

# General Terms and Conditions

## NovioMEMS

### 1. Definitions

- 1.1. **Agreement:** any agreement or contract, in any form, or any quotation in which NovioMEMS provides an offer which, upon acceptance by Customer, will result in an agreement between NovioMEMS and Customer.
- 1.2. **Customer:** the counterpart of NovioMEMS in the Agreement.
- 1.3. **NovioMEMS:** the company organized under the laws of the Netherlands and registered with the Dutch Chamber of Commerce under number 17279473, with offices at Den Dolech 2, N-laag a1.72, 5612AZ Eindhoven, The Netherlands.
- 1.4. **Goods:** any product in any form, including prototypes, blueprints, reports, documents, memoranda, manuals, materials, graphics and software, to be provided to Customer as part of the performance of a Service by NovioMEMS under the Agreement.
- 1.5. **Intellectual Property Rights:** any intellectual or intellectual property right or application thereof, including without limitation patents, copyrights, trademarks, trade dress, industrial designs or model rights, semiconductor layout rights and any rights regarding trade secrets.
- 1.6. **Service:** any activity or service to be performed by NovioMEMS.
- 1.7. **Terms and Conditions:** the terms and conditions in the present document.

### 2. Quotation and agreement

- 2.1. At the request of Customer, NovioMEMS will provide a quotation specifying the Services or Goods to be provided to Customer, the conditions and the applicable price.
- 2.2. Quotations are based on information provided by Customer. In case any such information turns out to be incorrect, NovioMEMS is entitled to revoke or adapt a quotation at any time.
- 2.3. A quotation is valid for 30 days after the date NovioMEMS provides the quotation to Customer.
- 2.4. Upon written acceptance of a valid quotation by Customer, the Agreement is formed between NovioMEMS and Customer. Should Customer fail to provide written acceptance, yet permit (or create a reasonable presumption that it permits) NovioMEMS to provide Services and/or Goods as specified in a quotation, Customer shall be deemed to have accepted the quotation.
- 2.5. A quotation can only be accepted if at the same time Customer also accepts the Terms and Conditions. Acceptance of a quotation therefore also constitutes acceptance of the Terms and Conditions.
- 2.6. The applicability of any general terms and conditions supplied by Customer is explicitly rejected. Any terms, conditions or exceptions provided by Customer are binding upon NovioMEMS only if explicitly confirmed in writing by NovioMEMS.

### 3. Performance of the Services

- 3.1. After acceptance by Customer, NovioMEMS will promptly provide the Services and/or Goods as specified in the Agreement, taking into account any reasonable requests of Customer during such provision.
- 3.2. Unless agreed otherwise in writing, NovioMEMS will provide the Services and/or Goods to the best of its knowledge and ability and in accordance with requirements of good workmanship.

- 3.3. NovioMEMS will use its best efforts to provide the Services and/or Goods according to those specifications or requirements noted in the Agreement, but cannot make any guarantees about specific results.
- 3.4. If Customer is not satisfied with the conformance of the Services and/or Goods to the specifications or requirements noted in the Agreement, Customer must notify NovioMEMS as soon as possible. In case NovioMEMS agrees with Customer's assessment, NovioMEMS will then, at its discretion, either use its best efforts to adapt the Services and/or Goods involved to so conform or terminate the Agreement. In case of termination under this provision, Customer is entitled to a refund for those Services and/or Goods that do not so conform, subject to the provisions of article 6.6. NovioMEMS is entitled to engage third parties to provide certain Services and/or Goods. The third parties will operate under the supervision and responsibility of NovioMEMS.
- 3.5. Any due dates or delivery dates indicated in the Agreement shall be deemed to be non-fatal. While NovioMEMS will make every effort to meet such dates, NovioMEMS cannot be held responsible for its failure to do so. No compensation shall be due for any missed due date or delivery date.

## 4. Customer requirements

- 4.1. Customer undertakes to do everything in its power that is reasonably necessary for NovioMEMS to provide the Services and/or Goods. Customer shall in particular ensure that NovioMEMS has access to all information which NovioMEMS indicates is necessary for or in respect of which Customer should reasonably have understood that such was necessary for provision of the Services and/or Goods.
- 4.2. Customer will ensure its employees and agents cooperate with NovioMEMS as reasonably necessary for the provision of the Services and/or Goods.
- 4.3. Customer will obtain all necessary approvals of the applicable regulatory bodies (government or otherwise) in connection with the provision of the Services and/or Goods. Customer agrees to comply with all applicable export laws and regulations, including those of the Netherlands, the United States and Canada, regarding the Goods and/or Services. NovioMEMS shall not be liable for any damages as a result of Customer's failure to obtain any such approvals or to comply with such export laws or regulations, or as a result of an inability to perform due to lack of any such approvals or lack of compliance with such export laws or regulations.
- 4.4. In case any or all of the above conditions are not, not properly or not timely complied with, NovioMEMS has the right to suspend its obligations under the Agreement until all said conditions are properly and timely complied with.

## 5. Changes to the Agreement

- 5.1. The Agreement may only be modified by a written document executed by the parties.
- 5.2. If the Agreement has been entered into for an indefinite period or for a definite period of more than twelve months, NovioMEMS has the right to adapt or add to these Terms and Conditions at any time. Such adapted or additional terms shall enter into force 60 days after communication thereof to Customer. Minor adaptations shall enter into force immediately after communication.
- 5.3. If Customer does not wish to accept an adapted or additional term, Customer must raise its objection to NovioMEMS as soon as possible after being notified about these terms. NovioMEMS then may, at its discretion, withdraw the adaptation or addition. If NovioMEMS does not do so, Customer has the right to terminate the Agreement within these 60 days. Article 6.5 shall not apply to such termination. Failure to do so constitutes acceptance of such terms.

## 6. Term and termination

- 6.1. The Agreement enters into force on the day that notice of acceptance by Customer is received by NovioMEMS and will remain in force for a term as specified in the Agreement. If no such term has been specified, the term shall be a one-year term.
- 6.2. If the quotation specifies that the Agreement is long-term or that the Agreement shall be renewed at the end of the term but does not specify a term of renewal, the Agreement shall be extended each year by another one-year term unless terminated at the end of a one-year term by either party subject to a two months' written notice.
- 6.3. In case a party blamefully fails to comply with the material obligations under the Agreement, the other party may terminate the Agreement, but only after the party that failed to comply has not remedied the failure within a reasonable time period after having received a written notice of default that is adequate and as detailed as possible.
- 6.4. Either party may immediately terminate the Agreement by written notice to the other party, without the requirement for notice of default or intervention of the Court, in the event of the following: if the other party has been granted suspension of payments, whether provisionally or not; if a petition for bankruptcy has been filed with respect to the other party and the petition has not been revoked within seven days; if the other party files for bankruptcy itself; or if the other party's enterprise is dissolved or terminated, except for the purpose of a merger with or absorption by another company.
- 6.5. Upon termination NovioMEMS will send Customer a final invoice for any amounts due but not yet invoiced. Any invoices sent before the date of termination will remain due and in full effect and will become immediately payable on termination.
- 6.6. Early termination of the Agreement by Customer in any other situation is only possible with the consent of NovioMEMS. If NovioMEMS gives its consent to such termination, Customer shall pay a termination fee of ten percent of the amount that would have been invoiced if the Agreement had been fully executed.
- 6.7. In case of termination, regardless of cause, any amounts to be refunded by NovioMEMS to Customer shall be limited to the amounts actually paid in the twelve months prior to the date of termination. However, no refunds or compensation shall be due for any Services and/or Goods provided by NovioMEMS that have not been timely rejected by Customer.
- 6.8. Those terms and conditions of these Terms and Conditions and the Agreement, which are, by their nature, meant to survive the term of the Agreement, shall so survive.

## 7. Prices and payment

- 7.1. All prices are exclusive of value-added tax (VAT) and other charges applicable under Dutch law and are based on ex-works deliveries as specified in INCOTERMS 2000.
- 7.2. If the Agreement has been entered into for an indefinite period or for a period of more than twelve months, NovioMEMS is entitled to adjust any prices by means of written notification at least three months in advance, unless the parties have explicitly agreed otherwise. If Customer does not wish to accept an increase in price, Customer must raise its objection to NovioMEMS as soon as possible after being notified about the increase. NovioMEMS then may, at its discretion, withdraw the price increase. If NovioMEMS does not withdraw the price increase, Customer has the right to terminate the Agreement within these three months. Article 6.5 shall not apply to such termination. Failure to do so constitutes acceptance of the adjusted price.
- 7.3. Customer will compensate NovioMEMS for all reasonable costs arising out of the provision of Services and/or Goods by NovioMEMS. These costs include costs for delivery of Goods to Customer, expenses for activities such as traveling, board and lodging as incurred by NovioMEMS in connection with provision of Services and/or Goods to Customer, but only after Customer has been informed in advance about such activities.

- NovioMEMS will invoice Customer for any amounts due. Customer will pay all invoices within thirty days after the invoice date, unless agreed otherwise in writing.
- 7.4. If Customer does not pay the amount due within the stipulated term, Customer will be in default automatically and will owe legal interest over the outstanding balance, payable on a monthly basis. Furthermore, Customer will pay any costs, fees and expenses incurred in connection with the collection of the debt.
  - 7.5. Any invoiced amounts are due immediately if the other party has been granted suspension of payments, whether provisionally or not; if a petition for bankruptcy has been filed with respect to the other party and the petition has not been revoked within seven days; if the other party files for bankruptcy itself; or if the other party's enterprise is dissolved or terminated, except for the purpose of a merger with or absorption by another company.
  - 7.6. If Customer disputes all or part of an invoice, Customer must provide a complaint with supporting evidence to NovioMEMS in writing within seven days after receiving the invoice. In such an event Customer is entitled to suspend payment of the disputed part of the invoice but not of any other part.
  - 7.7. If NovioMEMS deems the complaint is justified, NovioMEMS will issue an adjusted or replacement invoice. If NovioMEMS deems the complaint unjustified, Customer will pay the disputed balance immediately. Customer will also pay legal interest calculated on a monthly basis from the moment the original term of payment expired, and any costs, fees and expenses incurred in connection with the collection of the debt.
  - 7.8. Records kept by NovioMEMS shall form the basis for any invoices, unless Customer can prove such records are inaccurate or incomplete.
  - 7.9. NovioMEMS may suspend its obligations under the Agreement if NovioMEMS may reasonably make the assumption that Customer will fail or has failed to comply with its payment obligations.

## 8. Ownership of Goods

- 8.1. After termination of the Agreement, and after having fulfilled all his obligations under the Agreement, Customer will obtain all right, in particular Intellectual Property Rights, title and interest in the Goods identified as "deliverable" in the quotation.
- 8.2. At the request and cost of Customer NovioMEMS will perform all actions and sign all documents deemed necessary by Customer to transfer or assign ownership of the Goods referred to in the previous clause to Customer. Furthermore NovioMEMS will offer its reasonable assistance in any lawsuit or preparation therefore in which the ownership of such Goods is contested, for example by providing affidavits or proof available to NovioMEMS regarding the ownership or transfer to Customer of the Goods.
- 8.3. For all other Goods Customer only receives a non-exclusive, non-transferable license to use the Goods in Customer's business for the purposes of the Agreement. Such license shall be for the duration of the Agreement and shall become perpetual only upon Customer's payment of all invoices due under the Agreement.
- 8.4. The license of article 8.3 does not include any right to make the Goods in question available to third parties, unless that right is explicitly granted in the quotation.
- 8.5. Customer further receives a non-exclusive, non-transferable and fully paid-up license under any Intellectual Property Rights of NovioMEMS to produce and dispose of the Goods referred to in article 8.1 in any country or region of the world. This license shall not be construed as a warranty that NovioMEMS owns or controls all relevant Intellectual Property Rights for production or disposal of such Goods. This license shall be for the duration of the Agreement and shall become perpetual only upon Customer's payment of all invoices due under the Agreement.

## 9. Limited warranty

- 9.1. NovioMEMS warrants the good quality of any Goods supplied for a period of six months as from the date of delivery to Customer against all defects or failures which appear therein under proper use, and arise solely from faulty materials or workmanship.
- 9.2. This warranty does not cover damage sustained by normal wear and tear or any damage arising in consequence of negligence or improper handling or use of the Goods or parts thereof by Customer, or of maintenance by unauthorized persons or dealers, or of improper storage in the event of the Goods wholly or partly being stored by Customer previous to installation, use or transfer to third parties.
- 9.3. NovioMEMS's sole obligation under the above shall be to repair or replace, at NovioMEMS's sole discretion, such parts of Goods that violate the above warranty. Such repair or replacement shall be made free of charge to Customer. However, the preceding two sentences only apply if Customer informs NovioMEMS in writing about the defects within five working days after these defects have revealed themselves and makes the defective Goods or parts thereof available to NovioMEMS as soon as possible.
- 9.4. The above warranty or obligation to repair or replace Goods does not apply to any Software. All Software provided under the Agreement is provided "AS-IS" without warranty of any kind. NovioMEMS does not warrant that Customer's use of the Software will be uninterrupted or error-free. NovioMEMS is not under any obligation to repair or replace any part of the Software.
- 9.5. TO THE FULLEST EXTENT PERMITTED BY LAW, AND UNLESS EXPLICITLY INDICATED IN WRITING OTHERWISE, NOVIOMEMS EXPRESSLY DISCLAIMS ALL CONDITIONS, REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS REGARDING ANY SERVICE OR GOODS.

## 10. Limitation of liability

- 10.1. NOVIOMEMS SHALL BE LIABLE TO CUSTOMER ONLY FOR DAMAGES ARISING OUT OF ITS INTENTIONAL MISCONDUCT TOWARDS CUSTOMER OR MATERIALLY NEGLIGENT PERFORMANCE OF ANY OF ITS OBLIGATIONS UNDER THE AGREEMENT.
- 10.2. NOVIOMEMS SHALL NEVER BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, PUNITIVE AND/OR INCIDENTAL DAMAGES, INCLUDING LOSS OF PROFITS, ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, EXCEPT WITH RESPECT TO DAMAGES INCURRED AS A RESULT OF THE GROSS NEGLIGENCE OR WILFULL MISCONDUCT OF NOVIOMEMS.
- 10.3. ANY LIABILITY OF NOVIOMEMS, REGARDLESS OF CAUSE, SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY CUSTOMER TO NOVIOMEMS IN THE TWELVE MONTHS PRECEDING THE DATE THE CAUSE OF DAMAGE OCCURRED.
- 10.4. No liability shall exist for damages that have not been reported to NovioMEMS in writing within two weeks of their occurrence, or for damages where Customer failed to take appropriate measures to limit such damages.
- 10.5. Customer shall indemnify, defend and hold harmless NovioMEMS against any and all losses, claims, damages, liabilities, actions, costs or expenses, including reasonable attorneys' fees incurred by it in connection with any claim from third parties in connection with the Agreement.



- 10.6. Any deviations from the above are possible only if put in writing and signed by the CEO of NovioMEMS.
- 10.7. In case NovioMEMS becomes aware or has reason to believe that any of the Goods provided under the Agreement are or are likely to infringe any third party's rights, NovioMEMS at its sole discretion may:
  - (i) replace or substitute alternative Goods;
  - (ii) procure a license from the third party or parties involved;
  - (iii) terminate the Agreement or the obligations thereunder regarding the affected Goods.Regardless of the above, article 10.5 applies in full.

## 11. Confidential Information

- 11.1. A party that receives Confidential Information from another party shall protect the confidentiality of such Confidential Information by a reasonable degree of care against unauthorized disclosure for the term of this Agreement and a period of five (5) years after its termination.
- 11.2. The receiving party shall ensure that Confidential Information shall be disclosed only to those employees, contractors, agents, legal counsel, accountants or professional advisors of Customer having a need to know, and will inform these of the confidential status of Confidential Information. Any breach of confidentiality by such a person shall be regarded as a breach by Customer.
- 11.3. Each party agrees to advise any person who receives Confidential Information under the previous clause of their obligations of confidentiality hereunder. Each party warrants that any such person is bound to terms and conditions related to the use and disclosure of Confidential Information which are at least as stringent as provided in these Terms and Conditions.
- 11.4. Upon first request of the disclosing party, the receiving party shall destroy or return to the disclosing party all Confidential Information received in written or other tangible form, including all copies thereof.
- 11.5. The receiving party may retain for legal archiving and reference purposes only, sealed in an envelope or other suitable container, one copy of the Confidential Information made inaccessible to the operations personnel of the receiving party, so that there is a record of which Confidential Information was disclosed to the receiving party.
- 11.6. The parties acknowledge that disclosure or use of Confidential Information in violation of this Agreement could cause irreparable harm to the disclosing party for which monetary damages may be difficult to ascertain or an inadequate remedy. The parties therefore agree that the disclosing party will have the right, in addition to its other rights and remedies, to seek injunctive relief for any actual or threatened violation of this Agreement.
- 11.7. The receiving party shall use its best efforts to assist the disclosing party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, the receiving party shall advise the disclosing party immediately in the event the receiving party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement. The receiving party will cooperate with the disclosing party in seeking injunctive or other equitable relief against any such person.
- 11.8. For the purpose of this article, the term "Confidential Information" shall mean all information, including business and/or financial records, pricing information, technical specifications, documentation, designs, strategies and forecasts, business plans and proposals, software source code, samples, photographs, drawings or other information, in whatever form (including on paper, in electronic mail, as a digital file, on magnetic media, orally or otherwise) of a party of which the receiving party reasonably can be assumed to have known that such information was intended to remain confidential.

- 11.9. Information which would otherwise be Confidential Information shall not be deemed Confidential Information to the extent that the receiving party proves by written records that said information:
- is or has become publicly available without any wrongdoing by the receiving party;
  - is known and on record at the receiving party prior to disclosure by the disclosing party;
  - is lawfully obtained by the receiving party from a third party who is not bound by similar confidentiality obligations;
  - is developed by the receiving party completely independently of any such disclosure by the disclosing party; or
  - is ascertainable from a commercially available product.
- 11.10. In case a non-disclosure agreement has already been signed between the parties, that particular non-disclosure agreement will apply to any exchange of Confidential Information instead of this article 11.

## 12. Force majeure

- 12.1. Neither party will be bound to comply with any obligation if the party is prevented from doing so through force majeure. Force majeure will be deemed to include among other things, communications or power failure, riot, insurrection, labor disputes, accident, action of government, restrictions on import and/or export or any inability to perform which is caused by the party's suppliers.
- 12.2. If the force majeure has lasted for more than sixty days, either party will be entitled to terminate the Agreement by written notification with immediate effect, without any obligation to compensate the other party for any damages the non-terminating party may suffer as a result.

## 13. Non-solicitation

- 13.1. For the duration of the Agreement and for a period of six (6) months thereafter both parties agree not to directly solicit or seek to influence, induce, or attempt to induce any person employed by the other party for the purposes of employment without express written permission of the other party.
- 13.2. The above shall not preclude either party from hiring any person employed by the other party where such person independently responds to an employment opportunity transmitted by the other party to the general public (such as newspaper, magazine, broadcast, Internet, or employment agencies).

## 14. Applicable law and disputes

- 14.1. The law of the Netherlands governs these Terms and Conditions and the quotations and Agreements to which they apply.
- 14.2. Any disputes arising between NovioMEMS and Customer in connection with a quotation, these Terms and Conditions or Agreement will be settled by the competent court in the Netherlands for the principal place of business of NovioMEMS.
- 14.3. The United Nations Convention on Contracts for the International Sale of Goods does not apply.
- 14.4. In the event that any part of the Agreement or these Terms and Conditions become or are declared to be invalid by any court of competent jurisdiction, such invalidity shall not affect the rest of this Agreement. The parties shall in such a case determine one or more

replacement provisions that most closely approximate the clause concerned and which is legal under applicable law.

- 14.5. The failure of either party at any time to require performance by the other party of any provision of this Agreement shall in no way affect that party's right to enforce such provisions, nor shall the waiver by either party of any breach of any provision of this Agreement be taken or held to be a waiver of any further breach of the same provision.
- 14.6. Neither party may bring an action, regardless of form, arising out of or related to this Agreement more than one year after the cause of action has arisen or the date of discovery of such cause, whichever is later. However, in no event can an action be brought more than one year after the date of termination of the Agreement.

## 15. Miscellaneous terms

- 15.1. The parties enter into the Agreement as independent contractors. No employment relationship is created by the Agreement between NovioMEMS and Customer or any of their respective employees or agents.
- 15.2. The Agreement shall not be assigned or otherwise transferred by a party without the prior written consent of the other party, which shall not be unreasonably withheld. Any such assignment without such consent will be null and void. However, no consent is necessary for an assignment or transfer of the Agreement to any affiliate of the transferring party or any company that succeeds to substantially all of that party's business. This Agreement shall bind and inure to the benefit of the successors and permitted assigns of the parties.
- 15.3. NovioMEMS is entitled to identify Customer as its customer and to publish the brand name and logo of Customer in promotional messages and on pages on the NovioMEMS website, but only when those messages or pages also mention other customers of NovioMEMS.
- 15.4. Neither party shall issue any press releases regarding the Agreement nor any Goods and/or Services provided there under without the prior written approval of the other party.
- 15.5. Any requirement for a "written" statement can be fulfilled by using e-mail, provided the identity and integrity of such e-mail can be determined with sufficient certainty.
- 15.6. The section headings in these Terms and Conditions and in the Agreement are for convenience only and shall not be used in construing or interpreting either.