

PHOENIX PHOTONICS LTD
STANDARD TERMS AND CONDITIONS OF UNDERTAKING WORK AND/OR SUPPLYING GOODS

- 1 All work undertaken and/or all goods supplied by Phoenix Photonics Ltd ('Phoenix') are carried out or sold subject to the following terms and conditions. All proposals made by Phoenix which are accepted by Phoenix's client ('the Client') shall be deemed to have been accepted on the basis of the following terms and conditions notwithstanding any conflicting terms and conditions brought to Phoenix's notice and any order placed by the Client with Phoenix and accepted by Phoenix shall be deemed to have been accepted on the basis of the following terms and conditions only.
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 - i) The price quoted or accepted by Phoenix shall unless otherwise expressly specified be deemed to be exclusive of all duties and taxes in respect of the services and/or the goods and exclusive of any export and/or import duties, all of which taxes and duties shall be paid by the Client.
 - ii) The prices quoted are for stipulated quantities only and do not hold good for lesser quantities.
 - iii) Where the period for the carrying out of the contract is to exceed or is likely to exceed 6 months Phoenix shall be entitled to interim payments from the Client, which payment shall be on account of the price quoted or accepted by Phoenix.
- 3 The terms of and the date for payment are net within 30 days of Phoenix's invoice unless otherwise agreed in writing. In the case of a Client resident outside the United Kingdom, payment will if so required by Phoenix be made by confirmed irrevocable letter of credit issued by a Bank acceptable to Phoenix. The Client shall pay interest at the rate of 2 per cent above Barclays Bank base rate per annum on the amount of any late payment calculated on a day to day basis until the actual date of payment.
- 4 If, by reason of any rise in the cost of materials, labour or transport, or of conforming to any Act of Parliament or any order, regulation or bye-law made with statutory authority by Government Departments or by local or other authorities that shall be applicable to the work undertaken or goods supplied above such costs ruling at the date of quotation or acceptance, the cost to Phoenix of performing its obligations under the contract shall be increased, then a fair and reasonable estimate of amount of such increase shall be added to the Contract Price provided that no account shall be taken of any amount by which any cost incurred by Phoenix has been incurred by Phoenix's default or negligence.
- 5 Phoenix shall make all reasonable efforts to meet the agreed delivery dates (if any) but Phoenix does not guarantee such date which is given by way of estimate only. No delay shall in any way operate to affect or suspend any obligations or rights of Phoenix or the Client. In any event Phoenix shall in no way be liable for delay caused by any strike, lockout or industrial dispute or by force majeure, Act of God, riot, war, breakdown of machinery, shortage of materials or fuel or Government act or regulation to the extent that any such event is outside the reasonable control of Phoenix.
- 6 Delivery of the goods to the Client will be ex Phoenix's premises. At the request and expense of the Client, Phoenix may make arrangements for carriage of the goods to the Client and the insurance thereof during transit.
- 7 As a condition precedent to any liability to which Phoenix might otherwise be subject the following requirement (where appropriate) must be met
 - i) Damages reported on the carrier's waybill, or failing that the waybill is signed 'contents unexamined' and the damage reported to the carrier and to Phoenix if Phoenix is not the carrier within three days.
 - ii) Claims for shortages are made within seven days of delivery of the goods to the Client.
 - iii) Non-receipt is notified to Phoenix in writing within 14 days of the invoice date.
- 8 If the Client shall within 7 days after receipt of notice from Phoenix that the goods are ready for delivery fail to take delivery of the goods, Phoenix shall be entitled at the expense of the Client to store the goods. The risk of loss of or damage to the goods shall pass to the Client at the close of such 7 day period save where the loss is caused by the negligence or default of Phoenix, its agents or servants.
- 9 Save as otherwise provided herein, Phoenix hereby warrants that, if any defect in materials or workmanship in the goods appears within six months after the date of delivery to Client, Phoenix shall at its cost and option, repair or replace the goods (or part thereof) to the extent necessary to cure the defect or refund that part of the purchase price attributable to the defective goods (in which case the defective goods shall be returned to Phoenix). Phoenix's liability hereunder shall be conditional upon:
 - i) the Client making a written claim upon Phoenix within seven days after the date upon which he discovers or ought reasonably to have discovered the defect;
 - ii) the defect not being attributable to alteration or repair of the goods without Phoenix's prior consent, or misuse or neglect of the goods;
 - iii) the goods being returned, if Phoenix so requires, by the Client to Phoenix carriage paid (such amount to be refundable by Phoenix if the Client's claim is substantiated) within two weeks after Phoenix's request to that effect; and
 - iv) the Client allowing Phoenix a reasonable opportunity to inspect its manufacturing processes, review any information in its possession and make such other enquiries as Phoenix may consider reasonably necessary to determine the cause, existence and consequences of any defect.
- 10 If (without prejudice to Paragraph 11) Phoenix shall be found liable to the Client by reason of any defect or other deficiency in the goods or services supplied under this contract (including any deficiency attributable to negligence on the part of Phoenix), Phoenix's liability shall be limited to a total of £250,000 or the purchase price, whichever shall be the less.
- 11 Save as provided in Paragraph 9, all conditions and warranties (express or implied by statute, common law or otherwise) as to the quality or fitness for any purpose of the goods are hereby expressly excluded and Phoenix shall have no liability in contract or tort in respect thereof.
- 12 Property in the goods shall pass to the Client only on the full performance or satisfaction of the obligations of the Client, including the payment by it of all amounts payable hereunder notwithstanding that Phoenix may have allowed credit or agreed to deferred payment in variance of the terms and conditions herein set out.

Accordingly Phoenix shall be entitled on default in payment to repossess the goods and the Client shall do all in its powers to enable Phoenix so to do. Until property in the goods has passed to the buyer:

 - i) The buyer shall take proper care of the goods and take all reasonable steps to prevent any damage or deterioration thereto and shall allow Phoenix to inspect them if Phoenix so requires.
 - ii) The Client must keep the goods free from a charge, lien or other encumbrance and store the goods in such a way as to show clearly that they belong to Phoenix.
 - iii) The buyer shall give Phoenix all such information relating to the goods as Phoenix may require.
- 13 Notwithstanding any inconsistency with any other provisions of these general conditions, the Client acknowledges and admits that until payment has been made in full it holds the goods in a fiduciary relationship as bailee for Phoenix and that it shall be stopped from denying this admission.
- 14 Notwithstanding the foregoing and without prejudice to Paragraph 8 hereof the risk in the goods supplied shall pass to and become the responsibility of the Client upon delivery to the Client or to a carrier regardless of the identity of the carrier or of the fact that the carrier may have been selected by Phoenix. The buyer should arrange insurance accordingly.
- 15 In respect of work undertaken and/or goods sold the intellectual property rights shall be as follows:
 - i) Subject to Paragraph 12 the final product of any research developed or arising in the course of the carrying out by Phoenix of any research or other project for the Client shall remain the property of Phoenix until the full performance or satisfaction of the obligations of the Client hereunder where-upon the same shall become the property of the Client save in respect of any patent, trade mark, registered design or know how relating thereto. The Client shall except with the prior written consent of Phoenix until such time hold the same confidential and shall not divulge the same to or use the same for the benefit of any other person.
 - ii) Subject to Paragraph 15(iii) below, all patents, trade marks, registered designs or other intellectual property rights or know how resulting from the final product of a research referred to in Paragraph 15(i) above shall be the property of Phoenix unless otherwise agreed in writing between Phoenix and the Client. In the event of the Client having some right to the patents, trade marks or registered designs as referred to above, Phoenix will thereupon at the request and cost of the Client take or concur in all such reasonable action as the Client may request for the purpose of obtaining any such patents, trade marks or registered designs.
 - iii) In the case of a project sponsored by two or more Clients, any such patents, trade marks or registered designs as are referred to in Paragraph 15(ii) above shall be vested in Phoenix or its subsidiary company nominated by Phoenix.
 - iv) Copyright in all documents including drawings and handbooks furnished to the Client shall at all times remain vested in Phoenix and neither they nor their contents shall be used without the express written consent of Phoenix for any purpose other than that for which they were furnished.
 - v) So far as we are aware no goods supplied by us infringe any existing registered design or patent but the buyer shall indemnify us against all damages, penalties, costs and expenses to which we may become liable if any work undertaken or goods supplied in accordance with the buyer's specification involves an infringement of a registered design or patent.
- 16 Any information equipment or personnel to be provided to Phoenix for the purposes of this contract shall be provided promptly and as necessary. Any failure in this respect shall render the Client liable to Phoenix for any loss or cost arising therefrom or for any defect or otherwise which results in consequence.
- 17 Where the Client requires Phoenix to provide any services and/or goods in addition to those agreed between the Client and Phoenix such additional services and/or goods shall be supplied to the Client in accordance with these terms and conditions and charged at the current price ruling at the date.
- 18 No representative or agent of Phoenix has authority to vary or add to these standard conditions except with Phoenix's official confirmation in writing.
- 19 Where the goods are supplied by Phoenix as distributor the following paragraphs of these terms and conditions shall not apply: 6, 8, 9, 15(i) and 15(iii). As regards goods sold under a distributorship by Phoenix, Phoenix accepts no liability and gives no warranty against defects in workmanship or materials but will use every effort to procure for the benefit of the Client the manufacturer's warranty in that respect.
- 20 The terms and conditions and the contract between Phoenix and the Client shall be governed by and construed in all respects in accordance with the law of England.