

General Terms and Conditions for the Provision of Services by Neue Materialien Bayreuth GmbH

Version of February 2025

Neue Materialien Bayreuth GmbH (NMB), Gottlieb-Keim-Straße 60, D-95448 Bayreuth, Germany, sees itself as a research organisation within the meaning of the European Union Framework for State aid for research and development and innovation (2022/C 414/01, FuEuL-Unionsrahmen). NMB's purpose is to conduct research and development in the field of materials engineering and materials science. To this end, NMB provides research and development services on behalf of customers that serve innovation and technology transfer and is breaking new technological ground for this purpose. Beyond that, NMB performs services under a contract to produce a work on behalf of customers. The following General Terms and Conditions (GTC) are aligned with these special characteristics.

1 Scope of Application

- 1.1 These GTC shall apply to all services and works to be provided by NMB. These GTC shall not apply to property rentals and their ancillary services in connection with the Bayreuth Start-up Centre (Bayreuther Gründerzentrum, BGZ).
- 1.2 These GTC shall also apply in their respective version to all future contracts with the same customer, without NMB having to refer to these GTC again in each individual case. In this case, NMB will inform the customer without undue delay of any changes to these GTC.
- 1.3 These GTC shall apply exclusively. Deviating or conflicting general terms and conditions of the customer shall not become part of the contract, even if NMB is aware of them and does not specifically object to their application in the individual case, unless NMB has expressly agreed to their application in writing.
- 1.4 Individual agreements made with the customer in individual cases shall always take precedence over these GTC.

2 Conclusion of the contract

- 2.1 All offers of NMB are subject to change and non-binding.
- 2.2 By submitting a written order, the customer bindingly declares that he intends to order the requested works, services or other performances. NMB shall be entitled to accept the offer to conclude the contract contained in the customer's order within a period of two (2) weeks. Acceptance is made by means of a corresponding order confirmation from NMB to the customer.

3 Scope of Service / Performance

- 3.1 The type and scope of the service owed shall be determined by the order confirmation of NMB, including these GTC. Oral agreements prior to the order confirmation are non-binding and shall be replaced by the order confirmation.
- 3.2 The performance deadlines and dates are specified by NMB for the services to be provided in the written offer of NMB or in the customer's order and shall only be deemed to have been agreed upon by the order confirmation of NMB.
- 3.3 Changes to the scope of service by the customer shall only be deemed to have been agreed upon after written confirmation by NMB.
- 3.4 The deliverables of the service shall be provided to the customer after the performance of the service in accordance with the form specified in the order confirmation and the agreed performance deadlines and dates.
- 3.5 If NMB is unable to meet agreed performance deadlines and dates for reasons for which NMB is not responsible, NMB will inform the customer thereof without undue delay and will consult with the customer to agree on new performance deadlines and dates.
- 3.6 If NMB is unable to perform the service without NMB's responsibility for this, the performance deadlines and dates shall be extended by the duration of the impossibility of performance. Cases of impossibility of performance in this sense include, in particular, unforeseeable, unavoidable circumstances and events beyond the control of NMB, such as force majeure, war, natural disasters, epidemics or pandemics or labour disputes. NMB will inform the customer in an appropriate manner of the occurrence of the disruption. If the end of the disruption is not foreseeable and/or if it lasts longer than two (2) months, either party shall be entitled to rescind or terminate the contract. Claims for damages shall be excluded unless they are based

on intentional or grossly negligent conduct on the part of the other party.

4 Acceptance

- 4.1 The customer shall be obliged to accept the agreed service without undue delay as soon as it has been provided by NMB.
- 4.2 If the customer does not accept the agreed service, even though it is in accordance with the contract, NMB shall be entitled to demand acceptance by the customer within a reasonable period of time. If the customer does not accept the service within this additional specified period, the service shall be deemed to have been accepted. In all other respects, the statutory regulations on acceptance shall apply.

5 Remuneration

- 5.1 Unless otherwise expressly agreed in the individual case, NMB's prices as stated in the respective order confirmation for the services listed therein shall be deemed to have been agreed.
- 5.2 If a remuneration has not been expressly agreed, in particular if the respective order confirmation does not contain prices for the agreed service of NMB, the usual remuneration shall be deemed to have been agreed.
- 5.3 If, in the course of the performance of service, additional expenditure is required to provide the agreed service, NMB will consult with the customer to agree on the compensation of the incurring costs.
- 5.4 NMB is subject to VAT. All prices for services are quoted in euros plus the respective statutory value added tax. VAT is stated in accordance with the applicable legal regulations of the Federal Republic of Germany.
- 5.5 If planned work is postponed beyond NMB's financial year (calendar year) for reasons for which the customer is responsible, the cost rates applicable for the corresponding financial year shall be charged for invoicing the work.

6 Payments

- 6.1 Unless otherwise agreed or otherwise stated on the respective invoice, the agreed remuneration shall be due for payment within thirty (30) days of invoicing.
- 6.2 Payments shall be made to the NMB account without deduction, quoting the invoice number.
- 6.3 As soon as the customer is in default, NMB shall be entitled to demand default interest in the applicable statutory amount (§ 288 subsection 2 of the German Civil Code (Bürgerliches Gesetzbuch, BGB)).
- 6.4 The customer shall only be entitled to set-off insofar as his counterclaims are undisputed or have been finally and bindingly established. The customer shall only be entitled to assert rights of retention on the basis of counterclaims arising from the same contractual relationship.

7 Rights to Deliverables

If, in the course of the performance of the contractual service, findings are acquired that are capable of being protected by intellectual property rights (deliverables capable of being protected by intellectual property rights), the following shall apply:

- 7.1 At the request of the customer, which must be declared in writing to NMB within three (3) months of receipt of the mandatory information provided by NMB, NMB will ensure that it can dispose of the rights to its own deliverables capable of being protected by intellectual property rights. The terms of this will be set out in a separate agreement with the customer. If no such agreement is reached, NMB shall no longer be obliged to secure such rights.
- 7.2 If NMB's existing industrial property rights and/or rights acquired outside the performance of the service are required for the performance of the service and/or for the customer's utilisation of deliverables capable of being protected by intellectual property rights and/or other deliverables, a separate agreement between the parties shall be concluded for this purpose with the aim of granting the customer a right of use, insofar as NMB is entitled to do so.
- 7.3 Regarding the procedure in the event of joint deliverables capable of being protected by intellectual property rights, NMB and the customer will consult to agree on a case-by-case basis with the aim of granting the customer full availability of such

deliverables capable of being protected by intellectual property rights.

8 Intellectual Property Rights of Third Parties

NMB will notify the customer without undue delay of any third-party intellectual property rights that become known to it during the performance of the service, which could conflict with the use agreed upon in accordance with clause 7. NMB and the customer will decide by mutual agreement how these intellectual property rights will be taken into account in the further performance of the service.

9 Warranty / Liability

9.1 NMB performs the contracted services with the usual and reasonable care and in accordance with the current state of science and technology, using its existing own knowledge and experience or respectively its own knowledge and experience gained in the course of the contractual relationship.

9.2 In the course of performance of the service, NMB shall only be obliged to perform the services properly with ordinary and reasonable care. Therefore, NMB only warrants that the results presented in the relevant report correspond to the result determined within the scope of the services according to the current state of scientific knowledge and technical experience. In all other respects, the warranty shall be excluded. In particular, NMB shall not assume any warranty or other liability for (i) the achievement of the research and development objectives, (ii) the suitability of the deliverables for a specific purpose or the continued usability of the deliverables by the customer, and/or (iii) for the freedom of the deliverables from third-party rights.

9.3 Unless otherwise stipulated in these GTC, NMB is liable in the event of a breach of contractual and non-contractual obligations in accordance with the relevant statutory provisions.

9.4 NMB is liable for damages in the event of intent and gross negligence on the part of its legal representatives and vicarious agents. In the event of simple negligence, NMB shall only be liable

- a. for damages resulting from injury to life, limb and health;
- b. for damages resulting from the breach of an essential contractual obligation, i.e. an obligation the fulfilment of which is essential for the proper execution of the contract and on the observance of which the customer regularly relies and may rely.

9.5 In the event of simple negligence, the liability of NMB – with the exception of liability under clause 9.4 lit. a – shall be limited to compensation for foreseeable, typically occurring damage.

10 Special Regulation for Defects regarding Services under a Contract to produce a work

10.1 NMB makes commercially reasonable efforts in accordance with the latest scientific and technical knowledge in order to provide the work to the customer as agreed. Unless otherwise contractually agreed, NMB owes a work that is suitable for customary use and has a nature that is usual in works of the same type and that the customer may expect in view of the type of work. With regard to the warranty, reference is made to clause 9.2 of these GTC.

10.2 In all other respects, in the event of defects in NMB's services under a contract to produce a work the relevant statutory provisions shall apply unless otherwise stipulated in these GTC or otherwise agreed between the parties.

11 Confidentiality

NMB will not make customer's information marked as confidential available to third parties for the duration and for a period of three (3) years after the termination of the contractual relationship, as long as and to the extent that such information has not become generally known in any other way or the customer has waived the confidential treatment in writing. The customer is subject to a corresponding obligation vis-à-vis NMB, which includes, in particular, deliverables capable of being protected by intellectual property rights.

12 Subcontracting

12.1 In the event that NMB commissions third parties to provide partial services (subcontracting), NMB will inform the customer thereof.

12.2 Third parties acting for NMB under a subcontract will be bound to confidentiality to the same extent as the parties under

clause 11. In particular, NMB will ensure that it is able to fulfil its obligations under clause 7.

13 Publications

13.1 Publications by NMB on deliverables capable of being protected by intellectual property rights and/or other deliverables must be approved in writing by the customer in advance. There is no obligation for such approval.

13.2 With consideration for the fact that doctoral theses should not be affected, the customer is required to coordinate its own publications on deliverables capable of being protected by intellectual property rights and/or other deliverables with NMB in advance.

14 Termination

14.1 If, in the case of a service contract, in particular in the context of the respective order confirmation, it does not specify a fixed term or provides otherwise, the term shall be one (1) year from the conclusion of the contract. If the contract is not terminated in writing by one of the parties with at least three (3) months' notice prior to the expiry of the respective term, the contract shall automatically be extended by a further six (6) months at a time.

14.2 The right of the parties to terminate the contract for good cause remains unaffected.

14.3 Insofar as no significant progress has been made after the expiry of a significant processing period, NMB and the customer will jointly consult to agree on the further performance of the service. Insofar as NMB and the customer do not reach an agreement within four (4) weeks and the achievement of significant progress cannot be expected in a reasonable period of time in the future, both parties shall be entitled to ordinary termination of the contract with a notice period of at least four (4) weeks. In all other respects, there is no right of ordinary termination during any fixed terms in accordance with clause 14.1 or the respective order confirmation.

14.4 In the event of effective termination, NMB will hand over to the customer the deliverables achieved within the scope of the agreed service up to the expiry of the notice period within four (4) weeks after receipt of the termination. The customer shall be obliged to reimburse NMB for the pro rata costs incurred up to the end of the notice period in accordance with clause 5.

15 Miscellaneous

15.1 The place of fulfilment for the performance by NMB is Bayreuth.

15.2 Any ancillary agreements, amendments and supplements must be made in writing. This also applies to a waiver or amendment of this written form clause.

15.3 The Laws of the Federal Republic of Germany shall apply to the exclusion of its international conflict of laws provisions and, as a precautionary measure, the United Nations Convention on Contracts for the International Sale of Goods (CISG). The place of jurisdiction shall be Bayreuth. Notwithstanding this, the jurisdiction of the Regional Court Munich I (Landgericht München I) shall be deemed to have been agreed upon for disputes relating to clause 7 of these GTC.

15.4 Should one or more provisions of these GTC be or become invalid in whole or in part, this shall not affect the validity of the remaining provisions. Invalid provisions shall be deemed to have been replaced by such effective provisions as are suitable for achieving the economic purpose of the invalid provision as far as possible. The same shall apply in the event of a regulation gap.

15.5 The current version of our GTC is available on our website at www.nmbgmbh.de.