

# **General Terms and Conditions**

## **SMART Photonics B.V.**

Version 2024.01 15 July 2024

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These are the General Terms and Conditions of SMART Photonics B.V., a Dutch limited liability company having its principal address at High Tech Campus 29, 5656 AE Eindhoven, the Netherlands, registered at the Chamber of Commerce 54843219, hereinafter to be referred to as "SMART".

**1. GENERAL**

- 1.1 These General Terms and Conditions apply to and form an integral part of all Quotations to Customer, all Purchase Orders of Customer to SMART, all Order Confirmations by SMART, Accepted Purchase Orders and any Agreement, all as relating to the performance of Services or delivery of Products by SMART to Customer.
- 1.2 Any terms and conditions stated orally by Customer or set forth in any document issued by Customer either before or after issuance of any document by SMART setting forth or referring to these General Terms and Conditions are hereby explicitly rejected and disregarded by SMART, and any such terms and conditions shall be wholly inapplicable and shall not be binding in any way on SMART, unless and to the extent expressly agreed to in writing by SMART.

**2. DEFINITIONS**

<i>Accepted Purchase Order</i>	means a Purchase Order that is accepted by SMART in writing by an Order Confirmation.
<i>Affiliate</i>	mean an entity, which is directly or indirectly: (i) owned or controlled by a party, (ii) owning or controlling such party, or (iii) owned or controlled by the entity owning or controlling such party, but any such entity shall only be deemed an Affiliate for the period such ownership or control exists. For the purposes of this definition, an entity shall be deemed to own or to control another entity if more than 50% (fifty per cent) of the voting stock of the latter entity, ordinarily entitled to vote in the election of directors (or, if there is no such stock, more than 50% (fifty per cent) of the ownership of or control in the latter entity) is held by and consolidated in the annual accounts of the owning or controlling entity.
<i>Agreement</i>	means any agreement resulting from a Quotation, Purchase Order and/or Order Confirmation incorporating these General Terms and Conditions.
<i>Background</i>	means any knowhow, information, processes, methods, techniques, designs, process steps, tools, structures, applications, software, specifications and requirements which are owned or controlled by a Party or any of its Affiliates prior to such Party entering into the Agreement, as well as any and all Intellectual Property Rights relating to the foregoing, in respect of which ownership or control is acquired by such party or any of its Affiliates (a) before such party entering into the Agreement or (b) during the term of the Agreement solely as a result of activities conducted outside the framework or performance of the Agreement.
<i>Confidential Information</i>	means any information that is not generally known and is disclosed by either Customer or SMART pursuant to the Agreement, whether in oral, written, or other tangible or intangible form, that is identified as proprietary or confidential or is reasonably of the type of information generally treated as confidential by virtue of its content and/or nature. Confidential Information includes information that is owned by the disclosing party's parent, subsidiaries, and Affiliates or disclosed to the disclosing party by third parties. Notwithstanding the above,

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Confidential Information shall not include information which the receiving Party can demonstrate by contemporaneous written records:

- (a) has become publicly known and made generally available other than through any act or omission of the receiving Party;
- (b) was already or becomes known by the receiving Party without restriction as to use or disclosure;
- (c) was obtained without restriction by the receiving Party from a third party who had a legal right to make the disclosure;
- (d) was developed solely by employees of the receiving Party independently of the disclosing Party's Confidential Information; or
- (e) is disclosed pursuant to the order or requirement of a court, administrative agency, or other governmental body; provided, however, that the receiving Party shall provide prompt notice thereof to the disclosing Party to enable the disclosing Party to seek a protective order or otherwise prevent or restrict such disclosure and, if the disclosing Party requests, the receiving Party will cooperate in all reasonable respects to contest the disclosure, or obtain a protective order or other remedy.

<i>Customer</i>	means the natural person or legal entity that has entered into the Agreement with SMART.
<i>Customer Design</i>	means the (a) schematic design of an integrated circuit, including integrated photonics circuits, owned, controlled, licensed, developed or acquired by Customer and any integrated circuit, including integrated photonics circuits, design based on the specifications owned, controlled, licensed, developed or acquired by Customer and (b) the designs, information, technology, and materials, contained in the GDS files provided by Customer, but excluding the components from SMART's PDK that Customer includes in the GDS files.
<i>Customer Supplies</i>	means any and all documents, information, data, materials or tools provided by Customer.
<i>Delivery Date</i>	shall mean the date communicated and acknowledged by SMART for the delivery of the Services or the Products.
<i>Development Support Services</i>	means the development services that may be provided by SMART within the scope of the Agreement, but only if ordered by Customer.
<i>Effective Date</i>	means the date the Agreement between Parties is made and entered into.
<i>Foreground</i>	means any knowhow, information, processes, methods, techniques, designs, process steps, tools, structures, applications, software, specifications and requirements, as well as any and all Intellectual Property Rights that are conceived or reduced to practice by or on behalf of a Party, acting solely or jointly with the other Party, during the course of the Agreement and in connection with the Products.
<i>Intellectual Property Rights</i>	means any and all rights, title and interest in and to any patents, patent rights, copyrights, mask work rights, moral rights, rights of publicity, goodwill, trade secret rights and other intellectual property rights (whether patentable or not in any country), as may now exist or hereafter come into existence, and all applications therefor and registrations, renewals and extensions thereof, under the laws of any state, province, country, territory or other jurisdiction.

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<i>Losses</i>	means any and all fines, losses, damages, costs and expenses, including but not limited to attorney fees.
<i>Mask</i>	means a mask or mask set which is needed to implement the Customer Design in the Product.
<i>Open Source Software</i>	shall mean any software that is licensed under Open Software License Terms.
<i>Party or Parties</i>	means Customer and SMART collectively and or individually.
<i>Process Freeze</i>	means the phase in which SMART and Customer have concluded that the Prototype is ready for production.
<i>Products</i>	means those certain indium phosphide wafer dies manufactured by SMART using the SMART Process, whether or not based upon the Customer Design, pursuant to the Agreement. Products may also include Prototypes.
<i>Prototypes</i>	means those certain indium phosphide wafers manufactured by SMART pursuant to an Accepted Purchase Order containing a preliminary test version of the Customer Design, or any other design, aimed at producing functional samples and Qualification of this design, which may result in changes to the SMART Process prior to Qualification.
<i>Purchase Order(s)</i>	means written documents that at least specify (i) Product description; (ii) requested delivery dates; (iii) applicable price; (iv) quantity; (v) location to which the Product is to be shipped; (vi) Quotation reference number; and (vii) Qualification details.
<i>Order Confirmation</i>	means SMART's written acceptance of Customer's Purchase Order. This acceptance may always be withheld by SMART without any consequences.
<i>Quotation</i>	means a written document that specifies the offer made by SMART to Customer for the performance of Services and/or any delivery of Prototypes and/or Products under the Agreement. Acceptance by Customer of a Quotation shall be evidenced by Customer's sending of a Purchase Order, referencing the Quotation reference number. Any Purchase Order will only be binding after SMART's written Order Confirmation.
<i>Services</i>	shall mean any services to be provided by SMART to Customer as described in the Quotation to Customer.
<i>SMART Indemnified Parties</i>	means SMART and its Affiliates, their trustees, shareholders, officers, directors, agents and employees.
<i>SMART Process</i>	means the proprietary semiconductor manufacturing processes for manufacturing the Products owned controlled, licensed, developed or acquired by SMART, including any proprietary SMART PDK technology, e.g., the SMART Photonic IC design manual, through which SMART's customers can input and implement product design for manufacture.
<i>Work Products</i>	means hardware, software, tools, documents, manuals, materials, photographic slides, artwork, Masks, graphics, manufacturing or measurement methods and other products owned by SMART and/or created or developed by SMART in manufacturing the Products and/or the course of performing the Services, but excluding Products, and

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any derivatives, modifications, improvements or enhancements thereof.

**3. CONCLUSION OF AGREEMENTS**

- 3.1 SMART's Quotations shall always be considered as a revocable invitation to make an offer in a Purchase Order.
- 3.2 Customer shall reference SMART's Quotation in its Purchase Order. SMART may accept a Purchase Order through an Order Confirmation or reject a Purchase Order.
- 3.3 If SMART rejects a Purchase Order that deviates from the conditions laid down in the Quotation, SMART may either invite the Customer to issue a new Purchase Order on the basis of the conditions laid down in the Quotation or engage in negotiations about a mutually acceptable Agreement. If it so chooses, SMART may issue a new Quotation, to which Articles 3.1, 3.2 and 3.3 shall apply.
- 3.4 An Agreement between SMART and the Customer is only concluded once SMART has accepted a Purchase Order from the Customer in an Order Confirmation.
- 3.5 Notwithstanding the above, if SMART with the consent of the Customer commences execution of a written or oral Purchase Order based on a Quotation, the contents of the Quotation shall be deemed to constitute an Agreement and these General Terms and Conditions shall apply.
- 3.6 Based on mutual consultation, the Parties may amend the content of a concluded Agreement. An amendment of an Agreement shall only be binding for SMART once it has agreed to the amendment in writing.

**4. PRICES AND PAYMENT**

- 4.1 **PRICE.** The agreed price for the Products shall be as set forth in the applicable Accepted Purchase Order. All tariffs and prices are in Euros, are net prices and are based on delivery "FCA" (Incoterms 2020), unless explicitly agreed upon otherwise in writing.
- 4.2 **PAYMENT TERMS.** Payment terms are net fourteen (14) days from Customer's receipt of invoice. All invoices and payments shall be made in Euros. Payment shall be considered to have been made on the day the payable sum is received by SMART. In case of late payment, Customer will automatically, with SMART notification being required, be in default, and interest will accrue on the outstanding balance payable on a monthly basis from the day after the payment term lapses until payment in full at the rate of one percent (1%) per month or part of a month.
- 4.3 **DUTIES & TAXES.** Except where explicitly stated, all prices are exclusive of all taxes and duties, including, but not limited to, federal, state and local excise, sales, use, value-added and/or other similar taxes, and Customer shall be responsible for remitting such taxes with the purchase price.
- 4.4 **SUSPENSION OF OBLIGATIONS.** If Customer has failed or if SMART reasonably assumes that will fail, or if Customer enters in a position in which it is likely to fail to comply with its payment obligations, SMART will be entitled to suspend its obligations under the Agreement and to set further requirements as security for the amount that is due and/or future payment obligations.

**5. OBLIGATIONS OF CUSTOMER**

- 5.1 **ASSISTANCE OF CUSTOMER.** The Agreement is based on information provided by Customer. Customer shall (a) make available to SMART all Customer Supplies reasonably necessary for SMART to produce the Products as agreed upon under the Agreement, free of charge, in a

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timely fashion and sufficient quality, (b) make available such competent employees of its organization as are necessary to assist SMART in fulfilling its obligations under the Agreement.

- 5.2 **CUSTOMER SUPPLIES.** Customer Supplies shall comply with all legal requirements relating to safety and hazardous materials and shall comply with any instructions or house rules provided by SMART.
- 6. INTELLECTUAL PROPERTY AND LICENSES**
- 6.1 **BACKGROUND.** Each Party will retain ownership of all Intellectual Property Rights to its Background.
- 6.2 **OWNERSHIP OF FOREGROUND.** SMART owns or shall be entitled to all Foreground created or developed by SMART or jointly created or developed by SMART with Customer. Foreground that is related to (a) the SMART Process, or (b) any modifications to the SMART Process ("SMART Foreground IP" and together with SMART's Background, "SMART IP") shall always vest in SMART exclusively. To the extent Customer obtains any right, title or interest in or to (any part of) SMART IP, Customer hereby assigns - in so far as necessary in advance - and will assign all of Customer's right and interest to such SMART IP to SMART. Customer will ensure that any and all employees and third parties performing services or providing technology for the Products with access to SMART IP enter into binding written agreements with Customer sufficient to ensure that SMART so owns such SMART IP.
- 6.3 **CUSTOMIZED COMPONENTS AND DEVELOPMENT SUPPORT SERVICES.** In case of Development Support Services, the Parties may negotiate another allocation of the ownership of the Foreground on Customer-specific results from Development Support Services, always with the exception of SMART IP, which in all circumstances will be owned by SMART as described under Section 6.2. If the Parties agree that Customer will own certain Foreground on such Customer-specific results with the exception of SMART IP, Customer hereby in advance grants or shall grant to SMART, and SMART accepts or shall accept, a non-exclusive, transferable, irrevocable, worldwide, perpetual, royalty-free, fully paid-up, sublicensable license to the Intellectual Property Rights to such Customer-specific results for all industries.
- 6.4 **OWNERSHIP OF OTHER IP.** Any ownership rights that fall outside the scope of article 6.3 (such as SMART's Confidential Information, and any derivatives, modifications, improvements or enhancements thereof) shall remain or become the exclusive ownership of SMART.
- 6.5 **FEEDBACK.** Notwithstanding anything to the contrary herein, each Party may freely use and incorporate into such Party's products and services any general suggestions, enhancement requests, recommendations, corrections, or other feedback provided by the other Party relating to the Party's Intellectual Property Rights ("Feedback"); provided that in no event shall such Feedback include a Party's Intellectual Property Rights or Confidential Information.
- 6.6 **MANUFACTURE.** During the Term and subject to the terms and conditions of the Agreement and only for the purposes of the Agreement, Customer grants SMART a nonexclusive, non-transferable, revocable (in the event of breach or termination of the Agreement), royalty-free and fully paid-up license, without right to sublicense or to have made, to use Customer Background as necessary to implement the Customer Design and manufacture the Product for Customer pursuant to the terms and conditions of the Agreement.
- 6.7 **USE.** SMART hereby grants Customer a non-exclusive, transferable, irrevocable, worldwide, perpetual, royalty-free, fully paid-up, sublicensable license to all of SMART IP to use the SMART's PDK, including the SMART Photonic IC design manual, to create the layout design for the Product that implements the Customer Design. The licenses set forth in this subsection shall not permit Customer to (allow third parties) use SMART IP (1) to create additional quantities of the Products or (2) to reproduce, copy or reverse engineer or (3) distribute, rent, communicate to the public, assign, transfer, lease or sublicense other than as agreed upon in the Agreement any part of such SMART IP without SMART's prior written consent.

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- 6.8 **LICENSES FOR PRODUCTS.** (a) Subject to (b), SMART hereby grants and/or shall cause its Affiliates to grant Customer a perpetual, non-exclusive, non-transferable, royalty-free and fully paid-up, worldwide license under SMART's and its Affiliates' Foreground and Background to use, lease, sell, and otherwise dispose of the Products; and (b) for any software that is part of a Product, SMART hereby grants and shall cause its Affiliates to grant Customer a perpetual, non-exclusive, non-transferable, royalty-free and fully paid-up, world-wide license, without the right to grant sub-licenses, under SMART's and its Affiliates' Foreground and Background in as far as technically indispensable to use such software in Customer's business, provided however that the software is used only by Customer's employees, and Customer may not reproduce, distribute, rent, communicate to the public, assign, transfer, lease or sublicense any of such software to any other person or entity without SMART's prior written consent, subject to subsections 6.8 (b) up to and including 6.15.
- 6.9 **THIRD-PARTY LICENSES.** SMART hereby grants, insofar and as long as it possesses such rights, to Customer a non-exclusive, transferable, irrevocable, worldwide, perpetual, royalty-free, fully paid-up, sublicensable license to all such licensed third-party rights needed to utilize the Products.
- 6.10 The licenses set forth in this section 6 shall not permit Customer to use SMART IP (1) to create additional quantities of the Products or (2) to reproduce, copy or reverse engineer or (3) distribute, rent, communicate to the public, assign, transfer, lease or sublicense other than as agreed upon in the Agreement any part of such SMART IP without SMART's prior written consent.
- 6.11 All Customer's rights as laid down in subsections 6.7 to 6.10 are subject to Customer's fulfilment of all of its payment obligations in relation to the Services and Products.
- 6.12 **SOFTWARE.** Customer shall in no event, except as expressly stated in the above mentioned licenses or the Agreement and only limited to the extent permitted by mandatory law applicable to the Agreement: (a) modify, adapt, alter, translate, or create derivative works from, any software provided by SMART under the Agreement; (b) assign, sublicense, lease, rent, loan, transfer, disclose, or otherwise make available such software; (c) merge or incorporate such software with or into any other software; or (d) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code for such software without written authorization from SMART. Customer shall reproduce, without any amendments or changes thereto, any proprietary rights legends of SMART or its Affiliates or its third-party suppliers in any software or documentation provided by SMART under the Agreement.
- 6.13 Any software provided under the Agreement and any compilation or derivative thereof is the proprietary information of SMART or its Affiliates and is confidential in nature. The software provided under the Agreement is not sold and no ownership or assignment of any Intellectual Property Rights is intended nor shall be implied. No rights or licenses with respect to any software source code are granted by SMART or its Affiliates to Customer.
- 6.14 **OPEN SOURCE.** Customer warrants that it shall not perform any actions with regard to any software licensed under the Agreement in a manner that would require the licensed software or any derivative work thereof to be licensed under Open License Terms. These actions include but are not limited to (a) combining the licensed software or a derivative work thereof with Open Source Software, by means of incorporation or linking or otherwise or (b) using Open Source Software to create a derivative work of the licensed software.
- 6.15 **EXCEPTIONS.** No license, immunity or other right is granted to Customer, either directly or by implication, estoppel, operation of law or otherwise, under any of SMART's or its Affiliates Intellectual Property Rights that (i) would require payment of royalty or other consideration by SMART or its Affiliates to a third party, (ii) is necessarily infringed by implementing a standard adopted by a standard setting body or agreed between two or more companies, or (iii) is licensed as part of an industry wide licensing program.

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**7. WORK PRODUCTS**

- 7.1 Ownership title and any and all IPRs to Work Products shall belong to SMART.
- 7.2 In so far as necessary for the authorized use of the Products, SMART hereby grants or shall cause its Affiliates to grant Customer a perpetual, non-exclusive, non-transferable, royalty-free and fully paid-up, worldwide license under SMART's and/or its Affiliates' Foreground and Background to use the Work Products, and improvements thereto, in Customer's business, provided however that the Work Products are used only by Customer's employees, and Customer may not reproduce, distribute, rent, communicate to the public, assign, transfer, lease or sublicense any of such Work Products to any other person or entity without SMART's prior written consent. In so far as necessary for the authorized use of the Work Products and improvements thereto, Customer hereby grants and shall cause its Affiliates to grant SMART and its Affiliates a perpetual, non-exclusive, non-transferable, royalty-free and fully paid-up, worldwide license under Customer's Foreground to use the Work Products and improvements thereto.
- 7.3 SMART is entitled to delete or destroy certain Work Products owned by SMART at its discretion.
- 7.4 SMART shall keep Masks for Customer for a period of at least five years after the creation date of the Mask concerned or until the Agreement has ended or expired. If SMART wishes to destroy the Masks destined for Customer's Products, it shall notify Customer in advance.

**8. DELIVERY, ACCEPTANCE AND DEVELOPMENT SUPPORT SERVICES**

- 8.1 **AGREEMENT TO MANUFACTURE.** SMART shall manufacture, test and deliver Products pursuant to Accepted Purchase Orders.
- 8.2 **FOUNDRY LOCATION.** SMART owns a wafer manufacturing facility located in Eindhoven, the Netherlands, which will manufacture the Products, unless indicated differently. Back-end processing (namely cleaving and coating) is performed by qualified partners of SMART which are covered by the conditions of an agreement. Under no circumstances shall SMART be under the obligation to share specific information or names of these partners with Customer.
- 8.3 **QUALIFICATION.** Products to be manufactured and the manufacturing processes to be used under the Agreement may be subject to qualification by Customer pursuant to reasonable qualification criteria and procedures in accordance with specifically agreed upon provisions included in the Accepted Purchase Order. If the acceptance criteria are not met, the Parties will discuss in good faith about a corrective action plan how to remedy the noncompliance.
- 8.4 **QUALITY.** Products to be manufactured and the manufacturing processes to be used shall be completed in accordance with SMART's quality standards and procedures, which shall be consistent with industry best practices and any quality standards and procedures agreed to by the Parties, including on an Accepted Purchase Order.
- 8.5 **DELIVERY.** SMART shall supply the Products and Development Support Services on the delivery dates set forth in an Accepted Purchase Order. All delivery terms are FCA (Incoterms 2020) or to such locations as otherwise agreed in writing between the Parties for a specific Accepted Purchase Order. SMART shall use commercially reasonable efforts and apply the degree of care and skills usually exercised by employees of the same profession in similar circumstances to meet agreed upon delivery dates set forth in the Agreement on the condition that Customer meets all its obligations under the Agreement and provides all reasonably necessary order and delivery information in a timely manner prior to the agreed delivery date.
- 8.6 Title to the Products shall be transferred to the Customer upon full payment of all amounts due for such Products.
- 8.7 In the event Parties do not come to a remedy regarding the rejected Products, Customer shall return the rejected Products without delay.
- 8.8 **RETURNS.** Any and all returns shall be on the basis of DDP (Incoterms 2020) to SMART's Foundry Location, the Netherlands.



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- 8.9 **FORECASTS.** Parties may agree on binding or non-binding forecasts regarding future production. If such forecast applies it will be added to the Agreement as an Exhibit.
- 8.10 **CANCELLATION AND RESCHEDULING.** Should SMART anticipate at any time its impossibility to meet the agreed delivery date, SMART shall notify Customer by written notice. Such written notice shall contain the current state of the Accepted Purchase Order, the reasons for the foreseeable delay and the revised delivery date, to be agreed with Customer, with a minimum of thirty (30) days and a maximum of 50% of the originally agreed lead time, within which SMART shall use its best efforts to meet the delivery date for the Accepted Purchase Order ("Revised Delivery Date"). If the Revised Delivery Date is not met, Customer may terminate the part of the Accepted Purchase Order not performed on the Revised Delivery Date and receive a (partial) refund of any amounts already paid for (that part of) the Accepted Purchase Order affected. With respect to the breach of its delivery obligations, the foregoing states Customer's sole and exclusive remedy and, provided SMART complies with this clause, (a) SMART shall not be bound by any further obligation nor be liable for any damage for a breach of its delivery obligations, and (b) in case any or all of Customer's obligations under the Agreement relating to the specific Accepted Purchase Order are not, not properly or not timely complied with, the delivery date set forth in the Agreement shall be automatically extended for such additional time as shall be necessary to deliver in accordance with the Accepted Purchase Order, and any and all additional costs resulting thereof shall be for Customer's account.
- 8.11 **INSPECTION & ACCEPTANCE.** At its production facility SMART shall test the Products on compliance with the agreed Acceptance Criteria and issue a Wafer Verification Document to Customer. The Products delivered by SMART will be inspected and tested by Customer in accordance with the SMART Acceptance Procedure or specific agreed qualification procedure, and any additional procedures agreed to by the Parties within the agreed period after delivery (the "Acceptance Period"). In any case will all Products considered to be accepted by Customer within one months after delivery, unless other agreements have been made..
- 8.12 **REJECTION.** If Products are found to be defective according to the agreed Acceptance Criteria, Customer will provide SMART with written notice of rejection explaining the basis for rejection within the Acceptance Period. In case of such notice Parties will use best efforts to resolve the reason(s) for rejection to come to a remedy which is acceptable for both Parties. If no written notice is received by SMART within the Acceptance Period, such delivery shall be deemed accepted.
- 8.13 In case of rejection SMART shall verify the reason for rejection and if SMART accepts the rejection and the reason for rejection, rejected Products may be returned to SMART and shall be repaired, replaced and/or credited in mutual consultation within a reasonable period. Delivery shall take place under condition DAP (Incoterms 2020) to such location identified by Customer. The obligations of SMART described above are SMART's only obligations and Customer's sole and exclusive remedy for non-conformities of the Products to the Acceptance Criteria.
- 8.14 **DEVELOPMENT SUPPORT SERVICES.** Customer may request for Development Support Services under the Agreement. In such event, SMART shall provide Customer with a Quotation for such Development Support Services, including a description of services, timing and cost. Customer shall endeavour where possible to include any required Development Support Services early on during the scoping process in order to enable SMART to include these resources as part of the statement of work. SMART shall endeavour to include any necessary Development Support Services that are required for the manufacturing of Prototypes in their initial Quotation for such Prototypes, for instance in case the Customer Design warrants changes in the SMART Process.
- 8.15 Neither Party shall have any obligation with respect to any such Development Support Services unless an Accepted Purchase Order is in place relating to a mutually agreed scope, timing and cost.
- 8.16 **CHANGE CONTROL.** After Process Freeze, any intended or desired change to or impact on the Product Specifications and/or costs shall be governed by the SMART Change Control Procedure, being a change initiated by SMART for improving its production processes, quality,

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yield, etc. or by Customer for changing or improving Product Specifications. For each such change proposal, the Parties will conduct a risk assessment and decide on appropriate levels of testing required before introduction of the change, if any. Once the Parties approve of a change proposal, if applicable, new Product Specifications will be drawn up, leading to a new Process Freeze. Where applicable, preliminary results of characterization and reliability testing shall be performed by SMART and/or Customer to demonstrate the acceptability of the change.

**9. LIMITED WARRANTIES, INDEMNIFICATION AND REPRESENTATIONS**

9.1 **MANUFACTURING; PRODUCT WARRANTIES.** Parties may agree on specific product warranties in a separate Exhibit.

9.2 **DISCLAIMER.** EXCEPT AS EXPRESSLY SET FORTH IN THE AGREEMENT, AND TO THE FULLEST EXTENT PERMITTED BY LAW, NOTHING IN THE AGREEMENT SHALL BE CONSTRUED AS AND SMART EXPRESSLY DISCLAIMS ALL CONDITIONS, OBLIGATIONS, REPRESENTATIONS OR WARRANTIES, WHETHER STATUTORY OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, (A) ANY WARRANTY RELATED TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, COURSE OF DEALING, USE OF TRADE, ABSENCE OF ERRORS OR BUGS, UNINTERRUPTED OPERATION, ACCURACY OR COMPLETENESS OF RESULTS ARISING FROM THE PERFORMANCE OR USE OF THE SERVICES AND/OR SUPPLY OR USE OF THE PRODUCTS OR ANYTHING ELSE PROVIDED BY SMART UNDER THE AGREEMENT, AND (B) ANY WARRANTY OR REPRESENTATION AS TO THE VALIDITY OR SCOPE OF ANY APPLICABLE INTELLECTUAL PROPERTY RIGHT, AND (C) ANY WARRANTY OR REPRESENTATION THAT ANYTHING MADE, USED, SOLD, OR OTHERWISE DISPOSED OF UNDER ANY LICENSE GRANTED IN THE AGREEMENT OR ANYTHING PROVIDED BY SMART UNDER THE AGREEMENT IS OR WILL BE FREE FROM INFRINGEMENT OF ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHT, AND (D) ANY OBLIGATION TO BRING OR PROSECUTE ACTIONS OR SUITS AGAINST THIRD PARTIES FOR INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. SMART DOES NOT WARRANT THAT THE MEDIA USED ON THE DESIGNATED HARDWARE WILL BE COMPATIBLE WITH OR PERFORM ON ANY OTHER HARDWARE COMPONENT. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY SMART, ITS AFFILIATES, DISTRIBUTORS, DEALERS, AGENTS OR ITS OR THEIR EMPLOYEES, SHALL CREATE ANY WARRANTY.

SUBJECT TO THE EXCLUSIONS AND LIMITATIONS SET FORTH IN THIS AGREEMENT, THE FOREGOING STATES SMART'S ENTIRE LIABILITY AND OBLIGATION TO CUSTOMER AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO THE BREACH OF ANY WARRANTY.

9.3 SMART Indemnified Parties shall not be liable for any Losses and Customer shall defend, indemnify and hold SMART Indemnified Parties harmless against any and all third party claims against SMART Indemnified Parties and any Losses related to such third party claims, arising out of or relating to (i) the death of or injury to any person or any damage to property or any other damage directly or indirectly resulting from the Customer Supplies, (ii) any acts or omissions of Customer's or any of its Affiliates employees, officers, agents or representatives, (iii) Customer's breach of any of its warranties or obligations under the Agreement, (iv) the development, manufacture, delivery, sale, use or any other disposition of any Products or the performance, use or any other disposition of the Services or anything else provided under the Agreement, or (vi) the infringement of any third party intellectual property rights, except to the extent such Losses or third party claim arises from SMART Indemnified Parties' gross negligence or wilful misconduct.

9.4 Notwithstanding the limitations and other covenants laid down herein and only in so far as and to the extent directly and solely attributable to infringement by SMART, SMART shall, at its expense: (i) defend against a claim in a legal proceeding brought by a third party against Customer that any Product as delivered by SMART to Customer directly infringes the third party's Intellectual Property Rights; and (ii) hold Customer harmless against direct damages and

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costs awarded by final judgment in such proceeding (or agreed upon in a settlement to which SMART consents in writing). The above shall expressly not include the Customer Design, Customer Supplies or the results of Development Support Services.

- 9.5 Except as specifically provided otherwise in a Quotation or Agreement, Products are not designed, authorized or warranted to be suitable for use in medical, military, aircraft, space or life support equipment nor in application where failure or malfunction of a Product can reasonably be expected to result in a personal injury, death or severe property or environmental damage. Inclusion and/or use of the Product in such equipment or applications, without prior authorization in writing of SMART, is not permitted and for Customer's own risk. Customer agrees to fully indemnify SMART for any damage and/or Losses resulting from such inclusion or use.
- 9.6 In no event shall either party or any of its Affiliates be liable for indirect, incidental, special, punitive or consequential damages, which includes without limitation, loss of profits, savings, turnover, goodwill, reputation or data, whether or not such damages are based on tort, warranty, contract or any other legal theory and even if smart or any of its Affiliates was advised of the possibility of such damages.
- 9.7 No claim or recovery of any kind of loss or damage against SMART shall in the aggregate be greater in amount than the total price paid under the Agreement that gives rise to the claim or recovery with a maximum of five hundred thousand (500,000) euros.
- 9.8 Any claim for damages must be done within one ninety days (90) of the date of the event giving rise to any such claim, and any lawsuit relative to any such claim must be filed within one (1) year of the date of the claim. Any claims that have been brought or filed in conflict with the preceding sentence are null and void.
- 9.9 **FULL POWER AND AUTHORITY.** Each Party represents, warrants and covenants that it has full power and authority to execute the Agreement and to take all actions required by, and to perform the agreements contained in, the Agreement, and that each Party's obligations under the Agreement do not conflict with its obligations under any other agreement to which Customer or SMART is a party.
- 9.10 **COMPLIANCE WITH LAWS.** Customer represents, warrants and covenants that the Customer Design and Product requirements shall comply with all applicable laws and regulations. SMART represents, warrants and covenants that the SMART Process shall comply with all applicable laws and regulations in the jurisdiction of production by SMART.

**10. FORCE MAJEURE**

- 10.1 **FORCE MAJEURE.** If the performance of the Agreement or any obligations hereunder is prevented, restricted or interfered with by reason of war, civil war, insurrections, strikes, fires, floods, earthquakes, labour disputes, epidemics, pandemics, governmental regulations and/or similar acts, trade restrictions, bans, freight embargoes, non-availability of any permits, licenses and/or authorizations required, defaults or delays of suppliers or subcontractors and/or inability or impracticability to secure transportation, facilities, fuel, energy, labour, materials or components, or any other act or condition beyond the reasonable control (whether or not foreseeable during the time of the Quotation, placing of the Purchase Order or issuing the Order Confirmation) of the Parties hereto, the Party so affected upon giving prompt notice to the other Parties shall be excused from such performance during such prevention, restriction or interference.

**11. CONFIDENTIAL INFORMATION**

- 11.1 **CONFIDENTIALITY.** Both Parties will protect all Confidential Information using the same degree of care it uses to protect its own Confidential Information, but in no event less than a reasonable degree of care, to prevent any unauthorized use or disclosure of the Confidential Information for five (5) years from the expiration or termination date of the Agreement, unless the Confidential Information is a trade secret in which case the obligation for confidentiality is perpetual. Neither

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Party shall use or disclose such Confidential Information except as necessary to exercise its rights or perform its obligations under the Agreement. A Party may disclose Confidential Information only to its employees and contract employees who are instructed of the foregoing, who are required to have such information in order for that Party to carry out the transactions contemplated by the Agreement and who have signed agreements with confidentiality terms at least as restrictive as the obligations under this Section. Each Party is responsible for its employees' and contract employees' compliance with the confidentiality and non-disclosure terms of the Agreement. Both Customer and SMART shall notify the other Party of any such unauthorized use or disclosure, whether actual or suspected.

- 11.2 **EQUITABLE REMEDY.** Both Parties acknowledge that due to the unique nature of the Confidential Information, the other Party may not have an adequate remedy in money or damages in the event of any unauthorized use or disclosure of its Confidential Information. In addition to any other remedies that may be available in law, in equity or otherwise, the disclosing Party may be entitled to seek injunctive relief to prevent such unauthorized use or disclosure.
- 11.3 **RETURN.** Within one-hundred and eighty (180) days after termination or expiration of the Agreement and upon request of the disclosing Party, the receiving Party shall promptly return to the disclosing Party, or destroy, all tangible items and intangible items including electronic data files, e-mail messages, simulations, etc. containing or consisting of Confidential Information or certify in writing by an authorized officer of the receiving Party the destruction of all Confidential Information.
- 11.4 **CONFIDENTIALITY OF AGREEMENT.** Neither SMART nor Customer shall be entitled to disclose the existence of any Agreement (or publicize a relationship between the Parties) and agrees that the terms and conditions of the Agreement shall be treated as Confidential Information, unless otherwise agreed to by both Parties and/or required by applicable laws or regulations.

**12. TERM AND TERMINATION**

- 12.1 **TERM.** An Agreement shall become effective on the Effective Date and shall be valid until all agreed Products have been delivered and accepted, or continue for the period agreed upon between the Parties. If the Parties have agreed on a limited period, it shall be extended automatically for one (1) year increments unless terminated by giving six (6) months prior written notice. If the Agreement has been entered into for an indefinite period, the Agreement may be cancelled by giving six (6) months written notice, without compensation to the other Party.
- 12.2 **TERMINATION.** A Party may terminate the Agreement at any time if the other Party materially breaches any term hereof and fails to cure such breach within ninety (90) days after written notice of such breach, or if the other Party shall be or becomes insolvent, or if either Party makes an assignment for the benefit of creditors, or if there are instituted by or against either Party proceedings in bankruptcy or under any insolvency or similar law or for reorganization, receivership or dissolution, which proceedings if involuntary are not dismissed within sixty (60) days of filing thereof.
- 12.3 **SURVIVAL.** All provisions of the Agreement which by nature should survive the term of the Agreement shall survive, including but not limited to articles 6 (IPR), 9 (Warranties, Indemnification and Representations) and 12 (Termination and 13 (Effects of Termination). All other rights, licenses and obligations of the Parties shall cease upon termination or expiration of the Agreement, unless extended by written agreement of the Parties.

**13. EFFECTS OF TERMINATION**

- 13.1 **TERMINATION LIABILITY.** Termination does not affect any debt, claim, or cause of action accruing to any Party against the other before termination. The rights of termination provided in Section 12.2 above are not exclusive of other remedies that either Party may be entitled to under the Agreement or in law or equity. If at the time of the termination or expiration of the Agreement, Customer has received the benefit of any part of the performance of the Agreement, Customer

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shall pay (a) immediately upon such termination or expiration, the amounts invoiced by Smart for the services performed under the Agreement before the termination or expiration or (b) the pro rata amounts invoiced by Smart for partial performance, as the case may be.

**14. EXPORT AND IMPORT**

- 14.1 Customer represents that, with respect to its performance under the Agreement, it will comply with all applicable laws and regulations, including but not limited to those pertaining to EU Dual-Use Regulation (Regulation (EU) 2021/821) and U.S. Export Administration Regulation (EAR) or the export or import controls or restrictions of other applicable jurisdictions.
- 14.2 If the delivery of a Product or a Development Support Service under the Agreement is subject to the granting of an export or import license by a government and/or any governmental authority under any applicable law or regulation, or otherwise restricted or prohibited due to export or import control laws or regulations, SMART may suspend its obligations and Customer's rights regarding such delivery until such license is granted or for the duration of such restriction and/or prohibition, respectively, and SMART may even terminate the Agreement, without incurring any liability towards Customer. Furthermore, if an end-user statement is required, Customer shall provide SMART with such document upon SMART's first written request; if an import license is required, Customer shall inform SMART immediately thereof and Customer shall provide SMART with such document as soon as it is available. Customer warrants that it will not deal with the Product and/or Development Support Services in violation of any applicable export, import control or sanction laws and regulations.

**15. PUBLICITY**

- 15.1 Any reference to the trade name or trademarks of SMART in connection with any advertisement, publication or sales literature requires SMART's prior written permission. Copies of proposed press releases or advertisements or other communications about the Agreement or involving SMART shall be submitted to SMART for SMART's prior approval in writing. SMART is prohibited from publicly disclosing its relationship with Customer, the existence of the Agreement, or listing Customer as a customer of SMART without Customer's prior written consent.

**16. APPLICABLE LAW AND DISPUTES**

- 16.1 **GOVERNING LAW.** This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the Parties hereto shall be exclusively governed, construed and interpreted in accordance with the laws of the Netherlands. The UN Convention on Contracts for the International Sale of Goods shall not apply to any Quotation, Purchase Order, Order Confirmation, Accepted Purchase Order or Agreement.
- 16.2 **DISPUTES; VENUE.** Any dispute, controversy or claim arising under, out of or relating to the Agreement and any subsequent agreements or amendments to the Agreement, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, shall be submitted to mediation in accordance with the Mediation Rules of the International Chamber of Commerce (ICC) . The place of mediation shall be Amsterdam, the Netherlands. The language to be used in the mediation shall be English. If, and to the extent that, any such dispute, controversy or claim has not been settled pursuant to the mediation within sixty (60) days of the commencement of the mediation, it shall, upon the filing of a Request for Arbitration by either party, be referred to and finally determined by arbitration in accordance with the ICC Arbitration Rules. Alternatively, if, before the expiration of the said period of sixty (60) days, either party fails to participate or to continue to participate in the mediation, the dispute, controversy, or claim shall, upon the filing of a Request for Arbitration by the other party, be referred to and finally determined by arbitration in accordance with the ICC Arbitration Rules. The arbitral tribunal shall consist of three arbitrators. The place of arbitration shall be Amsterdam, the Netherlands. The language to be used in the

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arbitral proceedings shall be English. The dispute shall be decided in accordance with the substantive and procedural laws of the Netherlands.

- 16.3 Nothing contained herein shall prevent either Party from reverting to a competent court to seek injunctive relief if in such Party's opinion such injunctive relief is necessary to prevent irreparable, material harm.

**17. MISCELLANEOUS**

- 17.1 **CONFLICTING TERMS.** All Agreements between Parties shall be governed exclusively by the terms and conditions set forth in the Agreement concerned and these General Terms and Conditions. No additional or conflicting terms will apply and such terms are hereby explicitly rejected and disregarded, unless expressly agreed otherwise in writing. In case of contradiction between the terms of the Agreement and these General Terms and Conditions, the terms of the Agreement shall prevail.
- 17.2 **ASSIGNMENT.** Customer shall not assign any rights or obligations under the Agreement without the prior written consent of SMART. Customer acknowledges and agrees that SMART may delegate and/or formally assign all or part of its rights and obligations under the Agreement to any other SMART Affiliate or to any third party to which it has outsourced its activities in whole or in part.
- 17.3 **NOTICES.** Any notice required or permitted by the Agreement shall be in writing and shall be deemed sufficient upon receipt, when delivered personally or by courier, overnight delivery service or confirmed email, or forty-eight (48) hours after being deposited in the regular mail as certified or registered mail (airmail if sent internationally) with postage prepaid, if such notice is addressed to the Party to be notified at such Party's address or email number as set forth in the Agreement.
- 17.4 **SEVERABILITY.** If one or more provisions of the Agreement are held to be unenforceable under applicable law, the Parties agree to renegotiate such provision in good faith, in order to maintain the economic position enjoyed by each Party as close as possible to that under the provision rendered unenforceable. In the event that the Parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (i) such provision shall be excluded from the Agreement, (ii) the balance of the Agreement shall be interpreted as if such provision were so excluded and (iii) the balance of the Agreement shall be enforceable in accordance with its terms.
- 17.5 **INDEPENDENT CONTRACTORS.** The relationship of SMART and Customer established by the Agreement is that of independent contractors, and nothing contained in the Agreement will be construed (i) to give either Party the power to direct and control the day-to-day activities of the other, (ii) to constitute the Parties as partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking, or (iii) to allow either Party to create or assume any obligation on behalf of the other for any purpose whatsoever.
- 17.6 **RESERVATION OF RIGHTS.** SMART reserves all rights not expressly granted in the Agreement, and no licenses are granted under the Agreement, whether by implication, estoppel or otherwise, except as expressly set forth herein.
- 17.7 **AMENDMENTS.** SMART reserves the right to make any amendments or modifications to these General Terms and Conditions at any time. Such amendments and modifications shall apply to all Agreements referring to such amended or modified General Terms and Conditions as from the date of such amendment or modifications.