



## Standard Terms and Conditions for VLC Photonics S.L.

April 2016

- 1 Scope and validity
  - 1.1 These standard terms and conditions shall apply to all VLC Photonics S.L.'s deliveries and performance, whether commenced, continuing or future, in the absence of written agreement to the contrary. They shall also apply to all future transactions with the customer, even where VLC Photonics S.L. does not send them to the customer again or refer the customer to them again on such subsequent occasions.
  - 1.2 Notwithstanding any previous objections which may have been raised by the customer, the receipt by the customer of deliveries and the customer's acceptance of contractual performance by VLC Photonics S.L. generally shall constitute acceptance of these standard terms and conditions.
  - 1.3 Deviation from these standard terms and conditions, in particular the validity of any relevant terms and conditions of the customer, requires the express written consent of VLC Photonics S.L.. VLC Photonics S.L. hereby expressly rejects any terms and conditions of the customer which the customer may refer to any orders, acceptances or confirmations.
  - 1.4 The customer shall observe any protective rights which third parties may have in relation to the delivered goods.
- 2 Entry into the contract
  - 2.1 Offers made by VLC Photonics S.L. may be withdrawn at any time. Orders and oral agreements shall only become binding upon written confirmation to VLC Photonics S.L.. Any amendments or additions to the agreement as between the parties must be made in writing.
  - 2.2 All the customer technical requirements for a contract will be described into a detailed Statement of Work, provided by the customer. Otherwise, the Statement of Work will be compiled by VLC Photonics S.L. by making use of the information exchanged with the customer via email, teleconferences and other communication means, and will be agreed by the customer before the signature of the contract.
  - 2.3 Any appendices, drawings, illustrations, technical data and specifications contained in presentations, mailings, advertisements, price lists, the internet or any documents are without obligation unless they are specifically indicated as binding in the offer.
  - 2.4 Any significant deviation ( $\pm 5\%$  of the original quote) from the agreed Statement of Work must be done in writing and agreed by both parties. A new corrective quotation and invoice will be then generated to cover for the difference.
  - 2.5 VLC Photonics S.L. has the right to fulfil its contractual duties through third parties.
  - 2.6 VLC Photonics S.L. can not be held responsible for the performance of such third parties if these do not properly guarantee their performance to VLC Photonics S.L..
  - 2.7 VLC Photonics S.L. has the right to include the name of the customer's business and the customer's trademark in references and publications, unless otherwise stated in previous non disclosure agreements.
- 3 Prices
  - 3.1 Prices are given in EUR currency.
  - 3.2 The agreed price is exclusive of value added tax, unless otherwise indicated in the quote. Prices are stated net, 'ex works', and do not include insurance, installation, or any other applicable costs. Unless agreed to the contrary, shipment packaging is included in the price.
  - 3.3 VLC Photonics S.L. reserves the right to alter the price of the goods where changes in the price of component materials, wages or other circumstances for which VLC Photonics S.L. is not responsible of result in an increase in overall costs after the purchase order has been made.
- 4 Dispatch, packaging and duty to co-operate
  - 4.1 Dispatch shall be effected "ex works" (INCOTERMS 2000). All delivery periods shall be "ex works" and start as from the formation of contract, however not before all information and documents necessary for the execution of the contract have been provided by the purchaser, all technical questions have been cleared and all authorizations are have been granted. Any periods or dates regarding deliveries and services which were announced by VLC Photonics S.L. shall always be deemed as approximate, unless a fixed period or date was explicitly promised or agreed upon in writing.
  - 4.2 The customer may specify a particular means of shipment packaging or delivery, or alternatively it may require delivery according to its own particular delivery protocol. Such specifications or requirements shall only be binding on VLC Photonics S.L. insofar as VLC Photonics S.L. is informed of them and confirms them in writing. Any resulting additional costs shall be borne by the customer.
  - 4.3 The customer is obliged to inform VLC Photonics S.L. of any permits, export, ownership or usage licences, approvals, authorisations or other requirements or preconditions relating to delivery which exist in the jurisdiction in which the customer is located. The customer is obliged to take all steps necessary for compliance with these at its own expense.
  - 4.4 The customer shall provide VLC Photonics S.L. with all assistance necessary to ensure compliance with any export regulations. Any costs incurred in relation to compliance with such regulations are to be borne by the customer.
- 5 Risk
  - 5.1 The risk in the goods passes to the customer as soon as they have left the storage of VLC Photonics S.L.. Where the goods are ready for dispatch and dispatch is delayed as a result of circumstances for which VLC Photonics S.L. is not responsible, then risk in the goods shall pass to the customer as soon as VLC Photonics S.L. has informed the customer (either orally or in writing) that the goods are ready for dispatch.
  - 5.2 Insurance against damage in transit will only be effected at the customer's request and at the customer's expense.
- 6 Start of Work, Deadlines and Delays
  - 6.1 As otherwise stated in the quote or contract, the work will start at VLC Photonics S.L. once an initial payment of 25% of the quoted price is received at VLC Photonics S.L.
  - 6.2 VLC Photonics S.L. is not obliged to deliver the goods as long as the customer has yet to perform one or more of its obligations under the contract.
  - 6.3 The agreed time periods for delivery and performance by VLC Photonics S.L. begin to run upon entry into the contract. The contract is entered into on the date on which the customer provides a valid purchase order to VLC Photonics S.L.. VLC Photonics S.L. shall not be obliged to comply with these deadlines unless the customer has supplied VLC Photonics S.L. with all requested documentation and has adhered to all terms relating to payment. The deadlines shall be deemed to have been met if the goods have left the works or the storage of VLC Photonics S.L. before expiry of the deadline in question.
  - 6.4 Dates for delivery are only binding where these have been expressly confirmed in writing by VLC Photonics S.L..
  - 6.5 VLC Photonics S.L. is entitled to deliver the goods in instalments.
  - 6.6 Late delivery does not entitle the customer to withdraw from the contract or to claim damages unless the delay occurs as a result

of intentional or grossly negligent behaviour on the part of VLC Photonics S.L., and not of its subcontractors. This shall not apply where the delay in delivery jeopardizes the realisation of the purpose of the contract. If the customer extends the deadline for delivery and delivery is not effected by expiry of this extended deadline, the customer has the right to withdraw from the contract on the grounds of non-fulfilment of the contract.

6.7 Should delivery be delayed or fulfilment of the contract be otherwise hindered by reason of force majeure (for example power cuts, strikes, delay in delivery resulting from war or unstable political conditions, prohibitions or other measures enacted by any authorities), VLC Photonics S.L. may withdraw from the contract or alternatively, delay delivery of the goods for the duration of the obstruction without liability for damages or other claims.

6.8 The purchaser has any legal rights of rescission in case of delay with delivery or other performances only and insofar as VLC Photonics S.L. has culpably caused such delay. Any statutory rights of rescission remain unaffected.

## 7 Terms of payment

7.1 As stated in clause 6.1, an initial payment of 25% of the quoted price is required to start work at VLC Photonics S.L.

7.2 As otherwise stated, any quotation or contract involving fabrication stages at external foundries or packagers will require an initial pre-payment of 75% of the quoted fabrication price to be received at VLC Photonics S.L. one month after fabrication purchase order is made.

7.3 Invoices are payable net within 30 days of the date of the invoice.

7.4 Payment may only be made by means of bill of exchange if VLC Photonics S.L. has consented to this. Associated costs of such payment, as well as the risk for timely production and of any protestations are to be borne by the customer.

7.5 The receipt of payment by VLC Photonics S.L. shall be decisive.

7.6 If the customer does not make timely payment, or if VLC Photonics S.L. extends the time in which the customer has to pay, then the customer shall pay interest to VLC Photonics S.L. at the prevailing bank debt rate, but in any event no less than 5% above the base rate of the European Central Bank.

7.7 VLC Photonics S.L. reserves the right to claim for any additional damage it may suffer as a result of any delay by the customer.

7.8 Where the customer delays in payment, or where there is reason to doubt the customer's willingness or ability to pay, then in addition to any other rights VLC Photonics S.L. may have, VLC Photonics S.L. may demand immediate fulfilment of all the customer's outstanding obligations under the contract and / or demand security or prepayment in relation to future deliveries, withhold future deliveries due under this or any other contract VLC Photonics S.L. may have with the customer (either in whole or in part), take back (at the customer's expense) any goods which have already been delivered to the customer but have not yet been paid for, or to withdraw from all existing contracts with the customer. Where goods are delivered in instalments, each instalment constitutes a separate payable transaction.

## 8 Warranties and damages

8.1 All information concerning VLC Photonics S.L.'s services and products is given to the best of VLC Photonics S.L.'s knowledge. However, such information does not free the customer from the need to carry out its own checks and tests. The customer is obliged to check the goods (and in appropriate circumstances, to conduct any relevant tests), in order to ascertain the existence of any defects in relation to composition and fitness for purpose.

8.2 The customer must notify VLC Photonics S.L. in writing of any defects without delay, and in any event within 30 days from the date of receipt of the goods. Defects which could not be discovered within 30 days from receipt shall be notified to VLC Photonics S.L. within 30 days of the date on which they first became apparent. The customer shall lose its rights in relation to any defects which are not reported to VLC Photonics S.L. within the relevant time limits.

8.3 Should the customer ascertain that an incorrect quantity of goods has been delivered, then the customer shall inform VLC Photonics S.L. of this in writing without delay.

8.4 No claim under a warranty may be made in the case of inappropriate use, incorrect handling and non-adherence to all relevant rules and instructions including any rules relating to safety in the workplace and laser safety.

8.5 Insofar as nothing to the contrary is specified in this contract, VLC Photonics S.L. excludes liability for all damages (other than liability for death or personal injury), except where such damages result from intentional or grossly negligent behaviour. VLC Photonics S.L. is therefore not liable for physical damage to any property other than the goods themselves. In particular, VLC Photonics S.L. is not liable for loss of profits or other financial losses of the customer.

8.6 VLC Photonics S.L. shall not be liable for any damages which are caused by inappropriate use of the goods.

## 9 Non-performance

9.1 If the contract remains unperformed as a result of breach of contract or withdrawal by the customer, then VLC Photonics S.L. is entitled to a contractual penalty of a sum equal to the total costs already incurred by VLC Photonics S.L., but in any event no less than 10% of the net value of the ordered goods. Insofar as VLC Photonics S.L. withdraws from the contract on the such grounds, the customer shall reimburse VLC Photonics S.L. for all costs incurred by VLC Photonics S.L. as a result, subject to a minimum payment of a liquidated sum of 10% of the agreed net value of the contract.

## 10 Confidentiality

10.1 VLC Photonics S.L. shall treat all trade secrets of the customer which are disclosed during the performance of the contract as confidential and shall not disclose such trade secrets to third parties. VLC Photonics S.L. shall obtain the same agreement from any employees or agents to which it may disclose such information in order to perform its obligations under the contract.

10.2 VLC Photonics S.L. hereby prohibits the forwarding of information concerning its business relationship with the customer to third parties.

## 11 Intellectual property

11.1 VLC Photonics S.L. retains all its prior intellectual property in its deliverables and any items which are intended for use in conjunction with such deliverables.

11.2 Any new intellectual property developed as a direct consequence of the work performed under this contract will belong to the customer.

## 12 Governing law, jurisdiction and place for fulfilment

12.1 The legal relations of the parties are governed exclusively by Spanish law. The laws on international trade resulting from the United Nations Convention on contracts for the International Sale of Goods shall not apply.

12.2 The place for fulfilment of the contract in relation to deliveries by VLC Photonics S.L., payment to VLC Photonics S.L. and all other obligations of the customer is Valencia, Spain.

## 13 Miscellaneous

13.1 The above terms and conditions and any additional agreements made in writing at the time of entering into the contract constitute the entire contract and replace all earlier oral and written agreements.

13.2 The invalidity of any individual clauses does not effect the validity of the contract's remaining terms and conditions. The parties are under a duty to replace an invalid or unenforceable clause with the enforceable clause which is most similar in economic effect to the invalid or unenforceable clause.

13.3 Changes or additions to the above terms and conditions and to any other additional terms and conditions agreed at the time of entering into the contract must be in writing. This provision shall apply equally to the amendment of any requirement relating to written form. This provision also applies to this clause.