

Terms and Conditions for CORNERSTONE services (RIS:12780/17)

1. Definitions: In this Contract, the following words shall have the following meanings:

The Definitions **the Contract, and the Price** shall have the meanings set out in the Quotation above.

"Acceptance Date" shall be the date upon which the University provides confirmation to the Client to deliver the Services.

"Background IP" shall mean all technical know-how and information known to either Party, together with all IPR owned by, or licensed to the Parties used in the delivery of the Services, which is not Foreground IP.

"Client" shall mean the organisation specified in the Quotation.

"Deliverable(s)" shall mean those deliverables as specified in the Quotation.

"Foreground IP" shall mean all information, know-how, results, designs, inventions and other matter capable of being the subject of IPR which is conceived, first reduced to practice or writing or developed by the University during the Services and in whole or in substantial part for the generation of the Deliverables.

"Intellectual Property Rights (IPR)" shall mean patents, applications for patents and patentable know-how, trademarks or trading names (whether or not registered or registrable), designs (registered or registrable and including applications for registered designs), copyright (including rights in computer software and any sui generis rights), topography rights and other rights in semi-conductor chips, rights in inventions, the right to claim damages for past infringements of the same and all rights having equivalent or similar effect wherever situated.

"MPW" shall mean multi project wafer.

"Parties" shall mean the Client and the University.

"Purchase Order" shall mean the Client's order for the Services as set out in the Quotation.

"Services" shall be as detailed specifically in the Quotation, and in any supporting documents referred to therein.

"University" shall mean The University of Southampton, University Road, Highfield, Southampton, SO17 1BJ, United Kingdom.

2. The Contract for Services

- a) The Purchase Order shall only be deemed to be accepted when the University issues written acceptance, at which point the Contract shall come into force.
- b) The conditions set out herein shall, together with the Quotation above, constitute the entire terms of the Contract between the University and the Client. Any other terms and conditions whether contained in the Client's Purchase Order or other documentation that purport to impose terms on the Services shall have no effect. By submitting the online form, the Client accepts the terms of this Contract.
- c) No variation or amendments to these Terms and Conditions shall be valid unless agreed to in writing by the Parties as a specific variation of amendment agreement.
- d) The Services are provided for the fabrication of prototypes for research and evaluation purposes.
- e) The University may use subcontractors to carry out part of the work, such as certain processing steps. In such an event, any confidential information belonging to the Client will be protected under terms no less strict than those under Clause 7.

3. Price, Invoicing and Payment

- a) The Client will pay the full price for the conduct of the Services as set out in the Quotation. Where the Services are delayed through no fault of the University for more than 3 months then the University shall be entitled to submit an invoice for all work done up to that date, and such invoice shall be payable within 30 days of the invoice date.
- b) All sums due are exclusive of Value Added Tax, import/export duties and any other tax, which, where applicable shall be paid by the Client in addition to the price.
- c) Following the Acceptance Date, the University shall invoice 100% of the Price unless otherwise specified in the Quotation.

4. Ownership of Deliverables and IP

- a) University Background IP which is used in the Services, will remain the property of the University (or its licensor) and the University will grant a non-exclusive licence to such Background IP on fair and reasonable terms where Background IP is necessary for use of the Deliverables, provided it is free and able to do so. The University does not and shall not grant any access to Background IP for use in any LIDAR applications.
- b) The Client shall only pass to the University for use in the Services such Background IP owned by it and/or to which the Client has the right to grant a licence to the University for carrying out the Services. The Client hereby grants the University a non-exclusive royalty free licence, with the right to sub-licence, to use any Background IP provided by it to the University for the sole purposes of carrying out the Services and providing the Deliverables to the Client, such use to include: manufacture; to have manufactured; export; import; process; practice; copy; reproduce; develop; modify; improve; adapt; and make derivative works of the Clients Background IP, for the sole purpose of carrying out the Services.
- c) The Client shall own; any designs, test and characterization data, or other Client-specific report (Client Foreground IP) and the Deliverable(s). The following restriction shall apply to Client Foreground IP:
 - a. The Client Foreground IP and/or Deliverable(s) may not be used in any LIDAR applications without prior written consent from the University.
- d) The University shall own any design rules, fabrication processes, packing methods, test and characterisation methods produced as a result of performing the Services (University Foreground IP).
- e) Ownership of any Deliverables or Client Foreground IP and the right to negotiate a licence to Background IP shall not pass to the Client until full payment of the Price for the Services has been received by the University from the Client, and the Client will not have the right to use, dispose of or in any way deal with such Deliverables or Foreground IP until such time as payment has been made and the title in the same has passed to the Client.

5. Obligations of the Client

The Client shall provide all necessary information needed for carrying out the Services. For devices designed by the Client that will be fabricated in the course of the Services, the design shall be sent by the Client before the deadline as notified. If the University requires additional information to perform the Services, the Client shall provide the information in a timely manner. The Client is responsible for following the design rules specified in the call documentation, or other process design kit provided by the University or its partners.

6. Equipment, Materials and Substances

- a) The Client will provide the University with all such information and materials as are necessary for the University to carry out the Services and the Client warrants that all information provided by it or on its behalf for the University to deliver the specified services will be accurate.
- b) All models or experimental equipment used by the University during the course of the Services shall remain the property of the University unless otherwise agreed between the Parties in writing or supplied by the Client for the purposes of the University undertaking the Services. Although all reasonable precautions will be taken, any equipment supplied to the University by the Client will be held at the risk of the Client, and the University will not be liable for any loss, damage, destruction or disclosure of the same.
- c) The Client acknowledges that the University may procure devices, instruments or other materials to deliver the Services, and that they shall be the property of the University.
- d) The University shall ship the Deliverable/s to the Client using a recorded delivery courier, however except where the University is negligent, the University accepts no responsibility for failure of delivery, loss or destruction of the Deliverable/s through any fault of the courier, or failure of the Client to receive the delivery.

7. Warranties, Liabilities and Indemnities

- a) The University disclaims all warranties, statutory, express or implied, with regard to the results, services and deliverables (including all warranties of merchantability and/or fitness for a particular purpose, and all warranties of freedom from third party rights infringement or the like). The client accepts that all services and deliverables in connection with this contract are provided on an "as-is" basis.
- b) The University shall use reasonable endeavours to perform the Services. However, the University shall not be held liable for any defects in the performance of the results of the Services or delays or failures to meet delivery dates.
- c) The Client warrants that any Background IP or other Intellectual Property Rights it provides to the University for use in the Services is owned by the Client and/or that the Client has the right to grant a licence to the University for carrying out the Services including such uses as set out in clause 4(b). The Client will indemnify the University, its staff and subcontractors, shall keep them fully and effectively indemnified for any claim by a third party for infringement of their Intellectual Property Rights, arising from the University, and its staff or subcontractors, carrying out the Services and in providing the Deliverables to the Client as a result of using any Background IP or other Intellectual Property Rights provided by the Client to the University.
- d) Except in the case of i) personal injury (including death) caused by the negligent or willful act or omission of either party or their servants or agents, ii) for the fraud or dishonest action of either party or iii) for breach of clause 7(c) or clause 8, the aggregate liability by one party to the other party will not exceed twice the total amount payable by the Client to the University under this Contract. The liability of either party for any breach of this Contract will not extend to any indirect, incidental or consequential damages or losses including (without limitation) loss of profits. The University accepts no responsibility for use of or reliance on information, reports, materials or equipment arising from the Services, or for advice or information given in connection with them, or for use of the Deliverables, either by the Client or by any third party who has obtained any of the said information, materials or equipment or Deliverables directly or indirectly from the Client.

8. Confidentiality

- a) Any drawings, models, samples, or other matter submitted by one Party ("the Disclosing Party") to the other Party (the Receiving Party") are confidential and must not be copied or transmitted to any third party or used for any purpose other than carrying out the Services. The drawings, models, samples and other matter and any copies thereof shall remain the property of the Disclosing Party and the Receiving Party must return promptly the same together with any tangible copies (including any electronic or digital copies) to the Disclosing Party upon the Disclosing Party's written request.
- b) Any information relating to either Party's operations shall be regarded as confidential and will not, without the prior written consent of the Disclosing Party, be used (except in connection with the Services) communicated or disclosed by the Receiving Party. This restriction does not apply to information which: is or at the time of communication or disclosure was already in the public domain when it was provided by the Disclosing Party; subsequently enters the public domain through no fault of the University; is received from a third party who has the right to provide it to the receiving party without imposing obligations of confidentiality; or is required to be disclosed by law, by an order of any court of competent jurisdiction or governmental authority.

9. Publications

- a) The owner of the relevant Foreground IP is entitled to publish it providing no confidential information of the other party is published without prior written authorisation from that party.
- b) If the Client publishes its results or Client Foreground IP as a result of the Services, it shall acknowledge the University and the UK Engineering and Physical Sciences Research Council (EPSRC) funded CORNERSTONE project (EP/L021129/1).

10. Termination

- a) Notwithstanding either Party's rights that may exist in law to terminate or treat as terminated this Contract, either Party may terminate this Contract forthwith by written notice given to the other Party if the other Party is either (i) a company, and the company passes a resolution or the court makes an order that it should be wound up or that an administrator be appointed, or makes a composition or an arrangement with its creditors, or if a receiver or manager or administrator on behalf of a creditor is appointed, or if circumstances arise which entitle the court or a creditor to appoint a receiver, manager or administrator or which entitle the court to make a winding up order; or (ii) is an individual or a partnership which at any time becomes bankrupt, or has a receiving order made against him or her or makes any composition or arrangement with or for the benefit of his or her creditors, or purports to do so.
- b) Once this Contract has come into effect, the Client shall be liable for 25% of the Price if cancelled within 14 days from

the Acceptance Date. For any cancellation by the Client 14 days or more after the Acceptance Date, the Client shall be liable for 100% of the Price.

11. Postponement of the Services

The University may postpone the Services where there is an insufficient number of paying customers for the scheduled MPW fabrication batch or for a Force Majeure event (Clause 14). In this case, the University will advise the Client of the new estimated delivery date. The Client shall be entitled to terminate the Contract within 30 days of the notification of postponement without further liability in the event the University postpones the Services, in which case the University shall repay any advance payment made by the Client in relation to the Services within 30 days of the Client terminating the Contract.

12. Governing Law

This Contract shall be governed by the Laws of England and the parties agree to submit to the exclusive jurisdiction of the English Courts, save where the Parties agree to resolve any dispute by arbitration, mediation or other similar means.

13. Export control

The Client shall inform the University if any submitted design or other technical information relevant to the Services are subject to any Export Control legislation. If a UK export control licence is required by the University to send fabricated dies and supporting information to the Client, the University shall obtain an Export Licence and the Client will cooperate in providing any necessary information.

14. Force Majeure

Neither Party shall be liable to the other for any breach of this Contract caused directly or indirectly by anything outside its reasonable control including (without limitation to the generality of the foregoing) war, hostilities, government action, breakdown, delay in transportation, any form of labour dispute including strikes, fire, flood or act of God.

15. Invalidity

The invalidity or unenforceability for any reason or any term or condition, sub-clause or paragraph of this Contract or any part hereof shall not prejudice or affect the validity or enforceability of the remainder.