

General terms and conditions for the performance of Services and/or Supply of Goods by Penta Optics B.V.

1. Offer, quotation, order confirmation and agreement

- 1.1. These general terms and conditions (the “ terms and conditions” or “T&C”) shall apply to and form an integral part of all our offers, quotations, order confirmations and agreements regarding the performance of Services or supply of (parts of) Goods to the customer by Penta Optics B.V., having its registered office at Eindhoven, The Netherlands. Penta Optics B.V. is referred to as “Penta”, “we”, “us” or “our”.
- 1.2. Any offer, quotation, order confirmation and agreement between us and the customer shall constitute a contractual relationship between the ordering customer and Penta. Any obligation resulting from any of our offers, quotations, order confirmations or agreements shall be obligations of the specific legal entity which issued such offer or quotation, confirmed the order or entered into the agreement, and not of any other legal entity, except in case we can make use of an right of assignment as specified in Article 16 but only to that extent.
- 1.3. These T&C are not applicable for the secondment of employees by us to third parties.
- 1.4. Our offer or quotation is open for acceptance within the period stated therein. When no period is stated, the offer or quotation will only be binding after our written order confirmation (including e-mail).
- 1.5. These T&C shall constitute all of the terms and conditions of any offer, quotation, order confirmation and agreement between us and customer relating to the performance of Services or supply of (parts of) Goods. Acceptance of our offer or quotation includes acceptance of the following general terms and conditions and no other terms and conditions (whether contained in a purchase order or otherwise) shall be binding on us unless they are expressly agreed to in writing.
- 1.6. If we receive any order from customer for the performance of Services or the supply of (parts of) Goods and such order is not a response to an offer or quotation by us, or if we receive an order or acceptance by customer which deviates from our offer or quotation, such order or acceptance, respectively, shall be deemed to be a request for an offer or quotation only.
- 1.7. If any of the conditions in these general terms and conditions are null and void or become nullified, the remaining terms and conditions will remain in full force. In this event, we will commence consultations with customer in order to agree on new terms and conditions to replace the null and void or nullified terms and conditions, taking into consideration the objective and meaning of the null and void or nullified conditions as much as possible.
- 1.8. Changes to the offer, quotation, order acknowledgment or agreement or any part thereof, including but not limited to the scope of work, whether prior or during the execution, need prior written approval from both parties.

2. Prices and payment

- 2.1. All prices are in euros or in the currency set forth in our offer or quotation and subsequent order confirmation. All prices are exclusive any applicable VAT, sales tax or like kind taxes, fees, levies, imposts, duties, assessments, charges, customs duties or withholdings of whatever nature and based on Ex-Works deliveries (Incoterms 2000). Prices apply to the Services and/or Goods offered or agreed to Customer will pay us a net fee/price, as specified in the offer or quotation or relevant annex, plus prior agreed upon expenses amongst others for traveling, board and lodging as incurred by us, including specific additional costs and expenses, such as by way of example but not limited to: costs of thirds and internal costs.
- 2.3. We will be entitled to adjust our prices by means of written notification at least three months in advance, unless the parties have explicitly agreed otherwise.
- 2.4. Customer will pay all invoices within thirty (30) days after the invoice date.
- 2.5. If customer does not pay the amount due within the stipulated term, customer will be in default immediately. Interest will accrue on all late payments, at the rate of 1 % per month, calculated on a monthly basis, as from the due date until payment in full. Furthermore, customer will pay any costs, fees and expenses incurred in connection with the collection of the debt. In the event of any default by customer in the payment of any fees or charges due, or any other default by customer, we shall have the right to refuse performance of any Services until payments are brought current and we may suspend, delay or cancel any credit, delivery or any other performance by us, without prejudice to any other rights we may have.
- 2.6. If customer disputes the contents of an invoice, customer will notify us in writing within fourteen (14) days after receiving the invoice, stating the complaint and supporting it with proof. After these fourteen (14) days, the invoice will be deemed accepted and customer will pay the invoice within thirty (30) days after the invoice date. In such event, customer will be entitled to suspend payment of the disputed part of the invoice. If it is established that the complaint was justified, the invoice will be adjusted, and customer will pay the remaining balance within thirty (30) days after receipt of the adjusted invoice. If it is established that the complaint was unjustified, customer will pay the disputed balance immediately. Customer will also pay legal interest at the rate of 1 % per month, calculated on a monthly basis, as from the moment the original term of payment expired, and any costs, fees and expenses incurred in connection with the collection of the debt.
- 2.7. Payment by customer of non-recurring charges, as may be made to us for special design, engineering or production materials required for our performance on orders deviating from our established product line, shall not convey title to either the design or special materials, but title shall remain in us.
- 2.8. Customer shall not offset, withhold or reduce any payment(s) by it to us without our prior written approval.
- 2.9. If we incur exchange rate loss due to customer's failure to pay when payments are due, we shall be entitled to equivalent compensation from customer for such losses.

3. Retention of title

The customer explicitly accepts that we shall retain ownership of the Goods until full payment has been received of all amounts due in accordance with the agreement and the customer shall not resell the Goods than in the normal course of business and take all measures to protect the Goods and to ensure that our title to the Goods is in no way prejudiced. Risk of loss in the Goods shall pass to customer upon our delivery in accordance with the applicable Incoterm. The customer shall be obliged to insure the Goods at its own expense for the time they remain our property. If the customer fails to make any payments to us when due, the customer shall, upon our first notice, be obliged to return to us, at customer's risk and expense, any Goods that are subject to the retention of ownership.

4. Delivery and acceptance

- 4.1. Delivery dates communicated or acknowledged by us are approximately only, and we shall not be liable for, nor shall we be in breach of our obligations to customer because of any delivery made within a reasonable time before or after the stated delivery date. We agree to use commercially reasonable efforts to meet the delivery dates communicated or acknowledged by us on the condition that the customer provides all necessary order and delivery information sufficiently prior to the agreed delivery date. Deliveries in parts of the total order is allowed. Under- or over-deliveries of 10% or the total ordered quantity is allowed.
- 4.2. Any Services, Goods and tools will be accepted as the agreed acceptance procedure has been successfully completed. Customer shall execute the acceptance procedure within thirty (30) days of delivery of any Services, Goods and tools. In the event the acceptance procedure has not been executed within such thirty (30) day period, the Services, Goods and tools shall be deemed accepted.

5. Co-operation of customer

- 5.1. The offer or quotation and the description of the Services are based on information provided by customer. Customer undertakes that all documents, information and data necessary for us to perform the Services will be made available to us in a timely fashion. Customer will make available such competent employees of its organization as are necessary to assist us in fulfilling our obligations under the agreement. Customer will obtain if required by law or otherwise, all necessary approvals of the applicable consultative body(ies) in connection with the performance of Services. In case any or all of the above conditions are not, not properly or not timely complied with, or if we have to suspend Services for reasons not attributable to our gross negligence or wilful misconduct, the period of completion set forth in the agreement shall be automatically extended for such additional time as shall be necessary to perform the Services, and any and all additional costs resulting thereof shall be for customer's account.
- 5.2. If requested by us, customer will make available to us, without charge, sufficient office space, including but not limited to telephone and Wifi connection, at such customer locations as shall be necessary to facilitate the performance of Services.

6. Operational requirements for the processing

- 6.1. In tendering for and accepting orders we assume that:
 - a. the materials offered for processing meet any conditions stipulated by us in the tender or order confirmation and furthermore have been constructed in accordance with our requirements which may reasonably be stipulated by us with a view to the processing operation demanded;
 - b. the materials offered for processing are of the same type and/or quality as the materials on the basis of which we proceeded when tendering for or accepting the order;
 - c. the materials offered for processing will be delivered to us in good time and in the required numbers so that the work can be performed in the most economical manner and without interruptions.
- 6.2. If it becomes apparent to us when the materials offered for processing are delivered and/or the order is carried out that the requirements stated in subsection 1 above have not been met, we shall be entitled to refuse the order or, for the account of the customer, to make these materials suitable or cause them to be made suitable for the required processing, and in doing so to extend the agreed delivery period by the time required for such work.
- 6.3. If parts made available by the customer have to be incorporated in Goods to be manufactured by us, such parts shall be supplied by the customer in good time and in the required numbers. The parts, which are not used, shall be made available to the customer in the same manner together with the manufactured Goods.

7. Personnel

We undertake that Services shall be performed by reliable, adequately trained, experienced and skilled employees within the timetable set forth in the agreement.

8. Tooling

- 8.1. The design of the models and moulds and all intellectual property rights pertaining thereto, shall at all times remain our solely owned property. Customer may own in the situations set forth in these general terms and conditions, the physical moulds.
- 8.2. Models, moulds and or specific tooling provided or paid for upfront by customer pursuant to the quotation or order (hereinafter referred to as "Customer Tooling"), are title, risk and property of customer and shall be returned to customer as soon as is practicable after execution of the agreement for which the said Tooling is required or as set forth in art. 8.6

- 8.3. In case Customer does not pay the tooling fully upfront, and tooling investments are born by us, this tooling remains our property. In case an amortization scheme is agreed, the tooling will become Customer Tooling once full payment for all tooling investments is received by us.
- 8.4. All Customer Tooling shall be used by us exclusively for the execution of the agreement for which Customer Tooling is provided. We shall not use, reproduce, copy or disseminate the Customer Tooling without the prior written consent of customer.
- 8.5. All Customer Tooling provided by customer shall be identified, marked and tagged with clear text: "property of customer [name]" and will be stored under good housekeeping conditions. Customer shall pay our costs to maintain Customer Tooling in good working condition at all times. We shall keep on file a template for all Customer Tooling with an aggregate value of 100.000 (one hundred thousand) Euro.
- 8.6. All Customer Tooling shall remain located at our manufacturing facility. We shall not move, remove, or dispose of Customer Tooling without customer's prior written approval. Customer may remove Customer Tooling if we materially breach the agreement and have failed to repair such breach within a reasonable timeframe. Upon removal by customer from our premises, customer shall pay to us reasonable preparation costs such as packing and crating of the relevant Customer Tooling.
- 8.7. Customer may upon reasonable notification inspect and audit Customer Tooling, which shall be made available at our facility.
- 8.8. We may design and use tooling on our own costs for the manufacturing and testing of Goods (hereinafter referred to as "Penta Tooling"). Penta Tooling shall not become the property of customer. Customer may not dedicate or give instructions to the use of Penta Tooling.

9. Intellectual property rights and indemnification

9.1. Intellectual property rights

- 9.1.1. "Specifications" shall mean the specifications, hardware, material, functional and other requirements as well as acceptance criteria and packaging specifications with regard to the Goods as specified in the Annexes per Good.
- 9.1.2. "Manufacturing Technology" shall mean the complete realisation process of Goods, including supply chain management, production process design, material knowledge and design of moulds, models or tooling.
- 9.1.3. "Intellectual Property Rights" shall mean any form of protection afforded by law to inventions, models, designs, trade secrets or similar type technical information such as patents (including reissues, divisions, continuations and extensions thereof), utility models, registered and unregistered designs including mask works, copyrights as well as applications for any such intellectual property rights.

Customer retains Intellectual Property Rights laid down in and arising as a direct result from the Specifications. The ownership of all inventions and discoveries relating to Manufacturing Technology and made by us during the manufacturing and engineering of the Goods, as well as the ownership of all Intellectual Property Rights relating to such inventions and discoveries shall vest in us.

Penta Optics BV might, at its sole discretion, grant customer a perpetual, royalty bearing, non-exclusive, worldwide, non-transferable license under such Intellectual Property Rights to have the Goods made by a third party.

- 9.2. Indemnification. Customer shall indemnify and hold us harmless against all fines, losses, damages, costs and expenses, whether directly or indirectly arising from a claim brought by a third party claiming that the manufacture, sale or use (for example as stipulated by customer in its sales conditions) of any Good engineered, manufactured and/or supplied in accordance with customer's Specifications, instructions or suggestion, constitute(d) infringement of one or more of the patent rights or other intellectual property rights of such third party, together with the actual costs and expenses incurred by us in connection with such a claim by such third party we will give customer full authority to, at the option of customer, either settle or defend such claim, suit or proceeding and all reasonable co-operation and assistance in case customer decides to defend such a claim, suit or proceeding and provided further that we will refrain from any activity that can jeopardise or harm the defence of any such claim made by a third party.

10. Limitation of liability

- 10.1. All liability of Penta Optics BV to the customer shall be limited to claims or recovery of direct loss of direct damage for the amount of the total price of the Services performed or Goods supplied under the quotation or agreement, with a maximum of FIFTY THOUSAND EUROS (€ 50.000,-) as liquidated damages and not as a penalty. Over and above said amount customer shall indemnify us accordingly. IN NO EVENT SHALL PENTA OPTICS BV BE LIABLE FOR CONSEQUENTIAL, SPECIAL, PUNITIVE AND/OR INCIDENTAL DAMAGES RELATING TO OR ARISING OUT OF THE SERVICES OR SUPPLY OF GOODS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. These limitations are separate, essential terms of this general terms and conditions (and agreement) and effective upon the failure of any remedy, exclusive or not.
- 10.2. The goods of the customer or of third parties which are present on our premises are not insured against any risk whatsoever. We cannot be held liable in any case whatsoever for damage, destruction or loss of goods belonging to the customer or third parties. If goods of customer and/or third parties have become unusable as a result of processing performed by us, this shall be entirely at the risk of the customer.
- 10.3. We are not liable for defects arising out of materials provided by, or designs, drawings or other information stipulated or specified by the customer.

11. Warranty

- 11.1. We will perform the Services with the degree of care and skill ordinarily exercised by employees of our profession.
- 11.2. We warrant that the Goods delivered by us shall be in conformity with our quotation and that the Goods shall at the time of delivery and for the period of six (6) months thereafter be free from defects in material or workmanship which appear therein under proper use, and arise solely from faulty materials or our workmanship, and shall conform to their Specifications or such other Specifications as we have agreed to in writing, it being understood that this warranty does not cover damage
- sustained by normal wear and tear or
 - arising in consequence of negligence or improper handling or use of the Goods or parts thereof by customer or customer's agents, or
 - arising in consequence of maintenance by unauthorized persons or dealers, or arising in consequence of improper storage in the event of the Goods wholly or partly being stored by the customer previous to installation, use or resale to ultimate buyers; or
 - arising in consequence of environmental or stress testing or unilateral adjustments to the Specifications by customer or instructions by customer to its end-users on the use of the Goods or products incorporating the Goods.
- 11.3. Our liability under this warranty shall be to supply to customer free of charge, replacements of such parts as have proved to have such defects as set out here above or, at our option, repair such parts or have them repaired at our order, provided that we are informed by customer in writing within five (5) days after the defects have revealed themselves and the defective Goods have been placed at our disposal; the defective parts shall become our property as soon as they have been replaced.
- 11.4. If the customer places raw materials or goods at our disposal for processing, warranty will only be given for the soundness of execution of the Services concerned. If it is demonstrated by the customer with due observance of what is stated below in this article, that we have not performed the required work in conformity with the quality requirements agreed, we shall process the raw materials or goods once more without charging for the costs. We shall in no circumstance be bound by any further obligation, such as liability for damages, or dissolution of the order or agreement. The goods thereof must not have undergone any other processing, mounting or building in the meantime.
- 11.5. TO THE FULLEST EXTENT PERMITTED BY LAW, WE EXPRESSLY DISCLAIM ALL CONDITIONS, REPRESENTATIONS OR WARRANTIES EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. NOR SHALL WE BE LIABLE FOR LOSS OF PROFITS TO CUSTOMER OR TO ANY THIRD PARTY ARISING FROM THE SERVICES OR SUPPLY OF GOODS. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY PENTA OPTICS BV, ITS AFFILIATES, DISTRIBUTORS, DEALERS, AGENTS OR ITS OR THEIR EMPLOYEES SHALL CREATE ANY WARRANTY. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THESE GENERAL TERMS AND CONDITIONS (AND AGREEMENT).

12. Confidential Information

- 12.1. Neither customer nor we shall use, employ or disclose Confidential Information (as defined hereinafter) received from the other whether orally, in writing, by demonstration or otherwise, except as is necessary to implement the quotation, order or agreement – it being understood that the Confidential Information may be communicated in confidence within the receiving party's organization (and its affiliated companies' organizations) or to sub-contractors or to other persons called in by the receiving party for the execution of the quotations, orders and agreements for performance of Services or supply of Goods, but only on a need-to-know-basis – unless and to the extent the receiving party can prove by written record that:
- it already had knowledge of such information prior to disclosure; or
 - the information was already or becomes publicly known through no fault of the receiving party; or
 - information identical to the disclosed information was already in its possession or is subsequently lawfully obtained without restrictions to the use from a third party who is free to disclose the same or is subsequently independently developed by the receiving party without the use of the disclosed information.
- 12.2. Without limiting the generality of the foregoing, "Confidential Information" includes any and all information relating to the disclosing party's products, services, research, development, trade secrets, drawings, marketing and business plans, strategies, customers, management, personnel and contents and substance of all our quotations, orders and agreements for performance of Services or supply of Goods. In the event the receiving party receives a subpoena or court order to disclose any Confidential Information, the receiving party shall deliver prompt written notice to the disclosing party and shall cooperate with the disclosing party's attempts to obtain a protective order or other similar protection for the Confidential Information. The provisions of this section shall retroactively be in full force and effect from the date first contacts were established with respect to the subject matter of the quotation, order or agreement and shall remain in full force and effect during the duration of the quotation, order or agreement and three (3) years thereafter.
- 12.3. The customer shall be liable towards us for any damages resulting from the fact that third parties have access to Confidential Information. The Confidential Information shall be returned to us immediately at our first request.

13. Termination

- 13.1. The agreement will remain in force until the completion of the Services and/or the supply of (parts of) Goods or for a term as specified in the agreement. If the agreement has been entered into for an indefinite period, we may terminate the agreement by giving three (3) months written notice to customer, unless agreed otherwise in writing. In the event of such termination, we will not owe any compensation.
- 13.2. Any party may terminate the agreement without any liability, after having sent a written notice of default that is adequate and as detailed as possible, and that sets the reasonable time period by which the default must be remedied, if the other party blamefully fails to comply with the material obligations under the agreement.
- 13.3. Any party may give the other party written notification of the immediate termination of the agreement without liability, wholly or in part, without the requirement for notice of default or intervention of the Court, in the event of the following: if the other party has been granted suspension of payments, whether provisionally or not; if a petition for bankruptcy has been filed with respect to the other party and the petition has not been revoked within seven (7) days; if the other party files for bankruptcy itself; or if the other party's enterprise is dissolved or terminated, except for the purpose of a merger with or absorption by another company.

14. Effects of termination

- 14.1. If at the time of the termination customer has already received the benefit of the performance of the agreement, customer will not be entitled to the right to undo the performance and to not comply with the relevant payment obligations, except where we may be in default with respect to the performance. Amounts invoiced by us for the Services and/or the Goods delivered or carried out, and any other costs incurred by us under the agreement before the termination, and any other obligations entered into by us for the performance of the agreement, will remain due and in full effect, subject to the stipulations described in the previous sentence and will become immediately payable on termination.
- 14.2. Immediately following the termination of the agreement, each party will return all media containing Confidential Information and remove copies thereof including from its own media.
- 14.3. We are entitled to offset amounts due by customer to us or affiliated companies of Penta Optics BV with amounts due by us or affiliated companies of Penta Optics BV to customer or its affiliated companies.

15. Force majeure

- 15.1. Neither party will be bound to comply with any obligation if the party is prevented from doing so through force majeure. Force majeure will be deemed to include the failure to perform by our suppliers.
- 15.2. The expression "force majeure" shall for the purpose of the agreement mean and include circumstances or occurrences beyond one party's reasonable control – whether or not foreseeable at the time of the quotation, order (confirmation) or agreement – in consequence of which one party cannot reasonably be required to execute its obligations under the quotation, order (confirmation) or agreement.
- 15.3. In the event of the occurrence of force majeure, we shall be entitled to suspend provision of the Services and/or supply of Goods for the duration of the prevention or delay caused by such force majeure, without being held responsible for any damage resulting therefrom to the customer or a third party.
- 15.4. If the force majeure has lasted for more than sixty (60) days, the parties will be entitled to terminate the agreement by written notification, without prejudice to our right to compensation for what has already been performed under the agreement.
- 15.5. If customer desires early termination of the agreement because of force majeure, we may agree to such early termination. Amounts invoiced by us for Services delivered or carried out, and any other costs incurred by us under the agreement before the termination, and any other obligations entered into by us for the performance of the agreement, will remain due and in full effect and will become immediately payable on termination.

16. Assignment

Customer acknowledges and agrees that we may delegate and/or formally assign all or part of our rights and obligations pursuant to our quotations, order confirmations and agreements to any third party to which we have outsourced the performance of our activities.

17. Export control

- 17.1. The validity of our quotation, order confirmation or agreement may be subject to the granting of a governmental export license. In the event that such a license or end-user statement is required, the customer shall provide us with such document on first written request.
- 17.2. In case the performance of Services and/or supply of Goods will be restricted or forbidden due to (changed) export control laws, rights and obligations of the customer will be suspended for the estimated duration of this (changed) export control law, or even the agreement may be terminated.

18. Applicable law and disputes

- 18.1. The law of The Netherlands governs these general terms and conditions and the quotations, order confirmations and agreements to which they apply.
- 18.2. Any disputes arising between us and customer in connection with a quotation, an order confirmation, or in connection with an agreement resulting thereof, will be settled by the competent Courts in The Netherlands.
- 18.3. The United Nations Convention on Contracts for the International Sale of Goods does not apply.