EFFECT PHOTONICS TERMS AND CONDITIONS OF PURCHASE

GENERAL: In this document:
"Affiliates" shall mean any and all companies, firms and legal entities to which Effect Photonics B.V., registered in Eindhoven, the Netherlands ("EFFECT") or Seller, directly or indirectly holds 50% or more of the nominal value of the issued share capital or 50 % or more of the voting power at the general meeting of shareholders, or has the power to appoint the majority of directors;
"Agreement" shall mean the binding contract formed as described in Clause 2;
"Products" shall mean both tangible and intangible goods, including software and related documentation and packaging;
"Intellectual Property Rights" shall mean patents, utility certificates, utility models, industrial design rights, copyrights, database rights, trade secrets, any protection offered by law to Information, semiconductor IC topography rights and all registrations, applications, renewals, extensions, combinations, divisions, continuations or reissues of any of the foregoing or which otherwise arises or is enforceable under the laws of any jurisdiction or any bi-lateral or multi-lateral treaty regime;
"Personal Data" shall mean any and all information relating to an identified or identifiable individual;
"Open Source Software" shall mean (1) any software that requires as a condition of use, modification and/or distribution of such software, that such software: (i) be disclosed or distributed in source code form; (ii) be licensed for the purpose of making derivative works; (iii) may only be redistributed free from enforceable IPRs; and/or (2) any software that contains, is derived from, or statically or dynamically links to, any software specified under (1);
"Services" shall mean the services to be performed by Seller for EFFECT under the Agreement;
"Seller" shall mean each person or entity (including, where relevant, its Affiliates) that enters into the Agreement;
"Work Product" shall mean all deliverables (including future deliverables) and other data, reports, works, inventions, know-how, software, improvements, designs, devices, apparatus, practices, processes, methods, drafts, prototypes, products and other work product or intermediate versions thereof produced or acquired by Seller, its personnel or its agents for EFFECT in the performance of the Services.

1. Formation of the Agreement

1.1 An EFFECT purchase order ("PO") constitutes an offer by EFFECT or its Affiliates to Seller. When Seller accepts this PO, either by acknowledgement, commencement of performance, or by delivery of any items ordered, it shall be an Agreement.
1.2 This PO is limited to the terms and conditions specified on the face and reverse of this document and any attachments. EFFECT does not agree to any proposed addition, alteration or deletion by Seller. These terms and conditions can be varied only in writing and signed by EFFECT. Any other statement of Seller shall not alter, add to, or otherwise affect these terms and conditions.
1.3 EFFECT is not bound by and hereby expressly rejects Seller's general conditions of sale and any additional or different terms that may appear on any order acknowledgement or other Seller document.

2. DELIVERY, PRICES & PAYMENT TERM

2.1 Unless otherwise specified in the applicable PO, all prices are in EUR and gross amounts but exclusive of any value added tax (VAT), sales tax, GST, consumption tax or other similar tax only. If the transactions in the Agreement are subject to any VAT, GST or similar tax, Seller may charge the tax to EFFECT, and EFFECT shall pay the tax in addition to the prices. Seller shall issue an invoice that shall allow EFFECT to take advantage of any tax deduction.
2.2 Any licenses shall be included in the price.
2.3 Unless expressly agreed otherwise in writing, delivery of the Products, shall be FCA location EFFECT in Eindhoven, the Netherlands on the delivery date specified in the PO. Exact location of delivery to be specified in the corresponding PO. Delivery shall not constitute acceptance. Title in the Products shall pass to EFFECT at the time the risk is transferred to EFFECT pursuant to the applicable Incoterm (version 2020).
2.4 Unless another payment term has been expressly agreed to by EFFECT or is noted by EFFECT on the face of the PO, all invoices furnished hereunder by Seller, if approved by EFFECT, are due and payable thirty (30) days following the end of month during which such invoice was received.
2.5 If Seller fails to fulfill any of its obligations under the Agreement, EFFECT may suspend payment to Seller upon notice to Seller.
2.6 Seller accepts the right for EFFECT to set-off any amounts EFFECT or its Affiliates owe to Seller under outstanding and due invoices, with any amounts that Seller owes to EFFECT or its Affiliates under the Agreement or any other agreement.

3. SHIPPING

Unless instructed otherwise, Seller shall (i) ship the material covered by the PO complete; (ii) ship in accordance with the instructions appearing on the face of the PO; (iii) place the PO number on all packaging and shipping documents. All invoices, packing lists, bills of lading and shipping orders shall bear the PO number, items number(s), EFFECT's part number quantity and description and EFFECT Project number (if applicable). Seller shall provide adequate protective packing at no additional charge and shall bear full responsibility for damage due to improper packing or shipping of the Products.

4. INSPECTION

EFFECT shall have a reasonable time after delivery to inspect and accept the Products. Where EFFECT discovers defective or non-conforming products, EFFECT may at its option and without prejudice to any other rights or remedies it may have hereunder or at law: (a) at Seller's expense and at EFFECT's option, return such Products for refund, credit, repair or replacement or (b) obtain a price reduction. If Seller delivers a quantity of Products greater than that specified in the PO, EFFECT may reject all or part of the excess quantity or accept all or part of such quantity. Any excess quantity of Product accepted by EFFECT shall be subject to the terms and conditions of this Agreement. If Seller delivers a quantity of Products less than that specified herein, EFFECT may cancel the PO in respect of the undelivered quantity without any liability to Seller whatsoever.

5. PERFORMANCE OF SERVICES

5.1 Seller shall perform the Services with due skill and care, using the proper materials and employing sufficiently qualified staff.
5.2 The description of work in the PO describes the Services that Seller will perform and the fees which EFFECT will pay in return. No work is to be performed until an Agreement is in place.

5.3 Only written confirmation shall constitute acceptance of the Services. If EFFECT does not accept the Services, Clause 9 shall apply. EFFECT shall promptly inform Seller of the rejection, and Seller will, at its own expense, carry out the necessary corrections, additions, modifications.

6. WARRANTY

6.1 Seller warrants to EFFECT that the Products and Work Products:

i. will be new, merchantable, of good quality, free from defects in design (where applicable), material and workmanship and,

ii. will strictly conform to the specifications, drawings and samples furnished or accepted by EFFECT and all other requirements of the Agreement.

iii. have been designed, manufacture and delivered in accordance with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, including , where applicable, Regulation (EU) 2023/988 on General Product Safety (GPSR), Directive 2011/65/EU on the Restriction of Hazardous Substances (RoHS) including Directive (EU) 2015/863 to amend Annex II, and Regulation (EC) No. 1907/2006 concerning the Registration, Evaluation, Authorization and Restriction of Chemicals (REACH).

6.2 If Products contain manufacturers' warranties, Seller hereby agrees to assign such warranties to EFFECT and upon request shall provide details of such warranties. Products failing to comply with the warranties will be, at EFFECT's option, (i) returned for a full refund or credit of amounts paid by EFFECT for the defective Product or Work Product, (ii) repaired, (iii) replaced or (iv) reperformed by Seller, at no cost or expense to EFFECT and with shipping and transportation costs and risk of loss and damage in transit borne by Seller. Repaired and replaced Products or Work Products shall be warranted as set forth in this Clause.

6.3 The above warranties, are not exhaustive and shall not be deemed to exclude any warranties set by law. These warranties, together with Seller's service warranties, if any, shall survive inspection, test, acceptance and use of and payment for the Products.

6.4 The warranty term is a period of 26 (twenty-six) months from the date of delivery.

7. OPEN SOURCE SOFTWARE

Seller warrants that to the best of its knowledge after proper due diligence and inquiry, its Product or Work Product does not include Open Source Software. Seller agrees that it will indemnify EFFECT, EFFECT's Affiliates and EFFECT's customers against any and all losses, damages, costs and expenses arising from a breach by Seller of its obligations and representations hereunder.

8. LATE DELIVERY

Time is of the essence for each Agreement. Seller shall notify EFFECT as soon as it becomes aware that it cannot meet the delivery date specified on the face of the PO and shall propose a new delivery date. In the event of such delay, Seller shall, at no additional cost to EFFECT, employ accelerated measures such as material expediting fees, premium transportation costs or labor overtime to ensure the Products are delivered on or before the revised delivery date. In the event a delay in delivery or the new delivery date proposed by Seller is not acceptable to EFFECT, in addition to any other rights and remedies that may be available to it at law, EFFECT may cancel the PO in full or partially without any liability whatsoever to Seller. Acceptance of any part of a shipment shall not bind EFFECT to accept the remainder of that shipment or any future shipments or constitute a waiver of EFFECT's right to return any goods accepted for which EFFECT may otherwise have a right of return, including, but not limited to, as a result of breach of warranty.

9. NON-CONFORMITY

9.1 If any Goods, Services or Work Products are defective, latent or otherwise do not conform to the requirements of the Agreement, EFFECT shall notify Seller and may, without prejudice to any other right or remedy available to it under the Agreement or at law, at its sole discretion:

i. require performance by Seller;

ii. require delivery of substitute Goods or Work Products;

iii. require Seller to remedy the lack of conformity by repair;

iv. declare the Agreement rescinded; or

v. reduce the price in the same proportion as the value of the Goods or Services actually delivered, even if that results in a full refund of the price paid to Seller.

9.2 Seller shall bear all costs of repair, replacement and transportation of the nonconforming Goods, and shall reimburse EFFECT in respect of all costs and expenses (including, without limitation, inspection, handling and storage costs) reasonably incurred by EFFECT in connection therewith.

Risk in relation to the nonconforming Goods shall pass to Seller upon the date of notification thereof

10. RIGHT OF ENTRY

EFFECT may, with two (2) days prior notice to Seller, enter the premises of Seller during Seller's normal business hours to perform an inspection or quality review with respect to performance of the work pursuant to a PO.

11. CANCELLATION

EFFECT may, at any time, cancel, terminate, suspend performance of, or issue a hold on, elect to suspend (collectively "Cancellation"), the PO, in whole or in part, without Seller's consent, and, if applicable, EFFECT agrees to negotiate in good faith a reasonable compensation amount. In any case, EFFECT's liability shall be limited to, in the case of non-standard Products, the direct actual and reasonable costs of work and materials incurred and substantiated by Seller in direct connection with such Products subject to such termination (provided that Seller has made reasonable efforts to mitigate such costs) and, in the case of standard Products, the price of the Products shipped prior to the termination provided however, that in no event shall EFFECT's liability exceed the outstanding balance of the price of such Products and shall not include any of loss of profits. Notwithstanding the foregoing, where EFFECT provides Seller with notice of Cancellation of a PO at least thirty (30) days prior to the scheduled delivery date, EFFECT shall have no liability or obligations to Seller whatsoever. The provisions of this Clause will not apply to any cancellation by EFFECT for default by Seller or for any other cause allowed by law or under the Terms.

12. CHOICE OF LAW

The construction, interpretation and performance of this Agreement is governed by the applicable laws of the Netherlands, without regard to conflicts of laws principles. Any disputes arising out of the Agreement, including the existence thereof, shall be decided by the Courts of Oost-Brabant, if they cannot be settled amicably.

13. INDEMNITY

13.1 Seller agrees to indemnify EFFECT, its Affiliates and their respective directors, officers, employees, agents, subcontractors and other representatives (for purposes of this Clause 13, collectively "EFFECT") from any and all loss, damage, liability, cost (including reasonable solicitors' fees), penalty or any other expense of whatever nature (collectively "Claims") arising out of any act or omission of Seller (including negligence) directly or indirectly relating to the PO, the use or sale of the Products, non-conforming or defective Products, whether alone or in combination, or Services performed. The foregoing includes without limitation any Claims relating to allegations, actions or proceedings for breach of contract, in tort (including negligence), any statutory, regulatory or other legal claims, claims for bodily injury (including death) and damage to property.

13.2 Seller agrees to furnish, upon request by EFFECT, evidence of comprehensive general liability insurance with minimum limits of €900,000. In the event of material change or cancellation of Seller's insurance coverage, Seller shall ensure EFFECT is given thirty (30) days prior written notice by either Seller or Seller's insurance company.

14. LIMITATION OF LIABILITY

14.1 Neither party excludes or limits its liability for death or personal injury arising from its own negligence, fraud, or for any liability that cannot by law be excluded or limited.

14.2 **SUBJECT TO CLAUSE 14.1 IN NO EVENT SHALL EFFECT OR ITS AFFILIATES BE LIABLE UNDER ANY THEORY OF LIABILITY FOR SPECIAL, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY OR INDIRECT COSTS, EXPENSE OR DAMAGES INCLUDING WITHOUT LIMITATION LITIGATION COSTS, THE LOSS OF PRODUCTION OR PROFIT ARISING FROM ANY CAUSE WHATSOEVER, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH COSTS OR DAMAGES.**

14.3 In no event shall EFFECT'S liability to Seller under this Agreement exceed amounts actually paid to Seller for Services rendered or Products purchased.

15. CONFIDENTIAL INFORMATION

Seller acknowledges that certain information provided by EFFECT in connection with the PO is confidential in nature. Confidential Information means any business, marketing, technical, scientific, financial or other information, specifications, designs, plans, drawings, software, prototypes or process techniques of EFFECT, an affiliate or other third party, which at the time of disclosure, is reasonably understood to be confidential in nature, including the identity of the parties and the fact that the parties are in contact with each other, all related to the PO (collectively, "Confidential Information"). Seller shall hold Confidential Information in confidence and shall not disclose Confidential Information to third parties. Confidential Information does not include information that (a) is or becomes publicly available through no fault of the Seller; or (b) is lawfully disclosed to the Seller by a third party who is not under any obligations of confidence; or (c) Seller can establish was known to the Seller prior to the date of disclosure by EFFECT; or (d) is required by law to be disclosed; or (e) Seller can establish was developed independently by the Seller without the use of EFFECT's Confidential Information. Seller may only use Confidential Information for the purpose of fulfilling its obligations under the PO. Seller shall, upon written request by EFFECT, promptly return and/or destroy and certify as destroyed all Confidential Information in its possession or control, as well as all material which incorporates any Confidential Information. Seller shall not disclose, without the prior written consent of EFFECT any Confidential Information to any third party other than its employees, contractors or other third parties under similar obligations of confidence who have a need to know such information. Seller shall assume full responsibility for the unauthorized disclosure or use of any Confidential Information by its employees, contractors or any other third party to whom Seller is authorized to disclose Confidential Information pursuant to this paragraph. All obligations of confidentiality and non-disclosure set forth in the PO survive, without limitation, the expiration or earlier termination of the PO. Where the parties have entered into a separate non-disclosure agreement which covers the subject-matter of the PO, that non-disclosure agreement, to the extent applicable, shall supersede this Clause 15.

16. COMPLIANCE

It is the Sellers' responsibility to obtain all required export licenses from non-EU origins and advise EFFECT prior to shipment of any control requirements attached to the items. Copies of licenses shall be supplied by the seller to EFFECT prior to shipment. The seller will also advise EFFECT of any re-export or re-transfer restrictions that apply to all items to be supplied prior to confirmation of the Purchase Order. All Products delivered by Seller shall have been manufactured by Seller in accordance with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, including where applicable, Regulation (EU) 2023/988 on General Product Safety (GPSR), Directive 2011/65/EU on the Restriction of Hazardous Substances (RoHS) including Directive (EU) 2015/863 to amend Annex II, and Regulation (EC) No. 1907/2006 concerning the Registration, Evaluation, Authorization and Restriction of Chemicals (REACH).and Seller will provide documentation to confirm such compliance or applicable exemption with such requirements. In the event of hazardous goods, Seller shall notify EFFECT of the composition of such goods and of all laws, regulations and other requirements relating to such goods in order to allow EFFECT to properly transport, store and process such goods.

17. PERSONAL DATA

17.1 Where Seller in the performance of the Agreement processes Personal Data, then Seller agrees and warrants that Seller shall:

a) comply with all privacy and data protection law and regulations applicable to its Services;
b) Process Personal Data only (i) on behalf of and for the benefit of EFFECT, (ii) in accordance with EFFECT's instructions, and (iii) for the purposes authorized by this Agreement or otherwise by EFFECT, and (iv) insofar necessary for the Services rendered to EFFECT and as permitted or required by law;
c) maintain the security, confidentiality, integrity and availability of the Personal Data;
d) implement and maintain appropriate technical, physical, organizational and administrative security measures, procedures, practices and other safeguards to protect the Personal Data against (i) anticipatable threats or hazards to its security and integrity; and (ii) loss, unauthorized access to, or acquisition or use of or unlawful Processing; and
e) promptly inform EFFECT of any actual or suspected security incident involving the Personal Data.

17.2 To the extent that Seller allows a (sub)contractor to process the Personal Data, Seller shall ensure that it binds such (sub)contractor to obligations which provide a similar level of protection, but in no way less restrictive, as this Clause 17.

17.3 Seller shall, upon the termination of the Agreement, securely erase or destroy all records or documents containing the Personal Data. Seller accepts and confirms that it is solely liable for any unauthorized or illegal processing or loss of the Personal Data, if Seller fails to erase or destroy the Personal Data upon termination of the Agreement.

17.4 Seller shall indemnify EFFECT, Effect's Affiliates, their officers, agents and personnel from any damages, fines, losses and claims arising out of a breach of Clause 17.

18. INTELLECTUAL PROPERTY

18.1 The purchase of the Products or Services shall confer on EFFECT and its Affiliates, an irrevocable, nonexclusive, worldwide, fully paid up, perpetual license under all Intellectual Property Rights of Seller, to use, make, have made, build-in, have built-in, market, sell, lease, license, distribute or otherwise dispose of the Products or Services.

18.2 EFFECT acknowledges that Seller may have pre-existing Intellectual Property Rights in certain materials or software which Seller may use in the course of performing the Services. Seller remains owner of such pre-existing Intellectual Property Rights. To the extent Seller creates Intellectual Property Rights in performing the Agreement, EFFECT shall be the owner of the Intellectual Property Rights in the Work Product. Seller agrees to assign and does hereby expressly assign to EFFECT all rights, title and interest in the Work Product, including any and all moral rights Seller and its employees or contractors may have. During and after the Agreement, Seller will assist EFFECT in every way at EFFECT's expense, to secure, maintain and defend for EFFECT's benefit, all Intellectual Property Rights in the Work Product.

18.3 Unless otherwise agreed in advance in writing, Seller hereby grants EFFECT and its Affiliates an irrevocable, nonexclusive, worldwide, fully paid up, perpetual license to use, disclose, reproduce, modify, license and distribute or otherwise dispose of Seller's pre-existing Intellectual Property Rights incorporated in the Work Product.

18.4 Seller warrants that the Products and use thereof do not and will not infringe upon any patent, trademark, copyright or other intellectual property right of a third party.

19. INTELLECTUAL PROPERTY RIGHTS INDEMNIFICATION

19.1 Seller agrees to defend EFFECT at Seller's own expense in, from or against any claims damages costs and expenses resulting from or arising out of or in connection with any actual or alleged third party claim that any of the Goods, Services or Work Product or their use infringes any third Party's Intellectual Property Right.

19.2 EFFECT shall give Seller prompt written notice of any such claim. EFFECT shall have the right to participate and be represented in any such actions, suit or proceeding by its own counsel at its own expense.

19.3 If the sale or use of the Products, Services or Work Product shall be found to constitute infringement of Intellectual property Rights and their use is enjoined, EFFECT may, at its sole option, pursue any remedy or remedies available at law or in equity, including without limitation, requiring Seller to either procure for EFFECT the right to continue using such Products, modify them so they become non-infringing, or remove them and refund to EFFECT the total purchase price thereof.

20. TRADE-MARKS AND LOGOS

20.1 Seller shall remove or obliterate any Identification prior to any use or disposition of any material rejected or not purchased by EFFECT.

20.2 "Identification" means any semblance of any trade name, trademark, service mark, insignia, symbol, logo, or any other designation or drawing of EFFECT or its affiliates.

21. NO PUBLICITY

Seller shall not use the EFFECT name or the name of any of its Affiliates in any public statement or publicize the fact the parties are doing business, without the prior written consent of EFFECT.

22. MISCELLANEOUS

22.1 Any delay by EFFECT in the exercise of any right or remedy provided herein shall in no event be deemed to be a waiver of such right or remedy. To be valid, any waiver by EFFECT must be made in writing expressly referencing the PO. A valid waiver of any right or remedy herein shall in no event be deemed to (i) constitute a waiver of such right or remedy arising in the future or (ii) operate as a waiver of any other right or remedy.

22.2 EFFECT may assign its rights and obligations under this Agreement without requiring any notice to or consent from Seller. Seller may not assign or transfer any right or obligations hereunder without the prior written consent of EFFECT.

22.3 Seller shall not make any changes to the specifications, manufacturing processes or manufacturing site for the Products and shall not subcontract any of its responsibilities or obligations, in whole or part, under this PO, without EFFECT's prior written consent. Breach of this provision shall entitle EFFECT to immediately terminate the PO without any notice or liability to Seller whatsoever.

22.4 A copy, facsimile or electronic version of this document shall have the same force and effect as the original document.