

Terms of Business

1. Agreement, offers and confirmation

- 1.1 These Terms of Business apply, to the exclusion of any purchase or other conditions of the client, to the preparation, content and performance of all agreements between the client and People Creating Value B.V., trading as PCV Group (the “contractor”).
- 1.2 All offers are without commitment and are valid for two months. Prices quoted may be subject to change owing to unforeseen changes in the work. Prices are exclusive of VAT and other government levies. The rates and offers quoted will not automatically apply to future commissions.
- 1.3 Commissions must be confirmed by the client in writing. If the client fails to do so but consents to the contractor commencing the commissioned work, the terms of the offer will be deemed to have been agreed. Any subsequent oral agreements and stipulations will not be binding on the contractor unless he has confirmed them in writing.

2. Performance of the agreement

- 2.1 The contractor shall undertake the work commissioned with skill and care and in accordance with agreed specifications. To the extent necessary the contractor shall keep the client informed of the progress of the work.
- 2.2 The client shall do any and all things that are reasonably necessary or required to enable the contractor to deliver punctually and properly, in particular by supplying (or causing the supply of) complete, sound and clear requirements, data or materials in a timely manner.
- 2.3 Timelines quoted by the contractor for completion of the commissioned work are approximations only, unless the content of the agreement requires otherwise.
- 2.4 Where a commissioned work is of a developmental nature (meaning that the required technical solution is not readily available and needs to be created or invented), trade-offs may be required for technical, commercial, cost or legal reasons and accordingly achieving full compliance with specifications cannot be guaranteed by the contractor.
- 2.5 Where specifications are not expressly agreed at the start of the project as being final specifications for the relevant product, component or system, the specifications shall undergo the following process of iteration:
 - (a) at project initiation, the specifications will be treated as development targets, subject to trade-offs in terms of performance, features and cost as indicated by the contractor;
 - (b) during the pre-development phase, the parties will refine the specifications based on the architecture chosen;
 - (c) by the end of the pre-development phase, target requirements for the commissioned work will be developed and agreed based on tests, evaluation, and analysis during the pre-development phase. These target requirements will define the standard (nominal) performance and provide confirmation that the commissioned work is capable of achieving the nominal performance targets;
 - (d) during the development phase, the commissioned work will be developed to satisfy the target requirements, and non-standard (non-nominal) performance and precise tolerances will be investigated. Validation testing and investigation of tolerances of components will also enable non-nominal performance conditions to be identified and optimised, and the specification to be adjusted accordingly;
 - (e) by the end of the development phase, the commissioned work will be finalised (which will include proof of function and robustness testing and a frozen product specification including non-nominal performance requirements) and handed over to the client;
- 2.6 Following the development phase, if agreed, contractor may jointly define with the client the detailed sub-assembly and part specifications, and perform simulations and other activities to support tool acquisition and pre-production. The accuracy and completeness of sub-assembly and part specifications and any other pre-production and production activity is the final responsibility of the client. Any simulations carried out by contractor are approximations of real-life conditions and contractor does not guarantee their accuracy or completeness.
- 2.7 Unless otherwise agreed, the performance of tests, the application for permits and the assessment whether the client’s instructions comply with safety and technical laws and standards do not fall within the scope of the work commissioned to the contractor.
- 2.8 Prior to production, reproduction or publication, each party must give the other the opportunity to check and approve the final draft, prototype or galley proofs of the commissioned work. If the contractor is to place orders with or give instructions to manufacturing companies or other third parties, whether or not in the client’s name, the client must confirm its aforesaid approval in writing at the contractor’s request.
- 2.9 Following completion of the development phase and final closure of a project (and in any event prior to any pre-production support phase), contractor will complete the handover of the commissioned work, for client’s final acceptance (in accordance with an agreed acceptance testing process, if any).

- 2.10 Any client complaints to the contractor in relation to the commissioned work and its conformance with specifications must be filed in writing at the earliest possible time but not later than within ten business days after completion of the commissioned work and its handover, failing which the client will be deemed to have accepted the work commissioned work in its entirety and any and all rights to claim (additional or changed) performance or compensation of damages will lapse. In relation to any latent defects which could not have been reasonably identified during the acceptance process, the client must notify the contractor within 90 days of their discovery, and raise any claim within 6 months of the date of such notice, failing which all rights to claim compensation of damages will lapse. The preceding is without prejudice to the long stop date for claims under article 12.5.
- 3. Engagement of third parties**
- 3.1 Unless otherwise agreed, instructions to third parties to be given in the context of executing the work commissioned will be given by or on behalf of the client. At the client's request the contractor may act as an agent for the client's account and risk. The parties may agree on a fee for such services.
- 3.2 If the contractor provides an estimate of third-party costs at the client's request, such estimate will be an approximation only. If required, the contractor may seek quotations from third parties on the client's behalf.
- 3.3 If the contractor procures goods or services from third parties in the performance of the work commissioned work, for the contractor's own account and risk and on the basis of an express agreement, the general conditions of such supplier with regard to the quality, quantity, properties and delivery of such goods or services will also apply to the client.
- 4. Intellectual and other property rights**
- 4.1 Except as otherwise set out in article 4.2, all patents, design rights and other intellectual property in the commissioned work developed in the course of the performance of this agreement will vest in the client, once the client has fulfilled all its obligations under the agreement. Until such time as the client has fulfilled all its obligations under the agreement, the above mentioned rights will vest in the contractor.
- 4.2 The contractor's Background IP (including incremental improvements to it) will be owned by the contractor. For the purposes of articles 4 and 5, "**Background IP**" means all intellectual property owned by the contractor prior to the date of this agreement or generated or acquired at any time independently of its activities under this agreement which is necessary for the client to make, market or sell products to the extent they utilise the commissioned work. "**Incremental improvements**" to contractor's Background IP means improvements which are developed by contractor without any material contribution by the client and which cannot be separated from or used independently of the contractor's underlying Background IP. Contractor's Background IP will be available to the client by way of the licence in article 5.
- 4.3 Where, during any pre-development phase, contractor applies its know-how to present alternative engineering possibilities or concepts for achieving a solution ("**Concepts**"), such Concepts shall be treated as contractor's Background IP. Once a particular Concept is selected by the client at the end of the pre-development phase ("**Selected Concept**"), the Selected Concept and further developments to it shall be treated in accordance with article 4.1. Concepts which are not selected for further development within the project ("**Non-selected Concepts**") shall be available to the client together with other Background IP in accordance with article 5 below.
- 4.4 Unless specifically agreed, the commissioned work does not include conducting searches for the existence of any rights of third parties ("**FTO**"), including patents, trademark rights, drawing or design rights, copyrights or portrait rights. The same applies to any investigation into the possibility of such forms of protection for the client. The parties may agree to include an FTO search as part of the project, in which case the following process will apply:
- (a) the contractor will identify advisers (a firm of patent attorneys or similar, the identity of which will be subject to client's approval, not to be unreasonably withheld) to undertake the FTO. The cost of the advisers will be incorporated into the cost of the project;
 - (b) the contractor will instruct the advisers, on the client's behalf and following agreement with client on the scope of the instructions. The FTO report will be issued solely to the client, as the customer of the advisers;
 - (c) the client may make the content of the FTO report available to the contractor and request it to provide further input or analysis of the technical content to assist the client with assessing the FTO report;
 - (d) any analysis or other support provided by the contractor shall not extend to or be deemed to constitute legal advice to the client regarding issues of infringement or validity of any third party rights, and the client shall be fully responsible for any final assessment of any risk and any final decision on how to proceed with its project pursuant to the FTO report;
 - (e) if, based on the FTO report, the commissioned work gives rise, or in either party's opinion is likely to give rise, to a claim of infringement of third party intellectual property rights, the parties may work together under this agreement to replace or modify the commissioned work in such a way as to make it non-infringing, however neither party shall be obliged to proceed with the work if the other party does not wish to carry out modification work necessary to materially reduce the infringement risk.
- 4.5 Unless the work is not suitable for that purpose, the contractor will at all times be entitled to imprint his name on or in or to remove it from the work (or to have his name imprinted on or in or removed from the work).
- 4.6 With exception of article 12.5 upon completion of the commissioned work, neither the client nor the contractor will have any obligation to retain any of the materials and data used.

5. Use and licence

- 5.1 The contractor grants to the client a non-exclusive, worldwide, royalty-free, non-transferable licence under its Background IP to (i) make, have made, use, sell, import, export, distribute, display or market client's products utilising the commissioned work; (ii) sub-license the Background IP to its component manufacturing partners for the purpose of procuring components for such products; (iii) to use the Background IP contributed to the project in further developing the commissioned work provided that this does not extend to licensing or disclosing any Background IP to third parties; and (iv) to permit any of its affiliates to do any of the things set out in this article 5.1. (For the purposes of this article, "affiliate" means any entity which from time to time controls, is controlled by or is under common control with the client, and "control" means ownership or control of a majority of the voting rights, or the legal power to direct or cause the direction of the general management of the relevant entity).
- 5.2 With regard to any Non-selected Concepts licensed under this agreement, the contractor shall have no further obligation to disclose or teach the client beyond what is disclosed for the purposes of the project.
- 5.3 The contractor may use the commissioned work at his discretion for his own publicity or promotional purposes, with due observance of the client's interests.

6. Confidentiality

- 6.1 Parties shall not disclose confidential information concerning or received from the other party, unless otherwise obligated by law or a judicial order.
- 6.2 Parties shall oblige their personnel to comply with article 6.1.
- 6.3 At the first request of contractor parties shall enter into a non-disclosure agreement, the terms of which will continue to apply to the project for the duration of this agreement, unless otherwise agreed.
- 6.4 The confidentiality obligations of this agreement shall remain valid beyond its termination or expiry (a) in relation to market strategies and financial position, until they become public; (b) in relation to technical specifications or solutions, until they are made available to the public as the result of the market introduction of a product implementing such specifications or solutions; and (c) in relation to all other confidential information, for a period of 5 years.
- 6.5 If the client fails to comply to any obligation in this article 6 it shall forfeit to contractor an immediately payable penalty of € 25,000 notwithstanding the right of contractor to claim its actual damages in addition.

7. Processing of personal data

- 7.1 In so far as parties shall process personal data in executing the agreement, parties shall do so in a careful manner, in accordance with the applicable GDPR regulations implemented in the Dutch AVG.
- 7.2 In accordance with clause 32 AVG parties shall take appropriate organisational and technical measures to safeguard personal data.
- 7.3 If personal data is processed parties shall enter into a data processing agreement containing at least:
- (a) an obligation of the client to safeguard contractor against any and all damages (including penalties from responsible authorities) and claims from third parties deriving from the processed data;
 - (b) an obligation of the client to forthwith notify contractor of any infringement as referred to in clause 33 AVG.

8. Fees and additional costs

- 8.1 In addition to payment of the agreed fee, the contractor will be entitled to reimbursement of any costs incurred by him in the performance of the work commissioned.
- 8.2 If the contractor is required to perform more or other work due to late delivery or non-delivery of complete, sound and clear data and/or materials, or any change or error in instructions, briefings or specifications, such additional work will be charged separately on the basis of the contractor's usual fees.
- 8.3 If the fee to be paid is in any way subject to facts or circumstances to be evidenced by the client's accounting records, the contractor will be entitled upon receiving a statement of account from the client to have the client's accounting records audited by an accountant to be selected by the contractor. If the results of the accountant's audit differ more than 2% or € 100 from the client's report and statement of account, the costs of the audit will be for the client's account.

9. Payment

- 9.1 Payments must be made within the pay term indicated in the contractor's offer (or, if not indicated, within 30 days of the invoice date). If the contractor has not received payment (or payment in full) at the end of that term, the client will be in default and will owe interest at the statutory rate. All costs incurred by the contractor in connection with overdue payments, such as costs of litigation and judicial and extrajudicial costs, including the cost of legal assistance, bailiffs and debt collection agencies, will be for the client's account. The extrajudicial costs will be not less than 10% of the invoice amount, with a minimum of € 150.

- 9.2 Invoicing frequency will be indicated in the contractor's offer (but if not indicated, the contractor will have the right to invoice the client at monthly intervals for work performed and costs incurred in the performance of the commissioned work).
- 9.3 The client will pay the amounts due to the contractor without any reduction or set-off, save for settlement against adjustable advance payments relating to the agreement which the client may have made to the contractor. The client is not entitled to suspend payment of invoices for work that has already been performed.

10. Termination of the agreement

- 10.1 If the client gives notice of termination of an agreement, he must pay the contractor's fees and the costs (including committed third party costs) incurred in connection with the work performed until that date.
- 10.2 If the agreement is terminated by the contractor on the grounds of breach by the client in the performance of the agreement, the client will be required to pay, in addition to damages, the contractor's fees and the costs incurred in connection with the work performed until that date. In this context any conduct by the client on the grounds of which the contractor cannot reasonably be required to complete the work commissioned will also be regarded as breach.
- 10.3 The damages referred to in Article 10.2 will include (but not be limited to) the costs (including committed costs) arising from obligations undertaken by the contractor in his own name with third parties for the performance of the work commissioned, as well as 30% of the balance of the fee that the client would owe the contractor if the work commissioned were fully completed.
- 10.4 Both the contractor and the client will have the right to terminate the agreement in whole or in part with immediate effect if the other party is declared bankrupt or is granted a suspension of payments (whether or not provisional). If the client is declared bankrupt, the contractor will have the right to terminate the right of use granted, unless the consequences would be contrary to the principles of reasonableness and fairness.
- 10.5 In the event of termination by the client on the grounds of breach in the performance of the contractor's obligations, the performance already completed and the related payment obligation will not be subject to cancellation, unless the client provides evidence that the contractor is in default of that performance. Amounts that the contractor has invoiced before the dissolution for work performed or delivered properly under the agreement will remain payable in full with due observance of the previous sentence and will fall due immediately upon termination.
- 10.6 If the contractor's work consists of recurrently performing work of a similar nature, the agreement in question will be valid for such time as the work is requested by the client (plus any agreed notice period), unless otherwise agreed in writing. Such agreement may be terminated by written notice given with due observance of a reasonable notice period of not less than three months.
- 10.7 Contractor waives the right to declare the agreement void for reasons of error (clause 6:228 Dutch Civil Code) or file a claim to modify the agreement (clause 6:230 Dutch Civil Code).

11. Warranties and indemnities

- 11.1 The contractor warrants that the commissioned work supplied to the client has been made by the contractor or on its behalf and, if the design is protected by copyright, that the contractor is the author within the meaning of the Auteurswet (Dutch Copyright Act) and as the copyright owner has the power of disposition of the work.
- 11.2 The contractor warrants that, to the best of the contractor's knowledge, client's permitted use of contractor's Background IP licensed to it under this agreement shall not infringe any intellectual property right vested in any third party (subject to any third party rights identified in the FTO, which shall be treated as a disclosure against this warranty).
- 11.3 The client indemnifies the contractor or persons engaged by the contractor in the performance of the commissioned work against any third-party claim or action arising from the exploitation or use of the commissioned work except to the extent such claim or action arises as the result of contractor's breach of its warranties in this article 11.
- 11.4 The client indemnifies the contractor against any claim or action relating to intellectual property rights in materials or information supplied by the client and used in the performance or exploitation of the commissioned work.

12. Liability

- 12.1 The contractor will not be liable for:
- (a) errors or defects in materials or information supplied by the client or caused by acts of the client, such as late delivery or nondelivery of complete, sound and clear requirements, information and/or materials, or client decision not to proceed with any steps reasonably recommended by the contractor;
 - (b) errors or defects by third parties engaged by or on behalf of the client;
 - (c) inaccuracies in offers made by suppliers, or prices quoted by suppliers being exceeded;
 - (d) errors or defects in the commissioned work or errors in the text/data if the client has given its approval in accordance with the provisions of article 2.9 or has had the opportunity to perform approval testing or inspection and has failed to do so;

- (e) errors or defects in the commissioned work or errors in the text/data if the client has not had a particular model or prototype prepared or a particular test performed and the errors would have been apparent in such model, prototype or test.
 - (f) improper or defective manufacture of products incorporating the commissioned work;
 - (g) improper or unsafe handling or use of products by consumers or maintenance personnel;
 - (h) any addition or modification to the commissioned work in the final product or components or subsystems in or included with any the products which were not designed by contractor;
 - (i) any matters relating to application for permits in relation to final products incorporating the commissioned work, and compliance of such products with technical or safety regulations or standards.
- 12.2 The contractor will be liable only for direct damage attributable to it. Direct damage will include only:
- (a) reasonable costs to assess the cause and extent of the damage, to the extent that such assessment concerns damage within the meaning of these general conditions;
 - (b) any reasonable costs necessarily incurred to replace, correct or complete any defective part of the commissioned work provided that, where reasonably practicable, the contractor is given an opportunity to carry out such remediation itself at its cost; and
 - (c) reasonable costs incurred to prevent or limit the damage, to the extent that the client demonstrates that those costs led to a limitation of the direct damage referred to in these general conditions.
- 12.3 The contractor shall not be liable for indirect and consequential damage, including loss of profits, loss of anticipated savings, loss of business, intervention in the field or product recall, corrupted or lost data or materials, or damage due to business interruption.
- 12.4 Save in the event of wilful intent or recklessness by the contractor, the contractor's total liability for damage or loss arising from this agreement or any wrongful act committed against the client will be limited to the value of amounts invoiced and paid in respect of the relevant project under this agreement.
- 12.5 Any and all liability will expire twelve months from the date of completion of the commissioned work.
- 12.6 Where reasonably possible the client will be required to retain copies of materials and data he has supplied until the work commissioned has been completed. If the client fails to do so the contractor cannot be held liable for any damage or loss that would not have occurred if such copies had existed.
- 13. Other terms**
- 13.1 The client will not be permitted to transfer or assign to third parties any of the rights under an agreement concluded with the contractor, save in the event and as part of a transfer of the client's entire business.
- 13.2 The headings in these Terms of Business have been included for easy reference only and are no part of these Terms and Conditions.
- 13.3 All agreements between the contractor and the client are governed by Dutch law. All disputes arising out of this agreement, or relating to the performance of this agreement, will be resolved exclusively by the competent court in the place of domicile of the party bringing the claim. However, if this would render a court outside of the EU or Switzerland competent, the court in the place of domicile of the party alleged to be in breach will have exclusive jurisdiction to settle the dispute. The preceding is without prejudice to a party's right to seek injunctive relief in relation to any breach and/or imminent breach of this agreement, or to seek enforcement of a payment obligation, in any court of competent jurisdiction in any relevant territory.
- 13.4 Where a translation of these Terms of Business is also provided, in the event of any difference between the English language version and the translation, the English text will prevail.