

## GENERAL TERMS AND CONDITIONS

### 1. Introduction

1.1 These general terms and conditions ("**Terms**") shall apply to and will govern all orders and purchases of any products ("**Products**") by Nordic Electrochemistry ApS ("**Nordic Electrochemistry**") to any customer ("**Customer**").

### 2. Ordering

2.1 Customer shall place orders with Nordic Electrochemistry which must specify the Products, including the desired quantity and price with respect to the Products, ordered by Customer ("**Order**"). In case Customer does not want to receive delivery as soon as practicably possible as decided by Nordic Electrochemistry, Customer must state a specific delivery date in the Order.

2.2 Upon receipt of an Order, Nordic Electrochemistry will assess such Order and if Nordic Electrochemistry accepts the Order, Nordic Electrochemistry will issue an order confirmation to Customer confirming the Order including the quantity and price of the Products and the specific delivery date if such has been specified by Customer in the Order ("**Order Confirmation**"). It shall remain within the sole discretion of Nordic Electrochemistry to reject any Order.

2.3 Order Confirmations are binding for the Customer and cannot be terminated, annulled or adjusted by Customer without Nordic Electrochemistry's consent.

### 3. Delivery and passing of risk

3.1 The place of performance of the Order is Nordic Electrochemistry's business premises in Denmark. The Products shall be considered as delivered by Nordic Electrochemistry and the entire risk shall pass to the Customer on the date when Nordic Electrochemistry has notified Customer that the Products are available at Nordic Electrochemistry's premises.

3.2 If the Customer has requested shipment, the Products shall be considered as delivered by Nordic Electrochemistry and the entire risk shall pass to the Customer at the time where Nordic Electrochemistry has handed over the Products to the carrier, including in respect of delays, damages, loss, costs, destruction etc. pertaining to shipment to Customer's premises save as otherwise set out herein.

3.3 Notwithstanding anything to the contrary in sec. 3.1 or 3.2 title to any software incorporated within or forming a part of the Products shall at all times remain with Nordic Electrochemistry or the licensor(s) thereof, as the case may be.

3.4 Customer shall bear all freight costs, packing costs (in excess of the standard packing applied by Nordic Electrochemistry), taxes and duties etc., and to the extent such are initially paid by Nordic Electrochemistry, Nordic Electrochemistry will invoice any such costs to and the Customer will reimburse and thus pay such costs to Nordic Electrochemistry. Nordic Electrochemistry will pay insurance costs with respect to the Products until the risk has passed to the Customer.

### 4. Inspection of Products and Defects

4.1 Customer shall upon receipt of the Products at Customer's premises and without undue delay thoroughly inspect the Products to verify that there are no deficiencies and defects and that the Products conform to the Products ordered as set out in the Order Confirmation including that the agreed quantity of Products have been delivered.

4.2 In the event of any defects or deficiencies, Customer must immediately and in any event no later than 2 days following receipt by Customer notify Nordic Electrochemistry hereof in writing failing to do Customer shall be deemed to have accepted the Products "as-is".

### 5. Prices and payment

5.1 The prices quoted in the Order Confirmation shall apply. All prices will be stated in DKK, EUR or USD (to be decided by Nordic Electrochemistry depending on Customer's geographic location) and will be exclusive VAT.

5.2 Nordic Electrochemistry will invoice the amount set out in each Order Confirmation simultaneously with shipping the Products or when Nordic Electrochemistry is making Products available for Customer to pick up.

5.3 Unless otherwise set out in the Order Confirmation, Customer must effectively pay all amounts no later than 30 days following the date of each invoice. Payment shall be considered to have been made on the day the amount due is effectively received by Nordic Electrochemistry. All payments must be made by wire transfer to a bank account designated by Nordic Electrochemistry. Customer must pay bank transfer fees

to Customer's bank, whereas Nordic Electrochemistry is to pay bank transfer fees to Nordic Electrochemistry's bank.

5.4 In the event of any delayed payment Nordic Electrochemistry is entitled to claim interest in the amount of 1% per cent per month of the amount due.

5.5 Customer is not entitled to withhold payments or to set-off eventual counterclaims against any amounts owing by Customer to Nordic Electrochemistry, unless specifically agreed in writing with Nordic Electrochemistry

5.6 Without prejudice to any other remedies available to Nordic Electrochemistry pursuant to these Terms, Nordic Electrochemistry shall be entitled to withhold any deliveries of any Products until all amounts due have been paid by Customer.

## 6. Retention of Title

6.1 Delivered Products comprised by an Order Confirmation shall remain the property of Nordic Electrochemistry until all amounts owing with respect to Products comprised by the applicable Order Confirmation have been effectively paid by Customer.

6.2 Customer must keep Products reasonably separated from any other products and assets stored by Customer and further assure that such Products delivered by Nordic Electrochemistry are continuously uniquely identifiable as property of Nordic Electrochemistry until amounts owing have been paid with respect to the Products and that Products are safeguarded and stored in an appropriate and secure manner. Customer agrees that Nordic Electrochemistry (or a third party designated by Nordic Electrochemistry) may at any time inspect the premises of Customer to ensure compliance with the aforesaid requirements by Customer.

## 7. Intellectual property rights

7.1 Nordic Electrochemistry retains full ownership in and to all of its intellectual property rights created, acquired or otherwise obtained including with respect to the Products and nothing set out in these Terms shall be deemed whether directly or indirectly to assign, transfer or grant any rights to any of Nordic Electrochemistry's intellectual property rights to Customer, a customer of Customer or any other third party.

## 8. Indemnification

8.1 Subject to the exclusions and limitations of liability set out in sec. 10 of these Terms, Nordic Electrochemistry shall indemnify Customer against claims by a third party that the Products infringe such third party's intellectual property rights and shall pay to Customer the amount awarded to such third party in a final judgment (or a settlement accepted in writing by Nordic Electrochemistry) always subject however to the limitations and exclusions set out in sec. 11 and further provided that (i) Customer has notified Nordic Electrochemistry promptly in writing of any claim (or a threatening claim); (ii) has given Nordic Electrochemistry sole control over its defence or settlement; and (iii) Customer provides Nordic Electrochemistry with all reasonable assistance in defending such third party claim.

8.2 Without limiting the generality of any other provisions of these Terms, Nordic Electrochemistry's obligation to indemnify Customer as set out in sec. 8.1 shall in any circumstances not apply to the extent that a claim made by a third party is based in whole or in part on: (i) any goods or services other than the Products; (ii) Customer's breach of these Terms; and/or (iii) any marketing, distribution and/or combination of the Products with Customer's or any third party's products and/or services and/or (iv) any other matters not solely attributable to Nordic Electrochemistry.

8.3 If Nordic Electrochemistry receives information of an alleged infringement of third party intellectual property rights or a final adverse judgment is passed by a competent court or a final settlement consented to by Nordic Electrochemistry is reached regarding an intellectual property right infringement claim related to Nordic Electrochemistry products, Nordic Electrochemistry may in its sole discretion either (i) procure for Customer the right to continue to market, sell and distribute the allegedly infringing Products, (ii) modify the Products to make the Products non-infringing; and/or (iii) refund the purchase price paid for the infringing Products by Customer subject to Customer returning of Products. Customer acknowledges and accepts that Nordic Electrochemistry is entitled but not obligated to exercise either of the aforesaid options in Nordic Electrochemistry's sole discretion and Customer undertakes in any event to stop any marketing, sales and/or other distribution of the allegedly infringing

- Products immediately upon the request of Nordic Electrochemistry.
- 8.4 The remedies set out in this sec. 8 shall constitute the sole and exclusive remedies of Customer in the event of any infringement of third party intellectual property rights.
- 9. Software**
- 9.1 With respect to any software products incorporated in or forming a part of the Products hereunder, such software products are being licensed and not sold to Customer. Notwithstanding anything to the contrary contained herein, Nordic Electrochemistry or its licensor, as the case may be, retains all rights and interest in software products provided hereunder
- 9.2 Nordic Electrochemistry hereby grants to Customer a royalty-free, non-exclusive, non-transferable license, without the right to sublicense, to use software provided hereunder solely for Customer's own internal business purposes on the hardware products provided hereunder and to use the related documentation solely for Customer's own internal business purposes. This license terminates when Customer's lawful possession of the hardware products provided hereunder ceases, unless earlier terminated as provided herein. Customer agrees to hold in confidence and not to sell, transfer, license, loan or otherwise make available in any form to third parties the software products and related documentation provided hereunder. Customer may not disassemble, decompile or reverse engineer, copy, modify, enhance or otherwise change or supplement the software products provided hereunder without Nordic Electrochemistry's prior written consent. Nordic Electrochemistry will be entitled to terminate this license if Customer fails to comply with any term or condition herein. Customer agrees, upon termination of this license, immediately to return to Nordic Electrochemistry all software products and related documentation provided hereunder and all copies and portions thereof.
- 9.3 Certain of the software products provided by Nordic Electrochemistry may be owned by one or more third parties and licensed to Nordic Electrochemistry. Accordingly, such third parties retain ownership of and title to such software products. The warranty and indemnification provisions set forth herein shall not apply to software products owned by third parties and provided hereunder.
- 10. Exclusion and limitation of warranties**
- 10.1 Unless otherwise separately agreed in writing, Nordic Electrochemistry warrants for a period of 12 months following the date of passing of the risk to Customer ("**Warranty Period**") that the Products will be free from material defects and thus will perform substantially in accordance with the applicable specifications for the Products.
- 10.2 Within the Warranty Period, Nordic Electrochemistry will in its sole discretion decide whether to (i) repair Products, and/or (ii) replace Products, and/or (iii) in whole or in part refund the purchase price, with respect to Products that fail to conform to the warranty set out in sec. 10.1.
- 10.3 The warranty set out pursuant to sec. 10.1 shall not apply in the event that any Products fails to conform to the warranty due to matters not solely attributable to Nordic Electrochemistry including (i) normal wear and tear, (ii) lack of or improper maintenance, (iii) use contrary to specifications and guidelines accompanying Products, (iv) use of the Products in combination with equipment or software not supplied by Nordic Electrochemistry, (v) any use with Customer and/or third party products and services, and/or (vi) other matters beyond the reasonable control of Nordic Electrochemistry.
- 10.4 Nordic Electrochemistry expressly disclaim any other warranties - whether express or implied - and the remedies set out in this sec. 9 shall constitute the sole and exclusive remedies of Customer in the event of any breach of warranty by Nordic Electrochemistry.
- 10.5 The warranties are subject to the exclusions and limitations of liability set out in sec. 10 of these Terms.
- 11. Limitation of liability**
- 11.1 The parties shall be liable to pay damages in accordance with the ordinary rules of Danish law subject to the limitations and exclusions set out in these Terms.
- 11.2 Customer shall not be entitled to claim damages for any indirect losses, liquidated damages, penalties and/or other consequential damages suffered which shall apply regardless of whether such indirect losses etc. are suffered by

Customer or any third party. Without limiting the generality of the aforesaid, the parties acknowledge and agree that loss of business opportunities, loss of profit and loss of goodwill shall always be considered as indirect losses pursuant to these Terms.

11.3 Nordic Electrochemistry shall assume product liability in accordance with the ordinary rules of Danish legislation, however to the maximum extent permitted under Danish legislation the exclusions and limitations set out in these Terms including this sec. 11 shall apply.

11.4 Nordic Electrochemistry's total aggregated liability for any and all claims made by Customer pursuant these Terms shall for each Order Confirmation be limited to the lesser of the following amounts: (i) an amount equal to the total aggregate amount effectively paid by Customer to Nordic Electrochemistry for the Products comprised by the applicable Order Confirmation to which a claim is directly related or (ii) an amount not to exceed the actual insurance coverage pursuant to Nordic Electrochemistry's then-current insurance covering the type of claim made.

11.5 The above stated exclusions and limitations shall apply irrespective of the basis of the claim and shall include claims based on acts of negligence, strict liability, breach of warranties, penalties, liquidated damages, indemnification claims and/or punitive damages save as otherwise explicitly prohibited pursuant to applicable mandatory Danish legislation.

## 12. Regulatory requirements

12.1 Customer undertakes to comply with all applicable regulatory legislation applicable to the business activities as conducted at any time by Customer in any territory related to the Products. The obligations of Customer include but are not limited to observing that Products marketed, sold, distributed or otherwise made available by Customer will conform in all respects to applicable regulatory legislation in all territories including any applicable import and export legislation, regulations and orders.

## 13. Miscellaneous

13.1 Save as otherwise explicitly agreed in writing between the parties, no other terms and conditions than those set out in these Terms shall apply including without limitation any of Customer's

general terms and conditions or other documents or information provided by Customer to Nordic Electrochemistry.

13.2 A party shall not be liable for delays or for non-performance (other than failure to pay any amounts due) resulting from a force majeure situation. For as long as a force majeure situation persists the party affected by such force majeure situation shall be exempt from performance of its obligations.

13.3 If any provision of these Terms and/or the application of any such provision is declared judicially to be invalid, unenforceable or void, such decision shall not invalidate or render void the remainder of these Terms, and it is the intent of the parties that these Terms will be deemed amended by modifying such provision to the extent necessary to render it valid, legal and enforceable and that achieves to the largest extent possible the same objective.

13.4 These Terms are governed by Danish law (save for any provisions concerning the choice of law) and the United Nations Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded and shall not apply.

13.5 The parties agree that any dispute between the parties shall be subject to the exclusive jurisdiction of the ordinary Danish courts.

13.6 These Terms may be amended by Nordic Electrochemistry in its sole discretion at any time and such amended Terms will apply to any Orders placed by Customer with Nordic Electrochemistry following Nordic Electrochemistry's amendment of these Terms.

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These Terms are applicable to any Orders placed by Customers as of and following [ ] 2015.

## ADDITIONAL TERMS - OEM PARTNERS

13.7 These additional terms and conditions ("**Additional Terms**") shall apply to OEM Partners (as defined below) in addition to and without limiting the generality of any other terms and conditions set out in these Terms. Any defined terms and expressions set out in these Terms shall apply equally to these Additional Terms.

13.8 For the purpose of these Terms, an "**OEM Partner**" shall mean a legal entity that purchases Products from Nordic Electrochemistry for the purpose of

embedding or otherwise integrating such Products into such Customer's own products and thus provided that Products will be marketed, sold and/or otherwise distributed as an embedded/integrated part of with Customer's own products under Customer's own labels ("**Customer OEM Products**").

unless agreed with Nordic Electrochemistry

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These Additional Terms are applicable to any Orders placed by OEM Partners as of and following [ ] 2015.

- 13.9 In addition to any other limitations and exclusions applicable pursuant to these Terms, Nordic Electrochemistry disclaims any and all liabilities of whatsoever nature (and irrespective of the basis of such liability) whether directly or indirectly resulting from any embedding, integration, combination or other use of Products together with OEM Partner's own products and services and/or any other third party products and services.
- 13.10 It shall remain within the sole responsibility of and OEM Partner thus assumes all liabilities related whether directly or indirectly to any integration, embedding, sale, marketing, distribution or any other use of the Products as part of Customer OEM Products. The OEM Partner shall indemnify against any claims made by any third party as a result of any use of Products including any marketing, sale or distribution of Customer OEM Products.
- 13.11 Nordic Electrochemistry will to the extent such exists make the then-current general technical specifications concerning Products available "as-is" to OEM Partner for OEM Partner's use solely in connection with OEM Partner's use of Products as an embedded/integrated part of Customer OEM Products. For the avoidance of doubt, Nordic Electrochemistry does not undertake any obligation to provide any consultancy services, technical specifications, documentation, customizations or other information to the OEM Partner concerning the Products save as otherwise expressly and separately agreed between the parties in writing.
- 13.12 Products are delivered "as-is" disclaiming any and all warranties whether express or implied.
- 13.13 OEM Partner is not allowed whether directly or indirectly to use any trademarks belonging to Nordic Electrochemistry and/or to otherwise to market, sell, distribute and/or make available Customer OEM Products in a manner that directly or indirectly may result in Nordic Electrochemistry and/or any Products being associated with OEM Partner and/or Customer OEM Products,