

## **TERMS AND CONDITIONS OF SALE NEXMOSPHERE B.V.**

### **1. DEFINITIONS**

In these Terms and Conditions of Sale, the following words and phrases with their first letter(s) capitalized shall have the meaning ascribed to them as set out below unless this is expressly deviated from in a specific case:

**“Agreement”** means the Proposal, the Order Confirmation and these Terms and Conditions of Sale collectively

**“Charges”** means the amount payable by the Customer (in consideration) for a Product as may be set out in an Invoice;

**“Confidential Information”** has the meaning as set out in article 13;

**“Customer”** means the purchaser of the Product or the party who has accepted the Proposal and to whom the Order Confirmation and/or Invoice is issued;

**“Customized Product”** means a Product specifically designed and produced upon request of a Customer;

**“Design”** means the specifications, drawings, technical documentation and other documents as well as any models, molds, dies, tooling, creative work or process in relation to the engineering of the Products

**“Invoice”** means the online or paper form which may include the following information:

- (a) the Customer’s details;
- (b) the Product(s) selected by the Customer, including any specific or optional features selected by the Customer;
- (c) the Charges for the Product(s) selected by the Customer; and
- (d) where the Product is a commodity, a delivery address.

**“Order Confirmation”** shall mean the Order Confirmation document issued by nexmosphere to the Customer for the purchase of Products;

**“Product(s)”** shall mean any and all products and Services ordered by the Customer in accordance with the Agreement and delivered by nexmosphere to the Customer;

**“Product Description”** means the description of each Product as set out in a Proposal and/or Product Confirmation provided by nexmosphere, which may include specific usage rights (if any) in relation to the copyright protected content accessible and provided through that service or a Product;

**“Proposal(s)”** means a proposal delivered by nexmosphere to a potential Customer in seeking to purchase Products and which Proposal will be confirmed in a Order Confirmation;

**“Services”** means the (i) hours spend with regard to the design and manufacturing of a Product, (ii) the prototype designed and manufactured, (iii) the installation of the

Product at a location and (iv) all the other services provided by nexmosphere to (or for the benefit of) the Customer.

**“nexmosphere”** means nexmosphere B.V., whose registered address is High Tech Campus 10, 5656 AE Eindhoven, the Netherlands, registered in the Dutch Chamber of Commerce with number 67199496 or any other related corporate entity nominated by nexmosphere and whose corporate entity is confirmed on the Invoice.

### **2. APPLICABILITY**

These Terms and Conditions of Sale apply to all Proposals, Order Confirmations, the purchase and sale of the Products and/or Services from nexmosphere to the Customer, including all orders and acceptations between nexmosphere and a Customer. These The Agreement exclusively governs the relationship between nexmosphere and any relevant Customer. nexmosphere expressly rejects any general terms and conditions used by Customer. Customer may issue a purchase order for administrative purposes only. Additional or different terms and conditions contained in any such purchase order will be null and void and do not bind nexmosphere.

### **3. OFFERS AND CONFLICT**

3.1 All Proposals by nexmosphere are non-binding and may be revoked at any time by nexmosphere, unless nexmosphere stated otherwise in writing. Any amendments made by nexmosphere in writing or verbally, shall entail a new Proposal, automatically revoking the previous Proposal. Any amendments by Customer of an nexmosphere Proposal, will be deemed a new proposal by Customer, which nexmosphere may accept or reject at its sole discretion.

3.2 A Proposal or an amended and new Proposal (or a new proposal by a Customer) is only accepted by nexmosphere and deemed to be an Agreement when it delivers a Order Confirmation to the Customer [in which nexmosphere will state a Product Description].

3.3 In case of conflict between the relevant documentation of the Agreement, Customer shall inform nexmosphere of such conflict and the order of precedence of documentation in order to resolve such conflict shall be as follows: (1) the Order Confirmation, (2) the attachments to the Order Confirmation, (3) the Proposal, (4) the attachments to the Proposal and (5) these Terms and Conditions of Sale.

### **4. PRODUCTS AND PRICES**

4.1 Product configurations and prices are subject to change at any time until the Order Confirmation has been issued, unless Customer requests a change as meant in article 7.

4.2 Prices are based on delivery ex warehouse / works, unless otherwise agreed in writing, and do not include delivery and service costs.

4.3 All listed and quoted prices are exclusive of, and Customer shall pay, all taxes, duties, levies or fees, or other similar charges imposed on nexmosphere or on Customer by any taxing authority.

4.4 The prices quoted are in Euros, or in another currency if stated by nexmosphere in writing. Customer shall bear any exchange rate risk, unless otherwise agreed in writing.

4.5 The Customer will pay the Charges within 30 days following the issue of the Invoice.

## **5. ORDER CONFIRMATIONS, DESIGN, SHIPPING, DELIVERY, RISK OF LOSS, TRANSFER OF TITLE**

5.1 Unless otherwise agreed in writing, delivery shall be made ex warehouse/works. nexmosphere is entitled to make partial deliveries. Customer must accept delivery of Products during normal business hours, failing which all costs arising thereof shall be charged in conformity with nexmosphere's rates.

5.2 The risk of loss or damage of Products shall pass to Customer at the moment of delivery ex warehouse/works, even if nexmosphere has not yet transferred the ownership thereof.

5.3 Title to a Product will transfer to Customer only after the all Charges and all other compensations have been received by nexmosphere, provided that Customer is not otherwise in default of any of its obligations under the Agreement.

5.4 nexmosphere cannot be held liable for any damages as a result of delay in delivery of Products. In case there is a delay of more than 30 days in the delivery of the Customized Products to the Customer, the Customer has the right to cancel the delivery of that part of the Customized Products that have not been delivered within said period. The Customer is in such case entitled to a repayment of the corresponding part of the Charges. This repayment of Charges shall be the sole right the Customer is entitled to in relation to a delay in the delivery of Customized Products. Furthermore, Customer is aware that the Products might not be suitable for Customer' consecutive new entries to the market and nexmosphere cannot be held liable for non-compatibility of the Products with new entries of Customer whatsoever.

## **6. SPECIFICATIONS, DRAWINGS, TECHNICAL DOCUMENTATION AND OTHER ITEMS**

6.1 The Design shall remain the property of nexmosphere unless as explicitly agreed otherwise in the Order Confirmation. Brand and Customer specific specifications, drawings, technical documentation and other documents as well as any models, molds, dies, tooling, creative work or process and other items supplied to the Customer by or on behalf of nexmosphere shall remain the property of nexmosphere until the Charges have been fully paid to nexmosphere.

6.2 Insofar the Customer provides any specifications, drawings, technical documentation and other documents as well as any models, molds, dies, tooling, creative work or process and other items to nexmosphere to enable nexmosphere to produce and design the Products, nexmosphere may unquestionably assume the correctness of those specifications, drawings, technical documentation and other documents. Any incorrectness of these documents resulting in a deviation of the Products is for the sole risk and account of Customer. nexmosphere cannot be held liable for any damages following incompatibilities and/or defects of the Products based upon incorrect documentation and/or information provided by the Customer to nexmosphere.

## **7. CHANGES**

7.1 Customer may on its own account and risk request nexmosphere within all reasonability to change the Products, the scope of supply, the specifications, drawings, technical documentation and other documents as well as any models, molds, dies, tooling and other items, to issue additional instructions, to perform additional work or to omit certain Products or a parts thereof. nexmosphere shall within a reasonable time indicate if it can comply with any such request and what the consequences of it are for the Charges and the delivery time of the Products. The Customer shall then within 5 business days decide if the indication given by nexmosphere is accepted or not. If the indication is not accepted and the Order Confirmation is cancelled Customer shall pay to nexmosphere the Charges in relation to the Products that have been produced, plus all other costs and damages nexmosphere suffers because of the cancellation with a maximum of the Charges as included in the original Order Confirmation.

7.2 In case the Customer requests nexmosphere to stop the production immediately the delivery date as stated in the original Order Confirmation is no longer applicable and Customer shall be charged the reasonable costs caused by the requested interruption of the production and, if applicable the costs of the restart of the production of Products.

7.3 When upon request of the Customer changes have been made and unless agreed otherwise with nexmosphere, (i) no warranty period shall apply to the Products as set out in article 10 of these Terms and Conditions of Sale, (ii) nexmosphere cannot not be held liable for any of the changes requested and (iii) all liability following such requested changes during production and/or design of the Products are for the sole risk of and on the account of the Customer. nexmosphere will in particular not be liable for any damages of the Customer when nexmosphere advised negatively upon the request for changes made by the Customer.

## **8. INSPECTION AND ACCEPTANCE**

8.1 Customer is responsible to assess that the Products (including the choice and design of Products) comply with its intended use and Customer acknowledges that it is able to assess the requirements of the intended use of the Product.

8.2 Immediately upon receipt of a Product, Customer shall inspect it for defects and non-conformance with the written specifications provided by nexmosphere and will notify nexmosphere in writing within fourteen (14) days following dispatch of a Product, of any defects or non-conformance. After such fourteen (14) day period, Customer shall be deemed to have irrevocably accepted the Product, if not already previously accepted. After acceptance, Customer shall have no right to reject the Products for any reason or to revoke acceptance. Customer hereby agrees that a [fourteen (14)] day period is a reasonable period for inspection and revocation.

8.3 Customer may return a Product if: (i) it is in new condition, suitable for resale in its undamaged original packaging and with all its original parts and (ii) it has not been used, installed, modified, rebuilt, reconditioned, repaired, altered or damaged. All returns of Charges by nexmosphere to Customer shall be subject to the following deductions: (i) cost of putting items in salable condition; (ii) transportation charges, if not prepaid; and (iii) handling and restocking charges. Customized Products may not be returned and no refund will be made.

## **9. SUSPENSION OF PERFORMANCE AND RIGHT OF RETENTION**

9.1 nexmosphere is entitled to suspend its performance of the Agreement (including designing the Product or future partial deliveries) if Customer fails to meet any of its obligations under the Agreement (including but not limited to the delivery of information Customer has to provide to nexmosphere), or if nexmosphere reasonably expects that Customer will not fulfil its obligations provided for in the Agreement.

9.2 If Customer does not entirely, adequately and/or immediately fulfil any of its obligations of the Agreement, nexmosphere can exercise a right of retention with regard to the Products and funds of Customer, which means Customer will have no longer a right to delivery of the Products until it has fulfilled its obligations of the Agreement towards nexmosphere. Customer shall pay to nexmosphere the reasonable costs and damages of nexmosphere caused by the not fulfilling by Customer of its obligations out of the Agreement.

## **10. REPRESENTATIONS AND WARRANTIES**

10.1 A standard warranty period of one (1) year following delivery of the Products is provided by nexmosphere to the Customer during which nexmosphere represents and warrants that for the intended period of usage of the Products, the Products are fit for use, free from defects

and meet industry standards or explicit specifications agreed upon. In case of a warranty claim nexmosphere, in its sole discretion, will decide whether it will take back such Product or carry out any work necessary to cause the (parts of the) Products to comply with the Agreement and/or provide a new Product (ex warehouse / works) to the Customer and/or in its sole discretion to provide a reduction of Charges to the Customer. Customer shall pay within thirty (30) days after receipt of nexmosphere's Invoice all reasonable costs (including but not limited to transportation costs) incurred by nexmosphere as a result of or in connection with any such remedial action.

10.2 The warranty as provided in article 10.1 of these Terms and Conditions of Sale is the sole warranty provided to the Customer and the warranty claim by the Customer is only to be accepted if the claim is made in time and in accordance with article 8 of these Terms and Conditions of Sale. The warranty provided to the Customer is non-transferable Customer acknowledges that the application of article 7:17 DCC up until article 7:22 DCC is excluded.

10.3 Costs in connection with distribution and/or installation following a warranty claim by Customer are payable by Customer in case nexmosphere did not distribute and/or install the Products before the warranty claim was issued.

10.4 No warranty period of one (1) year is provided insofar the Products are not designed to have an intended period of usage that is longer than one (1) year, or as otherwise stated and set out in writing by nexmosphere in the Agreement. An extended warranty period shall be explicitly designated by nexmosphere as "warranted specifications".

10.5 nexmosphere represents and warrants that to the best of its knowledge, the Products do not infringe or otherwise violate any intellectual property right of any third party.

10.6 The representations and warranties hereunder do not cover faults or damages arising from natural wear and tear, faulty or careless treatment, faulty and unauthorized commissioning, installation or setting into operation not according to instructions given by nexmosphere by Customer or a third party, improper storage or unloading and unauthorized unpacking of Products, improper or defective environmental circumstances and unauthorized relocation of Products. Unauthorized modifications, repairs, or additions to Products, and wrong maintenance or maintenance by unauthorized people shall invalidate all warranties in connection to the Products. Furthermore, no warranties are provided by nexmosphere to the Customer in connection with software provided by or on behalf of nexmosphere to the Customer. And therefore, no liability is incurred by nexmosphere with regard to bugs and/or faults and/or damages with regard to that software.

10.7 The rights of Customer with respect to this warranty clause are restricted to a lack of conformity caused by

defects, faulty materials and failures in the Products or workmanship which appear under proper use.

10.8 Except as unambiguously and expressly set forth in the Agreement, nexmosphere makes no warranties about its Products' merchantability, fitness for a particular purpose, or non-infringement (whether express, implied or statutory).

10.9 The Customer represents and warrants that in case Services are performed at the site of the Customer the Services can be performed in conformity with all applicable laws and (safety) regulations. Customer indemnifies nexmosphere for the costs and damages of nexmosphere resulting from the fact that the site of Customer is not in conformity with applicable laws and (safety) regulations.

## **11. LIABILITY AND LIMITATION OF DAMAGES**

11.1 In no event and regardless of legal theory will nexmosphere be liable to Customer or a third party for any punitive, exemplary, indirect, special, incidental or consequential damages of any kind (including loss of profits, loss of use, business interruption, loss of data or cost of procurement of substitute goods, technologies or services or cost of cover) in connection with the Agreement or arising out of the relationship between the nexmosphere and Customer, whether alleged as a breach of contract or tortious conduct, including negligence, even if nexmosphere and/or Customer has been advised of the possibility of such damages.

11.2 nexmosphere is only liable for direct damages that nexmosphere would expect the Customer to suffer from a breach, where the those damages are materially attributable to an obvious defect of nexmosphere, insofar the defect has been notified to nexmosphere in time and in accordance with article 8 of these Terms and Conditions of Sale. nexmosphere's maximum aggregate liability for any causes whatsoever, and regardless of the form of action, will at all times be limited to the Charges that have been paid to nexmosphere in connection to the purchase of the Products.

11.3 Customer agrees to defend and indemnify nexmosphere, its present and future officers, directors, shareholders, employees and agents, and to hold each of them harmless from and against any claim, demands, causes of action, damages, liabilities, costs and expenses, including reasonable attorney's fees, arising from (i) Customer's or its customer's specific use of a Product, including product liability claims or actions, unless such action is solely related to the Product itself and has no bearing with the use or combination with other products, (ii) unauthorized maintenance, repairs or modification of Products by or on behalf of Customer or its customers, or (iii) Products that are out of the ordinary course of business of nexmosphere and that were explicitly requested and/or designed by Customer.

11.4 Customer undertakes and agrees to obtain and keep in full force and effect at all times valid policies of

insurance against all liabilities, risks and losses (including but not limited to the losses caused by any unlawful act on the part of any person, liabilities based on product liability claims, and liabilities in accordance with these Terms and Conditions of Sale) in respect of Customer's business relating to the Products.

11.4 The indemnification clauses as they may be set out in the Agreement, are not intended to benefit any third party or are not enforceable by any third party.

## **12. PATENT LIABILITY AND LIMITED LICENSE OF INTELLECTUAL PROPERTY RIGHTS**

12.1 nexmosphere shall not be liable towards Customer for the infringement of any third party's patents.

12.2 No cost or expense in defending claims of third parties shall be incurred on behalf of nexmosphere without its written consent. In the event that Products are held to constitute infringement by a court of law, nexmosphere at its own election and its own expense may either procure for Customer the right to continue the application of Products and/or the use of Products, or modify Products to make them non-infringing.

12.3 Customer is aware that some uses and applications of nexmosphere's Products might only be allowed after prior approval of third parties, having proprietary rights on a specific use or application. It is Customer's sole responsibility to obtain all necessary approvals and licenses before using and applying the Products. nexmosphere shall not be obligated to defend against, and shall not be liable for, infringement of any patent claim covering combinations of Products with any other product, whether or not supplied by nexmosphere, or any method, process or products in which Products are used, or for patent infringement arising from compliance with Customer's design, specification or instruction. In these cases Customer shall defend and indemnify nexmosphere against any damages or costs for such infringement and if so requested, nexmosphere shall give Customer full authority to conduct the defense thereof and full assistance and co-operation in such defense.

12.4 Notwithstanding the foregoing, there shall be no indemnification by nexmosphere with respect to any claim, loss, damage, expense or liability:

- unless nexmosphere shall have been given the opportunity to defend the matter and Customer fully co-operates in such defense;

- if the claimed infringement is settled without nexmosphere's consent;

- if the infringement results from the use of Products changed in accordance with article 7 of these Terms and Conditions of Sale and/or modified by the Customer or combined with a product not delivered by nexmosphere, where such infringement would not have occurred from the use of the Product as proposed by nexmosphere alone.

12.5 Provided that Customer has fulfilled its obligations towards nexmosphere, nexmosphere will for no

consideration provide Customer with a perpetual non-exclusive license related to the Products. No transfer, license or other grant of rights related to the intellectual property rights, e.g. patents, copyrights, trademarks, Designs, models, know-how are given to Customer, unless explicitly stated in writing by nexmosphere.

12.6 Customers may not enable and/or allow third parties to (i) copy, modify, translate, or reverse engineer any Products, including software; (ii) remove any copyright, trademark or other proprietary rights notices on Products, including software, except for so far this is in line with and according to the non-exclusive license as meant in article 12.5 or after prior written approval by nexmosphere.

### **13. CONFIDENTIAL INFORMATION**

13.1 Confidential Information means (i) the terms of the Agreement and (ii) any non-public, confidential or proprietary information relating to nexmosphere or Customer, whether or not technical in nature, including any that is designated by the disclosing party as Confidential Information at the time of its disclosure, either by a written or visual confidentiality designation, or otherwise if such information would, under the circumstances, appear to a reasonable person to be confidential or proprietary. Notwithstanding the foregoing, Confidential Information does not include information, technical data or know-how which: (i) is in the public domain at the time of disclosure or becomes available thereafter to the public without restriction, and in either case not as a result of the act or omission of the receiving party; (ii) is rightfully obtained by the receiving party from a third party without restriction as to disclosure; (iii) is lawfully in the possession of the receiving party at the time of disclosure by the disclosing party and not otherwise subject to restriction on disclosure; (iv) is approved for disclosure by prior written authorization of the disclosing party; or (v) is developed independently and separately by either party without use of the disclosing party's Confidential Information.

13.2 Customer agrees that it will safeguard the confidentiality of the Confidential Information supplied by nexmosphere and that it will observe the same due care with respect to such information as they would observe with respect to its own Confidential Information. Customer shall not sell, copy and/or distribute in any way Confidential Information to third parties, without nexmosphere's prior written consent, which consent may be granted or withheld in nexmosphere's sole and absolute discretion.

13.3 Immediately following the receipt of a written request to this effect by the disclosing party the receiving party will return any and all Confidential Information received from the disclosing party or destroy such Confidential Information, if the disclosing party so requests.

13.4 In relation to its promotional activities nexmosphere is allowed to disclose to third parties (i) information that is not Confidential Information, (ii) the name of the Customer and (iii) the Product.

### **14. FORCE MAJEURE**

nexmosphere will not be liable for any delay in performing or failure to perform any of its obligations under the Agreement caused by events beyond its reasonable control, which events include but are not limited to non-performance of a subcontractor and/or a supplier of nexmosphere and strikes. nexmosphere will notify Customer promptly in writing of the reasons for the delay or stoppage (and the likely duration) and is entitled to suspend the performance of the Agreement. After the lapse of 30 days of a force majeure event both Customer and nexmosphere may terminate the Agreement without nexmosphere and Customer incurring liability and an obligation to pay damages to the other.

### **15. SEVERABILITY**

If any provision of the Agreement between nexmosphere and Customer is held to be null, void or otherwise ineffective or invalid by a court of competent jurisdiction, (i) such provision shall be deemed to be restated to reflect as nearly as possible the original meaning of the terms or agreement in accordance with applicable law, and (ii) the remaining terms, provisions, covenants and restrictions shall remain in full force and effect unless nexmosphere demonstrates that the invalid provision is inextricably connected with the remainder of the Agreement, in which case the Agreement shall be considered void in its entirety.

### **16. FURTHER ASSURANCES**

nexmosphere and Customer covenant and agree on behalf of itself, its successors, and its assigns, without further consideration, to prepare, execute, acknowledge, file, record, publish, and deliver such other instruments, documents and statements, and to take such other action as may be required by law or reasonably necessary to effectively carry out the purposes of these terms or any other agreement between nexmosphere and the Customer.

### **17. MISCELLANEOUS**

1. Unless as explicitly otherwise agreed in the Agreement, nexmosphere's other rights (whether conferred by law or by agreement) shall not be prejudiced.

2. No amendment to the Agreement shall have any force or effect unless it is in writing and signed by the Parties.

3. The Agreement is made for the benefit of the Customer and nexmosphere, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement

under or relating to this Agreement are not subject to the consent of any third party.

#### **18. NO PARTNERSHIP**

Nothing contained in any agreement between the parties shall be read or construed so as to constitute the relationship of principal and agent or of partnership between nexmosphere and the Customer. Neither nexmosphere and the Customer may pledge or purport to pledge the credit of the other party or make or purport to make any representations, warranties, or undertakings for the other party (including the assumption of any obligation or liability and the exercise of any right or power). Evidence to the contrary of this provision is excluded. This is an agreement as to burden of proof (*bewijsvereenkomst*).

#### **19. GOVERNING LAW AND JURISDICTION**

Unless stated otherwise in writing, the Agreement and all agreements drawn up in accordance with the Agreement shall be governed by and construed in accordance with the laws of the Netherlands, without giving effect to the United Nations Convention on the Contracts for the International Sale of Goods. With respect to any disputes arising between the parties, parties hereby submit exclusively to the personal jurisdiction of the District Court Oost-Brabant, the Netherlands (where they formally elect domicile). The parties consent and agree that each such court is a convenient forum for, and has proper venue over, the resolution of all legal actions, proceedings and disputes arising out of or relating to their relationship. Any cause of action against nexmosphere, regardless whether in contract, tort or otherwise, must commence within one (1) year after the cause of action accrues. Otherwise, such action is permanently barred.