

PCB Motor's GENERAL TERMS



1. SCOPE AND APPLICABILITY

PCB Motor ApS, Danish Reg. No. 30509218 ("PCB Motor") is engaged in the development, customization, production, sale and licensing of movement solutions such as motors integrated on printed circuit boards including components to such solutions, and related products and services, e.g. support with the design of integrated movement solutions.

Unless otherwise expressly agreed in writing, these General Terms shall apply between PCB Motor and its Customers with respect to Products sold and Services performed. Services mean assignments related to customization of PCB Motor's motors.

2. DELIVERY OF PRODUCTS

Products are delivered Ex Works (Incoterms 2000) Krakasvej 17, DK-3400 Hillerød, Denmark. If PCB Motor undertakes to engage a freight forwarder on the Customer's behalf, the passing of risk and other consequences of the prescribed delivery term shall not be altered thereby. If PCB Motor realises that an agreed delivery date cannot be adhered to, PCB Motor shall inform the Customer and indicate the expected duration of the delay. The parties shall immediately endeavour to find reasonable remedial measures.

IF THE CUSTOMER RIGHTFULLY CANCELS AN ORDER DUE TO DELAY, ANY CLAIM FOR DAMAGES SHALL BE LIMITED TO 5% OF THE PRICE FOR THE DELAYED PRODUCTS, PROVIDED PCB MOTOR HAS NOT COMPLETED THE DELIVERY WITHIN A REASONABLE GRACE PERIOD SET BY THE CUSTOMER.

ANY CLAIM FOR DAMAGES NOT FORWARDED WITHIN 10 DAYS AFTER THE AGREED DELIVERY DATE SHALL LAPSE. ANY FURTHER CLAIMS DUE TO DELAY ARE EXCLUDED. With respect to continuous deliveries of Products, the Customer shall not be entitled to cancel orders that are not delayed. PCB Motor shall not be obliged to accept new orders. Orders cannot be cancelled unless approved by PCB Motor in writing.

3. PERFORMANCE OF SERVICES

PCB Motor shall ensure that Services are performed conscientiously and with the optimum utilisation of the expertise at PCB Motor's disposal. If a budget has been agreed, PCB Motor shall obtain the Customer's consent before incurring costs that exceed the total budget. During the performance of Services, PCB Motor shall produce periodic information, containing a summary of the work performed and results achieved, as well as an assessment of the progress made towards completion of the Services.

Any request for changes shall be forwarded in writing. In reply to such requests PCB Motor shall assess any influence on time and payment schedules agreed. The Customer may request that PCB Motor suspends further work until revised terms have been agreed, but PCB Motor shall not be obliged to change agreed specifications before agreement has been reached on the impact of the requested changes.

If it becomes apparent that a milestone or deadline will be exceeded to any significant extent, PCB Motor shall inform the Customer of the fact so reasonable measures may be decided. PCB MOTOR SHALL NOT BE LIABLE IN THE EVENT OF DELAYS, NOR IF THE OBJECTIVE OF THE SERVICES IS NOT OBTAINED.

4. SOFTWARE

If PCB Motor's deliverables include software the following provisions shall apply thereto:

PCB Motor grants to Customer a non-transferable, non-exclusive license to use the software, integrate the software in Customer's applications made with piezo ceramic components bought from PCB Motor, sell such applications and allow buyers thereof to use such applications with the integrated software. The license does not include a right to use or transfer the software to other applications. Unless explicitly stated by PCB Motor, permitted use of the software is free of royalty.

Unless otherwise prescribed by PCB Motor, Customer may modify the software, provided such modifications remain subject to the provisions of these Terms.

The source and object code of the software, and algorithms, concepts, techniques, methods and processes embodied therein, may constitute trade secrets and confidential and proprietary information of PCB Motor, and Customer shall not access, decompile, disassemble, or otherwise reverse engineer, or attempt to access or derive the source code of compiled software or use such trade secrets and information in any manner not permitted by PCB Motor in writing.

Software is delivered "as is", and PCB Motor undertakes no liability with regard to software.

5. INTELLECTUAL PROPERTY RIGHTS

These General Terms shall not constitute or imply any transfer of, or grant of license to, intellectual property rights ("IPR") held or generated by PCB Motor, except for a license from PCB Motor to the Customer allowing the Customer to use PCB Motor's technology to use and integrate Products purchased from PCB Motor in accordance with specifications approved by PCB Motor. Any transfer of, or grant of license to, IPR generated by PCB Motor during a collaboration shall be subject to written agreement, in the absence of which no transfer, etc., is made. PCB Motor shall be unrestricted in its right to use IPR generated by itself, unless PCB Motor has accepted specific limitations in writing. Each of the parties shall free of charge be entitled to use IPR generated jointly by the parties.

To avoid preventing PCB Motor and PCB Motor's other customers from using PCB Motor's technology, PCB Motor shall be entitled to obtain a license on commercially reasonable terms to use and allow others to use technology generated, even if patented, by the Customer involving PCB Motor's technology, except for use in applications where the Customer has commenced use of such technology itself.

To all products comprising PCB Motor's technology, the package containing them, or to a document accompanying the products, the Customer shall ensure that a statement substantially in the following form is affixed: "**Produced under license to patent application PCT/DK2006/000595.**" The relevant patent information may be updated from time to time, and the statement shall then be updated accordingly as soon as reasonably possible.

6. CONFIDENTIALITY

Any information, such as, but not limited to, information on products, processes, technology, results, materials, designs, prices, and any physical material of a party that is (i) indicated to be confidential, and either (ii-a) marked "confidential" or (ii-b) confirmed in writing within 10 days to be confidential, or (iii) obviously to the receiving party of a confidential nature, shall be treated and maintained as confidential by the receiving party. Information that is, or without breach of the above obligations becomes, part of the public domain; information already in the possession of a party; information received from a third party who was entitled to disclose such information; and information independently developed, shall be excluded as confidential information.

Always subject to the duty of confidentiality, the parties may use each other's confidential information for purposes within their publicly known field of business, unless the confidential information has been marked "special confidential information" and the parties prior to its disclosure have agreed specific limitations of use in writing. However, the Customer shall not without prior written consent be entitled to use PCB Motor's confidential information for purposes other than what is necessary for utilising PCB Motor's Products or Services.

The duty of confidentiality shall last for 5 years after each disclosure, unless a longer duration has been agreed in writing prior to disclosure.

Unless otherwise agreed, PCB Motor shall be entitled to state the Customer's name in PCB Motor's list of references.

7. PRICES AND PAYMENT

All prices are exclusive of any applicable sales or value added taxes as well as transportation and insurance charges. Such taxes and charges will be stated separately on invoices.

Services shall be paid for according to (i) an agreed payment schedule with respect to lump sums or, in the absence thereof, (ii) monthly invoices based on PCB Motor's hourly rates and rates for the use of special equipment plus expenses incurred for materials, travel, deliveries from sub-suppliers, etc.

All payments shall be effected in the quoted currency upon submission of purchase orders, unless terms of credit have been agreed.

In the event of delayed payment, PCB Motor shall upon giving one week's notice be entitled to terminate all, or some, pending deliveries or Services. Simultaneously, all outstanding amounts shall fall due regardless of previously granted terms of credit. On

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delayed payments an interest of 1% per commenced month is accrued.

Until payment has been received in full by PCB Motor, title to the Products shall remain with PCB Motor, and in the event of non-payment, PCB Motor shall, in addition to all other rights and remedies available to it, be entitled to recover possession of the Products.

8. LIMITED WARRANTY

PCB Motor warrants that its Products shall be manufactured and its Services performed in accordance with good workmanship. THIS WARRANTY IS EXPRESSLY MADE IN LIEU OF ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE. PCB Motor does not warrant any functionality of designs, etc. furnished by the Customer. The Customer shall examine Products and Services upon receipt, and any alleged breach of warranty shall be notified to PCB Motor immediately. THE SOLE LIABILITY OF PCB MOTOR FOR BREACH OF WARRANTY SHALL AT PCB MOTOR'S DISCRETION BE THE PROMPT REPAIR OR REPLACEMENT OF NON-CONFORMING PRODUCTS AND REWORK OF NON-COMPLYING SERVICES, PROVIDED SUCH REWORK IS POSSIBLE AND COMMERCIALY REASONABLE. If such corrective actions fail within a reasonable period of time, the Customer shall be entitled to a price reduction or to cancel the purchase of the non-conforming Products. THE WARRANTY EXPIRES 6 MONTHS AFTER DELIVERY.

9. SECURITY OF SUPPLY

If PCB Motor is declared bankrupt or permanently ceases to do business, the Customer shall be entitled to use PCB Motor's technology to continue existing product lines, subject to the Customer's payment of a royalty equal to the difference between the prices previously paid to PCB Motor and reasonable prices paid to a supplier of the parts previously supplied by PCB Motor in similar volumes. The Customer shall be entitled to have specifications and other relevant documentation deposited in an escrow of its choice but approved by PCB Motor. The costs of establishing and maintaining the escrow shall be borne by the Customer. Only if an event as described above occurs may the escrow be released.

10. INFRINGEMENT

PCB Motor warrants that to the best of its knowledge the Products will not infringe any third party's copyrights, patents, trade secrets, or other proprietary rights. PCB Motor warrants that it holds a license from UP10 ApS to use and sublicense UP10 ApS's patents. PCB Motor, at its expense, will defend the Customer against any claim based on an allegation of such infringement, and PCB Motor will pay any resulting costs and damages awarded against the Customer that are attributable to such infringement and will pay the part of any settlement that is attributable to such infringement provided that (1) the Customer notified PCB Motor promptly in writing of the claim; (2) PCB Motor was permitted full control of the defence or settlement of the claim; and (3) the Customer cooperated reasonably in such defence or settlement at PCB Motor's expense. In its defence or settlement of any such claim, PCB Motor may at its discretion: (A) procure for the Customer a right to continue using or selling the Products; (B) modify the manufacturing process so that the use or selling of the Products becomes non-infringing but still in all material aspects retains the same form, fit and level of functionality and performance; or (C) replace the Products with equivalent products not subject to such claim.

The Customer shall offer an infringement warranty similar to the above concerning designs and like information furnished by the Customer to PCB Motor. The Customer shall pay any resulting costs and damages awarded against PCB Motor that are attributable to such infringement and will pay the part of any settlement that is attributable to such infringement subject to the same provisions that are applicable to PCB Motor's warranty (1-3 and A-C).

PCB Motor shall not be liable towards the Customer in respect to any inability to deliver Products to the extent such inability is due to an alleged infringement or other violation as described above or an injunction or lawsuit in the same respect.

PCB MOTOR'S DUTY OF INDEMNIFICATION IS IN LIEU OF ANY AND ALL OTHER REMEDIES OF THE CUSTOMER WITH RESPECT TO INFRINGEMENT AND SHALL ONLY BE VALID IN COUNTRIES WHERE PCB MOTOR DELIVERS PRODUCTS OR COUNTRIES DESIGNATED BY THE CUSTOMER WHEN PURCHASING PRODUCTS.

PCB MOTOR DOES NOT WARRANT THAT THE RESULTS OF ITS SERVICES DO NOT INFRINGE ANY THIRD PARTY'S COPYRIGHTS, PATENTS, OR OTHER PROPRIETARY RIGHTS.

11. GENERAL LIMITATIONS OF LIABILITY

PCB MOTOR SHALL IN NO EVENT BE LIABLE FOR ANY LIABILITY, LOSS OR DAMAGE ARISING, DIRECTLY OR INDIRECTLY, FROM THE USE OF THE PRODUCTS OR THE SERVICES OR FOR ANY SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY OR CONSEQUENTIAL LOSSES OR DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF OPPORTUNITY, USE, INCOME OR PROFIT, OR INTERRUPTED OPERATION, NOR SHALL PCB MOTOR BE LIABLE FOR ANY POST-PROCESSING OR MISAPPROPRIATE USE, HANDLING OR EXPOSURE OF THE PRODUCTS OR BASED ON THE SERVICES. PCB MOTOR CANNOT BE HELD RESPONSIBLE IF PCB MOTOR'S PRODUCTS OR SERVICES FAIL TO PRODUCE THE REQUIRED OR EXPECTED RESULT NOR FOR COSTS DEFRAID IN VAIN.

PCB MOTOR'S AGGREGATE LIABILITY WHETHER IN CONTRACT, WARRANTY, TORT OR OTHERWISE, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM THE PERFORMANCE OR NON-PERFORMANCE OF ANY AGREEMENT SHALL IN NO EVENT EXCEED THE LESSER OF SUMS PAID BY THE CUSTOMER TO PCB MOTOR DURING THE 12 MONTHS PRIOR TO THE CUSTOMER BECOMING AWARE OF THE BASIS FOR A CLAIM TOWARDS PCB MOTOR, OR 100,000 DANISH KRONER. PCB MOTOR'S USE OF RESOURCES SHALL BE INCLUDED IN THE ABOVE AMOUNTS.

PCB MOTOR CANNOT BE HELD LIABLE FOR ANY LOSS OR DAMAGES UNLESS A WRITTEN REQUEST FOR COMPENSATION IS MADE WITHIN 6 MONTHS AFTER THE DELIVERY OF THE PRODUCTS OR THE PERFORMANCE OF THE SERVICES TO WHICH THE LIABILITY RELATES.

12. PRODUCT LIABILITY – INDEMNIFICATION

THE CUSTOMER SHALL BE ENTIRELY RESPONSIBLE FOR THE USE TO WHICH IT PUTS THE PRODUCTS OR THE SERVICES. For personal injuries and damage to consumers' goods, PCB Motor remains liable in accordance with applicable mandatory laws, however, PCB Motor disclaims all liability for damage arising from the fact that recognised scientific and technical expertise used later proves to be incorrect or defective. THE CUSTOMER SHALL, NONE-THE-LESS, INDEMNIFY PCB MOTOR FOR ANY LOSS OR DAMAGE RESULTING FROM THE CUSTOMER'S, ITS EMPLOYEES' AND ITS CUSTOMERS' USE OF THE PRODUCTS AND THE SERVICES, OR CAUSED BY THE PRODUCTS OR THE SERVICES, INCLUDING PRODUCT LIABILITY.

13. TERMINATION

In the absence of other written agreement, each party may terminate the performance of Services with one month's written notice. If it becomes apparent to PCB Motor that a successful outcome of its Services is unlikely, PCB Motor may terminate its performance of Services immediately.

14. FORCE MAJEURE

PCB Motor shall not be liable for any delay or failure to perform, if such delay or failure results from fire, explosion, labour dispute, earthquake, casualty or accident, lack or failure of transportation facilities, epidemic, flood, drought, or by reason of war, declared or undeclared, revolution, civil commotion, the act of a public enemy, blockade or embargo, act of God, any inability to obtain any requisite license, permit or authorization, or by reason of law, proclamation, regulation, ordinance, demand, or requirement of any government, late or defective deliveries from sub-suppliers or by reason of any other cause whatsoever, whether similar or dissimilar to the enumerated, beyond the reasonable control of PCB Motor. With respect to labour disputes, PCB Motor shall not be obliged to accede to any demands being made by employees or other personnel. All such causes entitle PCB Motor to a reasonable postponement of the performance of its duties. However, the Customer shall be entitled to terminate an affected order or delivery if and when the delay has exceeded 3 months.

15. SURVIVAL OF CERTAIN PROVISIONS

All obligations, liabilities and limitations that, by their nature, are intended to survive expiration or termination shall remain in effect beyond any expiration or termination of these General Terms and any agreement of which they are part.

16. DISPUTES

Unless the parties agree otherwise, any dispute arising out of or in connection with these General Terms shall be settled by the Danish Maritime and Commercial Court in Copenhagen, Denmark.

Danish law, except its choice of law rules, shall apply.