

Terms and Conditions

(a) All quotations made and orders received are subject to these terms and conditions which constitute the entire agreement between Applied NanoFluorescence (“ANF”) and you (“Customer”). These terms and conditions take precedence over any terms and conditions whenever submitted by the customer and no alterations shall apply unless confirmed in writing by an authorized representative of ANF. No form of acceptance except ANF’s written acknowledgement sent to Customer or ANF’s commencement of performance shall constitute valid acceptance of Customer’s order. Customer shall be deemed to have assented to the terms hereof, whether or not previously received, upon accepting delivery of any Product shipped by ANF. If tender of these terms is deemed an offer, acceptance is expressly limited to the terms hereof.

(b) PRODUCTS: “Products” shall mean any products or services identified on any ANF quotation, current price list, sales invoice, or any document that refers to this agreement. Alterations to any Product which ANF considers necessary to comply with specifications, changed safety standards or governmental regulations, to make a Product non-infringing with respect to any intellectual property or other proprietary interest, or to otherwise improve a Product may be made at any time by ANF without prior notice to, or consent of, Customer and such altered Product shall be deemed fully conforming.

(c) TITLE: Title to Products (excluding any Non-Recurring Engineering work) transfers from Applied NanoFluorescence to customer upon full payment. Time of delivery shall not be of the essence, however Applied NanoFluorescence will make every effort to expedite delivery in accordance with the time scales quoted. ANF shall have no liability for any loss whatsoever suffered by the customer as a result of delayed delivery. ANF will select the shipper unless instructed in writing otherwise by the Customer.

(d) PAYMENT TERMS: Upon credit approval by ANF, payment terms shall be net thirty (30) days from the date of installation. ANF reserves the right to require alternative payment terms including, without limitation, letter of credit or partial or full payment in advance. Customer grants ANF a security interest in Products (excluding services) purchased under this Agreement to secure payment for those Products purchased. If requested by ANF, Customer agrees to execute financing statements to perfect such security interest. There is no set-off right for the Customer. Full payment due per above terms should be sent via bank transfer.

(e) NON PAYMENT: Where payment is not received by the due date, without prejudice to ANF’s other rights and remedies, ANF reserves the right to suspend all deliveries of products and services to the customer.

(f) CANCELLATION: Purchase orders resulting from the above quote shall not be canceled, terminated, or suspended without prior written agreement from ANF which, if given, shall be upon terms that will compensate ANF for any loss or damage therefrom, including but not limited to any work in process or services performed, the price of Products shipped to, manufactured for, or held separately for the Customer, and loss of profits, incurred costs, and a reasonable allocation of general and administrative expenses relating to the Products. Cancellation penalty shall be calculated on the above terms but will be a minimum of 15% of order value for standard products.

(g) WARRANTY: ANF warrants that the products at the time of delivery shall comply with all relevant statutory requirements and regulations and nothing in these terms and conditions shall affect or limit any conditions or terms implied by statute, or affect ANF’s liability for death or personal injury. ANF makes no warranty with regard to external electronics and unspecified usage.

(h) MANUFACTURING DEFECTS: ANF will repair or replace at ANF’s option, within one year from date of installation, any material that contains a manufacturing defect notified in accordance with ANF’s warranty procedures. ANF shall not be liable for any direct, indirect, special, consequential, incidental damages, loss of profit, use, production, raw materials, or end product or for any other claim for damages arising out of the purchase, delivery, installation, removal, or use of the product(s), whether claimed in contract, warranty, tort (including negligence) or otherwise. This warranty covers all parts and labor costs needed to repair defects or failures in materials and workmanship. **[Exception:** the warranty on the value-grade lasers covers parts costs but does not cover labor or shipping charges.] If it appears that the unit needs repair, contact ANF to describe the problem and arrange for service. If the problem cannot be resolved at the customer’s site, the customer will pay the return shipping costs and ANF will pay for the shipping back after repairs. This warranty will be void if the customer has removed the enclosure or made modifications to any module without direct instructions from ANF.

(i) DISCLAIMER: Results obtained by the NanoSpectralyzer reflect the best efforts of ANF to characterize samples of single-walled carbon nanotubes on the basis of spectroscopic measurements and recent research findings in the field of nanotube spectroscopy. However, ANF will not be liable for any direct or consequential damages resulting from errors in data or deduced results obtained using the NanoSpectralyzer system.

(j) SOFTWARE: ANF retains ownership and grants the customer a royalty-free perpetual, non-exclusive license to use the NanoSpectralyze software for the sole purpose restricted to the product. In transactions with payment terms of net thirty (30) days, a 30-day trial license for the software will be provided at installation of the instrument. The trial license will convert to the perpetual license upon receipt by Applied NanoFluorescence of full payment of the sales invoice. In addition, ANF will provide updated versions of the standard NanoSpectralyze software at no charge for a period of three years following delivery. These software updates will be provided in forms intended for simple installation by end users, and will not include site visits for installation by ANF staff.

(k) INTELLECTUAL PROPERTY: ANF owns or licenses intellectual property, including certain patents or patent applications. All rights and title to ANF patents, trademarks or any other proprietary or intellectual property of ANF that relate to the items included in this quotation remain the title of ANF. However, modification of an ANF product, combination of an ANF product with another product, or use of a ANF product in a specific application may require licensing by the ANF product user of the patents of others. Obtaining such licenses, and any due diligence required to identify applicable patents, is the responsibility of the customer or user, and ANF is not liable in any way to any party for any infringement of patents relating to the party's modification of an ANF product, combination of an ANF product with another product, or the use of an ANF product for a specific procedure or process.

(l) PERFORMANCE: ANF will not be liable for failure to perform any of its obligations pursuant to these terms and conditions if such failure results from actions beyond that party's reasonable control or unforeseen events including but not limited to acts of God, supply shortages, labor disputes, riots, fire, war, or other such occurrences.

(m) CONFIDENTIALITY: Customer shall safeguard and shall not use, disclose or permit others to use any confidential information which Customer knows or ought to reasonably know is confidential, proprietary or trade secret information of ANF.

(n) ASSIGNMENT: This agreement and any rights hereunder shall not be assigned or transferred by the Customer to any other party in any way possible without the prior written consent of ANF. This agreement shall bind and inure to the benefit of any successors in title or permitted assignees of the parties.

(o) JURISDICTION: The validity and interpretation of this Quotation and these terms and conditions shall be governed by the laws of the USA. There are no agreements, representations, conditions or warranties expressed or implied other than those specified herein. If any provision of these Terms and Conditions is found by a court or administrative body of competent jurisdiction to be invalid or unenforceable, it shall not affect the other provisions of these Terms and Conditions which shall remain in full force and effect.

(p) GOVERNMENT LAWS AND REGULATIONS: Customer warrants that it shall not sell or transfer any ANF products or technology to or allow the use of any purchaser with which ANF cannot do business with under the laws and regulations of the United States. Customer shall not sell or otherwise transfer the product or technology to a country embargoed by the United States or prohibited entity unless authorized by the United States Government, and the customer acknowledges that knowingly disregarding these terms shall be just cause for immediate cancellation of these terms and conditions by ANF without any liability to ANF.