



## General terms of NOFFZ Technologies GmbH

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### Preamble

These terms of service and conditions apply for the contractual relationship between the Contractor/Supplier (also NOFFZ in the following) and the Purchaser/Client, unless different terms are specifically named in NOFFZ bid. In commercial transactions the acceptance of deliveries and services shall be deemed as acknowledgement of these conditions.

### § 1 General

- (1) Differently Conditions shall only be acknowledged by the Purchaser if this is explicitly agreed by NOFFZ in writing. Otherwise, different terms and conditions are not agreed to. The NOFFZ general conditions apply.
- (2) The laws of the Federal Republic of Germany are exclusively applicable and binding. Other laws are expressly excluded, in particular the United Nations Convention on Contracts for the International Sale of Goods and the Introductory Act to the Civil Code (EGB GB).

### § 2 Offers, Concessions

NOFFZ herewith reserves any industrial property rights and/or copyrights pertaining to services provided prior to a contract offer such as concepts, drawings, constructions, cost estimates, etc.

Such documents and records shall not be made accessible to third parties without the prior written consent of NOFFZ. If no agreement should arise from the contract offer, these documents shall, upon request, be returned without undue delay to NOFFZ.

Documents and records which NOFFZ has received from the Purchaser will also be returned without undue delay upon request. NOFFZ will not disclose documents and records to any third party unless NOFFZ may rightfully transfer supplies to such party under the contract offer.

Contract offers from NOFFZ are subject to confirmation. A contract shall only become binding if NOFFZ gives written confirmation of an order from a Purchaser. Technical and constructive standard changes to the scope of deliveries (especially construction, material selection, specifications and design) are reserved to the extent that they do not unacceptably affect the Purchaser or the performance of the service. The Purchaser shall furthermore comply with changes made by NOFFZ, if these are reasonable. Improvements to the products are permitted if these are reasonable for the client in consideration of the interests of NOFFZ. Documents on which the offer or order confirmation is based, such as illustrations, drawings, measurement and weight specifications are as a rule only to be seen as approximate values, unless NOFFZ expressly declares them to be binding.

The prices are calculated based on the current level of knowledge with respect to requirements. If significant deviations arise during implementation, additional charges or price reductions after consultation with the customer may result.

### § 3 Laws

General: NOFFZ reserves the right to use elaborated technical solutions for other projects. Solutions that relate generally to test constructions, PCB design, circuit design or software development do not become the property of the Purchaser. The purchaser will, however, have the right of unlimited use. Rights to universal tester platforms that come into use, as regards hardware and software, are reserved by the Supplier.

In addition to the above-mentioned designs, this applies for software of the Further:

The Purchaser shall have the non-exclusive right to use standard software, provided that it remains unchanged, is used within the agreed performance parameters, and on the agreed equipment. The Purchaser may make two back-ups without express agreement. Partial supplies shall

be allowed, insofar as they are reasonable to for the Purchaser.

The Purchaser shall protect the software from third party access. Persons who by order of the Purchaser exercise his utilization rights are not regarded as third parties.

### § 4 Prices and conditions of payment

Prices shall be net ex works and exclude packaging and other shipping and transportation costs; value added tax shall be added at the then applicable rate. If the payment term is culpably exceeded, NOFFZ can calculate late payment interest whilst reserving the right to raise further claims according to §§ 288 Sec. 2, 247 BGB.

Offset and retention by the Purchaser are excluded unless the counterclaim is acknowledged, undisputed or established as legally valid. The right to correct write errors and identifiable calculation errors is reserved.

### § 5 Delivery time and delay

Delivery times are provisional and non-binding. They are extended by an appropriate period of time if the Purchaser delays or neglects essential or stipulated acts of co-operation. This includes specifically documents to be submitted by the Purchaser, necessary approvals and releases of plans as well as compliance with terms of payment and other obligations.

The same applies for measures in the case of collective action or the occurrence of unforeseen obstacles that do not fall under the influence of NOFFZ, such as acts of God (fire, natural catastrophes, civil unrest), delays in delivery by a supplier, traffic obstructions, material or energy shortage, etc., although NOFFZ has taken adequate precautions against the occurrence of such events. Changes in the supplied goods or services by the Purchaser as well can lead to a reasonable extension of the delivery time. Partial deliveries are permitted insofar as the Purchaser can be reasonably expected to accept them. Each partial delivery shall count as a separate delivery for long-term delivery agreements.

NOFFZ will notify the client of delays. If NOFFZ receives deliveries from its suppliers that are not correct or not timely, and is not responsible for this, the delivery time shall be adjusted by a corresponding period. In this case regarding undelivered items, NOFFZ can alternatively declare the termination of the contract. The Purchaser is excluded from further damages and claims for reimbursement from NOFFZ.

If a fixed delivery date is agreed upon, NOFFZ is liable under legal regulations. The same applies if the client asserts that his interest in the fulfilment of the contract no longer exists due to NOFFZ's default. Compensation and damages for replacement due to a delay of delivery according to the warranty described below are limited or excluded.

If a contractual supply is impossible due to reasons within the scope of NOFFZ's responsibility, the Purchaser is entitled to claim damages. The Purchaser's claim for damages shall, however, be limited to an amount of 10% of the value of the part of the supplies which, owing to the impossibility cannot be put to the intended use. This shall not apply in the case of intent, gross negligence or initial inability; this does not imply a change in the burden of proof to the detriment of the Purchaser. The right of the Purchaser to cancel the contract shall remain unaffected.

### § 6 Shipping and risk transfer

Even where delivery has been agreed to be free of transportation charges, the risk shall pass to the Purchaser as described in the following:

if the supplies do not include assembly or erection, at the time when the supplies are shipped or picked up by the carrier. Upon request of the Purchaser, NOFFZ shall insure the supplies against the usual risks of transport at the expense of the Purchaser. The risk shall pass to the Purchaser if dispatch, shipping, the start or performance of assembly or erection, the takeover in the Purchaser's own facility or the trial run are delayed for reasons for which the Purchaser is responsible or if the Purchaser has otherwise failed to accept the supplies.

### § 7 Extended reservation of property

All items pertaining to supplies ("retained goods") shall remain the property of NOFFZ until every claim against the Purchaser arising from the business relationship has been fulfilled. If the combined value of the security interests of NOFFZ exceeds the value of all secured claims by more than 25 %, NOFFZ shall release a commensurate portion of the security interest if so requested by the Purchaser. For the duration of the (extended) retention of title, the Purchaser may not pledge the retained goods or use them as security, and resale shall be permitted only for resellers in the ordinary course of business, the necessary condition being that the reseller ensures its customers retention of title. The Purchaser shall inform NOFFZ forthwith of any seizure or other act of intervention by third parties.

In case of a culpable infringement by the Purchaser against substantial contractual obligations, NOFFZ is entitled to withdraw the retained goods after giving notice. The Purchaser is obligated to surrender the retained goods in this case. NOFFZ's act of withdrawal, or enforcing the title reservation, or pledging the conditional goods, will not constitute a cancellation of the contract unless NOFFZ expressly declares it.

### § 8 Installation, assembly and mounting

Assembly/mounting shall be subject to the following provisions:

The Purchaser is responsible for all ancillary work undertaken by NOFFZ and must cover the costs.

The Purchaser must take reasonable safety precautions for the property of NOFFZ that is used for installation, assembly, and mounting, for all materials and tools used, etc., in order to prevent losses.

All conditions necessary for carrying out NOFFZ's work, and that are the responsibility of the Purchaser, must be fulfilled sufficiently in advance. After completion of the work by NOFFZ, the Purchaser will promptly certify the acceptance of the supplies (within 14 days at most). If the purchaser does not comply with this agreement, the delivery shall be considered to have been accepted. Acceptance is also deemed to have taken place if the Purchaser puts the supplies to use; one test phase is excepted if put in writing at the time of the order.

If installation, operation or mounting is delayed by circumstances beyond the control of NOFFZ, the Purchaser shall, to a reasonable extent, bear the resultant costs, including waiting times, travel costs, business expenses, etc.

### § 9 Copyrights and industrial property rights

If a third party asserts claims with respect to a delivery/service from NOFFZ regarding a violation of copyright or industrial property rights, NOFFZ may proceed as they choose within the scope of subsequent performance as follows:

- The client is given the right to continue to use the delivery/service.
- The delivery/service shall be replaced or modified such that claims can no longer be asserted or there is no longer an infringement.
- If the previously stated arrangement is economically infeasible for NOFFZ, NOFFZ can withdraw the delivery/service and credit an appropriate value by the principles of appreciation.

The above obligations of NOFFZ shall only apply if the Purchaser immediately notifies NOFFZ of any such claim asserted by the third party in writing, does not concede the existence of an infringement and leaves any protective measures and settlement negotiations to the discretion of NOFFZ.

If the Purchaser stops using the product in order to reduce the damage or for other good reason, it shall be obliged to point out to the third party that no acknowledgement of the alleged infringement may be inferred from the fact that the use has been discontinued. Claims of the Purchaser shall be excluded if it is itself responsible for the infringement of an industrial property right.

Noffz Technologies GmbH  
Tempelweg 24A  
47918 Tönisvorst, Deutschland  
Telefon +49 2151 99878 0  
Fax +49 2151 99878 88

Geschäftsführer  
Dipl.-Ing. Wilfried Noffz  
Dipl.-Ing. Markus Solbach  
Dipl.-Ing. Manuel von Helden

Amtsgericht Krefeld  
HRB 9473  
USt-IdNr DE812096166  
Steuernr. 11557320113  
[info@noffz.com](mailto:info@noffz.com) · [noffz.com](http://noffz.com)

Bank Sparkasse Krefeld  
SWIFT SPKRDE33  
IBAN DE1732050000067149641

Deutsche Bank Krefeld  
DEUTDEDD320  
DE40320700800106233000



Claims of the Purchaser shall also be excluded if the infringement of the international property right is caused by specifications made by the Purchaser, to a type of use not foreseeable by NOFFZ or to the Supplies being modified by the Purchaser or being used together with products not provided by NOFFZ.

Any other claims against NOFFZ are excluded. Art. § 14 (Other liabilities) remains unaffected, along with the Purchaser's right to withdraw from the contract.

**§ 10 Acceptance of deliveries**

The purchaser is obliged to accept deliveries even if they have minor defects.

**§ 11 Warranty**

The contractor NOFFZ is liable for defects, including the absence of assured properties, as described in what follows:

- (1) The Purchaser must notify NOFFZ of obvious defects within 2 weeks of delivery, other defects within 12 months of delivery at the latest.
- (2) All complaints must be put in writing with a specification of the defect.
- (3) Any parts or services whose usefulness may, within twelve months from the date of transfer of risk, be affected to an extent not considered insignificant as a result of an event occurring prior to transfer of risk, shall be repaired, replaced or provided again free of charge, at NOFFZ's discretion.
- (4) In the case of a complaint, payments by the Purchaser may be reserved only in an amount commensurate with the defect.
- (5) NOFFZ shall grant correction of defects at an appropriate time and when a reasonable opportunity permits. If this is denied, they shall be released from the obligation of warranty services in this matter.

6. The warranty does not apply in the following circumstances:

- Natural wear and tear
- For damages arising after the transfer of risk from faulty or negligent handling
- In the event of excessive strain
- If unsuitable equipment is used or damages occur due to particular external influences, which are not provided for under the contract
- From non-reproducible software errors.
- Claims based on defects attributable to improper modifications or repair work carried out by the Purchaser or third parties and the consequences thereof shall be likewise excluded from warranty.

7. Warranty for improvements, substitute deliveries or services provided is granted for a period of 6 months and applies at least until the time the original warranty for the delivered items would expire. The period shall be extended for those parts which cannot be used properly due to the disruption, up to the length of the interruption in business caused by improvement, substitute delivery or compensatory service.

8. The above-stated time limits are not valid where longer non-excludable statutory periods apply.

9. Further warranty claims by the Purchaser against NOFFZ and its agents are excluded in principle.

**§ 12 Purchaser's / Client duty to cooperate**

For the project's success, the Purchaser's participation is essential, especially regarding the following points:

- Timely delivery of information and decision-making
- Timely provision of essential materials
- Timely provision of a sufficient number of all necessary test items

If the companies fail to comply with their obligation to cooperate or fail to do so in a timely manner, then all

deadlines are extended accordingly by at least the period of the delay. Additional expenses resulting from illegal or incomplete provisions for the company NOFFZ are billed separately according to costs and with prior notice.

**§ 13 Service and maintenance**

Upkeep and maintenance of the plant are in principle the responsibility of the Purchaser. Service and maintenance are carried out by the Supplier during normal business hours, Monday through Friday from 8 am to 5 pm. The response time is typically 48 hours on weekdays. The period between Christmas and New Year's Day (company holidays) is excluded. Commissioning on Sundays and holidays, and in the time between 11 pm and 6 am (night work) will add a 100% surcharge. This also applies to service after the warranty period has ended.

**§ 14 Other liabilities**

All claims for damages and reimbursement of expenses the Purchaser may have, on whatever legal basis with particular reference to positive breach of contract, infringement of contracting duties, and illicit activity, shall be excluded. The above shall not apply in cases of mandatory liability, e.g. under the German Product Liability Act ("Produkthaftungsgesetz") or in the case of intent, due to gross negligence, failure of guaranteed features or breach of an essential contractual duty. Compensation for the breach of an essential contractual duty is nevertheless limited to damages that are foreseeable and typical for the contract, unless there is evidence of intent or gross negligence. The above provision does not imply a change in the burden of proof to the detriment of the Purchaser.

**§ 15 Severability clause**

The invalidation of individual provisions in the previously implemented terms and conditions or their component parts shall not affect the effectiveness of the remaining terms and conditions. The contracting parties are obliged to replace a void provision with another provision permitting as closely as possible the same economic success, provided that no fundamental alteration of the subject terms of contract are precipitated; the same applies if circumstances in need of regulation are not explicitly regulated.

**§ 16 Place of fulfilment**

The place of execution for all obligations resulting directly or indirectly from this contractual relationship, including payment obligation, is NOFFZ's headquarters. The exclusive court of jurisdiction is Krefeld.