



## **Standard Terms and Conditions of Sale**

**Perceptive Engineering Limited**

**PEF029v8.0**

## Standard Terms and Conditions of Sale

These terms and conditions, together with the quotation or offer document ("the Proposal") issued by the Company, form the contract ("Agreement") entered into between (a) in the event the Customer is an entity organized under laws of any of the United States or has its principal place of business in the United States, Applied Materials, Inc. and its Affiliates or (b) in the event the Customer is an entity organized outside of the United States and/or has its principal place of business outside of the United States, Applied Materials South East Asia Pte. Ltd and its Affiliates, expressly including Perceptive Engineering Limited (an Applied Materials Company), which has an office at Vanguard House, Sci-Tech Daresbury, Keckwick Lane, Daresbury, WA4 4AB, ("the Company," "PEL" or "Applied") and the Customer, whose details are set out in the Proposal ("the Customer").

### 1. Definitions and Interpretation

1.1 The following terms have the following meanings:

#### **"Affiliates"**

the Customer or a Customer group company, including (i) any person under common control by the Customer or under common control by a person under the direct or indirect control of the Customer, or (ii) any person under the direct or indirect control of a person that has the direct or indirect control of the Customer (if any);

#### **"Authorised Representatives"**

each party's contacts detailed in the Proposal as may be amended from time to time in accordance with clause 3.1;

#### **"Fees"**

the amount to be paid by the Customer for PEL's provision of the Services as set out in the Proposal (and as may be amended in accordance with these terms);

#### **"Intellectual Property"**

any and all plans, drawings, technical documentation or other information, patents, copyrights, designs, trademarks, owned or issued by the Company, and all the rights therein whether or not registered or capable of registration;

#### **"Overtime"**

all time spent at Customer's request in performance of the Services outside Working Hours;

#### **"Services"**

the services to be provided by PEL to the Customer as specified in the Proposal;

#### **"Site"**

the Customer's site(s) at which the Services will be implemented (if any);

#### **"Software"**

the software (if any) supplied to the Customer as part of or in connection with the Services;

#### **"Software Licence Agreement"**

PEL's standard End User Licence Agreement as posted on its website and updated from time to time or a custom software license agreement executed by both PEL and Customer that expressly states that the EULA shall not apply;

#### **"Third Party Software"**

any part of the Software that is not owned by PEL;

#### **"Timetable"**

the timetable for the provision of Services detailed in the Proposal (if any);

**"Travel Time"**

all time spent travelling by PEL in connection with its performance of the Services; and

**"Working Hours"**

the hours of 09.00 to 13.00 and 14.00 to 18.00 Monday to Friday, excluding English public and bank holidays.

**"Work Product"**

means any Intellectual Property that is created (whether by Company alone or together with Customer) as a result or in the course of the performance of the Services. Work Product does not contain or include any Customer confidential information.

- 1.2 This Agreement is deemed to have come into force when PEL accepts an order from the Customer.

**2 The Services**

- 2.1 PEL will provide the Services during Working Hours.
- 2.2 PEL shall use its reasonable endeavours to adhere to any Timetable but in doing so shall not be required to work outside Working Hours and time of performance of the Services shall not be of the essence. PEL may work Overtime and any such time will be charged in addition to the Fees at PEL's standard rates from time to time.
- 2.3 If the Timetable contains obligations on the Customer, the Customer acknowledges that PEL will not be liable for any delay caused by the Customer's failure to complete its tasks within the relevant timescales and that any such delay may result in an increase to the Fees (such increase to be reasonable and to be notified by PEL promptly following the delay) and to the charging of additional sums in accordance with clause 9.3.

**3 Variations, Delay and Additional Work**

- 3.1 PEL and the Customer shall each identify Authorised Representatives who shall be responsible for all communications to the other under this Agreement. Each party may change the identity of its Authorised Representatives by notice in writing.
- 3.2 The Authorised Representatives shall have authority to agree changes to the Services. Any variation or addition to the Services must be agreed in writing by PEL's Authorised Representative and may be subject to additional charges.
- 3.3 Where PEL carries out work that is outside the scope of the Services such work shall be subject to the terms of this Agreement and will be charged at PEL's then standard rates.
- 3.4 If the Customer causes or requests any delay or suspension in the provision of the Services, PEL shall be entitled to charge the Customer forty percent (40%) of the daily rate detailed in the Proposal for each day of delay or suspension arising due to such delay or suspension. In addition, any incidental costs incurred will be charged to, and payable by, the Customer.
- 3.5 PEL may provide support for any Software provided as part of the Services. Such support shall be provided on PEL's then prevailing standard terms and rates.

**4 Provision of the Services on Site**

- 4.1 The Customer will provide PEL, promptly on PEL's request, with such assistance, access and facilities as PEL shall reasonably require to enable it to perform the Services. The Customer shall be responsible for the health and safety of PEL staff when at the Site.
- 4.2 PEL will use all reasonable endeavours to avoid causing any damage to or loss at the Site during the execution of the Services (other than that which is an unavoidable consequence of or an anticipated part of the Services) and shall make good any damage it negligently causes. All risk of other damage or loss at the Site shall be borne by the Customer.

- 4.3 PEL shall use its reasonable endeavours to ensure that its employees comply with Site rules reasonably notified to it by the Customer.
- 4.4 If the Customer prematurely ends any on-site visit by PEL other than as a result of the termination of the Agreement under clause 10.1, PEL shall be entitled to charge the Customer for the remainder of such visit at a rate of sixty percent (60%) of the daily rate specified in the Proposal per remaining day. The Customer shall also pay all travel, accommodation, living and other expenses incurred by PEL in relation to such visit notwithstanding its premature end.

## **5 Price and Payment**

- 5.1 The Fees shall be invoiced at the times detailed in the Proposal. In addition to the Fees the Customer will pay or reimburse to PEL all reasonable and proper expenses incurred by PEL in connection with the Services, all Travel Time and Overtime, where such expenses are in addition to those included in the Fees.
- 5.2 Any charges to the Customer under the Agreement shall be subject to any sales-related tax (e.g. value added tax) at the appropriate rate and any other tax, duty or charge incurred will be passed on to the Customer.
- 5.3 Any invoice should be paid within thirty (30) days of the invoice date in pounds sterling (or any different currency specified in the Proposal) without deduction or set-off.
- 5.4 Where for any reason payment of any sum due under these Conditions or any part thereof is not made by the due date PEL may, without prejudice to its other rights or remedies under these Conditions:
- 5.4.1 terminate or suspend the Customer's rights to receive any services, including the Services;
  - 5.4.2 Charge any collection costs as well as interest on all outstanding sums from the date payable at the rate of 1½% per month;
  - 5.4.3 modify future payment terms; and/or
  - 5.4.4 suspend the Customer's rights to use the Software (if any).

## **6 Software**

- 6.1 The Customer undertakes to ensure and warrants that any computers, networks, operating systems and/or other software that PEL is provided with to use in its provision of the Services are the property of or are legally licensed to the Customer and that all materials, methods and ideas provided for inclusion in any bespoke Software created by PEL are the property of the Customer. The Customer agrees to indemnify and hold PEL harmless in respect of any and all claims against PEL by third parties as a result of any such use (including all related costs, losses, expenses or damages arising in the event of any actual or alleged violation of third party proprietary rights or software licences).
- 6.2 Any Software developed and/or supplied to the Customer as part of the Services shall be licensed to the Customer on the terms of the Software Licence Agreement. In the event of conflict between these Conditions and the Software Licence Agreement (if any) the terms of these Conditions shall prevail to the extent of the conflict.
- 6.3 Where Third-Party Software is to be provided as part of the Services, PEL shall use its reasonable endeavours to procure that the licensors of the Third-Party Software grant their then standard licence to the Customer.

## **7 Intellectual Property**

- 7.1 All Intellectual Property, and know-how in the Services and the products relating thereto (including, without limitation, any Software), shall, save as provided in clause 6, belong to

PEL and the Customer shall have no rights in or to the same except as expressly provided. The Customer will return all such Intellectual property to PEL at the conclusion of the Agreement and only retain Software as agreed in writing by PEL.

- 7.2 All information and data provided to PEL by the Customer in relation to the Services shall remain the property of the Customer. At the conclusion of the Agreement PEL will return all such information or data to the Customer except to the extent it is required for the ongoing provision of support. Customer hereby grants to PEL a nonexclusive, worldwide, royalty-free and fully-paid license (with the right to exercise such rights through and with PEL's consultants and independent contractors engaged by Applied to perform some or all of the Services) to use, reproduce, perform, display, modify, and create derivative works of such Customer materials for the sole purpose of performing the Services for the duration of the Project. No other license to the Customer materials is granted by Customer under this Agreement, and all rights not granted are retained by Customer.
- 7.3 From time to time Customer may recommend to Company additional features, functionality, or performance to or for the Software (other than Customer-specific enhancements that Customer may engage Company to develop solely for Customer's own internal use) (each a "Recommendation"). In the event that Customer makes a Recommendation that Company subsequently incorporates into the Software or any of its other proprietary software (including without limitation any resulting new release of Software) (each a "New Feature") then, provided that Company does not use Customer's other confidential information to do so, Customer hereby grants Applied a worldwide, non-exclusive, royalty-free, irrevocable and perpetual right and license under any intellectual property rights Customer may have in the Recommendations themselves (whether existing now or in the future) to use and incorporate such Recommendations into the Software or any of Applied's other proprietary software. The New Feature shall be the sole and exclusive property of Applied free and clear of any restrictions and without any right of accounting retained by Customer, and all such Recommendations as used or incorporated by Applied in any New Feature are free from any confidentiality restrictions that might otherwise be imposed upon Applied under this Agreement or the Software Licence Agreement.
- 7.4 Except to the extent any Customer Materials are contained therein, Company exclusively owns and Customer hereby assigns to Company any ownership interest that it may have or acquire in all Work Product and all Work Product constitutes the Confidential Information of Company. All tangible or intangible materials comprising Work Product that are required to be and are delivered identified to Customer (excluding any Software) will be licensed to Customer under the same license grants and license restrictions as any Software is licensed to Customer under the applicable Software Licence Agreement.

## **8 Warranties**

- 8.1 PEL warrants for ninety days from the performance of any Services by Applied hereunder (the "Services Warranty Period") that the Services will be performed (i) in a professional and workmanlike manner and (ii) the Services shall be provided in accordance with relevant Proposal in all material respects.
- 8.2 The Customer accepts full responsibility for ensuring that the Services are sufficient to meet its needs and understands that PEL gives no warranty as to the appropriateness or adequacy of the Services or the product of the Services.
- 8.3 PEL will repair or replace (at its option) any hardware or proprietary software supplied by PEL for the delivery of the Services, which is found to be faulty during the Services Warranty Period. PEL does not make any warranty in relation to Third Party Software but shall use its reasonable endeavours to pass to the Customer the benefit of any warranty contained in any licence granted to PEL to use the same.
- 8.4 The warranties set out in this clause 8 are the only warranties given by PEL under this Agreement. Any other warranties, conditions, obligations or terms which are implied into this Agreement by statute, custom or at law (including without limit any conditions of fitness for purpose or satisfactory quality) are excluded to the fullest extent permitted by law.

## **9 Termination and Post Termination Provisions**

- 9.1 Neither Party shall be entitled to terminate the Agreement for convenience.
- 9.2 The Agreement may be terminated by either party by notice in writing with immediate effect:
- 9.2.1 if the other commits a material breach of any term of the Contract which (in the case of a breach capable of being remedied) has not been remedied within thirty (30) days of a written request to remedy the breach (and for these purposes it is agreed that lateness is a remediable breach); and/or
  - 9.2.2 if the other becomes bankrupt or insolvent, proposes a voluntary arrangement, is unable to pay its debts, suffers an insolvency event or any similar or analogous event occurs in relation to the other party in this or any other jurisdiction.
- 9.3 Upon such termination of the Agreement provision of the Services shall terminate and both Parties shall return to the other Party any Confidential Information exchanged hereunder. Any Licence granted hereunder shall terminate and Customer shall immediately cease use of the Software. Customer shall immediately on such termination or expiration return to PEL all copies of the Software (including Updates) and associated documentation, delete all stored copies of the same and shall also certify to PEL that no copies have been retained.
- 9.4 Any such termination of the Agreement is without prejudice to any other rights or remedies a party may be entitled to. It does not affect any accrued rights or liabilities of either party or any provision which is expressly or by implication intended to come into force on, or continue in force after, termination.

## **10 Liability**

- 10.1 Save as otherwise provided under Section 10.3, PEL's total aggregate liability under or in connection with the Agreement whether in contract, tort (including, but not limited to, negligence) or otherwise will not exceed the total Fees paid by the Customer in the 12 months preceding the event from which any such liability arises. Customer acknowledges that the Fees have been agreed by PEL in light of this limitation upon liability and that, given all the circumstances, this limit is reasonable.
- 10.2 PEL shall not be liable to the Customer for any claim to the extent that the claim relates to loss of profits, goodwill, anticipated savings, business opportunity, data or use of data, injury to reputation, third party losses or indirect, consequential or special loss or damage regardless of the form of action, whether in contract, strict liability or tort (including negligence) and regardless of whether PEL knew or had reason to know of the possibility of the loss, injury or damage in question.
- 10.3 Notwithstanding anything to the contrary in this Agreement, PEL's liability to Customer:
- 10.3.1 for death or personal injury caused by gross negligence or wilful misconduct;
  - 10.3.2 for breach of confidentiality obligations;
  - 10.3.3 for loss resulting from gross negligence, wilful misconduct or fraud (including without limit, fraudulent misrepresentation); or
  - 10.3.4 for any other liability the exclusion or limitation of which is not permitted by law
- shall not be limited (but nothing in this clause confers any right or remedy upon Customer to which it would not otherwise be entitled).

This clause 10 has continuing effect after termination or expiration of the Agreement.

## **11 Confidentiality**

- 11.1 PEL and the Customer will each:
- 11.1.1 keep confidential all information concerning the business and affairs of the other that it has obtained or received as a result of the discussions leading up to or the

entering into, or obtains or receives in performance of, this Agreement, as well as this Agreement itself (the "Information");

- 11.1.2 not disclose the Information in whole or in part to any other person without the other's written consent, save those of its employees, agents and sub-contractors involved in the provision of the Services and the implementation and/or support of the Software and who have a need to know the same; and
  - 11.1.3 use the Information solely in connection with the provision of the Services and the implementation and/or support of the Software and not for its own benefit or the benefit of any third party.
- 11.2 The provisions of clause 11.1 do not apply to the whole or any part of the Information which is already in the public domain or is required to be disclosed by law (but then only to the extent of required disclosure) or can be shown to be already in the other's possession other than as a result of a breach of this clause 11.
- 11.3 This clause 11 has continuing effect after the conclusion or termination of the Agreement. For the avoidance of doubt, nothing in this clause 11 shall prevent PEL from referring to Customer as its customer.

## **12 Force Majeure**

Save for payment obligations, neither party will be liable for any breach of its obligations resulting from an event beyond that party's reasonable control. The party affected by such an event agrees to give written notice to the other upon becoming aware of the event, that notice containing details of the circumstances giving rise to the event.

## **13 Non-Solicitation**

By entering into the Agreement, the Customer undertakes for the duration of the Services and for a period of twelve (12) months after performance of any services for the Customer to not directly or indirectly solicit or attempt to solicit any employee member of PEL.

## **14 Anti-Bribery Policy**

PEL and its employees operate under the Applied Materials Standards of Business Conduct which are available at <https://www.appliedmaterials.com/company/investor-relations/governance-documents>, including without restriction the Anticorruption Policy included therein.

## **15 General**

- 15.1 The rights and remedies available to the parties under this Agreement are without prejudice to any other rights or remedies available to the parties under this Agreement or at law.
- 15.2 The failure or delay by either party to exercise or enforce any of its rights or to enforce any obligation which the other party is in breach of under this Agreement is not a waiver of that right and nor will it bar enforcement of that obligation (or any similar or other obligation) at that time or at any subsequent time.
- 15.3 Any notice or other document to be served under this Agreement must be in writing, sent to the receiving party at its address stated in this Agreement (or notified to the other party from time to time in accordance with this clause 15.3) and a notice or other document will be effectively served if served in the following ways (and shall be deemed to have been served at the times stated):
  - 15.3.1 by pre-paid special delivery post - on the second day after posting;
  - 15.3.2 by fax - upon receipt of an error-free reception code (provided that a copy is sent by pre-paid first-class post on the date the fax is sent);

- 15.3.3 by e-mail - on sending (provided that a copy is sent by pre-paid first-class post on the date the e-mail is sent); and
- 15.3.4 by personal delivery - upon actual delivery or upon refusal to accept delivery.
- 15.4 If any part of this Agreement, or of any document made in connection with this Agreement, is determined by any court, tribunal or administrative body of a competent jurisdiction to be wholly or partly unenforceable for any reason, that unenforceability shall not affect the rest of this Agreement or that document, the unenforceable part being deemed severed and deleted and the remainder continuing in full force and effect.
- 15.5 This Agreement (including Proposals once completed) forms the entire agreement between the parties in relation to its subject matter and supersedes all previous contracts, arrangements, representations (save that it shall not apply to avoid liability for fraudulent misrepresentations) or understandings between PEL and Customer, in each case, whether written, arising from custom or oral. In the event of any conflict between the terms of this Agreement and the Proposal, the terms in the body of this Agreement shall take precedence.
- 15.6 This Agreement may not be varied otherwise than in writing and signed by duly authorised representatives of both parties.
- 15.7 The parties may, upon notice and with the consent of the other party (which shall not be unreasonably withheld), assign its rights and obligations under the Agreement to a third party in case of sale, transfer, merger or similar event involving all or parts of the party's business. Further, the Parties are entitled to assign their rights and obligations under the Agreement to any member of their group of companies respectively. Any other assignment of a party's rights and obligations under the Agreement to any other party shall be subject to the other party's prior written approval which shall not be unreasonably delayed or withheld.
- 15.8
- 15.8.1 In the event that (a) Customer is an entity organized under laws of any of the United States or has its principal place of business in the United States, this Agreement shall be governed by and is to be construed in accordance with the laws of the State of California without giving effect to any conflicts of laws principles that would require the application of the laws of a different jurisdiction. Any arbitration under 12.8.3 shall take place in San Francisco, California, and in the event either Party seeks interim relief as provided for in 12.8.3, both Parties consent to the jurisdiction of the courts located in Santa Clara County, California.
- 15.8.2 In the event that Customer is an entity organized outside of the United States and/or has its principal place of business outside of the United States, and this Agreement shall be governed by and is to be construed in accordance with the laws of the Republic of Singapore without giving effect to any conflicts of laws principles that would require the application of the laws of a different jurisdiction. Any arbitration under 12.8.3 shall take place in the Republic of Singapore, and in the event either Party seeks interim relief as provided for in 12.8.3, both Parties consent to the jurisdiction of the courts of the Republic of Singapore.
- 15.8.3 If any dispute arising out of or related to the Agreement or breach thereof, is not resolved amicably by the Parties, such dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce ("ICC") in effect as of the Effective Date, before a tribunal of three (3) arbitrators, with the first appointed by Customer, the second by Applied and the third by the first two (2) arbitrators (or, if such two (2) arbitrators fail to agree within sixty (60) days, by the ICC). The language of the arbitration will be English. The Parties agree to apply the International Bar Association Rules on Taking Evidence to any arbitration under this Section. In any event of arbitration, the arbitrators shall have the discretion to award reasonable costs to the prevailing Party. Such costs will not include the Parties' costs, expenses, or legal fees, but may include the costs of the arbitrators and the administrative fees, and any other fees assessed by the arbitrators. The award rendered by the arbitrators may be entered in any court having jurisdiction over the



Party or Parties to the dispute against which enforcement is sought, or a court in any other competent jurisdiction where the assets of said disputing Party or Parties are located. The written award of the arbitrators will be final and binding. The language of the arbitration will be English. Nothing in this Section prevents any Party from seeking interim relief in a court of competent jurisdiction.

15.8.4 The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement.

15.9 Compliance with Export Laws. Each party hereby acknowledges that the materials provided hereunder may be subject to one or more export control laws, regulations or the like, and agrees that it will not transfer, export or re-export any products or documentation licensed in the Software Licence Agreement or otherwise provided hereunder, including any documentation, information or product that incorporates, is derived from or otherwise reveals such, without complying with all applicable export control laws, regulations and the like, including obtaining and cooperating with the other party in securing all appropriate licences and authorizations. Each party specifically certifies that it will not transfer, export, or re-export any materials, products or documentation licensed under the Software License Agreement or otherwise provided hereunder to any country or entity subject to export control restrictions or embargoes under any applicable laws, regulations and the like.

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