

## **DEVELOPMENT TERMS AND CONDITIONS**

The following SCHOTT MINIFAB PTY LTD ("SCHOTT") Development Terms and Conditions shall apply to all Statements of Work accepted by SCHOTT and Customer. The Development Terms and Conditions are exclusive and in lieu of all other terms and conditions appearing on any Customer forms or elsewhere. SCHOTT's failure to object to provisions contained in Customer's acceptance of a Statement of Work or any other writing of Customer shall not be construed as a waiver by SCHOTT of the Development Terms and Conditions or an acceptance of any conflicting, additional or different terms and conditions.

### **1.0 DEFINITIONS**

1.1 "Affiliate" shall mean any entity which is, either directly or indirectly (through one or more intermediaries), controlling, controlled by, or under common control with a party. For purposes of this definition, "control" means ownership of all or a majority of the outstanding capital stock or other equity interests with voting rights of the controlled entity.

1.2 "Agreement" shall mean these Development Terms and Conditions in combination with the applicable Statement of Work accepted by the parties.

1.3 "SCHOTT Background Property" shall mean all Intellectual Property developed or acquired by SCHOTT or its Affiliates before or outside the scope of the Agreement.

1.4 "Customer Background Property" shall mean all Intellectual Property developed or acquired by Customer or its Affiliates before or outside the scope of the Agreement.

1.5 "Deliverables" shall mean any tangible or intangible items to be delivered by SCHOTT to Customer pursuant to a Statement of Work.

1.6 "Intellectual Property" shall mean any current or future know how, trade secret, invention, discovery, patent, utility model, copyright, trademark, industrial design, process, formula, technique, or any other tangible or intangible right or privilege of any nature, in all cases applicable all over the world and whether registered or not.

1.7 "Statement of Work" shall mean a statement of work, proposal, or other written document agreed by the parties that references these Development Terms and Conditions and describes the Deliverables and goals of the development work.

### **2.0 DEVELOPMENT WORK**

2.1 Development Work. SCHOTT has made a realistic projection of its likelihood of success in delivering the Deliverables along with a reasonable estimate of the proposed development effort, budget, and schedule. However, this projection and estimate is based on many assumptions, including that each development activity will be done once, or with limited iterations, with successful outcomes. As the development work proceeds, it is possible that there may be project requirements that neither party had anticipated, unexpected outcomes, or

inaccurate projections/estimates, all of which may impact the final outcome, scope of work and/or budget required to deliver the Deliverables. Should additional work be required to deliver the Deliverables, SCHOTT will advise Customer and seek approval to proceed before any additional work or costs are incurred.

2.2 Changes. At any time following execution of the Statement of Work, the Deliverables may be modified upon mutual written agreement of the parties. In the event any such change materially increases SCHOTT's development costs or requires a modification to the schedule for development, SCHOTT and Customer shall negotiate in good faith an equitable adjustment to the development charges payable by Customer to SCHOTT and to the schedule for development.

2.3 Liaison. Each party agrees to appoint a principal point of contact, identified in the Statement of Work as "Project Managers", to whom all communications between the parties with respect to development of the Deliverables shall be directed.

2.4 Freedom to Operate. Unless specifically stated in the Statement of Work or otherwise agreed in writing, SCHOTT is not required to undertake any freedom to operate searches or provide opinions in respect of freedom to operate, and Customer is fully responsible for conducting any such searches and forming its own opinions and otherwise determining whether the Deliverables infringe or potentially infringe Intellectual Property of any third party.

2.5 Restrictions. Nothing in the Agreement will impair either party's right to acquire, license, develop, manufacture or distribute (itself or through third parties on its behalf), any technology substantially similar to that described in the Deliverables, or Statement of Work, alone or in addition to or in lieu of the technology contemplated by the Agreement. Further, neither party will have any obligations to limit or restrict the assignment or reassignment of any employees or contractors in connection with the development of such similar technology or the technology contemplated by the Agreement. However, nothing in this Section 2.6 shall be construed as granting to either party any rights except as specifically provided in the Agreement.

2.6 Customer Provided Materials and Components. The development work may require the use of materials and components that Customer shall provide to SCHOTT, free of charge ("Customer Materials"). SCHOTT's development obligations under this Agreement are contingent upon timely provision of suitable Customer Materials. The provision of Customer Materials is subject to the additional following terms:

A. Customer Materials shall be provided upon SCHOTT's request. The Parties shall agree upon a Customer Materials delivery schedule and inventory tracking plan to ensure that SCHOTT's development schedule is not disrupted. SCHOTT is not responsible for any delays that are caused in whole or in part by Customer's failure to timely provide Customer Materials.

B. Customer is solely responsible for ensuring that the Customer Materials meet any regulatory requirements, approvals, or quality standards that are applicable to the development work and the manufacture, sale, and use of associated products. SCHOTT has the right to reject any Customer Materials that it deems are unsuitable and any resulting delays shall not be attributable to SCHOTT.

C. Customer retains title in the Customer Materials at all times and shall obtain adequate insurance coverage that meets or exceeds the value of the Customer Materials. SCHOTT shall not be liable for any damage or loss of Customer Materials unless such damage or loss is the result of SCHOTT's gross negligence or wilful misconduct

D. Within fifteen (15) days of the termination or expiration of the relevant Statement of Work, Customer shall notify SCHOTT of its decision to either: (a) request destruction of any remaining Customer Materials, or (b) request return of any remaining Customer Materials, which shall be at Customer's expense.

### **3.0 INTELLECTUAL PROPERTY RIGHTS**

3.1 Ownership by Customer. Except as otherwise covered under Section 3.2, Customer owns all right, title, and interest in (i) the Customer Background Property, and (ii) all new Intellectual Property for improvements and modifications to the Customer Background Property that is developed by either party or their Affiliates alone or jointly in connection with the Agreement, and (iii) the design of the final Deliverables provided by SCHOTT to Customer, and SCHOTT shall have no ownership interest therein. SCHOTT hereby irrevocably transfers, conveys and assigns to Customer all of its right, title, and interest therein. SCHOTT shall execute such documents, render such assistance, and take such other action as Customer may reasonably request, at Customer's expense, to apply for, register, perfect, confirm, and protect Customer's rights therein. Customer has the exclusive right to apply for or register any patents, utility models, mask works, copyrights, and such other proprietary protections with respect thereto.

3.2 Ownership by SCHOTT. SCHOTT owns all right, title, and interest in the SCHOTT Background Property, and all new Intellectual Property for improvements and modifications made in connection with the Agreement to (i) the SCHOTT Background Property developed by either party or their Affiliates alone or jointly, and (ii) manufacturing processes for the Deliverables that are developed by either party or their Affiliates alone or jointly, and Customer shall have no ownership interest therein. Customer hereby irrevocably transfers, conveys and assigns to SCHOTT all of its right, title, and interest therein. Customer shall execute such documents, render such assistance, and take such other action as SCHOTT may reasonably request, at SCHOTT's expense, to apply for, register, perfect, confirm, and protect SCHOTT's rights therein. SCHOTT has the exclusive right to apply for or register any patents, utility models, mask works, copyrights, and such other proprietary protections with respect thereto.

3.3 Each party as Attorney in Fact. Each party agrees that if the other party is unable because of the other party's unavailability, dissolution or incapacity, or for any other reason, to secure such party's signature to apply for or to pursue any application for any United States or foreign patents, utility models, mask works or copyright registrations covering the intellectual property assigned under this Section 3, then the other party hereby irrevocably designates and appoints such party and its duly authorized officers and agents as the other party's agent and attorney in fact, to act for and on the other party's behalf and stead to execute and file any such applications and to do all other lawfully permitted acts to further the prosecution and issuance of patents, utility models, mask works and copyrights thereon with the same legal force and effect as if executed by the other party.

#### **4.0 LICENSES BY CUSTOMER TO SCHOTT**

Customer hereby grants SCHOTT a nonexclusive, worldwide, perpetual, irrevocable, fully paid up, royalty free license, with the right to sublicense and authorize the granting of sublicenses, under the Customer Background Property and all other Intellectual Property of Customer and its Affiliates to deliver the Deliverables to Customer, alone or in combination with any SCHOTT products or services.

#### **5.0 LICENSES BY SCHOTT TO CUSTOMER**

SCHOTT hereby grants Customer a nonexclusive, worldwide, perpetual, irrevocable, fully paid up, royalty free license, under the SCHOTT Background Property and all other Intellectual Property of SCHOTT excluding all SCHOTT Background Property and all Intellectual Property of SCHOTT for manufacturing products, to make, have made, use, sell, offer for sale, import, and export the design of the final Deliverables provided by SCHOTT to Customer.

#### **6.0 PAYMENTS; TAXES**

6.1 Payments. In consideration of the duties and obligations of SCHOTT and its attempts to develop and deliver the Deliverables and as a precondition to the rights granted to Customer hereunder, Customer shall pay to SCHOTT the amounts net 30 days from the date of SCHOTT's invoice or as otherwise set forth in the Statement of Work. SCHOTT may charge Customer interest for all late payments computed on a daily basis from the due date until paid in full at the rate of one and one-half percent (1.5%) per month (or the highest percentage allowed by applicable law, if lower).

6.2 Taxes. In addition to the payment described in Section 6.1, Customer shall pay all taxes, including sales and use tax, but excluding any tax based upon the net income of SCHOTT if imposed by any government as a result of payments made to SCHOTT under the Agreement.

#### **7.0 CONFIDENTIALITY**

7.1 Confidentiality. During the course of this Agreement, a party and its Affiliates (the "Discloser") may disclose to the other party and its Affiliates (the "Recipient") certain non-public technical, business or financial information and materials related to the Agreement (the "Confidential Information"). The terms of the Agreement are also Confidential Information. The Recipient will not disclose the Confidential Information to any third party, except to its own officers, directors, employees, consultants, and professional advisers ("Representatives") who need to know the Confidential Information and who are bound by confidentiality and restricted use obligations at least as restrictive as the Agreement, and will not use the Discloser's Confidential Information for any purpose other than is necessary in performing the obligations under the Agreement. Recipient shall protect Discloser's Confidential Information using at least the same degree of care as it uses with its own confidential business information but no less than a reasonable degree of care. Recipient shall not copy, reproduce, or summarize any Confidential Information of Discloser, except as reasonably required to carry out obligations under the Agreement. Recipient shall not reverse engineer, disassemble, analyse the composition of, or decompile any Confidential Information (e.g. samples, products or materials) without the written

consent of Discloser. These obligations survive termination of the Agreement and continue for a period of five (5) years following termination of the Agreement.

7.2 **Exceptions.** Confidential Information shall not include any information or materials that (a) is or becomes public knowledge through no fault of Recipient, (b) Recipient can legally prove was known to it prior to receipt and not covered by an obligation of confidentiality in favor of Discloser, (c) is subsequently received from a third party that is under no obligation of confidentiality to Discloser, or (d) is independently developed by or on behalf of Recipient or its employees, agents, or Affiliates without use of or reference to Discloser's Confidential Information, as can be demonstrated by clear documentary evidence. Recipient shall not be in breach of its obligations if it is required to disclose Discloser's Confidential Information pursuant to a valid order or regulation issued by a court or government agency, provided that Recipient provides (a) prior written notice to Discloser of such obligation and (b) the opportunity to oppose such disclosure and obtain a protective order and (c) discloses the Confidential Information only to the extent legally required. Nothing in the Agreement shall require Discloser to disclose its Confidential Information to Recipient.

7.3 **Return of Confidential Information.** All Confidential Information must be returned to Discloser or destroyed without undue delay upon request of Discloser. Electronically stored Confidential Information shall be expunged from any computer, word processor or other storage device; provided that Confidential Information that is stored on routine back-up media solely for the purpose of disaster recovery will be subject to destruction in due course pursuant to Recipient's record retention policies, provided that employees of Recipient are precluded from accessing the Confidential Information in the ordinary course of business prior to such destruction and the provisions of confidentiality and limited use imposed by the Agreement apply.

## **8.0 USE OF CONTRACTORS**

SCHOTT may retain third parties ("Contractors") to furnish services to it in connection with the performance of its obligations hereunder and permit such Contractors to have access to Customer's Confidential Information, but only to the extent and insofar as reasonably required in connection with the performance of SCHOTT's obligations under the Agreement.

## **9.0 REPRESENTATIONS AND WARRANTIES**

EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 9.0, SCHOTT EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, AS TO ANY ASPECT OF THE DELIVERABLES, ITS OPERATION OR THE SERVICES TO BE PERFORMED BY SCHOTT HEREUNDER, INCLUDING WITHOUT LIMITATION, WARRANTIES OF QUALITY, PERFORMANCE, NONINFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DESIGN, CONDITION, CAPACITY OR TITLE. SCHOTT DOES NOT WARRANT THAT THE DELIVERABLES WILL OPERATE UNINTERRUPTED OR ERROR-FREE OR THAT ALL ERRORS WILL BE CORRECTED. Nothing in this Agreement operates to exclude or limit any warranty to the

extent that such warranty cannot be lawfully limited or excluded, including under the *Competition and Consumer Act 2010* (Cth).

## **10.0 INDIRECT DAMAGES**

NOTWITHSTANDING ANYTHING TO THE CONTRARY, SCHOTT SHALL NOT BE LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THE AGREEMENT UNDER ANY CONTRACT, STRICT LIABILITY, NEGLIGENCE OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OR LOST PROFITS, OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY OR SERVICES, REGARDLESS OF WHETHER SCHOTT HAS BEEN ADVISED OF THE POSSIBILITY OF THE SAME.

## **11.0 LIMITATION OF LIABILITY**

NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE TOTAL DOLLAR LIABILITY OF SCHOTT UNDER THE AGREEMENT OR OTHERWISE SHALL BE LIMITED TO NO MORE THAN THE TOTAL PAYMENTS MADE BY CUSTOMER TO SCHOTT UNDER THE APPLICABLE STATEMENT OF WORK.

## **12.0 TERMINATION**

12.1 Termination for Convenience. Customer may terminate the Agreement or any Statement of Work hereunder at any time for convenience upon thirty days written notice to SCHOTT. In the event of such termination, Customer shall pay for SCHOTT's and its Affiliates non-cancelable costs and expenditures, completed Deliverables, and a pro-rata amount for work in progress.

12.2 Termination for Cause. This Agreement and the Statement of Work may be terminated by a party for cause immediately upon the occurrence of and in accordance with any of the following:

12.2.1 Insolvency Event. Upon the occurrence of any of the following events: (i) a receiver is appointed for either party or its property; (ii) either makes a general assignment for the benefit of its creditors; (iii) either party commences, or has commenced against it, proceedings under any bankruptcy, insolvency or debtor's relief law, which proceedings are not dismissed within sixty (60) days; or (iv) either party is liquidated or dissolved.

12.2.2 Default. If the other party violates any covenant, agreement, representation or warranty contained therein in any material respect or defaults or fails to perform any of its obligations or agreements hereunder in any material respect, which violation, default or failure is not cured within thirty (30) days after notice thereof from the non-defaulting party stating its intention to terminate this Agreement or a Statement of Work by reason thereof.

12.3 Survival of Rights and Obligations Upon Termination. Sections 3-7 and 9-13 shall survive any expiration or termination of this Agreement or any Statement of Work.

### **13.0 MISCELLANEOUS**

13.1 Force Majeure. Neither party shall be liable to the other for delays or failures in performance resulting from causes beyond the reasonable control of that party, including, but not limited to, acts of God, labor disputes or disturbances, material shortages or rationing, riots, acts of war, governmental regulations, communication or utility failures, or casualties.

13.2 Export. Customer hereby acknowledges that the Deliverables supplied by SCHOTT under the Agreement may be subject to export or import controls under the laws and regulations of the United States (U.S.). Customer shall comply with such laws and regulations, and, agrees not to knowingly export, re-export, import or re-import, or transfer any SCHOTT products or information without first obtaining all required U.S. Government authorizations or licenses. SCHOTT and Customer each agree to provide the other such information and assistance as may reasonably be required by the other in connection with securing such authorizations or licenses, and to take timely action to obtain all required support documents.

13.3 Relationship of Parties. The parties are independent contractors under the Agreement and no other relationship is intended, including a partnership, franchise, joint venture, agency, employer/employee, fiduciary, master/servant relationship, or other special relationship. Neither party shall act in a manner which expresses or implies a relationship other than that of independent contractor, nor has authority to bind the other party.

13.4 No Third-Party Beneficiaries. Unless otherwise expressly provided, no provisions of the Agreement are intended or shall be construed to confer upon or give to any person or entity other than SCHOTT and Customer any rights, remedies or other benefits under or by reason of the Agreement.

13.5 Equitable Relief. Each party acknowledges that a breach by the other party of any confidentiality or proprietary rights provision of this Agreement may cause the non-breaching party irreparable damage, for which the award of damages would not be adequate compensation. Consequently, the non-breaching party may institute an action to enjoin the breaching party from any and all acts in violation of those provisions, which remedy shall be cumulative and not exclusive, and a party may seek the entry of an injunction enjoining any breach or threatened breach of those provisions, in addition to any other relief to which the non-breaching party may be entitled at law or in equity.

13.6 Waiver and Modification. Failure by either party to enforce any provision of the Agreement will not be deemed a waiver of future enforcement of that or any other provision. Any waiver, amendment or other modification of any provision of the Agreement will be effective only if in writing and signed by the parties.

13.7 Severability. If for any reason a court of competent jurisdiction finds any provision of the Agreement to be unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of the Agreement will continue in full force and effect and, to the extent possible, the unenforceable

provision shall be replaced by an enforceable provision coming closest to the intent and effect of the original provision.

13.8 Controlling Law and Jurisdiction. The Agreement and any action related thereto shall be governed, controlled, interpreted and defined by and under the laws of the State of New York, without regard to the conflicts of laws provisions thereof. The parties specifically disclaim the UN Convention on Contracts for the International Sale of Goods. The parties consent to the exclusive jurisdiction and venue of the state and federal courts residing in New York or Westchester Counties, New York with respect to all claims, disputes or actions arising out of or relating to the Agreement; provided, however, that a party may alternatively bring an action against the other party in the federal or state courts at the other party's principal place of business. The parties hereby agree to waive trial by jury with respect to any legal action arising out of or relating to the Agreement. The parties will attempt to resolve any dispute by negotiation followed by mediation before resorting to court.

13.9 Entire Agreement. These Development Terms and Conditions and any Statement of Work, constitute the entire agreement between the parties with respect to the subject matter hereof, and supersede and replace all prior and contemporaneous understandings or agreements, written or oral, regarding such subject matter.