



# General Terms and Conditions

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# UpNano – General Terms and Conditions

## 1. Object of Agreement and Scope

- 1.1. UpNano GmbH and UpNano US Inc. (hereinafter together "UpNano") are manufacturers and/or distributors and/or suppliers of high-resolution 3D printing systems.
- 1.2. Object of agreement and these General Terms and Conditions ("UpNano-GTC") are the distribution and Delivery of UpNano Products, provision of UpNano Services, and licensing of UpNano Software.
- 1.3. UpNano-GTC shall apply exclusively, unless otherwise agreed upon in writing, to all legal transactions between UpNano and the Customer. Any subsequent amendments and supplements to UpNano-GTC require UpNano's explicit written confirmation to become effective.
- 1.4. In the event of any conflict between the individual provisions of a Purchase Agreement, a Supplemental Agreement and an SLA, those of this Agreement, the individual provisions of such Contract will prevail.

## 2. Definitions

- 2.1. **"Business Day"** is any day other than Saturday, Sunday, or public holidays in Austria between 9:00 a.m. and 5:00 p.m. CET/CEST, excluding Christmas holiday break (last week of December and first week of January).
- 2.2. **"Customer"** is the contractual partner of UpNano as buyer of UpNano Products, as contractual partner for UpNano Services and/or as licensee of UpNano Software.
- 2.3. **"Customer Materials"** are design descriptions, drawings, models compounds, resins or other specifications provided by the Customer to UpNano. Customer Materials will be the property of the Customer. Up-Nano will use Customer Materials exclusively for the manufacturing of Products for the Customer.
- 2.4. **"Customer Site"** is the place of installation of UpNano Printing Systems at the place of the Customer defined in Purchase Contract and/or SLA.
- 2.5. **"Delivery"** means the delivery of the goods shall be deemed sold DDP for UpNano Printing Systems and EXW for UpNano Supplies according to INCOTERMS® 2023, unless otherwise agreed upon in writing. Software and data carriers shall be dispatched at the Customer's risk.
- 2.6. **"Force Majeure"** shall mean any situation outside of a party's control, which prevents compliance with the delivery period agreed upon, including terrorism, armed conflicts, official interventions and bans, transport and customs delays, transport damage, shortage of power and raw materials, industrial disputes and, the loss of a crucial supplier that is difficult to replace, third-party acts, atmospheric discharges, overvoltage, exposure to chemicals, accidents, fire, pandemics, natural disasters (earthquakes, hurricanes, and any other acts of god), electric shocks, power failures, and governmental orders, including such cases, which affect suppliers.
- 2.7. **"Initial Analysis"** comprises the investigation of log files and/or the System, as well as a check if the available data is sufficient for further actions, followed by ad hoc mitigation (workaround) in case of major incidents.
- 2.7. **"Items under use" ("IUS")** are all items listed in the SLA, e.g., hardware (including the System), software, covered by the SLA that has been concluded between UpNano and the Customer.
- 2.8. **"Place of performance"** of UpNano Services is primarily the place specified in the written order confirmation; secondarily it is the place where the service is actually performed by UpNano.
- 2.9. **"Purchase Agreement" ("SPA")** means any binding agreement between UpNano as seller and a Customer and/or a third party (i.e. financing company) as buyer of UpNano Products and/or UpNano Supplies.
- 2.10. **"Reaction Time"** stands for the time elapsed between the receipt of a service request by UpNano until the first feedback by UpNano to the Customer, as defined in the applicable SLA.
- 2.11 **"Risk of Loss"** means the point at which the Customer assumes sole responsibility of the goods. As used in this UpNano-GTS, Risk of Loss occurs as soon as UpNano delivers its goods to the Customer Site.
- 2.12. **"Site Requirements"** means the necessary conditions concerning environmental, storage and other conditions necessary for operating UpNano Printing Systems at the Customer Site. The Site Requirements can be dependent on the kind and functionality of the installed UpNano Printing System and can be adjusted by UpNano if useful and/or necessary.
- 2.13. **"SLA"** or **"Service Level Agreement"** means a service contract for UpNano Services with a flat rate for defined services for the IUS

which are covered by the SLA and contains a detailed description of the agreed services and terms and conditions. The SLA is available in the following versions:

- 2.14. **"SLA Basic Agreement" or "BA"**: This SLA BA is automatically included with a machine purchase and includes the standard warranty of one (1) year.
- 2.15. **"SLA Maintenance Agreement" or "MA"**: This SLA MA contains proactive maintenance to ensure functionality, including software updates and corrective maintenance in accordance with machine maintenance schedule. One maintenance visit per year is included. The duration for the SLA MA can be extended to a maximum of ten (10) years.
- 2.16. **"SLA Extended Warranty Agreement" or "EWA"**: This SLA EWA extends the SLA MA (see 2.15) by a minimum of one (1) to a maximum of five (5) years and includes software upgrades, service of scanner, stage, and laser with replacement of laser diodes, and all parts included in the original Delivery, shipping of parts and labor to fulfil warranty commitment. The duration for SLA EWA can be extended to a maximum of four (4) years.
- 2.17. **"SLA Full Service Agreement" or "FSA"**: This SLA FSA is a combination of MA (proactive) and EWA (reactive) inclusive of travel cost within the European Union, Switzerland, Iceland, Liechtenstein, United Kingdom and Norway. Any additional travel outside of these regions, if it exceeds 1,500.00 euros annually, shall be covered fully by the Customer. The duration of the SLA FSA can be extended to a maximum of four (4) years.
- 2.17. **"Supplemental Agreement"** means any additional agreement between UpNano as seller and a Customer and/or a third party (i.e. financing company) in connection with a Purchase Contract and/or a SLA.
- 2.18. **"Upgrade Release"** is an UpNano Software Upgrade for a release containing new features of UpNano Software under service.
- 2.19. **"UpNano Printing Systems" ("UpNano System")** means the entirety of equipment and components under the Contract, consisting of UpNano Hardware and UpNano Software, as referenced in the Appendix. UpNano Printing System requires that UpNano Software is installed on a PC with the minimum specifications according to the technical recommendations in the Site Requirements.
- 2.20. **"UpNano Hardware"** means high-resolution 3D printers, manufactured by UpNano.
- 2.21. **"UpNano Products"** means UpNano Hardware and UpNano Supplies.
- 2.22. **"UpNano Services"** means provision of maintenance work of any kind by UpNano for hardware, supplies, software, as well as printing services.
- 2.23. **"UpNano Software"** means 3D printing software **"Think3D"**, developed and licensed by UpNano as licensor to the Customer as licensee, which computer programs as defined by *the Austrian Copyright Act [Urheberrechtsgesetz]* which have been (a) distributed as standard by the licensor or (b) custom developed/adapted by UpNano individually for the Customer to use on, operate or control UpNano-Hardware.
- 2.24. **"UpNano Supplies"** means accessories, spare parts, printing materials and consumables which are manufactured and/or branded and sold by UpNano.
- 2.25. **"UpNano Support"** means Customer ordered support, including installation and training, Customer support for technical problems, telephone support, remote service support, design support, implementation support, and emergency support in case of malfunctions, whereby malfunctions are to be reported via phone or by email.

## 3. Contract Documents

Unless otherwise specified, the whole agreement between the Parties (the "Agreement") is formed by each of the following documents, which are separately referred to herein as a "Contract" as the context requires:

- 3.1. these UpNano-GTC;
- 3.2. the Purchase Contract;
- 3.3. the applicable Service Level Agreement (SLA);
- 3.4. the documentation for dimensions and weight of UpNano Hardware, provided by UpNano;
- 3.5. the Site Requirements concerning environmental, storage and other conditions necessary for operating UpNano Hardware, as defined and specified by UpNano; and
- 3.6. any Supplemental Agreement.

## 4. Offer and Conclusion of Contract

- 4.1. Offers by UpNano shall be considered non-binding in case of doubt.

- 4.2. Any documentation regarding offers and projects must neither be reproduced nor made available to third parties without UpNano's consent.
- 4.3. The Contract is deemed concluded once UpNano has sent a written order confirmation or consigned a Delivery after receipt of the order.
- 4.4. **Customer's duty to cooperate:** Without prejudice to a provision in an individual Contract, the Customer shall be responsible for (a) provision of all the information required to draw up technical specifications (b) use of the software as well as the results achieved with it; (c) loading of new versions and updates made available to the Customer.
- 4.5. **Reservation clause:** Performance of the Contract on the part of UpNano shall be subject to the reservation that no obstacles exist under national or international (re-)export regulations, in particular no embargoes and/or other sanctions.
- 4.6. **Customs Duties:** As used in this Up-Nano-GTC, "**Customs Duties**" shall mean duties or charges of any kind, imposed on or in connection with the import of goods into the United States and/or other countries outside the EU. All prices for goods hereunder include Customs Duties charged and imposed on UpNano under the current laws of the United States and/or other countries outside the EU as of January 1, 2025. If any new and/or higher Customs Duties, including without limitation any supplements or surcharges, are imposed under the laws of the United States and/or other countries outside the EU ("**Increased Customs Duties**"), then UpNano, at its sole discretion, may increase the prices hereunder for its goods sold to Customer to reflect and include such Increased Customs Duties.

## 5. Compliance with Export Regulations

- 5.1. When passing on UpNano Products to third parties, together with the pertinent documents, regardless of the manner in which they are provided or regardless of the services performed, including technical support of any kind, the Customer must comply with the applicable provisions of the national and international (re-)export regulations.
- 5.2. In any case, the Customer must comply with the (re-)export regulations of UpNano's country of domicile, the European Union, the Kingdom of Great Britain and Northern Ireland and the United States of America when passing on goods or services to third parties.
- 5.3. If required for export control checks, the Customer must immediately provide UpNano with all necessary information upon request, including information about the final recipient, final destination and intended use of the software or services.
- 5.4. Approvals by authorities and third parties that might be required for executing installations shall be obtained by the Customer. If such approvals are not obtained in time, the delivery period shall be extended accordingly.

## 6. Terms of Delivery

- 6.1. The delivery period shall commence on the latest of the following dates: (a) date of order confirmation; (b) date of fulfillment of all technical, commercial and other requirements incumbent upon the Customer; (c) date on which UpNano receives an advance payment or security that needs to be provided before Delivery of the goods; or (d) date of necessary approvals by authorities and/or third parties; provided that Risk of Loss in all cases shall occur as defined in Section 2.11 above.
- 6.2. A deadline specified for delivery period or maintenance shall only be binding if agreed between the Customer and UpNano as binding in writing. In case of Force Majeure, which prevents compliance with the delivery period agreed upon, and/or, if the Customer fails to meet its obligations, the latter shall be extended by the duration of such circumstances in any case.
- 6.3. If an instance of force majeure lasts for more than three (3) months, each party shall be entitled to terminate the Contract by written notification, without the other party being able to derive any claims therefrom.
- 6.4. UpNano shall be entitled to effect and charge partial or advance deliveries. If delivery on call has been agreed, the goods shall be deemed called up one year after the order was placed at the latest.
- 6.5. If, upon conclusion of the Contract, a contractual penalty for default in delivery has been agreed, such penalty shall be paid in compliance with the following provision and, for the rest, any deviation from this provision in individual respects shall not affect its applicability:

- 6.6. In case of a delay in performance that has demonstrably occurred solely through the fault of UpNano, the Customer shall be entitled to claim, for every full week of delay, a contractual penalty of no more than 1/2% (one half percent), up to a maximum of 5% (five percent), of the value of that part of the overall Delivery which cannot be used due to the delay in delivery of an essential part, provided a loss was incurred by the Customer in that amount. Any further claims from the delay shall be excluded.
- 6.7. If acceptance has been agreed, the goods shall be deemed fully accepted upon satisfaction of the Site Requirements.
- 6.8. UpNano Services shall be deemed completed when the installation is ready for use by the Customer and/or ready for trial, if such trial is provided for in the Contract.
- 6.9. UpNano shall be entitled to use subcontractors with regard to all Deliveries and elements of the performance, provided UpNano informs the Customer accordingly.
- 6.10. UpNano shall be entitled to process data from the installation that is the object of the service order using IT systems and to perform statistical analyses in a neutralized form.

## 7. Payment

- 7.1. **General:**
- a) Payments shall be made in the currency agreed to UpNano's bank account without any deductions or charges. Any checks or bills of exchange shall only be accepted as an undertaking to pay. All associated interest and expenses (such as debiting and discount charges) and any currency conversion costs or fees shall be borne by the Customer.
  - b) Any prices and costs do not include value added tax (VAT) or any other taxes, charges and fees, which shall be borne by the Customer unless otherwise agreed in writing.
  - c) UpNano shall be entitled to submit the invoice electronically.
  - d) Payments shall be due within 14 days after receipt of the relevant invoice.
  - e) The Customer shall not be entitled to retain or offset payments on account of warranty claims or other claims.
  - f) A payment shall be deemed made on the date UpNano is able to dispose of the amount paid.
  - g) Agreed prices are valid for six (6) months.
  - h) UpNano reserves the right to change the costs and hourly rates by written notification with ninety (90) days' notice, even independently of changes in wages under the collective agreement.
- 7.2. **Payment of Printing Systems:** For Deliveries, if no other terms of payment have been agreed, 40% of the price shall be due upon receipt of the order confirmation, 50% upon Delivery or 14 days after readiness of UpNano to deliver, 10% after commissioning. Commissioning is fulfilled with conclusion of the Site acceptance test (SAT) at the Customer's place of installation within the defined specifications. If the SAT is delayed for more than four (4) weeks due to reasons at the Customer Site, the last payment shall be made within six (6) weeks after Delivery.
- 7.3. **Payment of Consumables and Software Licenses:** For consumables and software licenses (as defined in an applicable Contract), payment shall be made within fourteen (14) days after invoiced by UpNano.
- 7.4. **Payment of Maintenance:** Unless otherwise agreed, UpNano Services shall be invoiced according to time and effort on a daywork basis (day-work) after the Services have been performed. If agreed in writing, they may also be charged at a flat rate (SLA).
- 7.5. **Payment of SLA:** The flat rates agreed in the SLA shall be paid in advance for the period agreed.
- 7.6. **Partial Invoices:** In case of Services the duration of which exceeds one (1) month, according to the contractor's calculation, a partial invoice will be issued at the end of each month. This shall also apply to settlement amounts arising due to subsequent Deliveries or other agreements beyond the original final amount, notwithstanding the terms of payment agreed for the main Delivery.
- 7.7. **Default of Payment:** If the Customer is in default on an agreed payment or any other performance from this or any other legal transactions, UpNano may, without prejudice to any other rights it may have,
- a) postpone performance of its own obligations until this payment or any other performance has been affected, and claim an appropriate extension of the period of performance,
  - b) demand payment of all outstanding receivables from this or any other legal transactions and invoice the statutory default interest

plus VAT for these amounts, with effect from the respective due date, unless UpNano is able to provide proof of any additional costs,

- c) have the right to terminate the contract with immediate effect, granting a period of grace of fourteen (14) days,
- d) in the event of qualified insolvency, i.e. after two instances of default, perform other legal transactions only against cash in advance. At any rate, UpNano shall be entitled to charge any pre-trial expenses, in particular dunning expenses and lawyers' fees, according to applicable statutory provisions, to the Customer.

## 8. UpNano Software

- 8.1 The Customer shall receive the non-transferable and non-exclusive right to use the software at the agreed installation site in compliance with the contractual specifications. This right is exclusively limited to use on Printing Systems delivered by UpNano.
- 8.2 For UpNano Software, UpNano shall provide the specifications. UpNano shall be entitled to deliver the version that is current at the time of Delivery.
- 8.3 For customized software ordered by the Customer, technical specifications must be agreed in writing between UpNano and the Customer. Software specifications may, for example, include performance features, documentation concerning specific functions, hardware and software requirements, installation requirements, conditions of use, and operation (user manual).
- 8.4 The Customer shall be responsible for complying with the software specifications, especially the conditions of use, as well as for acquiring and complying with any official authorization requirements.
- 8.5 The Customer has the right of use for the UpNano Software for the lifetime of UpNano Hardware at the Customer Site.
- 8.6 If the software is independent, use shall be permitted exclusively on hardware defined in terms of type, quantity and installation site in the Contract. Use on hardware other than that defined in the Contract and on multiple workstations shall require a separate written agreement.
- 8.7 The right of use does not cover Software Updates (as defined in an applicable SLA), unless otherwise agreed upon in writing.
- 8.8 The duration of the right of use shall be based on the Contract.
- 8.9 If the Customer fails to meet its obligations, UpNano shall be entitled to refuse further provision of services and to rescind the Contract after setting a reasonable deadline.
- 8.10 In any case, the right of use shall be limited to the period of use of the hardware defined in the Contract, if applicable.
- 8.11 Upon termination of the right of use, the Customer shall be obliged, at UpNano's discretion, to return the entire software including supplied documentation or to demonstrably destroy it. The same shall apply to software that has been modified or combined with other programs.
- 8.12 In the case of customized software, if a consensus cannot be reached within a reasonable period concerning acceptance of the technical specifications, UpNano shall be entitled to terminate the Contract with immediate effect.
- 8.13 All other rights to the software shall be reserved to UpNano. Therefore, without UpNano's prior written consent, the Customer shall not be entitled, in particular, to reproduce or modify the software, to make it available to third parties or to use it on other than UpNano Hardware, without prejudice to the provisions of [the Austrian Copyright Act](#).
- 8.14 For software for which UpNano only has a derived right of use (third-party software), the terms and conditions of use agreed between UpNano and its licensor shall apply in addition and shall take priority over the present UpNano-GTC if and to the extent that those terms and conditions of use relate to the licensee (e.g. end-user license agreement). UpNano hereby draws attention to those terms and conditions and shall make them available to the Customer on request.

## 9. Maintenance

- 9.1. Remote Service: In the absence of any other agreement, UpNano Services shall be performed by way of remote maintenance and remote diagnosis. There is no right to immediate troubleshooting. UpNano Services shall be performed during UpNano's business hours. The Customer shall confirm the hours worked by UpNano's staff in writing. If the Customer fails to provide appropriate confirmation without sufficient reason, the records of UpNano shall be taken as a basis for invoicing. The rates agreed or specified shall apply to the hours worked.
- 9.2. Customer Support: Remote customer support shall comprise up to 18 hours per year (fair use), unless otherwise agreed in an SLA.
- 9.3. Daywork services – Consideration for staff:
  - a) Working time shall begin upon arrival of the staff on the Customer premises and shall end when they leave

- b) UpNano shall inform the Customer about completion of the Services. The Customer shall then immediately check the Services and subsequently accept them. The Customer shall not be entitled to refuse acceptance for minor defects. If acceptance of the Services is delayed for reasons outside the sphere of influence of UpNano, acceptance is deemed effected after expiry of two (2) weeks following the notification of completion of the Services.

- c) For 24-hour and Saturday weekend support, a flat rate of EUR 200/hour emergency service is payable, for Sundays and public Holidays EUR 300/hour. Other services are invoiced at UpNano's hourly rates. Additional support time is payable at EUR 150/hour, unless otherwise agreed upon. Travel time is payable at EUR 100/hour.

- 9.4. Further requests: In case of further requests during an on-site visit, the Customer can either ask for an immediate cost estimate and repair during the ongoing on-site visit, if this is technically feasible, or ask for a repair offer and a further on-site visit.
- 9.5. Spare parts: Spare parts shall be charged based on the time and material required.
- 9.6. Accommodation costs: Accommodation costs of UpNano's staff shall not be included in the price and shall be charged separately, unless otherwise agreed.
- 9.7. Hardware Maintenance: In the event that the Customer orders support services, the services of UpNano shall include:
  - a) Installation and Training
  - b) Customer support for technical problems
  - c) Telephone support, remote service support, design, and implementation support – within two (2) working days
  - d) Emergency support in case of malfunctions, whereby malfunctions are to be reported via phone or by email.
  - e) If it turns out during a maintenance or repair order, that it is impossible to perform this order, UpNano shall be entitled to bill the expense for locating the defect at cost.
- 9.8. Software Maintenance: In the event that the Customer commissions software maintenance in absence of an SLA, the services of UpNano shall include:
  - a) The elimination of program errors that are reproducible, concern the last unmodified version of the program and are sufficiently documented by the Customer in the form provided by the UpNano.
  - b) The adaptation of the printer control software to changes/updates of the operating system environments released by UpNano.
  - c) The improvement and/or extension of program functions to any additional hardware components or functions developed and offered by UpNano.
- 9.9. Recommendation of Services:  
UpNano Services are recommended and shall include:
  - a) Performing necessary maintenance work on the UpNano Hardware (once per year).
  - b) Exchange of consumables (e.g., laser diodes, filters) in accordance with manufacturer specifications.
  - c) Correction of operational faults.
- 9.10. Exclusion:  
Not covered by the scope of services are expenses due to notifications that arise due to (i) failure to follow the instructions for maintenance, storage, installation, proper use and/or working conditions (see Site Requirements documentation) intended for the use of UpNano Products, (ii) for repairs which are incorrectly carried out by the Customer, (iii) for alterations (including relocation) made without UpNano's consent.

## 10. Service Level Agreement

- 10.1. Customer Support:  
Remote customer support, which is covered by SLA, shall comprise up to 36 hours per year (fair use).
- 10.2. Support Department:  
The support department is the central point of contact for any request or information regarding the services. Availability of the support department: [support@upnano.com](mailto:support@upnano.com)  
**for UpNano GmbH and UpNano US Inc.:**  
**CET/CEST** excluding public holidays in Vienna, Austria  
+ 43 1 890 16 52 (ext. 499)  
Business Days from 9:00 a.m. – 5:00 p.m.
- 10.3. Emergency Support:  
In case of an (emergency) breakdown, UpNano shall initiate the problem analysis without delay, irrespective of the service package selected by the Customer. If applicable, the Customer receives an emergency release to return IUS to original functionality or at least

basic functionality in the short term. It is the intention of UpNano to minimize downtime of the IUS.

- 10.4. **Service Level Agreement (SLA):** The SLA is available in the different versions as defined in the Definitions, which can be chosen by the individual Customer together with the purchase of UpNano Printing Systems. Basic Agreement (BA) is automatically included with a machine purchase for the first year after Delivery. SLA versions MA, EWA and FSA need further definition and confirmation. The SLA shall become effective upon signature or qualified digital signature of both parties.
- 10.5. **Flat Rate:** The flat rate shall cover the UpNano Services to be provided by UpNano according to the agreed version of the SLA.
- 10.6. **Software Updates:** Software Updates of UpNano Software are included in the SLA.
- 10.7. **UpNano Obligations:**  
The responsibility of UpNano in the context of an SLA entails: a) Planning and coordination for the annual service visit and/or the reactive on-site service intervention in cooperation with the Customer;  
b) Arrangement of reactive on-site intervention as fast as possible to minimize downtime of the IUS. The response time depends on and is subject to the availability of spare parts.  
c) Visits and travel arrangements will be scheduled and executed by UpNano only upon written confirmation (e-mail) by the Customer.
- 10.8. **Limitation of UpNano Obligations:**  
a) SLA presupposes an unimpeded workflow and timely completion of all work to be performed by the Customer in advance.  
b) Responsibility of UpNano is limited to the IUS, even if it is only a part of a larger system at the Customer Site.  
c) UpNano will do its best to have all essential spare parts for exchange on stock. These exchange parts are either new or refurbished by the manufacturer with the regular warranty.  
d) For certain parts (such as the laser system or piezo axes) of the UpNano System, such parts may have to be sent back to UpNano or to a supplier/manufacturer for repair or exchange of individual parts. In such case, UpNano will manage the entire repair process as fast as reasonably possible.  
e) UpNano will immediately inform the Customer about any unforeseen findings, damages or problems found during the on-site analysis of the UpNano System status and will provide possible solutions.  
f) UpNano obligations and the timely performance are conditional upon fulfillment of the Customer's obligations. This includes, in particular, the timely receipt by UpNano of the documents, hardware, software or permits to be furnished or obtained by the Customer.

## 11. Customer Obligations

### 11.1. The Customer shall:

- operate and run UpNano System in accordance with Up-Nano's documentation (customer manual) and Site Requirements.
- enable all necessary access to the UpNano System via remote access via Team-Viewer and/or on-site, as required (e.g. appropriate service accounts and passwords, etc.) to UpNano to fulfill the obligations according to these UpNano-GTC for performing maintenance and/or warranty work.
- enable the performance of services during UpNano's business hours on Business Days from 9:00 a.m. to 5:00 p.m. CET/CEST, excluding public holidays in Austria.
- make no modifications to the UpNano System nor ask a third party to do so without UpNano's prior written consent.
- inform UpNano promptly if the UpNano System breaks down or works in an unsatisfactory manner.
- in case of failure, document any malfunctions and/or program errors that occur and report them to UpNano in writing (i.e., by email) immediately after they occur, but not later than one (1) month after the defect was noticed first by the Customer.
- not relocate the UpNano System without prior written consent by UpNano and carry out instructions on how to secure the critical mobile parts and how to level the System adequately.
- follow the procedures related to the support services in accordance with the instructions of UpNano.
- give UpNano full details in writing of the safety and other regulations applicable at the Customer Site, that are relevant for the work to be done under any applicable SLA.

- ensure that all involved personnel dealing with the System, either operators or maintainers, have received the appropriate and respective training from UpNano.
- provide any supporting staff, lifting devices, scaffolding and incidentals required for performing maintenance and/or warranty work on the Customer's premises.
- ensure access to necessary and/or useful back-ups of the Customer data and system data, especially before any maintenance or repair intervention by UpNano.
- compensate UpNano for any used and necessary spare parts and/or repair cost which are not included in an SLA.
- compensate UpNano for any agreed remote and/or on-site repair and/or support.
- compensate UpNano for any waiting time which is not covered by an SLA and caused by the Customer.

11.2. At any rate, the Customer shall be liable for any damage (for instance, downtimes, etc.) incurred by UpNano due to non-compliance with this obligation or otherwise upon Risk of Loss has occurred.

11.3. If the Customer fails to meet its obligations, UpNano shall be entitled to refuse the provision of services and to rescind the Contract in accordance with the legally applicable regulations.

## 12. Warranty

12.1 If the terms of payment agreed are complied with, UpNano's sole warranty under this UpNano-GTC shall be to remove any defect existing at the time of handover that is detrimental to functionality, in accordance with the following provisions.

12.2 UpNano can repair and/or replace UpNano Products, at UpNano's discretion, which were defective at the time of handover or manifest a defect in materials or workmanship, which do not comply with the agreed technical specifications, arising during the Warranty Period, if the Customer provides a warranty notification regarding the defect to UpNano. Replaced parts shall pass into UpNano's ownership.

12.3 **Warranty Period:** Unless otherwise agreed, the warranty period for UpNano Hardware is twelve (12) months, for UpNano Supplies six (6) months. The warranty period for UpNano Hardware shall commence at date of Delivery, for UpNano Supplies at date of Purchase. UpNano's obligation ceases upon the expiration of the warranty period. In case of repair or replacement, UpNano guarantees for the repaired or replaced UpNano Products for the remaining warranty period, but at least for six (6) months after repair or replacement of defect products.

12.4 If Delivery or performance is delayed for reasons outside the reasonable control of UpNano, the warranty period shall commence two (2) weeks after the latter's willingness to delivery and/or perform.

12.5 The warranty claim is contingent upon the prerequisite that the Customer has reported any defects that have occurred in writing in due time and that UpNano receives this report. Any warranty notification must be made in writing without delay, not later than one (1) month after the defect was first noticed by the Customer, and must have been received by UpNano before expiry of warranty period by e-mail to: [support@upnano.com](mailto:support@upnano.com). The defect must be described in writing. To register a warranty notification the Customer is obliged to give UpNano the serial number of affected products. UpNano shall confirm receipt of the warranty notification without delay.

12.6 In the event of a defect subject to the warranty obligation, UpNano shall, at its discretion, rectify the defective good or the defective part at the place of performance or arrange for it to be sent to its own place for rectification, or reduce the price accordingly.

12.7 Any necessary hardware repairs shall take place either at the UpNano's facility, or, at UpNano's sole discretion, on-site at Customer Site. Unless otherwise agreed, the Customer shall return defective Products to UpNano and UpNano shall return the repaired, or replaced Products to the Customer Delivered At Place (DAP) the place of the Parties specified as per Incoterms® 2023 excluding taxes.

12.8 If goods are manufactured by UpNano based on Customer Materials, UpNano's liability shall only extend to execution as agreed in writing.

12.9 The elimination of Software defects which are function-impairing deviations from the valid specifications shall, at UpNano's discretion, involve the Delivery of new software or a corresponding modification to the program.



- 12.10 Unless agreed otherwise in an SLA, UpNano shall provide no warranty for third-party software that is not part of the contract, for interaction between the contractual software and/or other software programs used or planned at the Customer Site or for merely short-term, typical software interruptions and/or malfunctions.
- 12.11 If the warranty is intact and the software, in a function-impairing manner, does not adhere to the specifications, and UpNano, despite sustained efforts, is unable to achieve adherence to the specifications within a reasonable period of time, either contracting party shall have the right to dissolve the contract for the software concerned with immediate effect in exchange for restitution of the services and payments received.
- 12.12 Maintenance (e.g. troubleshooting, error rectification and updating, etc.) which does not come under the elimination of defects, as well as responsibility for the respective costs, must be agreed separately.
- 12.13 No warranty claims may be derived nor liabilities established from information provided in catalogues, brochures, advertising material, and written or oral statements not included in the contract.
- 12.14 Warranty Exclusions:  
UpNano shall not be responsible or liable
- a) for ensuring that UpNano Products will run uninterrupted or error-free,
  - b) for a defect or damage of Products which occurs as a result of the Customer's failure to follow the instructions for maintenance, storage, installation, improper use and/or working conditions (Site Requirements) intended for the use of UpNano Products,
  - c) for out-of-spec use with respect to the Site Requirements (temperature, humidity, abrasive atmosphere, contamination etc.)
  - d) for repairs incorrectly carried out by the Customer,
  - e) for incidents or issues that occur because the latest provided software version, or repaired and returned hardware was not installed,
  - f) for alterations (including relocation) made without UpNano's consent,
  - g) for any unauthorized changes to the configuration or setup of the System, affected equipment, software, or services,
  - h) for incidents or issues caused by unsupported equipment, software, or other services,
  - i) for consequential, indirect, or incidental damages,
  - j) for interaction between UpNano Software and other software programs used or planned at the Customer Site or for merely short-term, typical software interruptions and/or malfunctions and for third-party software that is not part of the Contract.
  - k) for deliveries and services performed by the Customer and/or by third parties commissioned by the latter, regarding existing installation parts (existing installations) which are not covered by the Contract.
  - l) for any non-IUS equipment after the warranty period.
  - m) for any breach of contract on the part of the Customer.
  - n) for any data loss in case of insufficient data back-ups by the Customer.
- 12.15 The warranty shall not include any defects and/or damage, loss of profit, declining production or any other loss that result from:
- a) insufficient adjustment, non-compliance with installation requirements and conditions of use, excessive stress on parts beyond the performance specified by UpNano, negligent or incorrect treatment and use of inappropriate operating material; this shall also apply to defects resulting from material and spare parts provided by the Customer.
  - b) Force Majeure.
  - c) use of printing materials by the Customer, purchased from and/or provided by third parties, does not affect either the UpNano Limited Warranty or an UpNano SLA.
- 12.16 In the event that it becomes clear only after the Services to detect and eliminate the defects have been performed by UpNano that Up-Nano is not subject to any warranty obligation under these warranty provisions and/or that the reason of failure or damage is attributable to the use of third-party printing materials, the Customer shall be obliged to pay for the services performed by UpNano according to the latter's repair rates.

- 12.17 The warranty shall lapse if the Customer or a third party not explicitly authorized by UpNano effects any modification or repairs to the product without any written consent by UpNano, even if the defect occurs in an unmodified part.
- 12.18 The warranty shall not cover the replacement of parts that are subject to natural wear.
- 12.19 Unless agreed otherwise in an individual contract, the burden of proving that the defect already existed at the point of handover shall be based on the statutory warranty provisions.
- 12.20 These provisions shall apply accordingly to every instance of assuming responsibility for defects on other legal grounds, except if mandatory law requires otherwise.
- 12.21 UpNano's warranty obligations do not extend to any warranty for licensed and pre-installed UpNano Software, UpNano Services, Maintenance and Reaction Time which are defined and solely covered by Service Level Agreement (SLA) which is recommended to be concluded.
- 12.22 Disclaimer: THE FOREGOING WARRANTY BY UPNANO IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OF QUALITY AND PERFORMANCE, WRITTEN, ORAL OR IMPLIED, AND ALL OTHER WARRANTIES INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED BY UPNANO AND ITS SUBCONTRACTORS.

### 13. Termination or Rescission of the Contract

- 13.1. Each party shall be entitled to terminate the Contract upon violation of a contractual provision by the other party and the unsuccessful expiry of a reasonable period of grace granted. Rescission shall be declared by means of a registered letter.
- 13.2. Any other consequences of rescission shall be excluded. Termination of the Contract does not establish any liability on the part of the party terminating the Contract.
- 13.3. Notwithstanding its other rights, UpNano shall be entitled to terminate the Contract:
- a) if the execution of the Delivery and/or commencement or continuation of the performance becomes commercially unreasonable for reasons within the sphere of responsibility of the Customer or is delayed despite an appropriate period of grace being granted,
  - b) if concerns with regard to the solvency of the Customer have been raised and the latter neither makes an advance payment upon request nor provides suitable security before Delivery,
  - c) if the System becomes unserviceable and/or necessary parts or spare parts are unavailable for more than six (6) months,
  - d) by serving a written notice to the other party within a three (3) month period, stating the reason of such termination.
- 13.4. Termination may also be declared with regard to an outstanding part of the Delivery or performance for the reasons listed above.
- 13.5. Unless any more specific provision was agreed, the Customer shall be entitled to terminate the Contract for default in Delivery resulting from gross negligence on the part of UpNano and the unsuccessful expiry of a reasonable period of grace granted.
- 13.6. Rescission of the Contract:  
If insolvency proceedings are opened with respect of the assets of a contracting party or a request for initiation of insolvency proceedings is rejected for lack of sufficient assets, and, in either case, the decision to close the company of the contracting party has been made, the other contracting party shall be entitled to rescind the Contract without granting a period of grace. If such rescission is declared, it shall become effective immediately once the decision is made not to continue the company. If the company is continued, such rescission shall become effective only six (6) months after the opening of the insolvency proceedings after rejection of the request for initiation for lack of assets. In any case, the Contract shall be terminated with immediate effect, provided that the insolvency law governing the insolvent contracting party does not provide otherwise or if termination of the Contract is essential to avoid serious financial disadvantages for the contract partner of the insolvent contracting party.
- 13.7. In the event of termination every performance or partial performance already effected shall be settled and paid as contractually agreed. This shall also apply to any Delivery or performance not yet accepted by the Customer as well as for any preparatory measures effected by UpNano. In the event of rescission of the contract, UpNano shall have the right to claim compensation for

any pre trial costs, and also is entitled to the return of products already delivered.

- 13.8. Any claims asserted by the Customer for *laesio enormis*, error and frustration of contract shall be excluded.

## 14. Liability

- 14.1. Unless agreed otherwise, UpNano shall not be liable for any negligence, personal injury (and consequential damage), pure financial loss, indirect loss, loss of production, downtime costs, cost of financing, cost of substitute power, loss of power, data or information, lost profit, savings not achieved, interest losses and losses from third-party claims asserted against the Customer or UpNano, or any other loss resulting of the goods or services not being able to be used in a way not specified in the contract shall be excluded.
- 14.2. The Customer shall include UpNano and its subcontractors and consortium partners, if any, as additional insureds in its existing machinery breakdown and machinery breakdown business interruption insurance and have the transferability of the insurance policy restricted in favor of UpNano. Such insurance coverage shall include the operational risks of the Services to be provided by UpNano under any Contract comprising the Agreement.
- 14.3. Unless agreed otherwise, all forms of compensation shall be excluded in case of non-compliance with any requirements for assembly, installation, implementation, commissioning, and use, or official authorization requirements.
- 14.4. If contractual penalties have been agreed, any claims of the Customer beyond that arising from the relevant title shall be excluded.
- 14.5. UpNano shall be liable to Customer solely for:  
damage outside the sphere of the Austrian product liability act (Produkthaftungsgesetz) – in line with statutory regulations – only if its intent or gross negligence is proven. Any liability for damage to installation and/or any object as a result of the services provided by UpNano, shall be limited to gross negligence demonstrably proven to UpNano.
- 14.6. Total liability of UpNano in cases of gross negligence shall be limited to the lower of the net contract value, to the amount of one year's compensation for the agreed Services or EUR 500,000. For Software, UpNano's liability shall be limited to the lower of 25% of the net contract value or EUR 125,000 per claim.
- 14.7. Customer shall be liable for:  
Any violation or breach of any terms, representations, warranties, agreements, covenants, or other obligations under any Contract comprising the Agreement, and the Customer shall indemnify, defend, and hold harmless UpNano GmbH and UpNano US, Inc. and their respective officers, directors, employees, subcontractors, agents, representatives, and any of their related parties (collectively, the "UpNano Indemnified Parties"), from any and all damages, losses, obligations, deficiencies, liabilities, costs, expenses, penalties, claims, causes of action and encumbrances, including, without limitation, attorneys' fees and disbursements resulting therefrom and incurred by any UpNano Indemnified Party.
- 14.8. If the staff of UpNano is directly ordered by the Customer to perform additional services, this shall be at the Customer's risk exclusively, and any liability on the part of UpNano shall be excluded. Such recourse to UpNano's staff by the Customer beyond the agreement in question shall be subject to UpNano's prior consent in writing and based on previously determined or customary consideration.
- 14.9. Upon written request by UpNano, the Customer shall immediately, but no later than within seven (7) Business Days following the request, submit an appropriate written confirmation by its insurance company regarding compliance with all obligations under this article.
- 14.10. These provisions shall finally settle all claims of the Customer vis-à-vis UpNano, on any legal ground and title whatsoever, and shall also apply to all staff members, subcontractors and sub-suppliers of UpNano.

## 15. Industrial Property Rights and Copyright

- 15.1. Final planning documents such as plans, drawings and other technical documentation of UpNano shall remain the intellectual property of Up-Nano at all times, as shall samples, catalogues, brochures, images and the like, and shall be subject to the relevant statutory provisions with regard to reproduction, imitation, competition, etc. This shall also apply to final planning documents.
- 15.2. UpNano shall assist the Customer with fighting any claims based on a violation of an industrial property right or copyright valid

according to the Austrian legal system that has been caused by software used in accordance with the Contract. The Customer shall inform UpNano in writing without delay if such claims are asserted against them, and shall also serve a third-party notice in the event of a legal dispute to give it the opportunity to join the proceedings.

- 15.3. If a product is manufactured by UpNano based on Customer Materials, the Customer shall fully indemnify the UpNano Indemnified Parties pursuant to the terms of Section 14.7 in the event of any violation of property rights.
- 15.4. The Customer shall be responsible for protecting all of UpNano's rights (such as industrial property rights and copyright, including the right to a copyright notice) in respect of the software and for protecting UpNano's entitlement to confidentiality in respect of business and trade secrets, thereby also ensuring that employees and agents of the Customer and/or third parties protect such rights and entitlement. This shall apply even if the software has been modified or customized with other programs. This obligation shall remain valid even after termination of the Contract.

## 16. Miscellaneous

- 16.1. This document including its appendices and attachments constitutes the entire agreement between the parties concerning the subject matter described herein and supersedes and replaces any previous understandings or agreements, verbal or written, regarding that subject. Any amendments to a Purchase Contract and/or SLA shall be effective only when made in writing and signed by both parties.
- 16.2. If individual provisions of the Contract or of these UpNano-GTC should be invalid, this shall not affect the validity of the remaining provisions. The invalid provision shall be replaced with a valid provision that approximates the intended objective as closely as possible.
- 16.3. The German-language version shall be deemed the authentic version of the Terms & Conditions and shall be used to interpret the contract.
- 16.4. UpNano must inform the Customer if it commissions subcontractors. Companies affiliated with UpNano shall be deemed to have been approved in advance.
- 16.5. UpNano shall retain title to all goods delivered until full payment of the amounts invoiced plus interest and costs.
- 16.6. Any Purchase Contract and/or SLA shall bind and take effect on the respective parties and their legal successors and agreed assigns.

## 17. Data Protection

UpNano will only store and process the data necessary for the execution of the order, the Purchase Contract and SLA. Personal data that becomes known in the course of fulfilling the order will be treated confidentially. Data will not be passed on to third parties unless this is necessary for the provision of services (e.g., transport services).

## 18. Governing Law and Dispute Resolution of Jurisdiction, Arbitration

- 18.1. The Contract shall be governed by Austrian law to the exclusion of conflict of law rules.
- 18.2. The application of the UNCITRAL UN Convention on Contracts for the International Sale of Goods shall be excluded.
- 18.3. Any dispute arising out of or in connection with this Agreement will be escalated to senior management of the parties, with the aim of resolving such issue amicably within thirty (30) days from such escalation.
- 18.4. The exclusive place of jurisdiction for resolving all disputes arising from the Contract that cannot be resolved amicably shall be the court in Vienna, Austria.
- 18.5. In case of any dispute outside of the European Union (EU), the Parties agree to an arbitration. Therefore, all disputes arising out of or in connection with the present contract outside of the European Union (EU) shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (ICC) by one or more arbitrators appointed in accordance with the said Rules, if not otherwise agreed upon in writing. In case of arbitration, the arbitration shall be governed by Austrian law, the language of arbitration shall be English, place of arbitration shall be (i) Vienna, Austria, if not otherwise agreed upon in writing. For any disputes with UpNano GmbH and (ii) Boston, Massachusetts, USA for any disputes with UpNano Inc