



1. Interpretation

1.1 Definitions:

Background IP: means all Intellectual Property Rights which exist and are owned by a party on or before the commencement date of the Contract, or which are brought into existence, developed or created by a party after the commencement date of the Contract independently of, or unconnected with, the Contract.

Business Day: means a day (other than a Saturday, Sunday or public holiday) when banks in Arizona are open for business.

Conditions: means the terms and conditions set out in this document as amended from time to time in accordance with clause 12.3.

Contract: means the contract between PowerPhotonic and Customer for the sale and purchase of the Goods and/or Services in accordance with these Conditions comprising the Order, these Conditions and the Sales Order Confirmation.

Customer: means the person or company who purchases the Goods from PowerPhotonic, as set out in the Order.

Deliverables: any deliverables set out in the Order to be produced by PowerPhotonic for the Customer as part of the Services.

Delivery Location: means the location set out in the Order or such other location as the parties may agree in writing.

Foreground IP: means all Intellectual Property Rights, information, data, software and materials identified, created or first reduced to practice or writing in connection with the Contract.

Force Majeure Event: means an event, circumstance or cause beyond a party's reasonable control.

Goods: means the goods (or any part of them) set out in the Order.

Intellectual Property Rights: means patents, utility models, rights to inventions, copyright and neighbouring and related rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to

apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Order: means Customer's order for the Goods and/or Services, as set out in Customer's purchase order form or in Customer's written acceptance of PowerPhotonic's quotation, as the case may be.

PowerPhotonic: means POWERPHOTONIC, INC., a Delaware corporation.

Sales Order Confirmation: means the order acknowledgement or order acceptance provided by PowerPhotonic to Customer and which identifies the Specification and the price.

Services: means the services, including the Deliverables, supplied by the PowerPhotonic to the Customer as set out in the Order.

Specification: means the specification for the Goods and/or Services, including any related plans and drawings, as agreed between the parties and which is identified in the Sales Order Confirmation.

Warranty Period: has the meaning set out in clause 5.1.

1.2 Interpretation:

- (a) a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (b) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (c) a reference to **writing** or **written** includes emails.
- (d) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (e) a reference to a party includes its successors and permitted assigns.

2. Basis of contract

2.1 These Conditions apply to the Contract to the exclusion of any other terms that Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 The Order constitutes an offer by Customer to purchase the Goods and/or Services in accordance with these



Conditions. Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.

2.3 The Order shall only be deemed to be accepted when PowerPhotonic issues a Sales Order Confirmation, at which point the Contract shall come into existence.

2.4 Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of PowerPhotonic that is inconsistent with these Conditions.

2.5 A quotation for the Goods and/or Services given by PowerPhotonic shall not constitute an offer. A quotation shall only be valid for a period of thirty (30) days from its date of issue unless otherwise stated in the quotation.

3. Goods

3.1 The Goods are described in the Specification.

3.2 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by Customer, Customer shall indemnify PowerPhotonic against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by PowerPhotonic in connection with any claim made against PowerPhotonic for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with PowerPhotonic's use of the Specification.

3.3 PowerPhotonic reserves the right to amend the Specification if required by any applicable statutory or regulatory requirement, and PowerPhotonic shall notify Customer in any such event.

4. Delivery of Goods

4.1 Unless otherwise specified in the Sales Order Confirmation, the Goods shall be delivered EXW, Delivery Location (Incoterms 2020). PowerPhotonic shall advise Customer of an estimated delivery date in advance and if PowerPhotonic anticipates any delay with delivery it shall contact Customer to arrange an alternative delivery date.

4.2 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. PowerPhotonic shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or Customer's failure to provide PowerPhotonic with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.3 If Customer fails to take delivery of the Goods on the agreed delivery date through no fault of PowerPhotonic, PowerPhotonic may (at its discretion) charge Customer for any resulting storage costs until delivery of the Goods.

4.4 If PowerPhotonic delivers up to and including 5% more or less than the quantity of Goods ordered Customer may not reject them, but on receipt of notice from Customer that the wrong quantity of Goods was delivered, PowerPhotonic shall make a pro rata adjustment to the invoice for the Goods.

4.5 Delivery is completed on the completion of unloading of the Goods at the Delivery Location.

4.6 Notwithstanding clause 4.1, PowerPhotonic may, on written request by Customer, arrange for delivery of the Goods on Customer's behalf.

5. Quality of Goods

5.1 Subject to clause 5.3, PowerPhotonic warrants that on delivery, and for a period of twelve (12) months from the date of delivery (**Warranty Period**), the Goods shall:

- (a) conform in all material respects with the Specification; and
- (b) be free from material defects in material and workmanship.

5.2 Subject to clause 5.3, if:

- (a) Customer gives notice in writing to PowerPhotonic during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
- (b) PowerPhotonic is given a reasonable opportunity of examining such Goods; and
- (c) Customer (if asked to do so by PowerPhotonic) returns such Goods to PowerPhotonic's place of business at PowerPhotonic's cost,

PowerPhotonic shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

5.3 PowerPhotonic shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 if:

- (a) Customer makes any further use of such Goods after giving notice in accordance with clause 5.2;
- (b) the defect arises because Customer failed to follow PowerPhotonic's oral or written instructions or guidance as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;



- (c) the defect arises as a result of PowerPhotonic following any drawing, design or Specification supplied by Customer;
- (d) Customer alters or repairs such Goods, or authorises a third party to do so, without the written consent of PowerPhotonic; or
- (e) the defect arises as a result of fair wear and tear, wilful damage, accident, negligence by Customer or a third party, or abnormal storage or working conditions.

5.4 Notwithstanding clause 5.1, PowerPhotonic provides no warranty or guarantee that the Goods will work in or be compatible with Customer's system or application.

5.5 Except as provided in this clause 5, PowerPhotonic shall have no liability to Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.6 These Conditions shall apply to any repaired or replacement Goods supplied by PowerPhotonic.

6. Title and risk

6.1 The risk in the Goods shall pass to Customer on completion of delivery.

6.2 Title to the Goods shall not pass to Customer until PowerPhotonic receives payment in full (in cleared funds) for the Goods, including any delivery charges. The Goods are sold to Customer for internal use by its business only and Customer agrees not to re-sell the Goods to any third party.

6.3 Until title to the Goods has passed to Customer, Customer shall:

- (a) store the Goods separately from all other goods held by Customer;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery; and
- (d) notify PowerPhotonic promptly if it becomes subject to any of the events listed in clause 9.1.

6.4 The parties acknowledge that all Background IP is and shall remain the exclusive property of the party owning it (or, where applicable, the third party from whom its right to use the Background IP has derived). Subject to any third party rights:

- (a) Customer grants PowerPhotonic a royalty-free, non-exclusive licence to use its Background IP insofar as contemplated by the Contract; and
- (b) PowerPhotonic grants Customer a royalty-free, non-exclusive, revocable licence to use its Background IP

solely to the extent necessary for the agreed purpose set out in the Sales Order Confirmation,

but for no other purpose.

6.5 The parties agree that any Foreground IP shall be owned by the party that created it, but will be made available to the other party, on a royalty-free basis, solely for the purpose set out in the Sales Order Confirmation. Filing and prosecution of patent applications on any Foreground IP will be handled on a mutually agreed-upon basis. Foreground IP conceived jointly by both Parties shall belong jointly to both Parties with their specific rights and obligations to be negotiated in good faith.

6.6 All attempts by Customer, or any other person, to use, copy, adapt, reproduce or transmit all or any part of the Goods or Deliverables or any other work created or commissioned by PowerPhotonic without PowerPhotonic's prior written consent are prohibited to the fullest extent permitted by law.

7. Supply of Services

7.1 PowerPhotonic shall supply the Services to the Customer in accordance with the Specification in all material respects.

7.2 PowerPhotonic shall use all reasonable endeavours to meet any performance dates for the Services specified in the Sales Order Confirmation, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

7.3 PowerPhotonic reserves the right to amend the Specification for the Services if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the PowerPhotonic shall notify the Customer in any such event.

7.4 PowerPhotonic warrants to the Customer that the Services will be provided using reasonable care and skill.

7.5 With respect to the Services, Customer shall (i) cooperate with PowerPhotonic in all matters relating to the Services and provide such access to Customer's premises, and such office accommodation and other facilities as may reasonably be requested by PowerPhotonic, for the purposes of performing the Services; (ii) respond promptly to any PowerPhotonic request to provide direction, information, approvals, authorizations, or decisions that are reasonably necessary for PowerPhotonic to perform Services in accordance with the requirements of the Contract; (iii) provide such customer materials or information as PowerPhotonic may request to carry out the Services in a timely manner and ensure that such customer



materials or information are complete and accurate in all material respects; and (iv) obtain and maintain all necessary licenses and consents and comply with all applicable laws in relation to the Services before the date on which the Services are to start.

8. Price and payment

8.1 The price of the Goods and/or Services shall be the price set out in the Sales Order Confirmation.

8.2 PowerPhotonic may, by giving notice to Customer at any time before delivery or performance, re-negotiate the price of the Goods and/or Services to reflect any increase in the cost of the Goods and/or Services that is due to:

- (a) any factor beyond PowerPhotonic's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in cost of labour, materials and other manufacturing costs);
- (b) any request by Customer to change the delivery date(s), quantities or types of Goods and/or Services ordered, or the Specification; or
- (c) any delay caused by any instructions of Customer or failure of Customer to give PowerPhotonic adequate or accurate information or instructions.

8.3 If within fourteen (14) days of beginning a price re-negotiation under clause 8.2 the parties cannot agree an increase in the price of the Goods and/or Services, PowerPhotonic may (at its sole discretion) terminate the Contract immediately without liability.

8.4 The price of the Goods and/or Services excludes amounts in respect of tax, as applicable, which Customer shall additionally be liable to pay to PowerPhotonic at the prevailing rate.

8.5 Unless otherwise agreed in writing by the parties, PowerPhotonic shall invoice Customer for the Goods and/or Services on or at any time after the completion of delivery (in accordance with clause 4.1) or on performance of the Services, or, at PowerPhotonic's sole discretion, before delivery of the Goods or performance of the Services.

8.6 Customer shall pay the invoice in full and in cleared funds within thirty (30) days of the date of the invoice. Payment shall be made to the bank account nominated in writing by PowerPhotonic. Time for payment is of the essence.

8.7 If Customer fails to make any payment due to PowerPhotonic under the Contract by the due date for payment, then PowerPhotonic may require that Customer pay interest on the overdue amount at the rate of four per cent (4%) per annum above Clydesdale Bank's base rate from time to time (and at four per cent

(4%) per annum if such base rate is below zero). Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. Customer shall pay the interest together with the overdue amount.

8.8 Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). PowerPhotonic may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by Customer against any amount payable by PowerPhotonic to Customer.

9. Termination

9.1 Without limiting its other rights or remedies, PowerPhotonic may terminate the Contract with immediate effect by giving written notice to Customer if:

- (a) Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within thirty (30) days of Customer being notified in writing to do so;
- (b) Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (c) Customer becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors; or
- (d) Customer's financial position deteriorates to such an extent that in PowerPhotonic's sole discretion Customer's capability to adequately fulfil its obligations under the Contract is an increased risk.

9.2 Without limiting its other rights or remedies, PowerPhotonic may suspend provision of the Goods and/or performance of the Services under the Contract if Customer becomes subject to any of the events listed in clause 9.1(a) to clause 9.1(d), or PowerPhotonic reasonably believes that Customer is about to become subject to any of them, or if Customer fails to pay any amount due under the Contract on the due date for payment.



9.3 Without limiting its other rights or remedies, PowerPhotonic may terminate the Contract with immediate effect by giving written notice to Customer if Customer fails to pay any amount due under the Contract on the due date for payment provided that PowerPhotonic has provided Customer with fourteen (14) days written notice to do so and Customer fails to pay all sums due within the fourteen (14) days.

9.4 On termination of the Contract for any reason Customer shall immediately pay to PowerPhotonic all of PowerPhotonic's outstanding unpaid invoices and any interest due.

9.5 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract that existed at or before the date of termination.

9.6 On termination or expiry of the Contract, the following clauses shall continue in force: clause 1 (Interpretation), clause 2 (Basis of contract), clause 3.2 (Goods), clauses 9.4-9.6 (Termination), clause 10 (Indemnities and Limitation of liability) and clause 12 (General).

10. Indemnities and Limitation of liability

10.1 Nothing in these Conditions shall limit or exclude PowerPhotonic's liability:

- (a) resulting from PowerPhotonic's gross negligence or wilful misconduct; or
- (b) death or bodily injury resulting from PowerPhotonic's acts or omissions.

10.2 Subject to clause 10.1:

- (a) **IN NO EVENT SHALL POWERPHOTONIC BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT POWERPHOTONIC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**

(b) **IN NO EVENT SHALL POWERPHOTONIC'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO POWERPHOTONIC FOR THE GOODS AND SERVICES SOLD HEREUNDER.**

10.3 Customer warrants that:

- (a) The Goods and Deliverables will be used for commercial application only and not for military application unless Customer has supplied PowerPhotonic with an End User Undertaking and any other documentation reasonably required by PowerPhotonic;
- (b) its use of the Goods and Deliverables and receipt of the Services will not breach any applicable laws or regulations; and
- (c) where Customer has provided the Specification for the Goods and/or Services, manufacture of the Goods and performance of the Services by PowerPhotonic and use of the Goods and Deliverables and receipt of the Services by Customer will not breach any Intellectual Property Rights of any third party.

10.4 Customer shall indemnify PowerPhotonic against all liabilities, costs, expenses, damages, claims, penalties and losses (including reasonable legal expenses) suffered or incurred by PowerPhotonic arising out of or in connection with Customer's breach of clause 10.2(b).

11. **Force majeure.** Except for Customer's obligations to pay for Goods and Services already provided to Customer, neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure results from a Force Majeure Event. If the period of delay or non-performance continues for four (4) weeks, the party not affected may terminate the Contract by giving four (4) weeks written notice to the affected party.

12. General

12.1 Confidentiality.

- (a) Each party undertakes that it shall not disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 12.1 (b).
- (b) Each party may disclose the other party's confidential information:



- (i) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising that party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 12.1; and
- (ii) as may be required by law, court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall disclose to any third party or use the other party's confidential information for any other purpose other than to exercise its rights and perform its obligations under or on connection with the Contract.
- (d) Upon termination or expiration of the Contract, each party shall promptly return or destroy, all materials and documentation regarding the Confidential Information.
- (e) Each party shall take all necessary precautions to protect the confidentiality of the Confidential Information received hereunder and exercise at least the same degree of care in safeguarding the Confidential Information as such party would with its own confidential information, but in no event less than a diligent standard of care.
- (f) Each party shall promptly advise the other in writing upon learning of any unauthorized use or disclosure of the Confidential Information.

12.2 Entire agreement.

- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

12.3 Variation. No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

12.4 Waiver. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single

or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

12.5 Assignment and other dealings. PowerPhotonic may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract. Customer shall not, without PowerPhotonic's prior written consent, at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.

12.6 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

12.7 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, or email.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, on the date and at the time when left at the address referred to in clause 12.7(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one (1) Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

12.8 Third party rights. The Contract is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of these terms.

12.9 Governing law. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject



PowerPhotonic

TERMS AND CONDITIONS OF SALE

matter or formation, shall be governed by and construed in accordance with the law of Arizona without giving effect to any choice or conflict of law provision or rule (whether of the State of Arizona or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Arizona.

12.10 Jurisdiction. Any legal suit, action, or proceeding arising out of or relating to the Contract shall be instituted in the federal courts of the United States of America or the courts of the State of Arizona in each case located in the City of Tucson, Arizona and County of Pima, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.