

## **1. Applicability**

- 1.1. These terms and conditions are applicable to all agreements, each such agreement a "Contract", in which PhotonFirst Technologies B.V., hereinafter PhotonFirst, acts as buyer towards a supplier, hereinafter referred to as: "Contractor/Supplier", including but not limited to Contracts for the supply of goods or the provision of services.
- 1.2. Any amendments to a Contract can only be agreed with prior written approval of PhotonFirst, by a duly authorized representative.
- 1.3. Applicability of any general terms and conditions of the Contractor/Supplier is explicitly rejected by PhotonFirst.
- 1.4. In the event that any one or more of the provisions contained in these terms and conditions or the Contract is held invalid, illegal or unenforceable in any respect, such provision or provisions shall be ineffective only to the extent of such invalidity, illegality or unenforceability, without invalidating the remainder of such provision or provisions or the remaining provisions of these terms or the Contract. 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.

## **2. Creation of the Contract**

- 2.1. The Contract can only be created as follows:
  - if a quotation from the Contractor/Supplier is followed by an order, hereinafter the "Purchase Order", the Contract shall be created at the moment the Purchase Order is submitted in writing by a duly authorized representative of PhotonFirst;
  - if the Contractor/Supplier has informed PhotonFirst that its quotation is non-binding, the Contract shall be created if the quotation is not withdrawn by the Contractor/Supplier within two working days after acceptance of the quotation by PhotonFirst;
  - if a Purchase Order is issued without a quotation from the Contractor/Supplier, the Contract shall be created if the written acceptance of the Purchase Order is received from the Contractor/Supplier within 5 working days after the Purchase Order has been issued, and/or if a start has been made with the work within such term in accordance with the Purchase Order. If within 10 working days neither acceptance has been received from the Contractor/Supplier, nor has the Contractor/Supplier started the work within such term, PhotonFirst shall be at liberty to conclude that no Contract whatsoever has been created, without having any obligation to compensate any expenses and/or damages whatsoever.

## **3. Changes**

- 3.1. PhotonFirst has the right to order the Contractor/Supplier to change the volume and/or the nature of the goods to be delivered and/or work to be carried out. If in the opinion of the Contractor/Supplier this leads to financial, technical and/or time consequences, the Contractor/Supplier shall notify PhotonFirst within 5 working days thereof in writing before complying with the change. Parties must subsequently reach agreement about the terms and conditions on which the change shall be carried out.
- 3.2. The Contractor/Supplier shall not work on, and PhotonFirst shall not be liable for any costs or expenses in connection with any change unless and until parties have agreed on all issues regarding such change, and PhotonFirst has provided a written confirmation from its authorized representative. If the parties fail to reach agreement, PhotonFirst shall have the right to terminate the Contract by means of a written notification to the Contractor/Supplier, without any obligation to pay any compensation of damages whatsoever.

## **4. Prices and payment conditions**

- 4.1. The agreed prices are fixed and cannot be amended, unless agreed otherwise in writing. All prices are in EUR or USD, excluding VAT. There shall be no additional surcharges like packaging cost, (small) order cost, insurance, etc.
- 4.2. Invoicing shall be effected after all deliveries/work have been carried out in accordance with the Contract and have been approved by PhotonFirst, or as has been agreed upon in the Contract. The Contractor/Supplier must send substantiation documentation along with the invoice. Payment shall be effected within 30 days after approval of the invoice by PhotonFirst. If and insofar as an invoice is only approved in part, PhotonFirst shall only be obliged to pay the approved portion of the invoice amount.
- 4.3. Invoices must be sent electronically to the following address: [invoices@photonfirst.com](mailto:invoices@photonfirst.com)
- 4.4. The Contractor/Supplier shall send an invoice for each delivery. The Contractor/Supplier shall not issue any combined invoices. The following information must be provided on this invoice:
  - a) The total value;
  - b) PhotonFirst's PO reference numbers, at least order and article codes;

And also, in case of products coming from other EC Member States and/or other countries, when applicable:

- c) The VAT numbers of Supplier and of PhotonFirst;
  - d) The IBAN number of the bank of the Contractor/Supplier;
  - e) The BIC / SWIFT / ACH number of the bank of the Contractor/Supplier;
  - f) The name of the bank of the Contractor/Supplier;
  - g) The HS code of the products.
- 4.5. PhotonFirst shall have the right to set off any amount owed by PhotonFirst to the Contractor/Supplier with any amounts due by the Contractor/Supplier (and/or other companies being part of the same group of companies as the Contractor/Supplier) to PhotonFirst (and/or other companies being part of the same group of PhotonFirst). Where, in the event of offset, amounts are quoted in different currencies PhotonFirst shall decide in which of these currencies the offset shall be effected. Conversion shall be effected at the rate of exchange valid at the due date of payment of the relevant invoice(s).

## **5. Warranties**

- 5.1. The Contractor/Supplier warrants as a minimum: that the delivered goods and/or the work carried out meet the requirements of the Contract, possess the qualities that have been promised, are free from any defects in workmanship, design, construction, manufacture and material, are suitable for their intended purpose and as a minimum meet the legal requirements and other government regulations as are applicable at the time of the fulfilment.
- 5.2. The warranties referred to in article 5.1 above and any additional warranties agreed in the Contract shall commence from the delivery of goods and/or fulfilment of work until the final approval by PhotonFirst, followed by a period of 2 years, unless parties explicitly agree a different period in writing.
- 5.3. If it turns out that the goods and/or work fail to meet the requirements stated in article 5.1, regardless of the results of any inspection and testing as referred to in article 6.1, the Contractor/Supplier shall carry out a Root Cause Failure Analysis within five (5) working days from PhotonFirst's written notification of such failure, stating the cause of the failure and the actions taken to prevent re-occurrence of the failure. In addition, the Contractor/Supplier shall repair or replace the delivered goods and/or the work carried out at its own expense and risk upon first request of PhotonFirst, unless PhotonFirst chooses to terminate the Contract as laid down in article 8, without prejudice to any other remedy available to PhotonFirst under the Contract or applicable law, including without limitation PhotonFirst's right to claim damages. In the event of repair and/or replacement, a new 2-year warranty period shall enter into force for the relevant goods and/or work.
- 5.4. If the Contractor/Supplier does not proceed to repair and/or replacement as referred to in article 5.3, PhotonFirst shall have the right - without prejudice to its other rights - to repair or replace the defective goods and/or work itself or to have them repaired or replaced, and to recover all costs and damages from the Contractor/Supplier. Also, Contractor/Supplier may at all times ask PhotonFirst to repair a defective good. When PhotonFirst agrees it shall charge and invoice EUR or EUR 110.- initial costs, supplemented with direct labor hours at a rate of EUR or EUR 75.- per hour. The related invoice shall have a 30 days payment term.
- 5.5. The warranties referred to in article 5.1 above and any other warranties agreed in the Contract shall be in addition to and not affect any and all other rights of PhotonFirst under the Contract or applicable law.

## **6. Inspection and testing**

- 6.1. PhotonFirst has the right to inspect and test the work and/or the goods or parts thereof - or to have them inspected and tested - both prior to supply/delivery and afterwards. The Contractor/Supplier shall notify PhotonFirst in good time where and when a conformity assessment of the work and/or delivered goods is possible. Any inspection or test by PhotonFirst does not imply any delivery, taking-over of acceptance of the work and/or the goods or parts.
- 6.2. The Contractor/Supplier shall enable PhotonFirst to inspect and test without posing any restrictions and shall provide the necessary facilities and assistance.
- 6.3. If the inspection or test shows that the work and/or the goods or parts thereof do not meet the requirements of the Contract, PhotonFirst shall be entitled to reject the work and/or the goods (or parts thereof) without prejudice to PhotonFirst's other rights under the Contract or applicable law.
- 6.4. PhotonFirst shall have the right to reject batches of goods on the basis of a standardized random sampling.
- 6.5. In the event of rejection, PhotonFirst shall inform the Contractor/Supplier as soon as possible in writing thereof, giving the reason which lead to the rejection. At PhotonFirst's discretion, rejected goods will be returned to the Contractor/Supplier or retained by PhotonFirst at the Contractor/Supplier's costs until the Contractor/Supplier has given PhotonFirst further instructions as to their disposal.
- 6.6. Rejected products must be credited as per the date of rejection.
- 6.7. The Contractor/Supplier shall carry out a Root Cause Failure Analysis within five (5) working days from PhotonFirst's written notification of rejection, stating the cause of the failure and the actions taken to prevent re-occurrence of the failure. In addition, the Contractor/Supplier shall repair or replace the rejected goods and/or the work carried out at its own expense and risk upon first request of PhotonFirst, unless PhotonFirst chooses to terminate the Contract as laid down in article 8, without prejudice to any other remedy available to PhotonFirst under the Contract or applicable law, including without limitation PhotonFirst's right to claim damages.

## **7. Instructions for delivery**

- 7.1. Supplier shall confirm every Purchase Order from PhotonFirst within 3 working days after receipt of the Purchase Order, stating PhotonFirst's Order and article code(s) and, if possible, PhotonFirst's product description.
- 7.2. In case of apparent errors or faults in the Purchase Order or conflicts between parts of the Purchase Order(s), Supplier shall contact PhotonFirst before commencing the execution of the Purchase Order to discuss an appropriate change of the Purchase Order, if required.
- 7.3. The Contractor/Supplier shall execute the Contract at the time or times agreed upon and agrees that time is of the essence. Delivery may however be made up to two (2) working days prior to the delivery date without prior agreement. Delivery is on time if effected within the above-mentioned timeslot of three (3) working days.
- 7.4. The Contractor/Supplier will promptly notify PhotonFirst of any anticipated delay in meeting any agreed delivery date, as well as the root cause for the delay and shall provide PhotonFirst with a corrective action plan to mitigate the delay, which may include delivery of the work and/or goods by expedited means of delivery. Such plan shall be carried out by the Contractor/Supplier upon PhotonFirst's approval of the plan. The Contractor/Supplier shall bear all costs of carrying out the corrective action plan, unless and to the extent that the delay is due to (i) Force Majeure as defined in article 11.2, or (ii) PhotonFirst or any third party engaged by PhotonFirst in the performance of the Contract.

- 7.5. Every delivery or part of delivery shall be accompanied by a complete packing slip, bearing PhotonFirst's order number, article code number(s), the quantity of products delivered and, if possible, PhotonFirst's order line number and PhotonFirst's product description.
- 7.6. Goods designated by the drawing as static sensitive, or otherwise applying static sensitive technology, must be properly handled, packaged, and labelled in conformance with NEN-EN IEC 61340 series or compatible international standards.
- 7.7. The Contractor/Supplier shall supply PhotonFirst free of charge with all the documents, information, testing results and technical data set out in the Contract and/or which PhotonFirst may reasonably deem necessary for the performance of the Contract.
- 7.8. PhotonFirst shall have the right not to accept goods if they are received without the appropriate packing slip and/or invoice. In this case PhotonFirst may return the goods at Supplier's expense or store these goods at the place of arrival at the expense of Supplier, until the fault is remedied.
- 7.9. PhotonFirst may reschedule, in whole or in part, the original scheduled delivery date or the quantities of the goods scheduled for a particular delivery time without any liability to the Contractor/Supplier, provided that PhotonFirst has notified the Contractor/Supplier thereof no later than five (5) working days prior to the original scheduled delivery date and provided further that the rescheduled delivery date is no later than 1 month after the original scheduled delivery date.
- 7.10. In the event the manufacturing of any good is discontinued, PhotonFirst shall have an opportunity to place a last-time buy Purchase Order for such good in such quantity as PhotonFirst may reasonably require and the Contractor/Supplier shall accept such Purchase Order at the price set out in the Contract. In the event the Contractor/Supplier wishes to stop production, the Contractor/Supplier shall immediately inform PhotonFirst thereof in writing but at least [12 (twelve)] months prior to the date of envisaged production stop.

## **8. Termination**

- 8.1. PhotonFirst has the right to terminate the Contract by means of written notification to the Contractor/Supplier:
- if after the expiry of 7 days after written notification by PhotonFirst the Contractor/Supplier fails to fulfil one or any of its obligations by virtue of the Contract or of further contracts arising therefrom, or fails to fulfil such obligations in time or properly,
  - if PhotonFirst or its customer(s) are served with a warning letter and/or a lawsuit is filed against either of them, alleging that any goods supplied by the Contractor/Supplier infringe, violate or misappropriate third party intellectual property rights, provided always that the parties have first in good faith discussed if and to what extent (i) such claim may prevent the Contractor/Supplier from performing its obligations under the Contract and/or PhotonFirst and/or its customer(s) to use the goods in accordance with their intended purposes; and (ii) how the goods can be modified to prevent or cease such infringement.
  - in the event of a winding-up, submission of an application for an administration order and/or suspension of business, close of operations or liquidation of the company of the Contractor/Supplier;
  - if a circumstance leading to Force Majeure as defined in article 11.2 continues for more than 14 days.
- 8.2. Where article 8.1 applies, PhotonFirst shall not be liable for expenses and/or damages of any nature whatsoever to the Contractor/Supplier, without prejudice to the rights of PhotonFirst to receive full compensation for damages and expenses.
- 8.3. Without prejudice to the provisions of article 8.1, PhotonFirst shall at all times have the right to terminate the Contract by written notification to the Contractor/Supplier. The parties shall then determine the consequences of the termination, in which case PhotonFirst shall only consider compensation of reasonably incurred expenses, if and insofar as the Contractor/Supplier has not been compensated already for such expenses pursuant to the Contract, and shall not be liable for any other costs. Under no circumstances shall PhotonFirst be liable to compensate the Contractor/Supplier for any possible indirect damages and/or loss of profit.
- 8.4. Termination by PhotonFirst under article 8.1 shall automatically give PhotonFirst the right to obtain, at the expense of the Contractor/Supplier, all or part of the undelivered or rejected work and/or goods from any supplier PhotonFirst may consider suitable. The Contractor/Supplier shall do everything in its power that is required to enable the new supplier to deliver the work and/or goods, in particular make available the necessary information and intellectual property. If the prices quoted by the new supplier are higher than those of the terminated Contract, the Contractor/Supplier shall, on request from PhotonFirst, pay to PhotonFirst the difference, if higher, between the new and the old prices, without prejudice to the compensation that PhotonFirst may claim from the Contractor/Supplier for non-completion of the Contract.
- 8.5. All claims that PhotonFirst may have against the Contractor/Supplier, now or in the future shall be immediately and fully payable on the date of termination of the Contract.

## **9. Delivery**

- 9.1. All deliveries shall be DDP at the agreed PhotonFirst's delivery address, unless agreed otherwise in writing. DDP or any other agreed trade term shall be construed in accordance with the Incoterms as valid at the time of delivery.
- 9.2. If PhotonFirst discovers a discrepancy between the received quantity and the quantity of any product marked on the packing slip, it shall issue a complaint note to the Contractor/Supplier within eight (8) working days after receipt of the products, stipulating to credit the difference, without prejudice to any other claim of PhotonFirst. In such event, payment of the relevant invoice may be suspended until the discrepancy problem is solved.

## **10. Goods handed over or submitted to supplier**

- 10.1. All goods handed over or submitted by PhotonFirst to the Contractor/Supplier for the execution of an order, shall be sent DDP and shall under all circumstances remain PhotonFirst's property. Damage to goods handed over or submitted by PhotonFirst shall be charged to Contractor/Supplier.

## **11. Liability, force majeure and indemnification**

- 11.1. The Contractor/Supplier carries out the Contract entirely at its own expense and risk and shall, subject to this article 11, be liable for all expenses and damage suffered by PhotonFirst or third parties following and/or in connection with the fulfilment of the Contract, except in case of demonstrable Force Majeure as defined in article 11.2.
- 11.2. Force Majeure as referred to in article 11.1 shall have the meaning as defined in the Dutch Civil Code but shall in no event include: shortage of employees, disability of employees, strikes, late supply/delivery, unsuitability of materials, incomplete supply of goods and/or performance of work, cash flow and/or solvency problems on the part of the Contractor/Supplier and/or unworkable weather conditions.
- 11.3. Subject to article 11.4, 11.5 and 11.6, the Contractor/Supplier will indemnify PhotonFirst and its customer(s) from and against any claims, including third party claims, loss, cost, damage or expense, fines, amounts paid in settlement, and reasonable legal fees and expenses, arising out of or related to any of the following: (i) the Contractor/Supplier's breach of the Contract; (ii) the negligence, gross negligence, bad faith, intentional or wilful misconduct of the Contractor/Supplier or the Contractor/Supplier's subcontractors or their respective employees or other representatives; or (iii) bodily injury, death or damage to personal property arising out of or relating to the Contractor/Supplier's performance under the Contract.
- 11.4. The Contractor/Supplier's liability hereunder is unlimited in the event that losses, damages, costs and expenses result from (i) the Contractor/Supplier's wilful intent or gross negligence, (ii) death, bodily injury or property damage, (iii) the Contractor/Supplier's violation of any applicable laws, including without limitation those listed in article 14; (iv) the Contractor/Supplier's violation of any of its confidentiality obligation hereunder; (v) the Contractor/Supplier's infringement of any IP owned by PhotonFirst or made available by PhotonFirst to the Contractor/Supplier under the Contract; and (vi) the Contractor/Supplier's indemnification obligation under article 12.4.
- 11.5. Except as set forth in article 11.3, neither party shall be liable for any indirect or consequential damage, including without limitation loss of profit or loss or interruption of business. For the avoidance of doubt, the following costs shall not be considered as indirect or consequential damages: costs arising out of or relating to (a) inspecting, recovering, sorting, scrapping, storing or reworking of the goods not in compliance with the Contract and affected packaging materials; costs (ii) for (a) procurement of alternative goods from alternative suppliers, including PhotonFirst's cost of testing and qualifying alternative goods from alternative suppliers; (b) incremental testing of PhotonFirst's finished products; (c) cleaning and/or repairing damage to PhotonFirst's or its customers' equipment and property; and (d) freight and airfreight for expedited delivery of replacement goods, from either the Contractor/Supplier or alternative suppliers.
- 11.6. Except as set forth in article 11.3, the Contractor/Supplier's liability under the Agreement shall be limited to the aggregate of the price payable by PhotonFirst to the Contractor/Supplier under the Contract.
- 11.7. The Contractor/Supplier shall take out adequate liability insurance as referred to in this article from a first class insurance company with a minimum cover of € 500.000,- per event, and shall give PhotonFirst access to the insurance policy upon request.

## **12. Intellectual and industrial property**

- 12.1. The Contractor/Supplier retains ownership of any creative idea, design, development, invention, works of authorship, software, know-how, or work results ("Creations") and intellectual property owned by the Contractor/Supplier prior to the effective date of the Contract, and Supplier owns any Creation and intellectual property created by or on behalf of the Contractor/Supplier to the extent not created as a direct result of providing the work and/or goods according to the Contract (collectively, "Supplier's IP"). To the extent that Supplier's IP has been incorporated in any goods delivered to PhotonFirst, the Contractor/Supplier grants PhotonFirst a non-exclusive, royalty-free, worldwide, perpetual, irrevocable, assignable, sub-licensable license under Supplier's IP to practice in any way to receive the full benefit of the goods or to maintain (including via the manufacture of replacement and spare parts), support, modify, repair, optimize, expand, enhance or further develop the goods or any equipment or component included within the goods.
- 12.2. PhotonFirst and its customers retain ownership of Creation and IP owned by PhotonFirst and its customers prior to the effective date of the Contract, and PhotonFirst owns any Creations and IP created by or on behalf of PhotonFirst to the extent created as a direct result of providing the work and/or the goods according to the Contract (collectively, "PhotonFirst IP"). The Contractor/Supplier assigns to PhotonFirst royalty-free, worldwide, perpetually, and irrevocably, all rights in PhotonFirst IP to fullest extent permitted by law. To the extent such assignment is not legally permissible, the Contractor/Supplier grants PhotonFirst an exclusive, royalty-free, worldwide, perpetual, irrevocable, assignable, sub-licensable and unrestricted license to such PhotonFirst IP to the fullest extent permitted by law. The Contractor/Supplier will execute any documents that PhotonFirst reasonably determines are necessary to document PhotonFirst's rights in PhotonFirst IP or to secure or perfect any IP relating to PhotonFirst IP. The Contractor/Supplier will cause its employees or subcontractors' employees to assign to the Contractor/Supplier any PhotonFirst IP created by such employee and to comply with the Contractor/Supplier's obligations set forth in this article 12.2. To the extent legally permissible, the Contractor/Supplier waives any moral rights in PhotonFirst IP, including but not limited to the right to be named as author, the right to modify, the right to prevent mutilation and the right to prevent commercial exploitation. To the extent such waiver is not legally permissible, PhotonFirst will have the irrevocable right to exercise any moral rights in PhotonFirst IP on the Contractor/Supplier's behalf to the fullest extent permitted by law.
- 12.3. Intellectual and industrial property rights shall include but not be limited to: copyrights, patents, utility models, trademarks, service marks, moral rights, design rights (whether registered or unregistered), technical information, know-how, database rights, semiconductor topography rights, business names and logos, computer data, generic rights, proprietary information rights and all other similar proprietary rights (and all applications and rights to apply for registration or protection of any of the foregoing) as may exist anywhere in the world.

- 12.4. Contractor/Supplier shall ensure that the goods delivered to PhotonFirst in no way violate any intellectual property right or similar right of third parties and Contractor/Supplier shall defend, indemnify and hold PhotonFirst harmless from any claims from third parties in this regard, unless the violation results from the Contractor/Supplier's strict compliance with any design supplied by PhotonFirst. If any good becomes, or is likely to become, the subject of an infringement, violation or misappropriation of any intellectual property right or similar right of third parties, then the Contractor/Supplier will, at its own expense, promptly take the following actions in the listed order of priority: (a) secure the rights necessary to continue using the good; or (b) replace or modify such good to make it non-infringing, such that the replacement or modification will not degrade the performance or quality of the good.
- 12.5. Contractor/Supplier shall refrain from using any trade name or (brand) logo of PhotonFirst as part of its own trade name and from allowing such trade name or (brand) logo to become a generic indication.
- 12.6. Contractor/Supplier shall immediately inform PhotonFirst of any violation of intellectual and industrial property rights of PhotonFirst or the companies affiliated with PhotonFirst, of which it becomes aware. PhotonFirst shall decide which steps should be taken on the matter.
- 12.7. Both parties shall ensure and warrant that by implementing any agreement, no violation is made of the rights of third parties.
- 12.8. As regards publicity relating to their co-operation, Contractor/Supplier shall always first obtain PhotonFirst's approval before seeking publicity. Confidential information obtained from PhotonFirst whether verbally or in writing shall be applied by the Contractor/Supplier for the execution of the Contract only. All such information shall remain PhotonFirst's or its licensor's property and if in written form shall be returned to PhotonFirst immediately upon PhotonFirst's first request, together with all copies thereof. All confidential information shall be kept in strictest confidence by the Contractor/Supplier.
- 13. Subcontracting**
- 13.1. Contractor/Supplier may subcontract the execution of orders to third parties within the limits of the rights and obligations under any order and/or agreement with PhotonFirst and on condition that Contractor/Supplier has in advance notified the name of the third party in question to PhotonFirst and has obtained PhotonFirst's permission in writing for subcontracting that third party. Contractor/Supplier shall bear full technical and commercial responsibility and liability with regard to the execution of (a part of) the order by third parties.
- 14. Anti-Corruption, Bribery and Anti-Money Laundering**
- 14.1. The Contractor/Supplier acknowledges that PhotonFirst has a zero tolerance policy towards bribery, corruption and money laundering. The Contractor/Supplier certifies that it is not included on any debarment or sanction list maintained by any governmental authority, nor prevented from performing services for PhotonFirst by virtue of any governmental order, proceeding or otherwise. If at any time during the term of the Contract, or at any other time that the Contractor/Supplier is providing services to PhotonFirst, the Contractor/Supplier cannot so certify to PhotonFirst, the Contractor/Supplier shall promptly notify PhotonFirst as to its status. The Contractor/Supplier confirms and agrees that - in relation to this Contract - it will comply with anti-bribery and corruption and anti-money laundering laws and regulations applicable to both the Contractor/Supplier and PhotonFirst. In this course the Contractor/Supplier will procure that its employees and service providers including, but not limited to, its subcontractors, agents and other intermediaries will not, offer, give, promise to give or authorize the giving to any person who-soever including but not limited to private individuals, commercial organizations, public officials or persons entrusted with special public service functions within the meaning of Article 84 of the Dutch Penal Code ("Wetboek van Strafrecht") ("Public Officials") or any political party, official of a political party, or candidate for public office (together "Beneficiary"), or solicit, accept or agree to accept from any Beneficiary, either directly or indirectly, anything of value including, without limitation, payments including so-called Facilitation Payments, gifts or entertainment (together "advantages"), which might be considered as improper practice or bribery in order to obtain, influence, induce or reward official or private actions or decisions or securing any improper advantage in connection with this Contract (the "Anti-Corruption Obligation"). Facilitation Payments shall include infrequent payments/benefits in cash or kind made to a Public Official to facilitate routine, non-discretionary governmental actions that: (i) the Public Official ordinarily performs; and (ii) one is entitled to under the laws of the relevant country.
- 14.2. The Contractor/Supplier shall: (a) immediately report in writing to PhotonFirst details of any breach of the Anti-Corruption Obligation in connection with the contract; (b) ensure and monitor compliance with the Anti-Corruption Obligation; (c) in case of any breach of the Anti-Corruption Obligation permit PhotonFirst to inspect, audit and make copies of any books and records of the Contractor/Supplier relating to this Contract and the Contractor/Supplier's compliance with the Anti-Corruption Obligation through an independent and professional auditor who is obliged to observe professional discretion (e.g. certified accountant) appointed by the Contractor/Supplier. In case the result of the audit performed is that the Contractor/Supplier has breached Anti-Corruption Obligations, PhotonFirst shall be entitled to reclaim the costs of the audit possibly incurred by PhotonFirst.
- 14.3. PhotonFirst shall - notwithstanding any other rights - have the right to terminate this Contract or suspend any services/supply or payments with immediate effect if PhotonFirst reasonably believes in good faith that the Contractor/Supplier has breached in any material respect any of the requirements set out in this Clause 14.
- 15. Audits**
- 15.1. The Contractor/Supplier shall maintain books, records, documents and other evidence pertaining to costs, charges, fees and other expenses to the extent and in such detail as will properly evidence all costs for labor, materials, equipment, supplies and work, and other costs and expenses for whatever nature for which reimbursement is claimed.
- 15.2. At any time during or after the term of the Contract, PhotonFirst shall have the right, upon not less than ten (10) business days' notice and within usual and customary business hours, to access and audit the facilities and records of the Contractor/Supplier and its subcontractors in order to verify compliance with the Contract and these terms and conditions.
- 15.3. The Contractor/Supplier shall provide to PhotonFirst's personnel, auditors and inspectors such assistance and co-operation as they may reasonably require, including access to relevant documentation, physical access to all areas within the factory where the Products are manufactured, tested and stored.
- 15.4. The Contractor/Supplier is obliged to close all corrective actions resulting from audits in a timely manner. Upon request such corrective action reports and progress made should be provided to PhotonFirst.
- 16. Applicable law and settlement of disputes**
- 16.1. These terms and conditions, the Contract, and all agreements arising therefrom are exclusively governed by Dutch law. The applicability of the Vienna Sales Convention (CISG) dated 11 April 1980 is hereby explicitly excluded.
- 16.2. All disputes which might arise between the Parties in connection with the Contract or any other agreements resulting from or related to the Agreement, 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 Amsterdam, 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 Amsterdam, the Netherlands. The language of arbitration shall be English.
- 17. Assignment and subcontracting**
- 17.1. PhotonFirst may assign, sub-let or pledge the whole or part of its rights, liabilities and obligations under the Contract to a third party upon the same terms and conditions as those agreed upon between the parties hereto without the consent of the Contractor/Supplier and as far as necessary Contractor/Supplier accepts it.