



# GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY

## 1 Definitions

1.1 PhotonFirst: PhotonFirst International B.V., PhotonFirst Technologies B.V., PhotonFirst Production & Packaging B.V. or one of the affiliates within the PhotonFirst group is the user of these General Terms and Conditions of Sale and Delivery. PhotonFirst is a leading global supplier of integrated photonic sensing equipment, including related software, services and accessories. PhotonFirst supplies Buyers with various Products and Services (as defined below) within the context of its business.

1.2 Agreement: the written agreement between PhotonFirst and Buyer regarding the delivery of the Products and/or Services by PhotonFirst.

1.3 Buyer: PhotonFirst's contracting party that purchases Products and/or Services from PhotonFirst.

1.4 Confidential Information: means any and all information, (including but not limited to technical, business and/or financial information, samples, specifications, photographs, presentations, drawings, data, know-how, prototypes or other documents), in whatever form or mode of communication, owned or controlled by PhotonFirst and which is disclosed in oral, written, graphic, machine recognizable (including software or databases), model or sample, or any derivation thereof by PhotonFirst to Buyer or obtained by Buyer in connection with the Agreement. Such information shall be Confidential Information if it would ordinarily be treated as confidential by PhotonFirst or would ordinarily be considered information of a confidential nature in the industry, whether or not specifically marked as such.

1.5 Defects: certain defect(s) in the Products that mean that the Products do not substantially meet the Specifications. Such defects can only be the case if these can be proven and/or reproduced and if the Buyer has advised PhotonFirst of these defects forthwith by Warranty Notification

1.6 General Terms and Conditions: these General Terms and Conditions of Sale and Delivery, which govern all PhotonFirst's offers and all Agreements of whatever nature between PhotonFirst and the Buyer.

1.7 IP rights: any form of protection anywhere in the world afforded by law to inventions, works of authorship (including but not limited software and software source codes), databanks, drawings, designs or models, trademarks, trade names, topographies and know-how and technical information, including without limitation patents (including reissues, divisions, continuations and extensions thereof), utility models, copyrights, database right, registered and unregistered design rights, trademarks, trade names, topography rights, trade secrets, and applications therefore.

1.8 Parties: PhotonFirst and the Buyer.

1.9 Product(s): the good(s), including all equipment, components, documentation and (embedded) software, to be supplied by PhotonFirst under the Agreement.

1.10 Purchase Order: A request from a Buyer to PhotonFirst for the delivery of Products and/or Services.

1.11 Quotation: any quotation, offer and/or tender by PhotonFirst to Buyer concerning the delivery of Products and/or Services, the granting of certain rights of use of Software, as well as related matters relating to Products and/or Services.

1.12 Services: the services to be performed by PhotonFirst under the Agreement.

1.13 Specifications: the specifications of the Products and/or Services, agreed upon between PhotonFirst and Buyer in writing.

1.14 Site Acceptance Test: the acceptance test as described in the Agreement which describes the testing procedure at the premises of PhotonFirst and the acceptance of the Product by Buyer.

1.15 Supplier: supplier(s), subcontractor(s) and/or licensor(s) of PhotonFirst.

1.16 Warranty Period: the warranty period for the Products and/or Services as specified in the Agreement.

1.17 Warranty Notification: a written statement by the Buyer to PhotonFirst in which the Buyer reports a Defect in a detailed and substantiated manner invoking warranty as worded in the Agreement and/or these General Conditions;

1.18 Working day: a calendar day from 08.30h to 17.00h CET, except weekends and officially recognized holidays in the Netherlands.

## 2 Applicability, Offers and Agreements

2.1 Unless explicitly agreed upon otherwise and in writing, these General Terms and Conditions apply to all Agreements and all other legal relationships in which PhotonFirst acts as the vendor and/or supplier of Products and/or Services within the context of its business activities.

2.2 All Quotations shall be non-binding and shall consequently only be deemed to be an invitation to place an Order. The previous sentence shall not apply if a term of validity is stated expressly in the Quotation.

2.3 An Agreement between PhotonFirst and the Buyer is only established once PhotonFirst has accepted a Purchase Order from the Buyer. In principle, PhotonFirst accepts a Purchase Order by signing a written document in which the Purchase Order, including the expected delivery period, is confirmed. A written order confirmation is deemed to correctly and completely reflect the Agreement. With regard to verbal assignments, PhotonFirst may request confirmation from the Buyer by fax or email.

2.4 Purchase Orders are accepted by PhotonFirst under the condition precedent that credit information to be gathered by PhotonFirst shows that Buyer will be able to pay its debts when due.

2.5 Based on mutual consultation, the Parties may amend the content of a concluded Agreement. An amendment of the Agreement is only binding for PhotonFirst once it has agreed to the amendment in writing. Parties declare and recognize explicitly that no other general (and/or special) purchasing, delivery or other conditions shall apply thereto than these General Conditions

2.6 For Products or Services for which no offer or order confirmation is sent based on their nature and scale, the invoice and/or delivery slip is likewise considered to be an order confirmation, which is also deemed to correctly and completely reflect the Agreement.

2.7 PhotonFirst retains the right to outsource and/or transfer its rights and obligations from any Agreement wholly or in part.

### 3 Prices and Payment

3.1 The prices charged by PhotonFirst are set forth in the Agreement. Unless explicitly stated and agreed otherwise, the prices given are exclusive applicable taxes, duties, insurance and transportation costs.

3.2 PhotonFirst has the right to increase the prices for the Products and/or Services in the event of an increase of the costs that determine such prices, including without limitation the costs of raw materials, components and labor.

3.3 In the event of an amendment to the Agreement implemented at the Buyer's request, PhotonFirst is entitled to charge any additional costs caused by the amendment to the Buyer.

3.4 Unless agreed otherwise, the purchase price is paid as a lump sum. The purchase price will be invoiced upon shipment of the Product.

3.5 All payments to be made by the Buyer must be received by PhotonFirst within the term stated on the invoice. Unless the Parties have made deviating arrangements, the term of payment will be thirty (30) days after the invoice date.

3.6 The Buyer will take responsibility for timely payment of the amounts due by transferring these to PhotonFirst bank account. Except with explicit written consent from PhotonFirst, no invoice can be paid in cash.

3.7 If Buyer has any objections to the invoice, the Buyer must send the written and documented objections to PhotonFirst within eight (8) days of receipt of the invoice, failing which the Buyer shall be deemed to have accepted by invoice.

3.8 The Buyer may not set off any amounts owed to PhotonFirst against any claim the Buyer might have against PhotonFirst, nor may the Buyer suspend its payment obligations on the basis of any claim it might have against PhotonFirst.

3.9 If PhotonFirst reasonably anticipates that the Buyer may not be able to comply with its payment obligations under the Agreement, or in the event that any credit insurance obtained by PhotonFirst with respect to the Agreement no longer covers the risk of such non-compliance, then PhotonFirst shall have the right to suspend the performance of the Agreements until such time that the Buyer has provided adequate additional payment security in a form reasonably acceptable to PhotonFirst.

3.10 If the Buyer fails to pay within the agreed term, the Buyer will be in default by operation of law without a notification of default being required. From the moment that the Buyer is in default, the Buyer will owe compensation for interest, equal to the statutory interest for trade transactions (as meant in article 6:119a Dutch Civil Code) for each month or part thereof by which the due date is exceeded.

3.11 If the unpaid invoice is not paid in full on the due date, all judicial and extrajudicial costs incurred for collection will be borne by the Buyer. The extrajudicial costs amount to fifteen percent (15%) of the unpaid amount due with a minimum of EUR 150.

3.12 In the event of non-payment, after notifying the Buyer, in addition to any other remedies available to PhotonFirst under the Agreement, these General Terms and Conditions or applicable law, PhotonFirst may suspend performance of its contractual obligations until PhotonFirst has received full payment.

3.13 The Buyer irrevocably authorizes PhotonFirst to pledge or assign PhotonFirst's existing and future claims against the Buyer to third parties as security and/or in the course of any factoring arrangement.

## 4 Delivery

4.1 Unless agreed upon otherwise, the delivery condition is Free Carrier (FCA) Alkmaar, the Netherlands, as such term is defined in the most recent "Incoterm" definitions issued by the International Chamber of Commerce. This means that delivery will take place when PhotonFirst handed over the Products, cleared for export, into the charge of the carrier at the named place or point named by the Buyer or at the point indicated by PhotonFirst.

4.2 Shipping, packaging, export clearance and insurance will be invoiced separately to the Buyer. Furthermore, the Buyer shall indemnify PhotonFirst for the costs of recovery and recycling of any transportation or product packaging of Products which it does not choose to dispose of itself. This indemnification obligation shall also apply where PhotonFirst is under a statutory obligation to recover and/or recycle packaging.

4.3 Upon written request PhotonFirst can arrange the transport on behalf of the Buyer. In the latter case transportation charges will be collected, or prepaid by PhotonFirst and billed to the Buyer at PhotonFirst discretion.

4.4 If PhotonFirst undertakes at the Buyer's request to ship the Product to its destination, the risk will transfer to the Buyer upon transfer of the Product to the first carrier, even if the transport documents indicate otherwise. If requested in writing by the Buyer, PhotonFirst will arrange for insurance on the Product while in transit at the Buyer's additional expense.

4.5 PhotonFirst will use commercially reasonable efforts to deliver the Product to the Buyer (or, where applicable, provide the Services) within the term of delivery indicated in the Agreement (the "Delivery Date") and on Working Days. If delivery of any Product or Service is delayed beyond the Delivery Date, PhotonFirst only obligation, and the Buyer's exclusive remedy, under the Agreement shall be for PhotonFirst to deliver such Product or Service (the "Late Item") as soon as reasonably possible after the Delivery Date, but in any event within any reasonable period following the Delivery Date that is agreed upon by both Parties (the "Delivery Extension Period"). If any Late Item has not been delivered by the expiration of the Delivery Extension Period, the Buyer's exclusive remedy under the Agreement shall be to terminate the Agreement on written notice to PhotonFirst; provided that: (1) such termination shall not relieve the Buyer of its obligation to pay PhotonFirst in full for any Product or Service that has already been delivered; (2) such termination is reasonable under the circumstances; and (3) PhotonFirst shall have no liability to the Buyer with respect to any Late Item after such termination.

4.6 Notwithstanding anything to the contrary, Delivery Dates shall be automatically extended by a reasonable period in case of reasons beyond PhotonFirst's control, such as: (1) any delay due to force majeure; (2) any delay by the Buyer in the fulfilment of its obligations under the Agreement; (3) unforeseen business disruptions on account of labor disputes (strike or lawful lock-out); or (4) unforeseen challenges related to the procurement of materials or default in delivery on the part of our suppliers. PhotonFirst will notify the Buyer when such occurrences or circumstances begin and end.

4.7 The term of delivery indicated commences once:

- the Agreement has been concluded;
- all official formalities have been met;
- the payments due from the Buyer upon conclusion of the Agreement have been made;
- all agreed securities have been provided by the Buyer;
- and all other applicable terms and conditions have been met.

## 5 Inspection, acceptance and complaints

5.1 The Buyer shall examine the delivered Products and/or provided Services and satisfy itself that the Products and/or Services meet the Specifications.

5.2 Parties shall perform the Site Acceptance Test when described and agreed in the Agreement. The Site Acceptance Test will be conducted at the Buyer's premises. Parties shall agree upon an acceptance protocol which shall constitute the sole basis of the Site Acceptance Tests (hereinafter "Acceptance Protocol"). This means that if the criteria set out in the Acceptance Protocol are met, the Products and/or Services shall have passed the Site Acceptance Test and are deemed to conform in all material aspects to the Specifications.

5.3 The Buyer shall – at its own expense - timely undertake preparatory activities to ensure that the conditions necessary for the performance of the Site Acceptance Test and the correct operation of the Products and/or Services are fulfilled. Such preparatory work shall be carried out by the Buyer in accordance with the written instructions (Site Requirements) provided by PhotonFirst.

5.4 In order to ensure that the Site Acceptance Test can be performed without any delays, the Buyer shall:

- ensure that PhotonFirst's personnel are able to start work in accordance with the agreed time schedule and to work during normal working hours. However, work may also be performed outside working hours if deemed necessary by PhotonFirst, provided that prior notice has been provided to the Buyer;
- inform PhotonFirst of all relevant safety regulations in force at the Buyer's premises;
- provide access to internationally acceptable hygiene facilities and medical services;
- make available at the proper time – free of charge – all office space, communication services, equipment, tools, machinery, materials and supplies set out in the Agreement;
- make available – free of charge – such labour and operators as set out in the Agreement or as reasonably required by PhotonFirst; and
- where applicable, give – free of charge - all necessary assistance to ensure that PhotonFirst personnel timely obtain all required visa's and any official entry, exit or work permits and if necessary tax certificates required in the Buyer's country, as well as access to the Buyer's premises.

5.5 If the Buyer confirms that the Products and/or Services conform in all material aspects to the relevant Acceptance Protocol or in the event that the Buyer fails to inform PhotonFirst as to whether or not the Products and/or Services have passed the Site Acceptance Tests within ten (10) Working days after the completion of such tests, or if the Buyer starts using the Products and/or Services for commercial purposes, such Product and/or Service will be deemed accepted.

5.6 The Buyer will identify in reasonable detail, in writing, any discrepancies between the test results and the Acceptance Protocol within ten (10) Working days after the completion of the test. If this term passes without written and specified notification of well-founded complaints, the applicable Product and/or Service is deemed to have been accepted.

5.7 In case of minor shortcomings, especially those which hardly or not at all influence the anticipated use of the Products and/or Services, the Products and/or Services shall be assumed to have been accepted despite these shortcomings. PhotonFirst shall remedy such shortcomings in a timely manner, which is reasonably acceptable for both Parties, and Parties may agree on partial payment for the work already performed and where no discrepancies between the test results and the Acceptance Protocol are found.

5.8 PhotonFirst shall upon the Buyer's request commence with adaptation work until the Products and/or Services comply with the relevant Acceptance Protocol within five (5) Working days from the date on which the Buyer informs PhotonFirst that the Products and/or Services in question have failed the Site Acceptance Tests. PhotonFirst shall perform such work at its own expense. Parties shall determine in good faith the period in which PhotonFirst is required to make the Products and/or Services compliant (the "Grace Period").

The Buyer shall carry out repeat Site Acceptance Tests immediately or as soon as reasonably possible upon PhotonFirst request and shall carry out such repeat Site Acceptance Tests as expeditiously as possible, and with the reasonable cooperation of PhotonFirst. Any failure to do so shall entitle PhotonFirst to extend the Grace Period by an amount equal to the delay in question.

5.9 If, after the expiry of the Grace Period, PhotonFirst has not delivered the Products and/or Services in question to the Buyer in a form that satisfies, in all material aspects, the Acceptance Protocol, the Buyer shall be entitled to terminate the relevant part of the Purchase Order, if such is justifiable under the circumstances. Such termination shall have no effect on the acceptance of any preceding Products and/or Services nor on payments due that are related to those preceding Products and/or Services. Alternatively, the Buyer may elect to accept the Product and/or Service "as is", subject to a pro rata refund of the applicable charges to reflect the reduced functionality or performance of the Product and/or Service in question. The foregoing constitutes the Buyer's sole remedy and PhotonFirst's sole obligation if, after expiration of the Grace Period, PhotonFirst has not delivered the Products and/or Services in accordance with the Acceptance Protocol. Any further remedy or obligation is explicitly excluded, arising by operation of law or otherwise.

5.10 If Parties do not agree on the results of the Site Acceptance Test, PhotonFirst may invite an independent expert to determine – by means of a binding advice - to what extent the Product and/or Service in question meets the Acceptance Protocol and, to the extent it does not meet such protocol, which activities must be performed to ensure that the Product and/or Service in question will meet such protocol. The independent expert shall also be invited to determine a time schedule for the correction of the Products and/or Services if his findings show that the Product and/or Service in question does not meet the Acceptance Protocol. Either Party may propose to the other Party one expert to carry out the verification. If the Parties cannot agree on an expert, the experts proposed by each Party shall be requested to nominate a third expert who will carry out the verification and the Parties shall accept the determination by such third expert. The Parties shall each bear their own costs and expenses in connection with the verification of the SAT performance. The costs and expenses of the expert(s) shall be equally shared by the Parties.

5.11 Upon acceptance of the Products and/or Services in accordance with this article 5, the Warranty Period commences.

5.12 If any Services deliverables are not subject to an Site Acceptance Tests, e.g. if the deliverables constitute of feasibility studies, designs, reports, drawings, etc., the deliverables shall be deemed to have been accepted upon approval thereof by the Buyer.



## 6 Warranty

6.1 Subject to article 7.10, PhotonFirst warrants that during the Warranty Period the Products shall meet the Specifications. PhotonFirst hereby disclaims all other warranties with respect to the Products, including without limitation the warranty of merchantability, the warranty of fitness for a particular purpose, the warranty of non-infringement, and all other warranties, express or implied, arising by operation of law or otherwise.

6.2 Any complaint that a Product does not comply with the warranty set out in article 6.1 must be lodged with PhotonFirst in writing, including a detailed description of the Defect, such complaint to be lodged as soon as such Defect is discovered but in no event more than four (4) weeks thereafter. If the Buyer lodges a complaint in the manner referred to above, the Buyer shall provide PhotonFirst with every reasonable opportunity to examine or have the Product examined in order to verify such complaint.

6.3 Notwithstanding anything to the contrary, the Buyer shall have no right to lodge any complaint with respect to any Product if such Product has been improperly transported, unloaded, unpacked, treated, used maintained or stored by or on behalf of the Buyer, or transported, unloaded, unpacked treated, used maintained or stored in violation of instructions given by or on behalf of PhotonFirst. In addition, the warranty shall directly lapse (and therefore no longer apply) in the event unauthorized modifications.

6.4 After discovery of any purported Defect in the Products, the Buyer shall use its best efforts to mitigate, prevent or limit any damages, including without limitation by immediately ceasing any use of such Products.

6.5 In the event that PhotonFirst breaches the warranty set out in article 6.1 (and provided that the Buyer has complied with article 6.2 above with respect to the lodging of a complaint relating to any such breach), PhotonFirst only obligation under the Agreement and the Buyer's exclusive remedy shall be to repair or replace the defective Product at no cost to the Buyer, or credit the Buyer in whole or part for the defective Product, all at the option of PhotonFirst. Any further liability is explicitly excluded.

6.6 With respect to Services provided under the Agreement, PhotonFirst warrants that it shall use commercially reasonable efforts to perform the Services so that they meet the Specifications. If, during the Warranty Period, any complaint is made that the Services do not meet such Specifications, then, provided that the Buyer has lodged such claim in accordance with article 6.2, PhotonFirst shall by way of sole obligation (and the Buyer's sole remedy) re-perform such Services at its own cost until they meet the Specifications. Any further liability is explicitly excluded.

## 7 Software

7.1 The Product includes software to operate the Product ("Software").

7.2 PhotonFirst and its licensors own all right, title, and interest (including, without limitation all IP rights) in and to the Software, any technical requirements and end-user documentation for the Software made available to Buyer by PhotonFirst and any content provided by PhotonFirst and used in connection with the Product. PhotonFirst may also license rights owned by third parties with whom it has agreements.

7.3 PhotonFirst grants to Buyer and Buyer accepts a nonexclusive license to use the Software ("License"). Buyer has only the limited rights to use the Software as expressly granted to Buyer under these General Terms and Conditions or the Agreement and no other rights are granted or conveyed, or will be deemed to be granted conveyed, whether by implication, estoppel, or otherwise.

7.4 PhotonFirst may terminate the License upon the breach by Buyer of any term hereof.

7.5 Upon any termination Buyer will no longer be permitted to use the Software. All licenses granted hereunder will terminate.

7.6 Buyer agrees that Buyer will not assign, sublicense, transfer, pledge, lease, rent, or share Buyer's rights under the License.

7.7 In accessing or using the Software, Buyer agrees not to (or permit anyone else to) do or attempt any of the following:

- use distribute, rent, loan, lease, sell, sublicense, or otherwise transfer or offer the Software for any commercial purpose;
- modify, translate, adapt, arrange, or create derivative works of the Software;
- decompile, disassemble or reverse engineer, or determine any source code, algorithms, methods, or techniques of the Software;
- interfere with, damage, or disrupt the operation or any security-related features of the Software, gain unauthorized access, or restrict or inhibit use by others;
- use the Software, any feature thereof in a way that could or does violate any law or the rights (including without limitation any IP rights) of any person, firm or entity or expose to PhotonFirst a legal liability.

7.8 PhotonFirst reserves the right at all times to monitor, review, retain and/or disclose any information as necessary to satisfy any applicable law, regulation, legal process or governmental request. In particular, PhotonFirst shall be entitled to verify and audit the Buyer's compliance with this article 7 or article 9 if PhotonFirst has serious reason to suspect any breach of these articles by the Buyer. PhotonFirst may request an independent third party auditor of a reputable firm to perform such audit. If any deviation of article 7 or article 9 is evidenced by the audit report, all costs of the audit shall be borne by the Buyer. The Buyer shall provide PhotonFirst and its auditors access to all its representatives, premises, documents and records relevant for such audit.

7.9 Buyer is responsible for Buyer's use of the Software and for any consequences thereof.

7.10 PhotonFirst shall not be liable to the Buyer or third parties for any loss or damage resulting from any use of the Software, except in cases of willful intent or gross negligence on the part of PhotonFirst. All Software is licensed 'as is' without any warranty whatsoever.

7.11 Buyer is responsible for establishing the adequacy of independent procedures for testing the reliability, accuracy and completeness of Buyer's designs, output, products or materials used and/or developed in connection with the Software.

## 8 Intellectual Property Rights

8.1 All IP rights with respect to the Products, Software, Services deliverables, documentation, and all other materials developed or provided under the Agreement, such as analyses, designs, documentation, reports, offers, as well as preparatory materials in that regard, shall be held solely by PhotonFirst or its third party licensors. Provided that the Buyer has made all payments due under the Agreement, the Buyer shall only acquire a non-exclusive license to use such IP rights as incorporated in the Products and/or the Services deliverables for the sole purpose of using the Products and/or Service deliverables for the purpose set out in the Agreement. The Buyer is not allowed to act in a way that violates such IP rights. Thus, it is, inter alia, prohibited:

- To disassemble or reverse engineer the Products or determine any methods, or techniques of the Products;
- Modify Software embedded in the Products;
- To share with any third party, without written permission of PhotonFirst, technical information which is protected by IP rights;
- To remove logos, trade names or trademarks of PhotonFirst from the Products or add logos, trade names or trademarks from Buyer to the Products.

8.2 If the Buyer becomes aware of an infringement of IP rights belonging to PhotonFirst, the Buyer will inform PhotonFirst accordingly as soon as possible.

8.3 If any claim is brought against the Buyer alleging that the use of the Products or use of any Service deliverable infringes intellectual property rights of any third party, the Buyer shall provide PhotonFirst with full details of such claim as soon as reasonably practicable. PhotonFirst shall defend, or at its sole option, settle the dispute and pay any and all damages awarded to the claimant by a court of law, or agreed with the claimant under a settlement agreement, provided in all cases that the Buyer provides PhotonFirst with such reasonable assistance as PhotonFirst requires in doing the same and provides PhotonFirst with full control and conduct of such claim.

8.4 Notwithstanding any of the above, at any time after notice to us of any such claim, PhotonFirst may: (i) procure for the Buyer the right to continue using the Products and/or Services deliverables on terms reasonably acceptable to the Buyer; or (ii) modify the Products and/or Services deliverables so that they become non-infringing; or (iii) replace that part of the Products and/or Services at no additional charge with non-infringing products acceptable to the Buyer. If none of the remedies under (i) to (iii) would be reasonably available to PhotonFirst, PhotonFirst shall refund that part of the purchase price that has been paid by the Buyer in respect of the Product(s), Service deliverable(s) or part(s) thereof that is held to constitute an infringement of another party's intellectual property rights, taken into account a reasonable deduction for the use of such Products and/or Services.

8.5 The remedies provided under subsection 3 and 4 of this article 8 constitute the Buyer's exclusive remedies in the event that the use of the Products, Service deliverables or any part thereof in is held or alleged to constitute an infringement of another person's intellectual property rights. Any other liability is explicitly excluded.

8.6 All right and title worldwide in or to any upgrades, modifications, alterations or derivate works of a Product, even if discovered, developed or created by or for the Buyer, shall exclusively be owned by PhotonFirst. The Buyer hereby transfers such right and title to PhotonFirst who accepts such transfer.

## 9 Confidentiality

9.1 The Buyer shall hold PhotonFirst's Confidential Information in confidence and, unless required by law, not make such Confidential Information available to any third party or use the other's Confidential Information for any purpose other than the implementation of the Agreement.

9.2 The Buyer agrees to take all reasonable steps to ensure that PhotonFirst's Confidential Information is not disclosed or distributed by its employees or agents in violation of the Agreement and these General Terms and Conditions.

9.3 PhotonFirst's Confidential Information shall not include information that:

- (i) is or becomes publicly known through no act or omission of the Buyer; or
- (ii) was in the Buyer's lawful possession prior to the disclosure; or
- (iii) is lawfully disclosed to the Buyer by a third party without restriction on disclosure;
- (iv) or is independently developed by the Buyer, which independent development can be shown by written evidence; or
- (v) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

9.4 If the Buyer violates its obligations under this article 9, it shall forfeit a penalty of EUR 50,000 for each violation and EUR 10,000 per day for each day that the violation continues, with a maximum of EUR 1,000,000 without prejudice to any other remedy available to PhotonFirst under the Agreement, these General Terms and Conditions or applicable law (including without limitation PhotonFirst's right to claim compensation of the actual damage, costs and expenses incurred by it as a result of such violation.

9.5 This article 9 shall survive termination of the Agreement, however arising.

## 10 Liability

10.1 The Buyer shall not be entitled to any incidental, indirect or consequential damages of any kind, including but not limited to lost profits, and/or loss or interruption of business, damage ensuing from claims by the Buyer's customers, mutilation or loss of data, damage relating to the use of objects, materials or software of third parties prescribed by the Buyer, damage relating to engagement of suppliers prescribed by the Buyer or for any special, punitive or exemplary damages, regardless of whether the Buyer was advised, had reason to know, or in fact know of the possibility of such damages.

10.2 PhotonFirst liability shall per event or series of connected events (meaning: events with the same or similar root cause) be limited to the greater of (i) 20 % (twenty percent) of the price paid by the Buyer for the Products and/or Services that gave cause to the Buyer's claim for damages; or (ii) the amount actually paid by PhotonFirst's insurance company (excluding the own risk payable by PhotonFirst) with respect to such event or series of connected events.

10.3 PhotonFirst liability because of an imputable failure to perform the Agreement shall in all cases only arise if the Buyer immediately and properly provides a written notice of default to PhotonFirst, with a reasonable time period for remedying the failure being given and PhotonFirst still imputably failing to perform its obligations after that period as well. The notice of default must contain a description of the breach which is as complete and specific as possible, so that PhotonFirst can respond adequately.

10.4 For any right to damages to exist, the Buyer must always report the damage or injury to PhotonFirst in writing as soon as possible after it occurs. Any claim to damages against PhotonFirst shall be extinguished by the mere lapse of 6 months after the claim arises.

10.5 Unless agreed upon otherwise, the Buyer indemnifies PhotonFirst for all claims from third parties for damages they have suffered. In particular, the Buyer indemnifies PhotonFirst against all third-party claims on account of product liability resulting from a fault in a product delivered by the Buyer to a third party that consisted entirely or partly of Products and/or Service deliverables delivered by PhotonFirst or that has been made with Products and/or Service deliverables supplied by PhotonFirst.

10.6 PhotonFirst does not bear any liability for damage or loss of whatever nature arising from incorrect, careless or incompetent use or from any use of the Product and/or Service deliverables delivered by PhotonFirst for other than normal purposes.

## 11 Retention of Title

11.1 Title of the Products and/or Service deliverables, and any and all rights that the Buyer is entitled to under the Agreement and/or these General Terms and Conditions and or applicable law, shall first pass to the Buyer upon full payment of the prices and fees due for such Products and/or Services deliverables.

11.2 For all Products and/or Services deliverables for which title has not yet passed, the Buyer shall: (i) place notices of PhotonFirst ownership on the same and (ii) maintain the same in satisfactory condition. Further, the Buyer shall provide, at its costs, for adequate insurance against theft, loss or damage of Products and/or Service deliverables for which title has not yet passed.

11.3 In the event that the Buyer fails to make payment for the Products and/or Service deliverables when such payment is due, PhotonFirst shall have the right to take possession of such unpaid Products and/or Service deliverables and the Buyer shall, at its own costs, render to PhotonFirst without charge all assistance and cooperation PhotonFirst reasonably requires to exercise such right. Costs related to the collection of its property by PhotonFirst will be borne by the Buyer.

## 12 Termination

12.1 Each of the Parties shall only be entitled to dissolve the Agreement or, as the case may be, a Purchase Order, if the other Party imputably fails to perform material obligations under the Agreement or, as the case may be, such Purchase Order- in all cases, after having received a proper written notice of default which is as detailed as possible and in which it has been given a reasonable time period to remedy the breach.

12.2 In the event the Buyer cancels any Purchase Order prior to its full completion, PhotonFirst shall be entitled to the remaining charges that would have been owed if the Purchase Order had not been cancelled prior to the expiry of the term of the Agreement.

12.3 In addition to dissolution grounds that exist at law, PhotonFirst shall have the right to dissolve the Agreement and every claim that PhotonFirst has against the Buyer will then become immediately due and payable in full, in the event:

- The Buyer has petitioned for or has been granted suspension of payment;
- The Buyer has been declared bankrupt or is the subject of a petition for bankruptcy; or
- if a Change of Control occurs in relation to the Buyer and such Change adversely affects the interests of PhotonFirst (e.g. because as a result of such Change, control is transferred to a competitor of PhotonFirst). For the purpose of this article 12.3, Change of Control shall mean (a) the sale of all or substantially all of the assets of the Buyer to a third party; or (b) a sale of stock, merger, consolidation or other reorganization of the Buyer or its holding company(ies), resulting in more than 50% of the voting stock of the Buyer, its holding company(ies) or the resulting or surviving entity being directly or indirectly owned or held by third parties other than those directly or indirectly owning or holding the voting stock in the Buyer or its holding company(ies) on the effective date of the Agreement.

12.4 PhotonFirst is entitled to terminate the Agreement without any liability if the Buyer becomes subject to international sanctions or if, as a result of epidemics, pandemics, catastrophes, war events or other reasons, the procurement of raw materials and/or components becomes significantly more difficult compared to the time at which the Agreement was concluded.

12.5 Any term and/or condition of the Agreement and General Conditions, which by their nature extend beyond its (and any) termination shall survive termination of any kind and remain in effect.

## 13 Various

13.1 If the delivery of a Product and/or Service deliverable 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, PhotonFirst may suspend its obligations and the Buyer's rights regarding such delivery until such license is granted or for the duration of such restriction and/or prohibition, respectively, and PhotonFirst may even terminate the Agreement, without incurring any liability towards the Buyer. Furthermore, if an end-user statement is required, PhotonFirst shall inform the Buyer immediately thereof and the Buyer shall provide PhotonFirst with such document upon PhotonFirst's first written request; if an import license is required, the Buyer shall inform PhotonFirst immediately thereof and the Buyer shall provide PhotonFirst with such document as soon as it is available. The Buyer warrants that it will not deal with the Products and/or Service deliverables in violation of any applicable export or import control laws and regulations.

13.2 This English version of the General Terms and Conditions will be the only official and legally binding version, regardless of whether a translation into another language is or will be made.

13.3 Specific provisions in any Agreement deviating from these General Terms and Conditions prevail over the provisions of these General Terms and Conditions.

13.4 The applicability of the Buyer's general purchasing or other general terms and conditions is herewith explicitly excluded.

13.5 The invalidity or nullity of any provision of these General Terms and Conditions of Sale and Delivery will not affect the validity of the remaining provisions of these General Terms and Conditions of Sale and Delivery. The Parties agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision, which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.



## 14 Applicable law and Disputes

14.1 The laws of the Netherlands exclusively governs all offers, Agreements and their performance, without giving effect to its conflict of law provisions.

14.2 The applicability of the Vienna Sales Convention is expressly excluded.

14.3 All disputes arising from or in connection with the Agreement governed by these Terms and Conditions or in connection with these Terms and Conditions themselves and their interpretation or execution, including disputes about its existence and validity, will – unless any mandatory statutory provision dictates otherwise – exclusively be judged by the competent court in the district of Alkmaar, the Netherlands. In the event the Contractor/Supplier has its statutory seat in a country in which a decision of a Dutch court is not enforceable, the dispute will be exclusively settled by means of arbitration in accordance with the Arbitration Rules of the Netherlands Arbitration Institute (NAI). The place of arbitration in that event shall be Alkmaar, the Netherlands. The language of arbitration shall be English.

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