

End User License Agreement Nazca PDK

This document contains important terms, rights and obligations, as well as limitations and exclusions concerning the Subscription to Nazca PDKs and usage of Nazca PDKs. The Subscription and usage of Nazca PDKs requires that Subscriber accepts, both in its capacity of end-user, and as employee, agent or other representative on behalf of the organization that ordered or received the PDK. If Subscriber does not agree with these terms and conditions neither access, installation, nor use of the Nazca PDKs is allowed. Any Subscription granted by Provider is governed by the general terms and conditions as described in this End User License Agreement (EULA).

*This EULA is agreed between the “Subscriber” **Company Name, whose principal address is at** and the “Provider” Bright Photonics B.V., whose principal address is at Horsten 1, 5612 AX Eindhoven, the Netherlands. The EULA becomes effective as of the Effective Date: **YYYY-MM-DD**.*

Definitions

The following words and expressions, when capitalized, shall have the meanings hereby assigned to them except where it is otherwise expressly stated:

Buyer: a party that purchased the Nazca PDK Subscription. If Buyer is not a Subscriber, a separate agreement must be put in place between Buyer and Bright Photonics B.V. to execute the Nazca PDK Subscription to the Subscriber. The EULA of the Nazca PDK shall be accepted by the Subscriber separately.

Subscriber: a party that accessed, installed or uses the Nazca PDK, and agrees with the EULA Nazca PDK. If Subscriber is not a Buyer, a separate agreement must be put in place between Buyer and Bright Photonics B.V. to execute the Nazca PDK Subscription.

Subscription: an acceptance of the EULA Nazca PDK and agreement to receive or be given access and updates to Nazca PDK for a certain period of time (Subscription Period).

Subscription Period: the period for which access to a Nazca PDK is given and updates are provided. The Subscription Period is indicated in the product description. The default subscription period is three (3) months.

Provider: a party that has rights to distribute, provide access and updates to the Nazca PDK Subscription, hereto Bright Photonics B.V.

Foundry: a technology provider and provider of a foundry PDK description and foundry PDK related materials.

Foundry PDK: Process Design Kit, a library of photonic components and process information from Foundry.

Nazca PDK: Nazca Design implementation based on the Foundry PDK by Bright Photonics.

PDK: a Nazca PDK

PDK Subscription, price and payment

1. The PDK Subscription is paid in full in advance by the Buyer. A PDK Subscription starts when Provider confirms the payment and will continue for a period stated in the PDK product description (validity) referred to as Subscription Period. Payment will be confirmed in reasonable time, typically a few business days.

2. Buyer will be charged the PDK rate stated at the time of purchase as one lump sum, plus applicable taxes. Subscription pricing is subject to change, and the change will be announced on the Nazca website.

3. A Subscription is non-cancelable and non-returnable. No refunds will be paid on any remaining Subscription. Subscription is non-exclusive, non-divisible and non-transferable.
4. Within the Subscription period Subscriber will receive PDK updates and Nazca-Design updates. The PDK Subscription does not include layout support, design support or support in using Nazca Design. It does include tool support on usage of the PDK subscribed to.
5. Foundry might require a valid Non-Disclosure Agreement (NDA) or Design Kit License Agreement (DKLA) between the Subscriber and the Foundry of the PDK. A Nazca PDK subscription can only be executed by the Provider if the Foundry confirms to the Provider in writing that the NDA or DKLA is in place. It is the sole responsibility of the Subscriber to arrange the NDA or DKLA where applicable, ideally before ordering a Nazca PDK.
6. PDK and installation instructions are exchanged with one representative of the Subscriber. PDK and installation instructions are exchanged with the Subscriber after Provider confirms the payment and validity of the NDA or DKLA between the Subscriber and the Foundry of the PDK, and after this EULA is accepted.
7. Subscriber shall: (i) use the Nazca PDK information only in connection with the preparation and submission of the design to the Foundry of the PDK; (ii) hold all Nazca PDK information in confidence and only provide access to its representatives within Subscriber's organization; (iii) not disclose a Nazca PDK to any third party without prior written approval of Provider.
8. A valid Nazca PDK Subscription is required to submit a design work to selected foundry and MPW run using Nazca PDK.

Intellectual Property rights and Confidentiality

1. All intellectual and industrial property rights to the PDK implementation in Nazca or other materials developed or provided by Provider, such as tutorials, design examples, documentation, manuals, Nazca PDK design manual, are held solely by Provider or its suppliers. The Nazca PDK is under Copyright.
2. The Nazca PDK developed or provided by Provider cannot be used for any commercial design or support services provided either by the Buyer, Subscriber or by other parties than Provider.
3. The Nazca PDK or other materials developed or provided by Provider cannot be copied, distributed, resold, published, displayed, disseminated, licensed or sub-licensed, or transferred without written permission of Provider. Provider keeps the right to impose reasonable conditions, such as fee or re-compensation, for any breach of the intellectual property rights of Provider.
4. The Nazca PDK is not sold to Buyer, no title to or no ownership of the Nazca PDK or any associated intellectual property or properties rights are transferred to Buyer nor to Subscriber with the Subscription.
5. Provider has rights to automatically collect information regarding Subscriber and Buyer in order to execute the Nazca PDK Subscription. All information collected is in compliance with Provider's privacy policy and applicable Dutch law.

Guarantee, liability, indemnity

1. Provider delivers the PDK on an "as-is-basis" and is not liable for any error, omission or defect, any inability to use or inability to access the PDK.
2. Provider shall not have any obligations concerning fixing errors reported during or after the expiry of the Subscription period, unless the parties have concluded a maintenance or support agreement.
3. Any liability of Provider for any form of loss or damage is excluded, including any additional damages in any form whatsoever or any compensation for any direct, indirect or consequential loss or any loss due to a loss of profits.

4. Subscriber shall indemnify Provider against any claims of third parties because of PDK or Nazca liability caused by any defect due to a modification or extension implemented by Subscriber.

5. Provider reserves the right to refuse a PDK Subscription or services to anyone without disclosing the reason.

Termination

1. The Subscription is terminated after the expiration of the Subscription Period.

2. Buyer and Subscriber shall delete all files and all copies related to the Nazca PDK being in Subscriber's possession or control, if so required by the NDA(s) or DKLA(s) conditions covering the Nazca PDK. Subscriber shall immediately inform Provider about deletion. It is the sole responsibility of Subscriber to follow the NDA or DKLA conditions.

Governing Law

1. This EULA is governed by and constructed in accordance with the laws of the Netherlands. The courts located in s'Hertogenbosch (the Netherlands) will have full and exclusive jurisdiction in all matters related to or arising out of the general terms and conditions described in EULA.

Accepted and agreed by

Subscriber/Buyer:

Authorized signature:

Organization:

Name:

Title:

Date: