



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 Edinburgh 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 11.3.

Contract: means the contract between PowerPhotonic and Customer for the sale and purchase of the Goods 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.

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, trade marks 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, 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 LIMITED (registered in Scotland with company number SC267035).

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

Specification: means the specification for the Goods, 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 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 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

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 es-



timated 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

- 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 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

5.7 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 8.1.

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.

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 any other work created or commissioned by PowerPhotonic without PowerPhotonic's prior written consent are prohibited to the fullest extent permitted by law.

7. Price and payment

7.1 The price of the Goods shall be the price set out in the Sales Order Confirmation.



7.2 PowerPhotonic may, by giving notice to Customer at any time before delivery, re-negotiate the price of the Goods to reflect any increase in the cost of the Goods 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 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.

7.3 If within fourteen (14) days of beginning a price re-negotiation under clause 7.2 the parties cannot agree an increase in the price of the Goods, PowerPhotonic may (at its sole discretion) terminate the Contract immediately without liability.

7.4 The price of the Goods excludes amounts in respect of value added tax (VAT) as applicable, which Customer shall additionally be liable to pay to PowerPhotonic at the prevailing rate, subject to the receipt of a valid VAT invoice.

7.5 Unless otherwise agreed in writing by the parties, PowerPhotonic shall invoice Customer for the Goods on or at any time after the completion of delivery, or, at PowerPhotonic's sole discretion, before delivery of the Goods.

7.6 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.

7.7 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.

7.8 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.

8. Termination

8.1 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 suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) Customer's financial position deteriorates to such an extent that in PowerPhotonic's opinion Customer's capability to adequately fulfil its obligations under the Contract is an increased risk.

8.2 Without limiting its other rights or remedies, PowerPhotonic may suspend provision of the Goods under the Contract if Customer becomes subject to any of the events listed in clause 8.1(a) to clause 8.1(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.

8.3 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.

8.4 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.

8.5 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.

8.6 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 8.4-8.6 (Termination), clause 9 (Indemnities and Limitation of liability) and clause 11 (General).

9. Indemnities and Limitation of liability

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

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- (d) any matter in respect of which it would be unlawful for PowerPhotonic to exclude or restrict its liability.

9.2 Subject to clause 9.1:

- (a) PowerPhotonic shall under no circumstances whatsoever be liable to Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- (b) PowerPhotonic's total liability to Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed one hundred (100%) of the price paid or to be paid by Customer for the relevant Goods.



9.3 Customer warrants that:

- (a) the Goods 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 will not breach any applicable laws or regulations; and
- (c) where Customer has provided the Specification for the Goods, manufacture of the Goods by PowerPhotonic and use of the Goods by Customer will not breach any Intellectual Property Rights of any third party.

9.4 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 9.3.

10. Force majeure

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.

11. General

11.1 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 11.1 (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 the 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 11.1; and
 - (ii) as may be required by law, court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall 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.

11.2 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.

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

11.4 **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.

11.5 **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.

11.6 **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.

11.7 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 11.6(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.

11.8 **Third party rights.** The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

11.9 **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 matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

11.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.