



PURCHASE ORDER TERMS AND CONDITIONS

Under the purchase order and these terms and conditions (together "**PO**"), Sila Nanotechnologies, Inc. ("**Sila**") agrees to purchase, and Seller agrees to sell the products and services listed in the PO. Unless otherwise stated in the PO, Sila objects to additional or different terms contained in any Seller documents, including quotations, acknowledgments, or online terms. Those Seller terms are considered void. Seller, by acceptance of the PO, agrees as follows:

1. Acceptance of PO. Seller accepts the PO (including change orders to the PO, as described in Section 6 below) by: (a) informing Sila (which shall include any making, signing, or delivering to Sila any letter, form, or other writing or instrument acknowledging acceptance); or (b) beginning to perform under the PO. Either shall be deemed an unconditional acceptance of the PO. Except as expressly stated on the PO, any qualification of such acceptance and any terms varying from or in addition to the PO are hereby rejected.

2. Delivery. TIME IS OF THE ESSENCE WITH RESPECT TO ANY DELIVERY UNDER THE PO. Seller shall complete delivery of all equipment, materials, items, articles, products, and merchandise ("**Products**") and consulting, creative, support, logistics, technical, and all other services ("**Services**") within the time specified on the PO, or if no time is specified, within a reasonable time of Seller's receipt of the PO. Sila will be responsible for payment of reasonable freight charges for the shipment services, and of the designated carrier or designated type of transportation if indicated on the PO, provided Seller ships the Products at the lowest prices and upon the best terms and discounts prevailing at the time of shipment. If Seller fails to perform, or so fails to make progress as to endanger performance of the PO in accordance with its terms, and does not cure such failure within a period of ten (10) days of its receipt of written notice of such failure (or such longer period as Sila may authorize in writing), then Sila reserves the right, without liability and in addition to its other rights and remedies: (a) to terminate by written notice all or any part of the PO and receive a full refund for amounts paid including any delivery costs; (b) to purchase substitute Products or Services elsewhere and charge the Seller with reasonable additional costs incurred; and/or (c) to extend the date of delivery, in which case Sila may: (i) require delivery by fastest way and charges resulting from the premium transportation must be fully prepaid and absorbed by Seller; and/or (ii) withhold from payment to Seller, as a diminution in value as a result of the late delivery, a late delivery discount of two percent (2%) for each week that delivery is late up to twenty percent (20%) of the PO price. Seller will continue performance of the PO to the extent not terminated. Any provision herein for delivery of Product or Services by installment shall not be construed as rendering the obligations of the Seller severable. Title and risk of loss for the Products shall transfer from Seller to Sila on the date the Products are delivered to Sila. Sila may terminate all or any part of the PO, without cause, by providing Seller with at least (30) days advance written notice. Sila shall pay to Seller all undisputed amounts owing under the PO as of the date such notice is deemed given and received in accordance with Section 19 (Notices). Sila may terminate this PO: (i) in accordance with Section 11 (Force Majeure); (ii) if Seller breaches any of its obligations under this PO and fails to cure such breach within fifteen (15) days of Sila's receipt of written notice specifying the breach; or (iii) if the Seller: (x) becomes insolvent or unable to pay its debts as they mature; (y) makes an assignment for the benefit of its creditors; or (z) seeks relief, or proceedings are commenced against it or on its behalf, under any bankruptcy, insolvency or debtors' relief law and such proceedings have not been vacated or set aside within sixty (60) days from the date of commencement thereof.

3. Custom Work and License. Each party retains ownership of its own background intellectual property (and associated intellectual property rights): (a) existing prior to the PO's acceptance; or (b) developed or acquired independently of the PO. If Seller makes modifications to the Products or any process related to the Products, or creates any work product specifically for Sila, whether in the course of providing the Services or otherwise (collectively, "**Custom Work**"), Sila will own such Custom Work. Seller hereby assigns all rights, title, and interest in the Custom Work to Sila and represents and warrants that: (i) the Custom Work was developed through Seller's sole and original efforts and that it does not and will not infringe the intellectual property, privacy, or publicity rights of any third party; and (ii) Seller has no other arrangements that would interfere with assigning all of Seller's interest in the Custom Work to Sila. Seller hereby grants to Sila an irrevocable, non-exclusive, worldwide, perpetual, royalty-free license, with the right to grant sublicenses, to use any of Seller's background intellectual property rights needed to use, modify, repair, produce, obtain from alternate sources, and otherwise commercially exploit the Services or Products (including related systems and components) solely for Sila's own commercial purposes not in competition with Seller.

4. Inspection. All Products and Services furnished hereunder are subject to inspection and approval by Sila following receipt, notwithstanding prior payments therefore, and may be rejected, in whole or in part, by Sila if "**Defective**", which means the Products or Services are inferior in quality or workmanship, or not in conformity with the terms, specifications, requirements, or warranties of the PO or as otherwise applicable. If any Products or Services delivered hereunder are determined in good faith discretion to be Defective or otherwise unfit for sale, Sila may, at its option: (a) require the Seller to correct at no cost to Sila any Defective Products or Services by repair or replacement; or (b) return such Defective Products to Seller (as applicable) and recover from Seller the PO price, cost of transportation both ways, labor and other costs of unloading and reloading, trucking and similar costs, including the cost of Services; or (c) correct the Defective Products or Services and charge Seller with the cost of such correction. The foregoing remedies are in addition to all other remedies available to Sila at law or in equity, or under the PO, and shall not be deemed to be exclusive.

5. Invoice and Payment. Except for any amounts disputed by Sila, Sila shall pay Seller in accordance with the payment terms set forth in the PO following the later of: (a) the actual delivery date; (b) the date of Sila's acceptance of all of the Products and Services; or (c) Sila's receipt of a properly prepared invoice. Unless Sila specifically authorizes in writing, Sila will not pay any overtime, weekend, emergency, or other special pricing. A properly prepared invoice must include the PO number and, if required in the PO, Seller's certification of conformance of the Products and/or Services to the requirements.



If payments are made in installments, Seller shall include all applicable sales tax with the last payment. Seller and Sila shall seek to resolve all payment disputes expeditiously and in good faith. Seller shall continue performing its obligations under the PO notwithstanding any such dispute. Payment of an invoice is not evidence or admission that the Products or Services meet the requirements of the PO.

6. Modifications. A party may notify the other party of any desired modification to the PO. If such modification is to change the controlling terms and conditions of the PO (as identified in the PO order of precedence), then, in order to be effective, an amendment setting forth the modification(s) must be signed by an authorized representative of each party. If such modification is instead to change the order specifics of the PO (i.e., a change or addition to the Products and/or Services, quantity, delivery dates, shipping term, and/or prices) then, in order to be effective, Sila must issue, and Seller must accept, a purchase order setting forth the agreed upon modification(s) without changing the controlling terms and conditions. Under Sila's procurement system, a change order is signified with the addition of "-01", "-02", "-03" etc. to the end of the original purchase order number, etc.

7. Warranties. Seller will provide all Products and perform all Services in a professional and workmanlike manner and in accordance with the highest applicable industry standards. Seller represents that, to the extent required by applicable laws, Seller has registered and is duly licensed to sell and distribute all such Products and Services. Seller warrants that all Products and Services (including the packaging, labeling, labels, and registration thereof) will, as applicable: (a) comply with applicable laws; (b) be of merchantable quality and free from any defects in workmanship, material and design; (c) conform to applicable specifications; (d) be fit for their intended purpose and operate as intended; (e) conform to the sample, if the sale is by sample; (f) be free and clear of all liens, security interests or other encumbrances; (g) not infringe or misappropriate any third party's intellectual property rights, privacy rights, or publicity rights; and (h) not incorporate any open source or copyleft materials without Sila's prior written approval of such incorporation and any applicable license terms. These warranties survive any delivery, inspection, acceptance, or payment. These warranties are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of Sila's discovery of the noncompliance. Sila's approval of the Seller's material or design shall not relieve Seller of the warranties set forth in the-PO, nor shall waiver by Sila of any drawing or specification requirement for one or more of the items constitute a waiver of such requirements for the remaining items to be delivered hereunder unless so stated by Sila in writing. Seller represents and warrants to Sila that, either: (i) the Products do not contain any hazardous substance; or (ii) if the Products do contain a hazardous substance, all hazardous substances therein are specifically and properly identified on a Material Safety Data Sheet packed with the Product(s), and the Products will not create an environmental hazard when used in accordance with the operating instructions provided to Sila by Seller. As used herein the term "**hazardous substance**" means any substance that is prohibited or regulated by any law for the protection of human health or the environment or which is at any time designated by any governmental authority to be radioactive, toxic, hazardous or otherwise a danger to health, reproduction or the environment; and the term "**environmental hazard**" means any contamination of soil, water, or air with, or any exposure of humans or nature to, a hazardous substance in violation of any environmental law or regulation.

8. Indemnification. Seller shall indemnify, defend, and hold harmless Sila (and its agents, employees, officers and directors) from any and all losses, damages, fines, penalties, costs, and expenses (including reasonable legal fees) arising from third-party claims, demands, assertions of liability or actions: (a) resulting from actual or alleged breaches of the PO, fraud, negligent acts or omissions, or willful misconduct by Seller or Seller's employees, agents, or subcontractors; or (b) arising or alleged to arise, directly or indirectly out of: (i) the possession, use, sale, handling, or consumption of any Products or Services, if such possession, use, sale, handling, or consumption is reasonable according to standard industry practice or in accordance with the operating instructions provided by Seller to Sila; (ii) any act, omission or failure to perform the obligations or requirements hereunder of Seller or imposed by law; or (iii) the passive, secondary, or concurrent (but not sole) negligence of Sila (its agents, employees, officers, or directors), with respect to the Products or Services sold or delivered hereunder, made or instituted by any person, group or organization, including employees of Seller or Sila. Sila agrees to notify Seller promptly in writing in the event any such claim, demand, assertion of liability or action, is brought to Sila's attention.

9. Insurance. During the term of the PO, Seller shall: (a) purchase and maintain the insurance set forth in this Section with companies with an A.M. Best Rating of at least A-VII and who are authorized to do business in any state where Seller will perform its obligations hereunder; (b) include Sila as an additional insured on a primary and noncontributory basis for the required Commercial General Liability, Business Auto Liability, and Umbrella Liability policies, and provide the applicable additional insured endorsement(s); and (c) provide a waiver of subrogation in favor of Sila on all lines of required coverage. Seller's insurance must be primary and non-contributory to any insurance carried by Sila. It is the responsibility of Seller to require any engaged subcontractors to obtain and maintain insurance adequate and reasonable for the product or service each such subcontractor will provide, or to ensure that Seller's policies cover the liability arising from such subcontractors. Seller shall furnish certificates of insurance and applicable endorsements to Sila as evidence of its policies upon Sila's request. Sila's acceptance of the certificates or endorsements will not constitute a waiver of Seller's obligations hereunder. Seller shall provide and maintain in effect the following types and minimum amounts of insurance: (i) Worker's Compensation Insurance, in compliance with all applicable state statutory requirements, and Employer's Liability Insurance with the limit of not less than \$1,000,000 per person per accident; (ii) Commercial General Liability Insurance, including contractual liability and products completed operations coverage, written on an occurrence basis with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate; (iii) Business Auto Liability Insurance written on an occurrence basis to apply to "any auto" or at a minimum "all owned, hired and non-owned autos", with policy limits of not less than \$1,000,000 per accident for bodily injury and property damage; and (iv) Commercial Umbrella Liability Insurance over Seller's primary Commercial General Liability, Business Auto



Liability, and Employers Liability. All coverage terms required under the Commercial General Liability, Business Auto Liability, and Employers Liability above must be included on the Umbrella Liability Insurance. Coverage must be written on an occurrence form with minimum policy limits of \$2,000,000 each occurrence and \$2,000,000 aggregate.

10. No Liability. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW: (I) IN NO EVENT SHALL SILA BE LIABLE TO SELLER OR ANY THIRD PARTY, UNDER ANY THEORY OF LIABILITY, FOR ANY INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE; AND (II) IN NO EVENT SHALL SILA'S CUMULATIVE LIABILITY HEREUNDER EXCEED THE AMOUNT OF THE PURCHASE PRICE STATED ON THE PO. SELLER ACKNOWLEDGES AND AGREES THAT THE LIMITATIONS OF LIABILITY SET FORTH IN THE PO ARE AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES, AND THAT SILA WOULD NOT HAVE ENTERED INTO THE PO ON THE TERMS SET FORTH HEREIN WITHOUT SUCH LIMITATIONS OF LIABILITY.

11. Force Majeure. Sila shall have the right, without obligation, to cancel the PO in case of interruption of its business due to acts of God, flood, fire, earthquake, explosion, war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest, government order, decree or law, embargoes or blockades, actions by governmental authorities, national or specific regional declared emergencies, strikes, labor stoppages or other industrial disputes, epidemic, pandemic in or within the region or area in which work is being performed, and any other similar events beyond the reasonable control of Sila.

12. Severability. If any provision of the PO, or the application of a provision is, for any reason or in any event found to be invalid or unenforceable, then the remainder of the PO (and the remainder of the provision, to the extent possible) will remain in full force and effect and be interpreted so as best to reasonably effect the intent of the parties.

13. Governing Law. The PO shall be governed and construed in accordance with the laws of the State of California, without regard to conflicts of laws principles. Seller agrees that all disputes arising hereunder shall be adjudicated in the applicable state or federal court having jurisdiction in Santa Clara County, California, and Seller hereby consents to the personal jurisdiction of such courts.

14. Survival. Following completion, cancellation, or any other termination of the PO (collectively, "**Termination**"), all obligations under the PO will continue to survive in order to give proper effect to such obligations.

15. Assignment. Neither party will assign, subcontract, delegate, or otherwise transfer any rights or obligations under the PO without the prior written consent of the other party, except that a party may assign the PO without such consent to its successor in interest by way of merger, acquisition, or sale of all or substantially all of its assets. Any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void. The PO binds and benefits the parties and their respective permitted successors and assigns.

16. Taxes. Unless both parties agree otherwise in writing, each party will be responsible for its own respective taxes as required by law. If Seller is required to charge tax (e.g., state sales tax) or Sila is required to withhold tax, then the required party will give the other party the opportunity to demonstrate (and document) how such charge or withholding may be mitigated (for example, by providing a sales tax exemption certificate).

17. Confidential Information. Any non-public technical and non-technical information that Seller learns about Sila in connection with the PO, including the PO itself, is "**Confidential Information**" of Sila. Seller may only use Confidential Information to perform under the PO and may share it only on a need-to-know basis with Seller's employees and others approved in writing by Sila who, in either case, have signed confidentiality agreements containing obligations of confidentiality at least as restrictive as those contained in the PO. Sila owns the Confidential Information and Seller must return or destroy it and all copies if Sila requests. If confidential information shared between Seller and Sila is protected under the terms of a separate and active confidentiality agreement between Seller and Sila (excluding a visitor non-disclosure agreement to access a Sila site), then such confidentiality agreement ("**NDA**") shall apply to the PO. For purposes of the PO: (a) any Termination of the PO will not terminate the NDA; and (b) termination of the NDA will not be deemed effective for the purposes of protecting Confidential Information (as defined in the NDA) shared under the PO until Termination of the PO has taken effect; and (c) upon Termination of the PO, the obligations under the NDA will survive in accordance with the survival terms of the NDA. If no applicable NDA exists between Seller and Sila, then Seller's obligations under this Section will survive Termination of the PO and will be binding upon such party and its permitted successors and assigns.

18. No Publicity or Outreach. Seller shall not use Sila's name or Sila's logo on any website, social media account or post, advertisement, press release, news article, or publicity campaign without the prior written consent of Sila. Further, Seller agrees that it shall not communicate with Sila's direct customers without Sila's written permission and involvement.

19. Notices. Any notice under the PO must be: (a) in writing and delivered to a party at its email or other address set forth on the PO, attention Legal Department, or such other address as that party may specify in writing in accordance with this Section; and (b) delivered by email, personal delivery, overnight courier, or certified or registered mail (return receipt requested). Respectively, notices will be deemed given and received when sent by email, upon personal delivery, the next business day after deposit with an overnight courier, or five business days (excluding federal holidays) after deposit in the mail (when sent certified or registered, return receipt requested). Any notice to Sila must also be emailed to legal.notices@silanano.com.

20. U.S. Department of Energy and Federal Flow Down Requirements. The parties acknowledge that this PO is subject to the applicable U.S. Department of Energy and Federal Flow Down requirements at www.silanano.com/partners-customers if the purchase order indicates such. If applicable, then such requirements are incorporated herein by this reference.