

Standard Terms and Conditions for VLC Photonics S.L.*September 2019***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 in written form 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.
- 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- 2.1 Offers made by VLC Photonics S.L. have a validity period of 30 days, but may be withdrawn at any time if properly justified by VLC Photonics S.L.. 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. Such document will be explicitly referenced on VLC Photonics S.L. quote, which 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 quoted offer.
- 2.4 Any significant cost deviation ($\pm 5\%$ of the original quote) from the agreed quoted price for a certain 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 (e.g. foundries, packagers, etc.).
- 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 other written form, like e.g. previous non-disclosure agreements.

3 Prices

- 3.1 Prices are given in EUR currency.
- 3.2 Under customer request, other currencies can be used for quotation by VLC Photonics S.L..
- 3.3 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, customs taxes, or any other applicable costs.
- 3.4 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.
- 3.5 In case an Academic or Commercial discount is applied over the quoted price, under certain conditions, and when the customer does not fulfill any of these conditions, the full amount of the discount should be reimbursed to VLC Photonics.

4 Dispatch, packaging and duty to co-operate

- 4.1 Dispatch shall be effected "ex works" (INCOTERMS 2010) from VLC Photonics S.L. offices at Ed. 9B, D2, UPV, Camino de Vera sn 46022 Valencia, Spain. 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.
- 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. so far 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 to help for compliance with these.
- 4.4 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.
- 4.5 Insurance against damage in transit will only be effected at the customer's request and at the customer's expense.

5 Start of Work, Delivery deadlines and Delays

- 5.1 As otherwise agreed in written form, the work will only start at VLC Photonics S.L. once the initial payment for the quoted price is received at VLC Photonics S.L.
- 5.2 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.
- 5.3 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 VLC Photonics S.L. agrees to a valid purchase order issued by the customer.
- 5.4 VLC Photonics S.L. shall not be obliged to comply with the quoted 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, unless otherwise agreed in written form.
- 5.5 Any periods or dates regarding deliveries which were announced by VLC Photonics S.L., especially when referring to outsourced manufacturing or packaging services, shall always be deemed as approximate, unless a fixed period or date was explicitly promised or agreed upon in writing.
- 5.6 VLC Photonics S.L. is entitled to deliver the goods in instalments, unless otherwise denied in written form by the customer.
- 5.7 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. or any of its subcontractors.
- 5.8 In case of delays in deliveries for a justified reason, and only when no subcontractor is involved, VLC Photonics may agree with the customer in written form to extend any deadline for delivery. If delivery is not affected 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.
- 5.9 Should any 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 Terms of payment

- 6.1 Payments are only accepted in EUR currency.
- 6.2 When payment on a different currency is agreed on a quotation (see clause 3.2), any conversion difference between the quotation day and the payment day will be covered by the customer if it exceeds 2% of the total amount.
- 6.3 As stated in clause 5.1, an initial payment of the quoted price is required to start work at VLC Photonics S.L.
- 6.4 As otherwise stated, any quotation or contract involving subcontracting with external foundries or packagers will require an initial prepayment of 75% of the quoted fabrication price to be received at VLC Photonics S.L. one month after fabrication purchase order is made. Otherwise, initial payment will be 25%, unless otherwise agreed in written form.
- 6.5 Invoices are payable net within 30 days of the date of the invoice.
- 6.6 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.
- 6.7 The receipt of payment by VLC Photonics S.L. shall be decisive.
- 6.8 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 7% above the latest base rate of the European Central Bank.
- 6.9 VLC Photonics S.L. reserves the right to claim for any additional damage it may suffer as a result of any payment delay by the customer.
- 6.10 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.

7 Warranties and damages

- 7.1 All information concerning VLC Photonics S.L.'s services and deliveries 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.
- 7.2 As long as the services provided by VLC Photonics S.L. to its customers are considered part of a research and development or prototyping project, the target specifications of the components and systems defined in the statement of work will never be guaranteed and will be delivered on a best effort basis.
- 7.3 VLC Photonics S.L. will extend the guarantees given by its subcontractors (e.g. foundries and packagers) to its customers. Unless otherwise agreed in written form, VLC Photonics S.L. will not provide any additional guarantees on deliveries from any subcontractor.
- 7.4 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. 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.
- 7.5 If any defect is found at any delivery from any subcontractor of VLC Photonics S.L. (e.g. foundry, packager, etc.), and such defect is not covered by the warranty of the subcontractor, VLC Photonics S.L. will invest all reasonable efforts to compensate the customer by searching for a solution with its subcontractors.
- 7.6 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.
- 7.7 Insofar as nothing to the contrary is specified in this contract, VLC Photonics S.L. excludes liability for all damages which are caused by inappropriate use of the goods. 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 Non-performance

- 8.1 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.

9 Confidentiality

- 9.1 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.
- 9.2 VLC Photonics S.L. hereby prohibits the forwarding of information concerning its business relationship with the customer to third parties.

10 Intellectual property

- 10.1 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.
- 10.2 The IP from third parties (e.g. foundries) that may be used to provide the services contracted to VLC Photonics will still belong to such third parties, unless otherwise agreed in written form with the IP owners.
- 10.3 Any new intellectual property developed as a direct consequence of the work performed under this contract will belong to VLC Photonics S.L., unless otherwise agreed in written form.

11 Governing law, jurisdiction and place for fulfilment

- 11.1 The legal relations of the parties are governed exclusively by the law of Spain.
- 11.2 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.

12 Miscellaneous

- 12.1 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.
- 12.2 The invalidity of any individual clauses does not affect 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.
- 12.3 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.