

## CrayoNano General Terms and Conditions of Sale

**1. General**

- 1.1 These General Terms of Sale apply to and form part of any agreement between CrayoNano AS ("**CrayoNano**"), and the Buyer (the "**Agreement**") related to the sale of Deliverables by CrayoNano to the Buyer. For the purpose of these General Terms of Sale, the "**Buyer**" shall mean the legal entity purchasing the Deliverables from CrayoNano pursuant to the Agreement, and "**Deliverables**" shall mean all items supplied or to be supplied by CrayoNano to the Buyer pursuant to an Agreement as well as any services related to the supply of such items (for such services, the provisions of these General Terms of Sale apply to the extent reasonably applicable).
- 1.2 Any Agreement shall be considered concluded between the parties at the earliest of (i) the conclusion of a written agreement signed by both parties, (ii) CrayoNano issuing a written (including electronic) confirmation of a purchase order received from the Buyer, or (iii) CrayoNano fulfilling a purchase order received from the Buyer. In the event of inconsistency, unless otherwise agreed in writing, the General Terms of Sale shall prevail over any other part of the Agreement, and any order confirmation by CrayoNano shall prevail over any purchase order.
- 1.3 The Buyer acknowledges and agrees that all information provided by CrayoNano relating to the Deliverables shall only be considered part of the Agreement if this is explicitly stated in the relevant quotation and/or order confirmation issued by CrayoNano.

**2. Deliverables and delivery**

- 2.1 Any purchase order shall be binding only upon written (including electronic) order confirmation by CrayoNano.
- 2.2 CrayoNano shall make reasonable efforts to deliver the Deliverables as specified in the order confirmation. Unless otherwise agreed in writing, all Deliverables shall be delivered Carriage Paid To (CPT) Incoterms 2020 the delivery location specified in the order confirmation. Notwithstanding the above, any dates quoted for delivery of the Deliverables are approximate only and CrayoNano shall not be liable for any delay in delivery of the Deliverables howsoever caused. Time for delivery shall not be of the essence unless stipulated by CrayoNano in the order confirmation.
- 2.3 The Buyer shall be obliged to take delivery of the Deliverables and to do all the acts which can reasonably be expected of the Buyer in order to enable CrayoNano to make the delivery as agreed. If the Buyer does not comply with this obligation, the risk in the Deliverables shall pass to the Buyer at the time such non-compliance occurs, and all costs incurred by CrayoNano in connection with the delivery shall be borne by the Buyer.
- 2.4 CrayoNano shall be entitled to suspend its delivery obligations under the Agreement if CrayoNano, in its sole discretion, reasonably suspects that the Buyer is unable or unwilling to fully comply with its payment obligation.
- 2.5 CrayoNano reserves the right to make partial deliveries as far as reasonable for Buyer and to submit invoices for such partial deliveries. For all Deliverables specially developed for Buyer, CrayoNano reserves the right to deliver a quantity which is within the range of -20 % and +10 % of the total quantity ordered. Buyer will be charged for the actual quantity delivered.

**3. Cancellation, Rescheduling, Returns and Modifications**

- 3.1 Any cancellation, delay or other change by Buyer of a purchase order previously accepted by CrayoNano will require the prior approval of CrayoNano (such approval to be given in CrayoNano's sole discretion) and the approval will be without prejudice to any rights or



remedies CrayoNano may have under the Agreement or at law. If, on request of Buyer, CrayoNano agrees to any such change in purchase order or a change in an Agreement, including a (partial) cancellation, delay or suspension, the addition, omission, alteration, substitution or modification of the design, quality, standard, quantity, manufacturing site or performance (including sequence, quantities or timing) of Deliverables, or a change in Deliverables is required due to (i) changes in applicable laws, regulations or industry standards, (ii) emergency situations, (iii) incorrect or incomplete information provided by Buyer, or (iv) non-compliance by Buyer of any of its obligations under an Agreement, Buyer shall reimburse CrayoNano for all costs and expenses incurred in respect of such change promptly on first request.

#### **4. Price and payment**

- 4.1 Unless otherwise is agreed in writing, all prices quoted for Deliverables are exclusive of Value Added Tax (VAT) and other sales taxes and does not include insurance or import or export formalities. Such costs shall be borne by the Buyer. The Buyer undertakes to make payment of all invoices in the currency quoted in the quotation provided by CrayoNano for the relevant order and, if no such quotation has been given, as quoted in CrayoNano's order confirmation.
- 4.2 Unless otherwise stated on CrayoNano's proposal, quote or invoice, prices are for products only and do not include taxes, freight, duties, tariffs or any other charges or fees for additional services (collectively, "Additional Fees"). Unless otherwise stated on CrayoNano's proposal, quote or invoice, Customer is responsible for any and all Additional Fees. Prices are subject to change due to manufacturers' price increase, change in exchange rate or quoting errors
- 4.3 Subject to prior notice to Buyer, CrayoNano reserves the right to adjust prices for Deliverables not yet delivered to reflect variations in individual costs of more than five percent (5 %) including any foreign exchange rate fluctuations, raw materials and other costs of manufacturing and distribution, and labour costs, that take effect between the date of the Agreement and delivery of Deliverables. In such case, the price adjustment shall be proportionate to the cost variation.
- 4.4 Unless otherwise agreed, consideration payable in respect of the Deliverables shall be invoiced when delivery is deemed to have taken place pursuant to clause 2. The terms of payment shall be as stated in the quotation provided by CrayoNano and, if no such quotation has been given, in CrayoNano's order confirmation. In the absence of any such terms, payment is due within 30 days net of the date of the invoice, to the designated bank account of CrayoNano. Buyer shall pay all amounts due to CrayoNano in full without any set-off, counterclaim, deduction or (tax) withholding.
- 4.5 If the Buyer fails to make payment by the agreed time, CrayoNano shall be entitled to claim interest on any overdue amount. The interest rate shall be 3 % per month, or the highest rate permitted under applicable law (if such is lower).

#### **5. Retention of title**

- 5.1 The ownership of the Deliverables shall remain the sole and absolute ownership of CrayoNano until the Buyer has paid the full, agreed price for the delivered Deliverables to CrayoNano, as well as any interest or other amounts due with respect to such Deliverables.
- 5.2 Upon arrival of the Deliverables at the agreed destination, the Buyer must examine the Deliverables for transport damage and must verify that the correct quantity of Deliverables has been delivered immediately upon arrival at the agreed destination. The Buyer must notify CrayoNano of any such damage and/or deviation in quantity immediately, and in any event within 2 business days of the arrival of the Deliverables. The reporting of damages, non-conformities or deficiencies will not relieve the Buyer from its payment obligation for the Deliverables.



## 6. Limited Warranty

- 6.1 CrayoNano warrants that on delivery and for a period of 12 months from the date of delivery the Deliverables will correspond in all material respects with their specification and be free from material defects in design, material, and workmanship.
- 6.2 Any warranty obligations of CrayoNano under an Agreement are conditional upon: (i) proper storage, installation, use, operation, and maintenance of Deliverables, all in accordance with product application notes and other instructions or terms communicated or provided by CrayoNano to Buyer (if any); (ii) Buyer keeping accurate and complete records of operation and maintenance during the warranty period and providing CrayoNano access to those records; (iii) modifications, combination with other goods or repair of Deliverables only as authorized by CrayoNano; and (iv) Buyer examining the Deliverables immediately upon delivery and Buyer notifying CrayoNano in writing of any non-conformity of the Deliverables immediately (and in any event within 14 days) after such non-conformity is discovered or ought to have been discovered by careful examination. Failure to meet these conditions renders the warranty null and void.
- 6.3 Any notification by the Buyer in accordance with clause 6.2 shall include a description of the non-conformity and all relevant evidence necessary to evaluate the non-conformity, including a filled out CrayoNano Return Material Authorization (RMA) form for any commercial issues and a Customer Failure Analysis Form (CFAR) for any technical related issues (which are available from CrayoNano upon request).
- 6.4 Upon submitting a notice of non-conformity and receiving approval of return from CrayoNano, Buyer shall arrange shipment to CrayoNano and CrayoNano shall, upon receipt of the Deliverables, be granted a reasonable time to evaluate the notice and the Deliverables and, where relevant, propose an appropriate solution. No Deliverables shall be returned to CrayoNano without prior approval from CrayoNano.
- 6.5 CrayoNano's sole and exclusive obligation, and the Buyer's sole and exclusive right, with respect to claims under this warranty shall be limited, at CrayoNano's option, either to the replacement or repair of non-conforming Deliverables or to an appropriate credit for the purchase price thereof. The Buyer acknowledges and accepts that replacement Deliverables supplied by CrayoNano may have minor deviations in design and/or specifications which do not affect the functionality of the replaced Deliverable. In respect of any replaced or credited Deliverables, CrayoNano may, in its sole discretion, either claim the property of the replaced or credited Deliverables and require Buyer to return these to CrayoNano, or instruct Buyer to destroy these at Buyer's costs. Repaired Deliverables shall be warranted for the remainder of the original warranty period.
- 6.6 In the event that CrayoNano decides that a claim under warranty is not valid, Buyer will bear the costs incurred by CrayoNano in handling and testing, and the transport of Deliverables returned.
- 6.7 Unless expressly stated in writing, any Deliverables specifications or catalogue descriptions are for guidance only. CrayoNano shall be entitled to make any changes to the Deliverables specification without prior written notification to Buyer. CrayoNano shall be entitled to make changes to the design and composition of the Deliverables where such changes will not have a material impact on the performance or compatibility of the Deliverables.
- 6.8 Unless otherwise follows from mandatory, applicable law, CrayoNano shall have no obligation to repair, replace or refund payment for any Deliverables where a notification according to clause 6.2 is received more than 12 months after the delivery of the relevant Deliverables, or where such notification is otherwise not provided in accordance with clause 6.2 and 6.3.
- 6.9 CrayoNano shall have no obligations under warranty if the alleged defect or non-conformity is the result of normal wear and tear, stress testing, non-compliance with CrayoNano's instructions, misuse, neglect, improper handling, modification, combining it with other products, or other circumstances attributable to the Buyer.



- 6.10 The warranty granted above shall apply to the Buyer and does not extend to the Buyer's customers, agents or representatives and is in lieu of all other warranties, whether express or implied, including without limitation any implied warranties of merchantability, fitness for a particular purpose, including the Buyer's combination of the Deliverables with other products, or the performance of any Buyer product which incorporates or is integrated with the Deliverables. All other warranties are hereby specifically disclaimed by CrayoNano.
- 6.11 Where CrayoNano informs the Buyer that any Deliverables are subject to recall or withdrawal, Buyer shall fully cooperate and shall provide all such assistance as CrayoNano may require. Buyer shall keep accurate books and records to ensure the traceability of the Deliverables in case of Deliverables recall.
- 6.12 The remedies pursuant to this clause 6 shall be Buyer's sole and exclusive remedies with respect to default or defects, and shall exclude any other remedies that may be available to Buyer pursuant to law.

## **7. Improper Use**

- 7.1 The Buyer warrants that the Deliverables will not be used in life support systems, human implantation, nuclear facilities or systems or any other application where product failure could lead to loss of life or catastrophic property damage. Buyer will indemnify and hold CrayoNano harmless from any loss, cost, or damage resulting from Buyer's breach of this clause 7.

## **8. Export**

- 8.1 The Buyer acknowledges and agrees that the Deliverables being sold hereunder may be subject to export control laws and regulations.
- 8.2 Buyer will comply with all such laws and regulations to the extent applicable. Such laws and regulations include, but are not limited to, the Norwegian Export Control Act, the U.S. Export Administration Regulations (US EAR), the U.S. State Department's International Traffic in Arms Regulations (ITAR), sanction regimes of the U.S. Department of Treasury's Office of Foreign Assets Control (OFAC) and export laws and regulations of the European Union (EU) and/or any of its member states. To the extent relevant, Buyer shall not, without prior U.S. Government authorization, export, re-export, or transfer any commodities, software, or technology, either directly or indirectly, to any country subject to a U.S. trade embargo or sanction or to any resident or national of said countries, or to any person, organization, or entity on any of the restricted parties lists maintained by the U.S. Departments of State, the Treasury, or Commerce. In addition, any Deliverables sold hereunder may not be exported, re-exported, or transferred to any end-user engaged in activities, or for any end-use, directly or indirectly related to the design, development, production, use, or stockpiling of weapons of mass destruction (e.g., nuclear, chemical, or biological weapons, and the missile technology to deliver them).

## **9. Force majeure**

- 9.1 If an extraordinary situation should arise which is outside the control of CrayoNano, which makes performance of the duties under the Agreement impossible, and which under Norwegian law must be classified as force majeure, the Buyer shall be notified of this as soon as reasonably possible. The obligations of CrayoNano shall be suspended as long as the extraordinary situation prevails. The corresponding obligations of the Buyer shall be suspended for the same period.
- 9.2 In the event that the delay exceeds three months, either party may cancel the affected Agreement(s), in which case CrayoNano is not liable for any resulting damages.
- 9.3 Nothing in this clause 9 will excuse the Buyer from its payment obligations for Deliverables received.

## **10. Intellectual property Rights**

- 10.1 "Intellectual Property Rights" shall mean any intellectual property rights, whether registered, applied for or non-registered, including but not limited to patents, designs, trademarks, service



marks, copyright, copyright-related rights (neighboring rights) and all similar rights, including those subsisting in inventions, performances, computer programs, trade secrets, know-how, business names, goodwill, and the layout, style and presentation of goods or services.

10.2 Nothing in the Agreement shall be construed to transfer or assign any Intellectual Property Rights between the parties. In particular, CrayoNano retains all right, title and interest in and Intellectual Property Rights related to the Deliverables.

10.3 Except as permitted in writing by CrayoNano, the Buyer agrees that it will not analyze or have analyzed, deconstruct or have deconstructed, or reverse-engineer or have reverse-engineered any of the Deliverables.

## **11. Legal requirements**

11.1 CrayoNano shall at all times have the necessary approvals and permits required to provide the Deliverables and is obliged to document, on the Buyer's request, that such approvals and permits have been obtained.

## **12. Limitation of liability**

12.1 Each party shall be liable to the other party for direct damages caused by a breach of its obligations under the Agreement. Each party's total liability for any losses or other damages related to a specific purchase order is limited to an amount equal to 100% of the total fees to be paid in respect of such purchase order. Without prejudice to the foregoing, each party's total liability for any losses or other damages related to the Agreement is limited to an amount equal to 50% of the total fees to be paid under the Agreement. Neither party shall be liable for indirect or consequential damages (including but not limited to any lost profits, lost savings, loss of data, loss of reputation, loss of goodwill, indirect, incidental, punitive, special or consequential damage). The said liability limitations do not apply to any losses suffered by CrayoNano due to the Buyer's breach of clause 7, Buyer's misappropriation of CrayoNano's Intellectual Property Rights, or in the case of gross negligence or wilful misconduct by a party.

## **13. Indemnification for infringement of third party's Intellectual Property Rights**

13.1 Buyer shall promptly, and in no event later than 2 business days after becoming aware thereof, notify CrayoNano of any third party claim alleging that any of the Deliverables supplied to Buyer by CrayoNano infringes any third party Intellectual Property Rights. Upon such notice, CrayoNano may at its own option and at its own expense either: (i) procure for Buyer the right to continue using such Deliverables or (ii) provide a replacement non-infringing product for such Deliverables of equivalent functionality; or (iii) modify such Deliverables such that they are no longer infringing; or (iv) make an appropriate refund or credit of monies paid by Buyer for the Deliverables.

13.2 In the event that a claim referred to under clause 13.1 results in any legal proceedings, Buyer shall give CrayoNano full authority, at the option and cost of CrayoNano, to settle or conduct the defence of such claim. Buyer shall provide CrayoNano with all assistance as CrayoNano may reasonably require in connection with such defence of such claim. Buyer shall not enter into any settlement in connection with any such claim, nor incur any costs or expenses for the account of CrayoNano without the prior consent of CrayoNano.

13.3 Subject to the provisions of clause 12 and this clause 13, CrayoNano will reimburse Buyer in respect of any final award of damages by a court of competent jurisdiction holding that the Deliverables as supplied by CrayoNano under the Agreement directly infringe any third party Intellectual Property Rights, provided that the infringement is held to be directly and solely attributable to the use by Buyer of the Deliverables as supplied by CrayoNano under the Agreement.

13.4 Notwithstanding anything to the contrary provided in the Agreement, CrayoNano will not be liable for, and the obligations of CrayoNano set out in this clause 13 will not apply to: (i) any claim of infringement of third party Intellectual Property Rights resulting from compliance with Buyer's design, drawings, specifications or instructions; or (ii) use of any Deliverables other than in accordance with its specifications or any claim based on or resulting from any



modification or adaptation of Deliverables, made by or on behalf of Buyer; or (iii) any third party Intellectual Property Rights covering any assembly, circuit, combination, method or process, in the manufacture, testing or application in which such Deliverables supplied by CrayoNano may have been used; or (iv) any claim of infringement resulting from compliance with an industry standard applying to the Deliverables.

- 13.5 With regard to any claim of infringement covered by clause 13.4, Buyer shall fully indemnify CrayoNano against any award of damages for any such infringement and shall reimburse all costs incurred by CrayoNano in defending any suit or proceeding for such infringement, provided that CrayoNano gives Buyer notice in writing of any such suit or proceeding for infringement without undue delay and, if so requested, full authority to conduct the defence thereof.
- 13.6 In the event that CrayoNano receives notice claiming infringement of third party Intellectual Property Rights in relation to any Deliverables supplied or to be supplied under an Agreement, CrayoNano may, in order to limit or avoid liability, terminate the Agreement, suspend or discontinue the supply or performance to Buyer of the Deliverables and CrayoNano will not be liable to Buyer by virtue of such termination, suspension or discontinuation.
- 13.7 Subject to the exclusions and limitations set forth in clause 12, the foregoing states the entire liability of CrayoNano for infringement of third party Intellectual Property Rights in connection with the supply of Deliverables.

#### **14. Termination**

- 14.1 Either party may terminate the Agreement with immediate effect:
- (a) If the other party materially breaches its obligations under the Agreement, and fails to rectify such breach within 30 days of receipt of notice of the breach from the other party; or
  - (b) in the event the other party becomes insolvent, files for bankruptcy, or a petition for bankruptcy is filed against it which is not vacated within 30 days, or if either party should file a petition in aid of creditors.

#### **15. Data Protection**

- 15.1 Each party is an independent controller for any processing of personal data performed in connection with the Agreement. Each party is responsible for its own compliance with applicable data protection laws. In the event that one of the parties processes personal data on behalf of the other party, the parties shall in good faith enter into a data processing agreement based on a template to be provided by CrayoNano.

#### **16. Confidentiality**

- 16.1 Each party shall treat all non-public information exchanged or received in connection with the Agreement as confidential and shall not (i) disclose any such information to any third party without the prior written consent of the other party; (ii) use or utilize any such information in any way or manner that may be in violation of or in competition with any legitimate business activity or interest on behalf of the disclosing party. Each party agrees to take reasonable precautions (no less rigorous than the receiving party takes with respect to its own comparable confidential information) to prevent unauthorised disclosure of the other party's confidential information. The confidentiality obligation shall survive the termination or expiration of the Agreement.
- 16.2 Notwithstanding the generality of the foregoing, Buyer shall maintain any technical, commercial and financial information, including any quotation and (pricing) terms, other data disclosed to Buyer by CrayoNano, and any feedback, confidential and shall not disclose such information to any third party and shall not use any such information for any purpose other than as agreed by the parties and in relation to the quotation and/or the Agreement.



## **17. Assignment**

- 17.1 A party shall not assign any rights or obligations under the Agreement to a third party without the prior written consent of the other party. Notwithstanding the foregoing, CrayoNano may assign all or part of its rights under the Agreement to an affiliate or to any entity that succeeds to or acquires all or substantially all of the business or assets of CrayoNano through merger, consolidation, or acquisition of stock or assets. The Agreement is binding on any permitted assignees or transferees.

## **18. Miscellaneous**

- 18.1 The Agreement constitutes the entire agreement between the parties with respect to the matters dealt with herein and supersedes any previous agreements between CrayoNano and the Buyer. In particular, no terms or conditions communicated by the Buyer to CrayoNano, e.g. in a purchase order, shall be binding upon CrayoNano unless explicitly accepted in writing. If such terms are accepted by CrayoNano, any terms of the Agreement shall prevail over such Buyer terms and conditions. In the event of conflict between these General Terms of Sale and the rest of the Agreement, the latter shall prevail.
- 18.2 CrayoNano may amend these General Terms of Sale from time to time by sending a new version of the General Terms of Sale to the Buyer. Unless the Buyer raises a written objection to CrayoNano within two (2) weeks from the date of receipt of the new version, the Buyer shall be deemed to have accepted that the new version shall apply to any future purchase orders.
- 18.3 If any provision of the Agreement is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, that invalidity or unenforceability will not affect the other provisions of the Agreement which shall remain in full force and effect. The parties must attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision that achieves to the greatest extent possible the same effect as would have been achieved by the invalid or unenforceable provision.
- 18.4 Any terms set out in the Agreement that by their nature are intended to survive the expiration or termination of the Agreement shall survive the expiration or termination of the Agreement

## **19. Governing law and dispute resolution**

- 19.1 The Agreement is governed by and shall be construed in accordance with Norwegian law.
- 19.2 Any dispute or claim arising out of or in connection with the Agreement, including any dispute regarding its existence or validity, shall be resolved in accordance with the Rules of Arbitration of the International Chamber of Commerce (ICC) by one or more arbitrators appointed in accordance with the said Rules.
- 19.3 The arbitration proceedings shall be conducted in Oslo, Norway. The language of the proceedings shall be English.
- 19.4 Notwithstanding the above, the parties will be entitled to apply for injunctive relief or other provisional measures either to a court having jurisdiction in relation to such relief or order, or under the ICC Rules for expedited arbitration.