Terms and Conditions
for Design Services, Manufacturing/Assembly Services and Consultation
Form B02 Rev 3 16/8/24

bay photonics
Advanced Photonics Assembly and Packaging

These Standard Terms and Conditions, together with our proposal and Official Quotation make up the Agreement between the named Client and Bay Photonics Ltd. Before countersigning the Proposal, placing a Purchase Order or verbally authorizing work, be sure you read and understand its contents, which deal with the allocation of risks and duties between the Client and Bay Photonics Ltd.

1. **Appointment**. *When we start what.* With effect from the Commencement Date stated within the proposal or Official Quotation, Bay Photonics Ltd is appointed as a design, development, Manufacturing/Assembly Services and consultation resource to the Client to carry out the project development unless this Agreement is terminated by either party serving not less than one month's notice in writing on the other or a 'Force Majeure.'

2. **Services**. *We'll do what we agreed we would do.* Bay Photonics Ltd will perform the services defined in its Proposal and any amendments or change orders accepted by both parties. Any Additional Services identified by Bay Photonics (to change design to make it meet the Specification) or any request from the Client that requires extra work, or additional time, or increases Bay Photonics Ltd' costs will invoke an invoice from the Additional Services line item of the Proposal.

3. **Duties**. *What we'll do.* During the appointment, Bay Photonics Ltd shall devote time, attention and skill to the business of the Client as shall be necessary for the proper performance of the Design Services. Bay Photonics Ltd warrants to the Client that by entering into this Agreement Bay Photonics Ltd will not be in breach of any obligations to or agreements with any third party. If an employee of Bay Photonics Ltd is unable at any time to perform the Design Services due to circumstances beyond his or her control, Bay Photonics Ltd may delegate performance of the Design Services to such suitably qualified and experienced personnel as Bay Photonics Ltd may from time to time deem appropriate. Bay Photonics Ltd must notify the Client if this power to delegate is exercised and provide details of the name of the delegate.

4. **Standard of Care**. *We'll try to do the work right. If we mess up, we'll try to fix it.* Bay Photonics Ltd will perform the services with the skill and care ordinarily used by qualified professionals performing the same type of services at the same time under similar conditions in the same or similar locality. No other standards or warranties, expressed or implied, including warranties of marketability or fitness for a particular purpose apply. The Client will notify Bay Photonics Ltd in writing of any deficiencies in the services within 15 days of their discovery but not later than 120 days after substantial completion of the services. The Client will give Bay Photonics Ltd a reasonable opportunity to correct these deficiencies.

5. **Client's Responsibilities.** *You'll help us where you can.* Client will provide approvals, consents, and access to design staff necessary for performance of the services. Client will provide Bay Photonics Ltd with all reasonably available documents that are related to the services.

6. **Payment.** *You'll pay us fairly and quickly.* Except as expressly provided in the Quotation, Client will pay Bay Photonics Ltd for the services at its standard rates, reimburse its expenses, and pay any taxes and shipment costs applicable. Bay Photonics Ltd will submit periodic invoices. The Client will notify Bay Photonics Ltd in writing within 10 days of any disputed item on the invoice and pay all undisputed items as stipulated on the quotation. Overdue payments will accrue interest at the current rates of Statutory Interest chargeable under the Late Payment of Commercial Debts (Interest) Act 1998. Bay Photonics Ltd may terminate its services upon 10 days written notice any time payment is overdue on any account with the Client. Client agrees to pay for all services up until termination plus termination and collection costs, including reasonable lawyers' fees and expenses. If the Client fails to pay an invoice by its due date, Bay Photonics Ltd reserve the right to cease providing any services under this Agreement until such time as the outstanding invoice is paid and any time scales agreed with the Client in relation to the provision of the services under this agreement will be adjusted accordingly.

7. **Confidentiality.** *We won't tell anybody about this work.* Each Party undertakes that it shall not disclose or use or cause to be disclosed or used, at any time during or subsequent to this Agreement, any Confidential Information. Each Party may disclose the other Party's confidential Information: (i) to its employees who need to know such information for the purposes of exercising rights or carrying out its obligations under or in connection with this agreement; and (ii) any disclosure that may be required by law, a court of competent jurisdiction or any governmental or regulatory authority. No Party shall use the other Party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement. The obligations in this clause shall not apply to information which: (i) was known to the other party before it was imparted by or on behalf of the other party; or (ii) is publicly available or becomes publicly available through no act or omission of the Party. For the purposes of this clause, **Confidential Information** shall mean all information (whether commercial, financial, technical or otherwise) relating to a Party or its operation or business or customers which is supplied by or on behalf of that Party or generated by either Party from such information, either in writing, orally or in any other form, directly or indirectly from or pursuant to discussions with the other Party or which is obtained through observations made by either Party, including all analyses, compilations, studies and other documents whether prepared by or on behalf of the Party which contain or otherwise reflect or are derived from such information and any other information clearly designated by the Party as being confidential to it (whether or not it is marked "confidential"), or which ought reasonably be considered to be confidential.

8. **Intellectual Property Ownership.** *Who owns the work we've done for you?* Each party retains ownership of all intellectual property rights in their background intellectual property (which for the purposes of this agreement shall mean all intellectual property rights owned by either party prior to the date of this agreement or developed independently by either party outside of this agreement). Each party is licensed to use the other party's background intellectual property only for the delivery of the services under this agreement and any attempt to use such background intellectual property for any other products or services is strictly forbidden. The Client is granted a fully-paid up, non-exclusive, royalty-free, non-transferable perpetual licence to use Bay Photonics Ltd's background intellectual property solely for the purposes of the products or services developed pursuant to this agreement. Bay Photonics Ltd will own all intellectual property rights in all foreground intellectual property created under this agreement. Bay Photonics Ltd hereby grants the Client a fully-paid up, non-exclusive, royalty-free, non-transferable perpetual licence to use such foreground intellectual property for the purposes of the Product or Services developed pursuant to their business. Foreground intellectual property shall mean intellectual property developed during the course of providing the services under this agreement.

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9. **Patent Infringement.** *The Client has a better view of any contentious patents.* Issues relating to Patent Law and Patent Infringement shall be the responsibility of the Client. Bay Photonics Ltd will provide design, development and consultancy services at the request of the client and shall not knowingly infringe patents or patent law.

10. **Termination of Agreement.** *Both parties can stop this work.* Either party shall have the right at any time to terminate this Agreement by not less than one month's notice in writing to the other party. Bay Photonics Ltd will require payment for any services undertaken or material purchased up to the date of Termination request. Bay Photonics Ltd may require payment, to the value of the Purchase Order, if no other work can be found to fill the scheduled work slot. In addition, both parties shall have the right to terminate this Agreement at any time by summary notice without any payment in the event of the other party: being in material or persistent breach of any of the terms of this Agreement; having a bankruptcy order made against it or making any arrangement with its creditors or having an interim order made against it; persistently and wilfully neglecting or becoming incapable for any reason of efficiently performing the Design Services

11. **Disputes.** *We want disputes settled quickly and fairly.* If a dispute arises relating to this Agreement and cannot be settled through direct discussions, the parties agree to endeavor to settle the dispute through a mediation firm acceptable to both parties, the cost of which shall be divided equally. The Client reserves the right to join any dispute under this Agreement with any other claim in litigation or other dispute resolution forum, and Bay Photonics Ltd agrees to such joinder, so that all disputes related to the project may be consolidated and resolved in one forum.

12. **Insurance.** *This is all we have.* During the work, Bay Photonics Ltd will maintain Employer's Liability insurance. Indemnity limits are £5,000,000 for Employer's Liability and £2,000,000 for Public Liability.

13. **Limitations of Liability.** *We won't pay any more on a claim than what's fair.* In no event (death or personal injury excepted) will Bay Photonics Ltd be liable to the Client for any indirect, incidental or consequential damages arising out of the Design Services or any products provided under this Agreement, even if Bay Photonics Ltd has been advised of the possibility of such damages. Bay Photonics Ltd liability to the Client for actual damages for any cause whatsoever, regardless of the form of the action, will be strictly limited to 100% of the Fees paid for the prior 12 months.

14. **Indemnification.** Client agrees to hold harmless, indemnify, and defend Bay Photonics Ltd and its affiliates and subconsultants and their employees, officers, directors and agents against all claims, suits, fines and penalties, lawyer's fees and other costs of settlement and defence, which claims, suits, fines, penalties, or costs arise out of or are related to this Agreement.

15. **Force Majeure.** *We aren't responsible for things we don't control.* No failure or omission by either party to carry out or observe any of the terms and conditions of this agreement shall give rise to any claim against the party in question or be deemed a breach of this agreement if such failure or omission arises substantially from any cause wholly beyond the control of that party. However, in the event of interruption of the services the party shall use their reasonable efforts to resume the normal services with the least possible delay. Either Party may, during the continuance of any force majeure event, terminate this Agreement by written notice to the other Party if a force majeure event continues for more than 30 working days.

16. **Entire Agreement.** *This agreement over any other.* This Agreement, together with The Official Quotation, Proposal and Confidentiality Agreement (if any), contain the entire agreement and understanding of the parties relating to the subject matter of this Agreement and extinguishes all previous agreements between the parties relating to the subject matter hereof. Bay Photonics Ltd will not accept any purchase order from Client which purports to incorporate Client's standard terms and conditions in the place of these terms and conditions.

17. **Survival of Causes of Action.** *Termination doesn't change work already done.* The termination of this Agreement howsoever occurring shall not affect the rights and liabilities of the parties already accrued at such time nor affect the continuance in force of such of its provisions as are expressed as or capable of having effect after such termination.

18. **Severability.** *Removal of incorrect part of clause only.* If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of this Agreement shall continue in full force and effect as if this Agreement had been executed with the illegal or unenforceable provision eliminated.

19. **Waiver.** *There is no automatic waiver.* Failure of any party to insist upon strict performance of any provision of this Agreement or the failure of any party to exercise any right or remedy to which he or she is entitled hereunder shall not constitute a waiver thereof and shall not cause a diminution of the obligations under this Agreement. No waiver of any of the provisions of this Agreement shall be effective unless it is expressly stated to be such and signed by all the parties to this Agreement.

20. **Communications.** *Any important documents shall be hand delivered or sent by post.* Any communication to be given pursuant to the terms of this Agreement shall be in writing and shall be delivered by hand or sent by post to the address of the addressee as set out in this Agreement or such other address (in UK) as the addressee may from time to time have notified for the purpose of this Clause.

21. **Law and Jurisdiction.** *English laws apply.* This Agreement is governed by the laws of England and the parties submit to the jurisdiction of the Courts of England.

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