therefrom shall be for the sole benefit of and on behalf of I-nano and its licensors. No rights are assigned with respect to the said trademarks.

9.8 The partner acknowledges and undertakes to respect I-nano and its licensors' ownership to the trademarks and the validity of the applications and registrations for the trademarks. the partner undertakes to preserve the value and validity of the trademarks and will not commit any act which challenges I-nano and its licensors' ownership to or the validity of the trademarks or which assists any other person in such act.; to this effect the partner or client shall:

9.8.1 only use the trademarks in relation to marketing of the services as permitted hereunder and strictly in accordance with these marketing and branding terms, the partner agreement, the I-nano marketing guidelines referred to herein and any other instructions provided by I-nano from time to time;

9.8.2 not use, register or seek to register any trademark, trade name, company name, domain name, or user name or user group or other identification means in social media sites (e.g. facebook, linkedin, twitter, instagram), which is identical to or similar to any of the trademarks or any other corporate trade mark of I-nano or its licensors, or distributors thereof, whether alone or together with any other mark, name, word, logo or symbol, whether during or after the term of the partner agreement, in any country throughout the world;

9.8.3 not represent or act as agent for I-nano or its licensors, and shall have no authority to act in the name of, or on behalf of, or enter into any agreement or other commitment on behalf of I-nano or its licensors, or give any condition or warranty or make any representation on I-nano's or its licensors' behalf; and

9.8.4 not challenge the validity, scope of protection or ownership of I-nano and its licensors to the trademarks.

9.5 The partner shall notify I-nano promptly upon becoming aware of any actual or suspected infringement of any trademark, any action by any third party challenging any trademark or any claim by any third party that use of a trademark infringes any third party rights.

9.6 I-nano and its licensors may, in their sole discretion and at their own expense, bring or cause to be brought any prosecution, lawsuit, action or proceeding for infringement, unauthorized use, interference or violation of/with any trademark, and the partner shall not be entitled to take any such actions against any third party unless it has received I-nano's prior written consent and the parties have agreed on terms under which such action will be conducted. the partner shall provide all information and assistance to I-nano and its licensors in the event that I-nano decides that proceedings should be commenced or defended. any such proceedings shall be under I-nano's and its licensors' control and any recovery obtained shall accrue solely to the benefit of I-nano and its licensors.

## 10 TERMINATION

- 10.1 Subject to any earlier termination in accordance with the terms of this terms and conditions of sale and trade, this contract will commence on the date the products were delivered and terminate on the End Date (if any) set out in the Specific Terms.
- 10.2 Subject to any earlier termination in accordance with the terms of this contract, Work Orders shall commence on the Start Date and terminate on their End Date (if any) specified in the schedule relating to the Work Order.
- 10.3 Without prejudice to any other right or remedy it may have, a party (Terminating Party) may terminate this contract or a Work Order forthwith by written notice to the other party (Defaulting Party) on the commission of a material breach of this contract by the Defaulting Party provided that, if the breach is capable of remedy, notice of termination will not take effect unless the Defaulting Party has failed to remedy such breach to the reasonable satisfaction of the Terminating Party within 15 Working Days following receipt by the Defaulting Party of notice of termination specifying the breach concerned. For the purposes of this clause, a failure to pay any sum of money on the due date will be deemed to be a material breach of this contract.
- 10.4 Without prejudice to any other right or remedy it may have, I-nano may terminate this contract (including all Work Orders) immediately if the Client ceases trading and/or commences winding up (otherwise than for the purposes of a solvent reconstruction) or a receiver, or similar is appointed over any of the assets of the Client, or any action is taken to have the Client declared insolvent or bankrupt.
- 10.5 The termination of this contract or a Work Order will not relieve the Client of its obligation to make payment to I-nano of any Fees and Expenses due to I-nano.

## 11 DISPUTE RESOLUTION

- 11.1 If any dispute arises as to the terms of this contract, then any party may give notice to the other party of that dispute. The parties will endeavor to resolve it quickly and fairly in good faith
- 11.2 If the dispute or difference cannot be settled by good faith negotiation between the parties within five Working Days of the dispute or difference arising, such dispute or difference may be referred by either party to the mediation of a single mediator agreed to by both parties, or failing that, appointed by the President for the time being of the Mexican Jurist Society or his/her nominee.
- 11.3 If the dispute or difference cannot be settled within 15 Working Days of the dispute or difference being referred to mediation pursuant to clause 11.2, either party may commence court proceedings and shall be entitled to exercise all rights and remedies available to it at law.
- 11.4 Nothing in this clause 11 shall prevent either party from commencing court proceedings for the purposes of seeking urgent interlocutory relief.

## 12 GENERAL

- 12.1 A failure by a party to enforce a provision of this contract will not constitute a waiver of any right to future enforcement of that or any other provision.
- 12.2 If any part of this contract is unenforceable, invalid or illegal, the other terms will remain in force.
- 12.3 No party shall be liable for any default in its obligations under this contract if that default arises from any cause reasonably beyond its control. This clause shall not apply to an obligation to make payment under this contract.
- 12.4 Subject to clause 2.8, neither party will assign or otherwise transfer its rights or obligations under this contract without the

prior written consent of the other party (such consent not to be unreasonably withheld).

- 12.5 Nothing in this contract will prevent I-nano from undertaking activities in fields the same as or similar to the Work Order, whether on its own account or on behalf of any third party.
- 12.6 The Contact Person of each party will have authority to represent it in all matters pertaining to this contract. A party may change its Contact Person by written notice to the other party.
- 12.7 All clauses of this contract that are intended to continue after termination, including clauses 6 (Liability), 7 (Intellectual Property Rights), 8 (Confidentiality), 9 (Publication of results and use of I-nano name), 11 (Dispute Resolution) and 12 (General) will continue in full force and effect
- 12.8 Any notice to a party under this contract will be deemed to have been delivered three working days after posting to the address of that party specified in the Specific Terms of this contract or immediately on receipt by the sender of evidence the notice has been successfully faxed to the number specified in the Specific Terms of this contract.
- 12.9 This contract records the entire understanding and agreement between the parties regarding its subject matter and supersedes and extinguishes all prior agreements, statements, correspondence and undertakings, whether written, oral or both made between the parties relating to the same subject matter (representations) other than those which are set out in this contract. The parties agree that in entering this contract, they have not relied on any representation (including pre-contractual representations) other than those which are set out in this contract.
- 12.10 This contract will be governed by Mexican law and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.
- 12.11 The date of this contract shall be the date that the last party signed. Clients and third party agents subcontracted on behalf of the partner, agree to refrain from soliciting any employees of each other, or actively or passively condoning such solicitation by them or any related companies, unless such solicitation is agreed to in written form. Moreover, both parties agree to refrain from employing each other's employees, directly or indirectly, even after they leave, unless a three-way non-disclosure agreement to this effect is obtained from all parties involved in the business