

**Vibracoustic**  
**General Terms and Conditions of Purchase**  
**(valid as from 1 May 2016)**

**1. Scope of Application, Definitions**

- 1.1 These General Terms and Conditions of Purchase ("**Conditions of Purchase**") of Vibracoustic ("**we**"; "**us**"; "**our**") shall apply, unless expressly stated otherwise or amended by mutual written agreement, exclusively to all purchase contracts ("**Contract**" and "**Contracts**") of all our affiliates, legal entities under public law and special funds under public law and to all orders ("**Orders**") placed and Contracts concluded with suppliers ("**Suppliers**"), governing the purchase of goods, materials, services and work performances ("**Goods**") and their delivery ("**Delivery**"). Our Conditions of Purchase have the content as qualified by way of the respectively applicable country annexes which are contained in Clauses 20-44 of these Conditions of Purchase and which shall - in case of any discrepancies - prevail over these Conditions of Purchase. Any terms and conditions set out by Suppliers conflicting with or deviating from our Conditions of Purchase will not be accepted and shall not be binding on us, unless the application of such terms and conditions has been expressly approved by us in writing. These Conditions of Purchase shall also be exclusively valid if we do not object to the incorporation of our Supplier's conditions in a particular case or if, even in recognition of contrary or supplementary terms and conditions of Supplier, we accept its Delivery and/or pay Supplier's invoice without reservation.
- 1.2 These Conditions of Purchase shall also apply to all Contracts which will be entered into at some point in the future, as of the commencement of contractual negotiations. These Conditions of Purchase also apply to all future business relations with Supplier, even if not explicitly and separately stipulated.
- 1.3 There are no oral side agreements to these Conditions of Purchase between the parties. Supplier agrees not to assign or delegate the performance of its duties hereunder without our prior written consent.
- 1.4 If any Clause of these Conditions of Purchase is or becomes invalid or unenforceable, the validity of the remaining stipulations shall not be affected. In such case, the invalid or unenforceable provision(s) shall be replaced by lawful provision(s) coming as close as possible to the purpose pursued by the invalid or unenforceable provision(s). The same shall apply in case of an omission.

**2. Completion of Contract, Orders, Changes of Process**

- 2.1 Any Contract with Supplier and all Orders shall be considered binding on us only if they are set down in writing. Any modification, addition or subsidiary agreement before, at or after the conclusion of the Contract also requires our written consent. The requirement of written form may only be waived in written form itself. Fax, email or remote data transmissions shall be tantamount to written form unless the provisions of law require another specific form for the validity and effectiveness of a particular action.
- 2.2 If Supplier does not accept our Order within two (2) weeks of receipt in writing, we shall be entitled to revoke the Order. Delivery on call shall be binding unless Supplier objects within three (3) working days of receipt. Any deviation from, modification of or supplement to our Orders shall only be effective if explicitly and separately indicated as deviation, modification or supplement and expressly approved by us in writing. If Supplier delivers to us without prior confirmation of the Order, Supplier shall be deemed to have accepted the terms of the Order as well as these Conditions of Purchase.

- 2.3 For the purpose of initiating Contracts, we will send a letter of inquiry to Supplier. Upon receipt, Supplier is obliged to check such letter for any defects, deficiencies or misconceptions (e.g. requirements under product liability or environmental law, accident prevention requirements, technical standards, regulatory obligations, practicality in technical terms etc.) and notify us in its offer accordingly and specify the relevant product information without further request no later than upon Delivery. In no way does our approval of any documentation (e.g. designs, drawings etc.) release Supplier from its warranty or liability hereunder.
- 2.4 The trade terms will be construed in line with the INCOTERMS issued by the International Chamber in Paris, 2010 edition.

- 2.5 All Goods are to be packaged and processed by Supplier according to the provided purchase specifications. In the event that Supplier intends to deliver any new or changed Goods, Supplier shall, at our request, provide samples of such Goods to us prior to the Delivery. After approval of samples or purchase specifications, further alterations of the Goods themselves (e.g. material, function, appearance etc.), their production methods or changes in process (e.g. manufacturing location, subcontractors, material suppliers etc.) are not allowed without our express written approval. Our final approval of samples does in no way affect our rights under these Conditions of Purchase or statutory law, as applicable.

**3. Audit, Quality Assurance**

- 3.1 Supplier shall, upon our request, prior to the start of a business relation with us participate in a qualification audit ("**Audit**"), which shall be executed by way of an on-site review of Supplier's facilities by members of our Global Purchasing department. We will provide written notice to Supplier of any unsatisfactory condition detected in the course of such Audit and, within two (2) weeks after receipt of such notice, Supplier shall provide a response in written form to us.
- 3.2 Supplier shall during the entire business relation maintain a quality management system according to DIN EN ISO 9001:2008 or ISO/TS 16949:2002 that ensure the proper quality of Deliveries, monitor the systems by internal audits in regular intervals and promptly take action if any deviation has been detected. Supplier shall also implement an environmental management system according to ISO 14001 and if not yet implemented Supplier take all efforts set up such environmental management system. Supplier shall report on its efforts on our request. We shall have the right to inspect Supplier's quality assurance and environmental management system with prior notice. At our request, Supplier shall permit us to examine certification and audit reports as well as inspection procedures including all test records and documents relevant to the Delivery.
- 3.3 Part of any Order placed by us or Contract between us and Supplier are our "*Quality Assurance Measures for Procurement of Purchased Parts*", as amended from time to time and published at our website [www.vibracoustic.com](http://www.vibracoustic.com) (under Downloads - Supplier's Documents. By accepting any Order placed by us or by entering into any Contract with us, Supplier declares to have read the "*Quality Assurance Measures for Procurement of Purchased Parts*", to have full and complete understanding of its contents, effects and consequences and to accept to comply with the referred measures.
- 3.4 Supplier is obliged to review and comply at all times with our respectively effective quality system requirements that are

being periodically updated, revised and amended by us, and which may be made available at our website [www.vibracoustic.com/contact/downloads](http://www.vibracoustic.com/contact/downloads) or be published by us in any other form and made accessible to Supplier; as well as to comply with additional requirements upon which both parties mutually agree in writing.

#### **4. Delivery, Dates of Delivery, Delivery Time**

- 4.1 Delivery dates specified in the Contract or the Order or otherwise agreed upon are binding and must be strictly met. The delivery date is defined as the date the Deliveries are received at our manufacturing plant specified in the Contract or Order. Supplier shall promptly notify us in writing of emerging delays in meeting Delivery dates and deadlines, explaining the reasons for the delay and specifying how long the delay is expected to last.
- 4.2 In addition to other rights and remedies we may have in the event of Deliveries after the agreed Delivery date, we may choose to cancel the delayed Order without any obligation or liability and contract a third party instead of Supplier. Only if and to the extent that Supplier cannot be held responsible for specific disruptions (e.g. disruptions caused by Force Majeure events, i.e. not disruptions of Supplier's own supply, production or distribution services), Supplier will be excused for delays. The term "Force Majeure" means an event or circumstance that is beyond the reasonable control of Supplier, and which by its nature could not have been foreseen by Supplier or, if it could have been foreseen, was unavoidable.
- 4.3 Deliveries by installments and premature Deliveries shall be allowed only with our express prior written consent. Upon our request, Supplier will halt shipments and Deliveries for specified periods. We cannot be held liable for manufacture of Goods by Supplier in advance of the agreed schedule. Delivery of excess quantities does not oblige us to take, store or maintain such excess quantities but can be responded to by returning any such excess quantities to Supplier at its expense. Payment claims, however, shall be due no earlier than on the Delivery date that has originally been agreed upon.
- 4.4 Unless otherwise agreed upon, Deliveries must be accompanied by a Delivery note and a works test certificate according to EN 10204:2004 or any other equivalent internationally recognized test certificate specifying the details as mutually agreed upon with Supplier. An initial sample test report must be furnished with first-time Deliveries.
- 4.5 On-site Deliveries are only possible at previously arranged times.
- 4.6 In case of delayed Delivery we shall be entitled to impose a contractual penalty of 1% as liquidated damages for each commenced week of delay, but no more than a total of 5% of the Order value, while Supplier shall have the right to furnish evidence that no or only slight damage was caused. The right to assert additional damages shall be reserved. We shall be obligated to declare a reservation of contractual penalty no later than upon payment of the invoice following the delayed Delivery.
- 4.7 An unreserved acceptance of delayed Deliveries does not imply a waiver from our right to claim damages based on such delay. Any additional legal or equitable rights will remain unaffected. In particular, we reserve the right to claim damages exceeding the amount of the liquidated damages.
- 4.8 If not agreed otherwise each delivery shall be performed according to DAP (Incoterms 2010). Part of any Order placed by us or Contract between us and Supplier are our "*Logistics Requirements for Suppliers*", as amended from time to time and published at our Website [www.vibracoustic.com/contact/downloads](http://www.vibracoustic.com/contact/downloads) (under "*Downloads, Supplier's Documents*").

- 4.9 Supplier shall inform us immediately, if any deliverable or performance is subject, in whole or in part, to export restrictions under foreign trade rules, exchange control regulations or the terms of international embargos or export restrictions.

#### **5. Place of Performance, Packaging, Passage of Risks, Acquisition of Ownership, Execution of Delivery**

- 5.1 The place to which, according to the Order, the Goods have to be delivered or where the service is to be performed, shall be the place of performance. Place of performance for our payments is the registered office of our principal place of business (registered office) in the country from which the Order is issued.
  - 5.2 On Supplier's account and at Supplier's risk the Delivery shall be properly packed and made, "Delivery at Place", to the address named by us in the Order. Packaging must protect the Goods against damaging and deterioration in transit, be in compliance with relevant packaging regulations especially in respect to environmental and recyclable aspects, specify our Order number, the content (kind and quantity) of the Order, as well as special handling or storage requirements (e.g. flammability, toxicity, corrosiveness etc.) of the delivered Goods. The risk of accidental perishing or accidental deterioration of Delivery will pass on to us only with receipt of Delivery by us or by a forwarding agent appointed by us at the place of performance or after final acceptance of the Delivery, whichever comes later, even if we have agreed to pay the freight charges.
  - 5.3 With the passage of risk at the place of performance or with Delivery to a forwarding agent independently appointed by us we shall acquire ownership of the Goods without reservation of any rights to the benefit of Supplier.
  - 5.4 Supplier guarantees the future availability for a period of fifteen (15) years after Delivery for Goods that are to be used in original equipment automotive parts (e.g. spare parts or other material necessary for remedial work) and for a period of seven (7) years after Delivery for material used for Goods used in all other parts. Supplier must be able to procure maintenance for Goods for a period of four (4) years after end of (series) supply. All other services must be available for a period of four (4) years after expiration of warranty.
  - 5.5 Any employees of Supplier or of a third party acting on behalf of Supplier, who, in delivering, installing, demonstrating or maintaining the Goods of Supplier on our premises, do so at their own risk and must at all times comply with applicable safety rules and regulations and adhere to safety instructions of our staff. The foregoing does in no way establish any employer's managerial authority on our part with regard to such employees, nor does it confer any other responsibility on us with regard to the services to be performed by Supplier on our premises.
- #### **6. Prices, Invoicing, Conditions of Payment, Retention Rights, Assignments, Competitiveness**
- 6.1 Prices specified in the Order are fixed prices. Prices are DAP (INCOTERMS 2010) and include packaging and costs for the disposal of packaging, the return transport of exchangeable containers as well as insurance and other costs of Delivery, unless stipulated otherwise in writing. Value Added Tax, service taxes or any other applicable taxes must be shown separately, otherwise it will be deemed to be included in the price.
  - 6.2 In case Supplier is responsible for erection, assembly and/or commissioning and no other provisions have been agreed upon in writing, Supplier shall bear all necessary costs, such as travel expenses and provision of tools.
  - 6.3 Invoices will be processed only if we receive them by separate mail. Each Order must be invoiced separately without delay

after the shipping of the Goods. Invoices must include the Order number specified in our Order, Order date, Supplier number and our item number, all highlighted for easy readability.

- 6.4 Payment maturity dates will be suspended in the event that we are entitled to object to the Goods delivered or works performed by Supplier.
  - 6.5 Invoices must be made out in EUR, payments will be made in EUR only, unless otherwise requested or agreed to by us in writing or required by mandatory law.
  - 6.6 Payment will be made at our sole discretion either by bank transfer, cheque and/or bill of exchange after acceptance of Delivery and receipt of an orderly invoice as well as after receipt of all documents pertaining to the Delivery. Unless otherwise agreed upon in writing or stated differently by mandatory law, we shall pay either within 14 days with a 3% discount or within 30 days without discount. In the event that delays occur due to a form of sending the invoices different from such as stipulated in Clause 6.3 of these Conditions of Purchase, our rights, in particular the right to apply discounts, remain unaffected.
  - 6.7 Supplier shall not be entitled to assign or otherwise dispose of its claims wholly or partly against us without our prior written consent. Supplier is not entitled to set-off payments against counter-claims, unless such counter-claims are undisputed or subject to a legally binding court decision.
  - 6.8 We shall be entitled to claim statutory setoff and retention rights.
  - 6.9 As we aim at supplying our customers with the highest quality of products at the lowest possible cost, any Goods delivered by Supplier must, at least, be equivalent to comparable goods, materials, services and work performances of competitors in terms of quality and price. In the event that a competitor of Supplier offers any Goods at better quality or lower price, Supplier shall, within 30 days following our respective request, provide us with a new offer that, at least, matches such competitor's conditions.
- 7. Liability for Defects, Other Liability, Recourse**
- 7.1 The Goods are defective and Supplier agrees to indemnify us against and pay all damages of any kind, including but not limited to retrofitting and recall campaign expenses and incidental and consequential damages, in the event that the Goods (a) do not comply with the requirements under applicable law; (b) do not conform to drawings, materials and specifications designated and with all samples approved by us; (c) are not packaged and marked in conformity with the requirements set out in Clause 5.2 of these Conditions of Purchase; (d) are not new, unused, best available technology, of merchantable and first-class materials and workmanship, safe, and free from defects, contamination and rust; (e) to the extent Supplier knows or has reason to know of the purposes for which the Goods are intended, are not suitable for the intended purposes; and (f) if designed by Supplier are not free from defects in design.
  - 7.2 We will inspect the delivered Goods on the basis of accompanying documents only for identity and quantity as well as for visible transport damage as the case may be, on the basis of sample checks only. We will notify Supplier about defects of the Delivery once discovered in the ordinary course of our business within an appropriate time of at least five (5) working days after the defect has been detected. If we comply with the aforesaid, Supplier hereby waives its right to object to the notification of defects on grounds of delay.
  - 7.3 Unless stipulated otherwise in this Clause 7, Supplier shall be liable according to the applicable legal provisions, in particular for defects of the Delivery, whereas this liability is in no way

limited or disclaimed with respect to cause or amount, and insofar shall indemnify and hold us harmless from and against any third party's claims.

- 7.4 In case, the applicable legal provisions foresee different types of subsequent performances (e.g. repair or replacement), we shall be entitled to choose the type of subsequent performance to be executed, unless Supplier has a right to refuse the type of subsequent performance chosen by us under applicable law and exercises such right.
  - 7.5 In the event that Supplier fails to remedy the defect within a reasonable time-limit as set by us, we shall be able to remedy the defect ourselves and demand from Supplier compensation for the expenses necessary for this or an appropriate advance payment. A deadline shall not be necessary in the event that supplementary performance by Supplier shall be abortive or unacceptable for us (e.g. on account of special urgency, operating safety hazard or imminent occurrence of disproportionate damages); Supplier shall be informed of this immediately, if at all possible in advance.
  - 7.6 We reserve the right to assert all legal and equitable warranty claims also in the case any given defect remained unknown to us upon completion of Contract as a result of gross negligence, where we accepted Deliveries even though we were aware of minor defects or where our inspectors approved or failed to inspect Supplier's obligations under Clause 7.1 of these Conditions of Purchase.
  - 7.7 Unless otherwise agreed upon individually or governed by legal provisions that call for extended periods, claims for defects shall lapse 24 months after selling our product to the consumer, but - unless otherwise agreed upon by way of individual agreement - no later than 60 months after the passage of risk according to Clause 5.2 of these Conditions of Purchase, or in case of work performance 48 months after the written final acceptance. This shall not apply to Deliveries that, consistent with their common application, are used in buildings and have caused the latter's defectiveness; in that case claims will lapse five (5) years after such use.
  - 7.8 We reserve the right to take recourse against and are entitled to compensation from Supplier for all costs incurred by us if we are obliged to take back any product from our customers, if the purchase price paid to us is reduced by our customers, or if any other claims are asserted against us due to defects attributable to Supplier.
  - 7.9 In addition, Supplier shall exempt us from any third-party claims related to deficiencies in title if Supplier can be held responsible for the deficiencies in title. The limitation period mentioned in Clause 7.7 of these Conditions of Purchase shall apply.
  - 7.10 For every defect detected by us during the incoming inspection process Supplier shall pay to us an administration fee in the amount of EUR 75 for the processing of such defect.
- 8. Product Liability, Recall, Insurance**
- 8.1 Supplier assumes full responsibility for, indemnifies and holds us harmless from and against any liabilities and third party claims arising out of the death of or injury to any person or damage to property, if and to the extent the causes for this lie in Supplier's domain. Within the scope of this provision Supplier is also obligated to reimburse us for all expenses that are incurred by or in connection with a recall action or any other measure reasonably initiated by us. Supplier will be - to the extent possible and reasonable - (1) informed about the content and scope of the recall measures to be performed and (2) allowed opportunity for comment. The foregoing also applies in case that - after due consideration - we have settled or adjusted any such third party claims.
  - 8.2 Supplier and Supplier's subcontractors must provide evidence in adequate form (e.g. certificates) to us, (1) verifying that they

have secured satisfactory insurance coverage as to (a) worker's compensation; (b) commercial general liability (including products liability at a minimum - per each individual instance of liability - of EUR 5,000,000 or the equivalent in the currency of the country from which the Order is issued); (c) completed operations and contractual liability; (d) all risks property (including, but not limited to, coverage for tools provided by us or maintained by Supplier and owned by us); and (e) liability and damages incurred in connection with automobile accidents (= comprehensive automobile insurance coverage) and (2) showing (a) the amount of coverage; (b) the policy number; (c) the date of expiration; (d) with regard to product liability coverage, that we or are named as an additional insured. Supplier may only terminate or modify insurance coverage after having informed us in advance and having provided evidence of new equivalent coverage to us. However, in no way shall our claims be limited to the amount insured.

## **9. Industrial and Intellectual Property Rights**

- 9.1 Supplier guarantees that, to Supplier's knowledge, neither the Goods nor their use infringe or contribute to the infringement of industrial or (other) intellectual property rights or other rights of third parties nor violate legal or official regulations of whatever kind. Supplier also guarantees that the Goods delivered by it do not contain CFC, PCB or asbestos. Supplier shall keep track of and comply with our respectively effective restricted substances management which may be made available at our website [www.vibracoustic.com](http://www.vibracoustic.com) or be published by us in any other form and made accessible to Supplier and as may be amended by us from time to time. Supplier shall undertake to provide, at our request, all relevant IMD system data at no charge. Supplier is obliged to defend, protect, hold harmless and indemnify us, our successors and assigns, our customers and users of our goods, from all loss and damage, whether direct or consequential, as to any claim or demand based on or arising out of infringement or an allegation of infringement and, after notice, to defend at Supplier's own expense any suits arising from such claim.
- 9.2 If Supplier can be held responsible for a breach of the guarantee in the foregoing Clause 9.1 of these Conditions of Purchase, Supplier shall indemnify us from all and any claims lodged against us by third parties for reasons of or in connection with the Goods or their use; the limitation period mentioned in Clause 7.7 of these Conditions of Purchase shall apply accordingly.
- 9.3 Supplier agrees to provide a completed "US Customs Form 434 - North American Free Trade Agreement Certificate of Origin" for all parts that have an origin of USA, Canada, or Mexico; and for parts with origins other than USA, Canada or Mexico, to provide and properly mark the country of origin of each part.

## **10. Ownership of Intellectual Property Rights**

Any information, formulations, drawings, models, tools, technical records, procedural methods, software as well as other technical, commercial or creative know-how made available by us or acquired by Supplier through us during or because of the business relationship will remain in our ownership and must be surrendered to us on our request at any time, but in no case later than at the end of the business relationship (including any copies, extracts and replicas), or by our choice must be destroyed at Supplier's cost. Supplier, thus, has no right of retention thereto. In addition to the foregoing, Supplier must comply with the confidentiality obligations as set out in Clause 12 of these Conditions of Purchase.

## **11. Reservation of Ownership, Provision of Tools to and from Supplier**

- 11.1 We shall reserve the ownership of goods provided by us (e.g. parts, components, semi-finished goods).
- 11.2 Reservation of ownership shall also apply to Goods resulting from the processing, mixing or combining of our Goods in their full amount, whereas these processes are performed on our part so that we are considered as manufacturer. If third-party ownership rights extinguish after processing, mixing or combining with Goods from those parties, we shall acquire joint ownership at a ratio of the objective value of those goods.
- 11.3 Tools made available to Supplier as well as tools manufactured by Supplier itself or ordered at a third party on our behalf, to the costs of which we have contributed, shall remain our property or shall pass into our ownership upon manufacturing and/or acquisition by Supplier, must be clearly indicated as our property and shall not be removed from the Supplier's premises without our prior written consent. Without any written and explicit agreement being concluded for such purpose, we do not transfer any rights or licenses in connection with such tools when Orders are placed or Deliveries are accepted.
- 11.4 Supplier shall hold our tools in custody on our behalf at no charge, insure them adequately and furnish evidence of insurance cover at our request. Supplier shall use the tools exclusively for the purpose of manufacturing parts for us, unless otherwise agreed upon. We hereby grant our prior approval to manufacture parts based on Orders placed by any of our affiliates different from the one that had placed the original Order.
- 11.5 Supplier shall ensure proper maintenance and repair of the tools provided at its own cost. At the end of Contract Supplier shall surrender the tools without delay at our request while no right of retention may be derived by it. Upon surrender the tools must be in apparent good order and condition corresponding to their earlier use. Costs of repair shall be borne by Supplier. In no case may Supplier scrap the tools without our prior written approval.
- 11.6 In the case Supplier provides tools (e.g. special dies, jigs, patterns etc.) to us, which are included in the price paid for the Goods, then such tools become our property and we are granted all rights and licenses thereto after payment. Supplier is obliged to maintain, repair and replace where needed such tools at its expense except for the actual costs caused by a change of our design or specifications, in the event that such change is made prior to the exhaustion of the useful life of the tools. We may transfer or dispose of such tools at our discretion once the Order has been terminated. We shall have the right to take possession of, including the right of access for such purpose, any such tools without any liability to Supplier. We may, at our discretion, purchase from Supplier at book value any tools that we have not already acquired ownership of by (direct) payment or amortization in the price of purchased Goods. Any partial amortization shall be credited to us in determining the fair market value price. Supplier is, whenever applicable, responsible for reducing the price of Goods purchased according to the Contract when the amortization period for tooling and/or equipment is complete. The Supplier warrants that the tools provided, manufactured or created in connection with the performance of its contractual obligations will not infringe or contribute to the infringement of any third party's right and in particular of any intellectual property (including but not limited to: copyrights, droits d'auteur, patents, trademarks, designs, models, design patents, rights of database creators).

## **12. Confidentiality, Documentation, Data**

- 12.1 Any information, formulations, drawings, models, tools, technical records, procedural methods, software as well as

other technical, commercial or creative know-how made available by us or acquired by Supplier through us, and also any work results thus obtained ("**Confidential Information**") shall be maintained in secrecy by Supplier towards third parties, may be used in Supplier's business exclusively for Deliveries to us, may not be used for Supplier's own purposes or for any other purpose and be made available only to such persons as need to have access to Confidential Information in connection with the business relation and have therefore been obligated to maintain secrecy. This provision also extends beyond the duration of contractual relations so long as Supplier fails to prove that the Confidential Information was known to it already or was in the public domain at the time it was acquired or was made public later without its fault.

- 12.2 Supplier also has to maintain secrecy about the supply relationship to us and requires our prior written approval for indicating to third parties that Supplier is furnishing Goods to us.
- 12.3 Supplier is obliged to keep the documentation relating to Goods for at least fifteen (15) years after the date of Delivery and to provide such documentation to us upon our written request.
- 12.4 We are entitled to process any information, documents or any other data obtained in connection with the business relation to Supplier for our own purposes.
- 12.5 The parties reciprocally authorize the personal data treatment within the scope of the Contract in accordance with the applicable data protection law provisions.

**13. Environmental Compatibility**

Supplier warrants that the Goods comply upon Delivery with up-to-date environmental standards, i.e. all applicable regulations regarding the supplied Goods (including all used materials). Supplier shall provide all information required by such regulation and/or upon our request. Supplier shall be responsible, where physically possible, to take its Goods back for the purpose of recycling them within the scope of statutory duties or to dispose of them in an environment-friendly manner. Supplier shall keep track of and comply with our respectively effective restricted substances management which may be made available at our website [www.vibracoustic.com](http://www.vibracoustic.com) or be published by us in any other form and made accessible to Supplier and as may be amended by us from time to time. In the event that we are subject to any liabilities, cost, damages, fees, fines, etc. due to a violation of any of the obligations mentioned in this Clause 13 by Supplier, Supplier will indemnify us. Supplier shall support our defense in the event of administrative procedures against us due to Supplier's Goods including materials/substances used therein, and provide all reasonable information needed and/or requested by any authority and/or us for such defense.

**14. Paperless Communications**

Upon our request, Supplier will use electronic data interchange communication (EDI). All EDI communication that is properly issued and verified will have the same legal effect as if it were transmitted on paper in writing.

**15. Cancellation of Order**

We reserve the right to entirely or partially cancel an Order in the event that (1) Goods (a) are defective; (b) are not shipped according to the specifications in our original or subsequently amended Order; or (c) deviate from agreed specifications or provided samples; (2) Supplier (a) breaches or does not comply with any provision of these Conditions of Purchase; (b) does not perform any of its promises or warranties in connection with the Goods; (c) does not issue a new offer according to Clause 6.9 of these Conditions of Purchase; (d) becomes insolvent or commits an act in insolvency/bankruptcy; (e) is subject to filing of a voluntary or involuntary petition in

insolvency/bankruptcy; (f) has legal proceedings instituted for the appointment of a receiver or trustee; or (g) suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts; (3) Supplier's ability to perform is, in our reasonable judgment, endangered or impaired due to Supplier's condition; or (4) at our discretion, provided that in the event of such cancellation at our discretion, we pay Supplier's reasonable costs incurred up to the date of cancellation.

**16. Ethics Policy**

Our agents and employees must not encourage or accept bribes, kickbacks, inappropriate gifts or entertainment. Supplier is obliged not to induce - and not to have induced in the past - our agents and employees to any such action, whether legal or illegal. We reserve the right and Supplier hereby permits us to audit any of Supplier's records that are deemed necessary by us to ensure compliance with this Ethics Policy. Supplier keep track of and comply with our Code of Conduct which may be made available at our website [www.vibracoustic.com](http://www.vibracoustic.com) - Downloads - Code of Conduct or be published by us in any other form and made accessible to Supplier and as may be amended by us from time to time.

**17. Compliance with Law**

- 17.1. Supplier and Supplier's subcontractors are obliged to comply with all effective and relevant legal provisions (e.g. laws, regulations, directives, guidelines, rules, orders etc.), conventions, ordinances and standards of the country/countries of origin and destination of the Goods which govern their manufacturing, labeling, shipping, transportation, importation, exportation, licensing, approval or certification, including, but not limited to those relating to environmental matters; hazardous chemicals; data protection; hours and conditions of employment, wages; subcontractor selection; discrimination; occupational health/safety and motor vehicle safety and to provide all information necessary by such norms and/or requested by us. Supplier's and Supplier's subcontractors are obliged to maintain own compliance rules as to the aforesaid that satisfy local regulatory requirements.
- 17.2. Supplier and Supplier's subcontractors must not facilitate or utilize any form of forced or involuntary labor, nor engage in abusive worker treatment or corrupt business practices and provide, at our request, written certification of Supplier's and Supplier's subcontractors' compliance with the foregoing to us. Supplier shall indemnify and hold us harmless from and against any liability, claims, demands or expenses (including attorney's or other professional fees) arising from or relating to Supplier or Supplier's subcontractors' noncompliance with the obligations in this Clause 17.

**18. Waiver, Modifications, Changes of Order**

Any waiver of a breach of a specific provision of these Conditions of Purchase is exclusively limited to this specific breach and does not entail a waiver of any other breach. These Conditions of Purchase may be amended or modified at any time by us only. The Conditions of Purchase are applicable in their respectively current version being available at [www.vibracoustic.com/contact/downloads](http://www.vibracoustic.com/contact/downloads) - Downloads-Supplier's Documents which Supplier is obliged to keep track of and download. We may, at our discretion, at any time issue written change Orders in which we are entitled to make changes as to

(1) ordered quantities of Goods (2) the drawings, designs, or specifications relating to the Goods covered by the respective Order (3) the details of shipping, packing, and/or (4) the place of performance. In the event that the date of Delivery, the manufacturing costs for the Goods (including the costs for performing services), are affected by such changes, we will make equitable adjustments to the purchase price, the Delivery schedule or both.

## 19. Applicable Law, Place of Jurisdiction, Compliance

19.1 The legal relationship between the parties will be governed exclusively by the local laws applicable at our principal place of business (registered office) in the country from which the Order is issued, without recourse to the rules on conflict of laws. For the avoidance of doubt, the UN Convention on the International Sale of Goods (C.I.S.G.) and other international conventions or uniform law on the sale of Goods shall not be applicable.

19.2 The exclusive place of jurisdiction for all legal disputes arising out of contractual relationships with our Suppliers, in particular the Delivery, the Contract or its validity or in connection with these Conditions of Purchase, shall be, if Supplier is a businessman or company, our principal place of business (registered office) in the country from which the Order is issued. In addition to this, we shall be entitled to take legal action against Supplier at a court with jurisdiction over the registered office or branch office of Supplier or at the court with jurisdiction over the place of performance at our discretion.

## 20. Applicable to Contracts governed by Austrian law only

20.1 A sentence shall be added to Clause 7.2 which reads as follows: "Article 277 Austrian Commercial Code shall not apply".

20.2 Clause 19.2 reads: "The exclusive place of jurisdiction for all legal disputes arising out of contractual relationships with our Suppliers, in particular the Delivery, the Contract or its validity or in connection with these Conditions of Purchase, shall be, if Supplier is a businessman or company, Vienna, Austria. Any and all legal disputes shall either be resolved by the court with jurisdiction for commercial matters in Vienna, or we shall be entitled to take legal action against Supplier at the court with jurisdiction over the place of performance at our discretion."

## 21. Applicable to Contracts governed by Chinese law only

Clause 19.2 reads: "Any disputes arising from or in connection with the Contracts or the performance of the Contracts shall be submitted to Shanghai International Arbitration Center ("SHIAC") in accordance with its rule then in force ("SHIAC Rules"). Prior to such submission, the parties shall endeavor through friendly consultations to settle the dispute. Such consultations shall begin immediately after one party has delivered to the other party a notice requesting such consultation. If within thirty (30) days following the date on which such notice is given the dispute cannot be settled through consultations, then the dispute shall be submitted to arbitration as aforesaid. Unless otherwise agreed by us and Supplier, the arbitration panel shall consist of three (3) arbitrators to be appointed in accordance with the SHIAC Rules. Unless otherwise agreed by us and Supplier, the language of the arbitration shall be English. Supplier and we acknowledge and confirm that the arbitration award shall be final and binding upon the parties, not subject to any appeal, and shall deal with the question of costs of arbitration and all matters related thereto, and the immunity power, if any, is waived. Judgment upon the arbitration award may be entered in any court having jurisdiction over the party against whom enforcement is sought or such party's property. The foregoing shall not preclude the parties from applying for any preliminary or injunctive remedies available under applicable law for any purpose, including but not limited to securing the subsequent enforcement of an arbitration award."

## 22. Applicable to Contracts governed by Czech law only

22.1 The term "liquidated damages" used in Clauses 4.6 and 4.7 means, for the purpose of Czech law, "contractual penalty" (*smluvní pokuta*). Claims for damages (*náhrada škody*) in excess of the "contractual penalty" shall in any case remain unaffected.

22.2 A sentence is added to Clause 7.7 which reads: "Supplier is always obliged to provide the Delivery with the respective written guarantee proclamation."

22.3 Supplier and We agree that, as regards mutual rights and obligations resulting from delivery of defective Goods, sections 424, 427, 428, 433(2), 434 and 435(1, 2) of the Act no. 513/1991 Coll., Commercial Code (as amended) are not applicable.

22.4 The term "cancel" used in Clauses 4.2 and 15 means, for the purpose of Czech law, a right to "terminate" (*odstoupení od smlouvy*) under the Act no. 513/1991 Coll., Commercial Code (as amended).

## 23. Applicable to Contracts governed by the laws of England and Wales only

23.1 Clause 4.6 reads: "If Supplier fails to make Delivery of the Goods on the agreed Delivery date specified in the Contract or the Order we shall be entitled to a contractual payment of 1% of the Order value to which the Delivery relates for each commenced week of delay, but such contractual payment shall be no more than a total of 5% of the said Order value. The right to assert additional damages shall be reserved."

23.2 In Clause 15 (2) after "(g) suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts" the following shall be inserted: "(h) commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors; or (i) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over Supplier."

23.3 In Clause 1.3 after "There are no oral side agreements to these Conditions of Purchase between the parties" the following shall be inserted; "and Supplier acknowledges that it has not relied on any statement, promise, representation, assurance or warranty outside these Conditions of Purchaser or an Order".

## 24. Applicable to Contracts governed by Finnish law only

24.1 2 d) of Clause 15 reads "we may terminate the Contract at any time by giving a written notice in the event (i) Supplier is placed in bankruptcy, corporate reorganization or liquidation, (ii) an application for such proceedings has been initiated against Supplier and it is probable that they will result in Supplier actually being placed in bankruptcy, corporate reorganization or liquidation, (iii) Supplier has been subjected to execution proceedings (*ulosotto*), and such execution proceedings have not been fully successful, or (iv) Supplier is unable to repay its debts as they fall due in the ordinary course of business". 2 e) and f) of Clause 15 are deleted.

24.2 Clause 19.2 reads "Any dispute, controversy or claim arising out of or relating to a Contract, or the breach, termination or validity thereof, shall be finally settled by arbitration in accordance with the Arbitration Rules of the Finland Chamber of Commerce. The number of arbitrators shall be three, the seat of arbitration shall be Helsinki and the language of the arbitration shall be English."

## 25. Applicable to Contracts governed by French law only

25.1 The first sentence of Clause 1.2 reads: "These Conditions of Purchase shall also apply to all Contracts which will be entered into at some point in the future, as of Supplier's acceptance of our Order."

25.2 The second sentence of Clause 4.6 reads: "The right to assert additional damages exceeding the amount of the liquidated damages, which are not a penalty and as such not governed by

the provisions of article 1152 of the French Civil Code, shall be reserved."

25.3 A sentence is added to Clause 6.6 which reads: "Late payments may result in a penalty at an interest rate equal to three times the legal interest rate. We will also be subject to a statutory penalty for collection costs payable in case of late payments (currently EUR 40)."

25.4 The first sentence of Clause 6.7 reads: "Supplier shall not be entitled to assign or otherwise dispose of its claims wholly or partly against us without notifying us first by court bailiff."

25.5 The last sentence of Clause 7.5 reads: "A deadline shall not be necessary in the event that supplementary performance by Supplier shall be ineffective or unacceptable (e.g. on account of special urgency, operating safety hazard or imminent occurrence of disproportionate damages); Supplier shall be informed of this immediately, if at all possible in advance."

25.6 The first sentence of Clause 11.6 reads: "In the case Supplier provides tools (e.g. special dies, jigs, patterns etc.) to us, which are included in the price paid for the Goods, then such tools become our property and we are granted all rights thereto after payment pursuant to this Clause 11.6."

25.7 The last sentence of Clause 12.1 reads: "This provision also extends for 25 years after the termination of contractual relations so long as Supplier fails to prove that the Confidential Information was known to it already or was in the public domain at the time it was acquired or was made public later without its fault."

25.8 A sentence is added to Clause 15: "Any cancellation of Order will be subject to a reasonable prior written notice sent by registered letter with acknowledgment of receipt."

25.9 Clause 19.2 reads: "The legal relationship between the parties shall be subject to the exclusive jurisdiction of the commercial court of Paris."

## **26. Applicable to Contracts governed by German law only**

26.1 In Clause 6.6 the phrase "cheque and/or bill of exchange" is deleted.

26.2 The first sentence of Clause 6.7 does not apply.

26.3 In Clause 7.1 (d) reads as follows: "are not new, unused, safe, and free from defects, contamination and rust."

26.4 The following phrase is added to the end of the second sentence of Clause 11.5: "...unless such right is undisputed or subject to a legally binding court decision."

26.5 In Clause 15 after "We reserve the right to entirely or partially cancel an Order in the event that" the phrase " - and provided that all other respectively required preconditions for such cancellation stipulated by mandatory law are met" is added. (2) (d), (e) and (f) of Clause 15 are deleted.

## **27. Applicable to Contracts governed by Hungarian law only**

27.1 The contractual penalty specified in Clause 4.6 means the contractual penalty provided for in section 246 of Act IV of 1959.

27.2 The first sentence of Clause 19.2 reads: "The exclusive place of jurisdiction for all legal disputes arising out of contractual relationships with Supplier, in particular the Delivery, the Contract or its validity or in connection with these Conditions of Purchase, shall be the competent court to be determined in line with the general rules applicable to jurisdiction under the Hungarian Code of Civil Procedure."

## **28. Applicable to Contracts governed by Indian law only**

28.1 Clause 4.6 reads: "In case of delayed Delivery we shall be entitled to impose 1% of the Order value as liquidated damages for each commenced week of delay, but no more than a total of 5% of the Order value, while Supplier shall have the right to

furnish evidence that no or only slight damage was caused. We shall be obligated to declare a reservation of liquidated damages no later than upon payment of the invoice following the delayed Delivery. The amounts of liquidated damages as set out in this Clause represent a genuine pre-estimate of the damages likely to be suffered by us in case of delayed Delivery. Supplier acknowledges that the losses that will actually be sustained by us are uncertain and impossible to determine with precision. The amounts due under this Clause as liquidated damages shall be payable by Supplier without any requirement of proof of the actual loss or damage caused by such delayed Delivery. The sums set out in this Clause seek to estimate the potential liability of Supplier and constitute liquidated damages and not a penalty."

28.2 The last sentence of Clause 4.7 does not apply.

28.3 The amount payable under Clause 7.10 is INR 6.250.

28.4 Clause 19.2 reads: "In the event any dispute or difference (hereinafter referred to as the "Dispute") arises out of or in connection with the interpretation or implementation of these Conditions of Purchase, or out of or in connection with the breach, or alleged breach of these Conditions of Purchase, the parties involved in such Dispute shall attempt in the first instance to resolve the Dispute by friendly consultations. If the Dispute is not resolved by friendly consultations within 30 days after information by one party to the other in writing of the existence of the Dispute, then either of the parties shall refer the Dispute for resolution by arbitration. Such arbitration shall be conducted as per the Rules of London Court of International Arbitration applicable to India ("LCIA India Rules") for the time being in force. The parties shall be entitled to apply to the appropriate court of competent jurisdiction at Mumbai, India, exclusively for interlocutory or interim relief in respect of the arbitration. The juridical seat and the venue of arbitration shall be Mumbai, India and the arbitration shall be held in the following manner:

- a) All proceedings in any such arbitration shall be conducted in English.
- b) There shall be three (3) arbitrators, all of whom shall be fluent in English. The party making the reference shall appoint one arbitrator and the other party shall appoint one arbitrator in accordance with the LCIA India Rules. The third presiding arbitrator shall be appointed by the two (2) appointed arbitrators in accordance with the LCIA India Rules. No arbitrator will have the power to alter, amend, or add to the provisions of this Agreement.
- c) The arbitration award made by all or a majority of the arbitrators shall be final and binding on the parties and the parties agree to be bound thereby and to act accordingly. The award shall be enforceable in any competent court of law in India.
- d) The award shall be in writing and shall be a reasoned award.
- e) The panel may (but shall not be required to) award to the party that substantially prevails on merits, its costs and reasonable expenses (including reasonable fees of its counsel).
- f) Each party shall bear its respective costs for such arbitration including without limitation the fees of the arbitrator, counsel fees and all expenses in relation to such arbitration.
- g) When any Dispute is under arbitration, except for the matters under Dispute, the Parties shall continue to exercise their remaining respective rights and fulfil their remaining respective obligations under this Agreement, to the extent possible during the pendency of the arbitration proceedings."

**29. Applicable to Contracts governed by Italian law only**

29.1 The second sentence of Clause 4.6 reads: "The right to assert additional damages exceeding the amount to be liquidated as penalty shall be reserved in accordance with art. 1382 of the Italian Civil Code".

29.2 The warranty and the remedy set forth in Clause 7 shall be deemed in addition to and not in substitution of any other warranty and remedy set forth by the law or otherwise.

29.3 Clause 7.6 does not apply.

**30. Applicable to Contracts governed by Japanese law only**

The term "liquidated damages" used in Clause 4.6 means "contractual penalty" (*iyakubatsu*) the amount and payment conditions of which are set out in this Clause 4.6.

**31. Applicable to Contracts governed by Macedonian law only**

31.1 The term "liquidated damages" used in Clause 4.6 means "contractual penalty" as determined in Article 259 of the Macedonian Law on Contracts and Torts. The second sentence of Clause 4.6 reads: "The right to assert additional damages exceeding the amount of the liquidated damages, which are not a penalty and as such not governed by the provisions of article 265 of the Macedonian Law on Contracts and Torts, shall be reserved."

31.2 Clause 19.2 reads "All disputes arising out of or in connection with the present Conditions of Purchase and any and all Contracts concluded thereunder, including the disputes concerning their interpretation and validity, shall be submitted to the Permanent Court of Arbitration of the Macedonian Chamber of Commerce and shall be finally settled under the Rules of the Permanent Court of Arbitration, unless the applicable Macedonian legislation stipulates the exclusive jurisdiction of another court. The number of arbitrators, appointed in accordance with the Rules of the Permanent Court of Arbitration, shall be three (3). The language of the arbitration shall be English. The arbitration award shall be final and binding upon Supplier and us and both we as well as Supplier waive the right to appeal.

**32. Applicable to Contracts governed by Mexican law only**

32.1 The first sentence of Clause 4.6 reads: "In case of delayed Delivery we shall be entitled to impose a contractual penalty of 1% of the Order value for each commenced week of delay, but no more than a total of 5% of the Order value, plus all duly documented contractual penalties which we incur with any third party as a consequence of delayed Delivery, while Supplier shall have the right to furnish evidence that no or only slight damage was caused."

32.2 Clause 17.2 reads as follows: "It is hereby specified that there is no labor relationship between us and Supplier and/or Supplier's subcontractors; moreover, Supplier and/or Supplier's subcontractors, must not facilitate or utilize any form of forced or involuntary labor, nor engage in abusive worker treatment or corrupt business practices and provide, at our request, written certification of Supplier's and Supplier's subcontractors' compliance with the foregoing to us. Supplier shall indemnify and hold us harmless from and against any liability, claims, demands or expenses (including attorney's or other professionals' fees) arising from or relating to Supplier or Supplier's subcontractors' noncompliance with any labor regulation and/or the obligations in this Clause 17. Supplier acknowledges, agrees and expressly states that the recourses and money to be used by it in order to comply with its obligations hereunder, arise from legal and permitted transactions and that under no circumstance it will commit a crime or carry out an activity that may affect us or any of our goods or assets, or any third party with whom we may have any contractual relationship."

32.3 Clause 19.2 reads as follows: "The parties hereby submit and consent to the exclusive jurisdiction and venue of state courts sitting in Mexico City, Federal District, for the purpose of hearing and determining any disputes; the parties are hereby waiving the recourse to any other jurisdiction that they may be entitled to, due to their present or future domiciles or otherwise."

**33. Applicable to Contracts governed by the laws of the Netherlands only**

The term "Force Majeure" used in Clause 4.2 shall mean an event as meant in section 6:75 of the Dutch Commercial Code.

**34. Applicable to Contracts governed by Polish law only**

34.1 The first sentence of Clause 6.6 reads: "Except for payments higher than EUR 15,000 (calculated into PLN in accordance with the exchange rate announced by the National Bank of Poland on the last day of the month preceding the month in which the transaction is made), which shall be made via the entrepreneur bank account, payment will be made subject to our own discretion by bank transfer or cheque and/or bill of exchange after acceptance of Delivery and receipt of an orderly invoice as well as after receipt of all documents pertaining to the Delivery."

34.2 In Clause 7.7 "48 months" is replaced (x 2) by "36 months".

34.3 The claims under Clause 7.8 expire at the earliest two months from the point in time at which we have fulfilled any claims asserted against us by a customer, however, five years as of the delivery of the Goods by Supplier at the latest.

34.4 In the event that Supplier is obliged to indemnify against any third-party claims, in particular under Clauses 7.1, 7.3, 8.1, 9.1, 9.2, 13 and 17.2 of these Conditions of Purchase, this obligation shall be understood as warranty obligations (*odpowiedzialność gwarancyjna*), in particular it shall be understood as obligations under Article 392 of the Polish Civil Code (*zwolnienie z odpowiedzialności*).

**35. Applicable to Contracts governed by Portuguese law only**

35.1 The second sentence of Clause 18 reads: "These Conditions of Purchase may be amended or modified at any time by us only and the amendments or modifications shall enter into force 5 days after giving written notice to Supplier."

35.2 Clause 19.2 reads: "The legal relationship between the parties shall be subject to the exclusive jurisdiction of the courts of Lisbon."

**36. Applicable to Contracts governed by Romanian law only**

36.1 In Clause 4.1 a sentence is added after the first sentence which reads: "Should Supplier fail to observe any of its obligations when due, Supplier shall be immediately deemed in default upon expiry of the performance deadline (*e de drept in intarziere*), in accordance with the provisions of the Romanian law."

36.2 A sentence is added to Clause 7.7 which reads: "For the avoidance of doubt, the periods herein are contractual warranty terms, while the claims shall be filed in court within the limitation periods (*termene de prescriptie*) provided by law."

36.3 The following phrase is added to the last sentence of Clause 11.2: "...and Supplier shall procure that the relevant third party agrees to the joint-ownership."

36.4 A sentence is added to Clause 11.3 which reads: "Supplier shall procure the execution of any documents attesting our ownership right, if required."

36.5 The last sentence of Clause 12.1 reads as follows: "This provision also extends beyond the duration of contractual relations, for a maximum period of three (3) years, so long as Supplier fails to prove that the Confidential Information was

known to it already or was in the public domain at the time it was acquired or was made public later without its fault. With respect to any industrial and intellectual property rights, the obligations in this Clause 12.1 shall survive the termination of contractual relations for the entire duration of protection of such rights."

**37. Applicable to Contracts governed by Slovenian law only**

The limits on right of retention of Supplier imposed under Clause 10 and Clause 11.5 shall not apply to the extent they violate mandatory Slovenian law.

**38. Applicable to Contracts governed by South African law only**

38.1 The first sentence of Clause 6.1 reads: "Prices specified in the Order are fixed prices and will not be subject to any increases or additional charges during the period of the Order notwithstanding any fluctuation in the exchange rate." A sentence is added to Clause 6.1: "If the prices are not shown in the Order, Supplier's list prices valid at the time of the Order shall apply with the standard deductions."

38.2 The following phrase is added to the end of Clause 6.5: "...and subject to the exchange control regulations."

38.3 In Clause 7.7 "48 months" (x 2) is replaced by "the period prescribed by the Prescription Act, No 68 of 1969".

38.4 The last sentence of Clause 7.9 does not apply.

38.5 Supplier agrees, declares and undertakes that we are exempted from the obligation to provide security in any lawsuit or enforcement proceedings initiated in South Africa arising out of or in connection with the Contract.

**39. Applicable to Contracts governed by South Korean law only**

A sentence is added to Clause 5.5 which reads: "Supplier shall indemnify us and hold us harmless from any damages or costs of any nature incurred by us in connection with any claim or allegation by any such employees."

**40. Applicable to Contracts governed by Spanish law only**

Regarding Clause 4.1, Supplier accepts that the term is an essential condition of the agreement. Therefore, Clause 4.1 reads: "Delivery dates specified in the Contract or the Order or otherwise agreed upon are binding and an essential condition and must be strictly met. Supplier shall promptly notify us in writing of emerging delays in meeting Delivery dates and deadlines, explaining the reasons for the delay and specifying how long the delay is expected to prevail".

**41. Applicable to Contracts governed by Swiss law only**

41.1 The second and the third sentence of Clause 7.2 are replaced as follows: "We will notify Supplier about defects of the Delivery once discovered in the ordinary course of our business within 30 business days after the defect has been detected. A delay in the notification shall in no way limit, preclude or lead to the forfeiture (in German: *Verwirkung*) of our warranty or damage claims. The provisions of article 201 of the Swiss Code of Obligations are hereby waived by the Parties."

41.2 In Clause 7.6, the words "legal and equitable" are deleted.

**42. Applicable to Contracts governed by the laws of Thailand only**

42.1 A Clause 1.5 is added which reads: "In case the applicable laws require that the Contract or Order is created in a particular form, Supplier is responsible to ensure that the Contract or Order is formed in the way prescribed by law so that it will have full effect and be enforceable according to the applicable law."

42.2 A Clause 1.6 is added which reads: "In case a Contract requires to be affixed with a certain rate of stamp duty in order to become valid and acceptable evidence in legal procedures

before Thai Courts, Supplier shall be solely liable for such stamp duty to be paid and affixed on the Contract in the amount and within the period of time as required by law."

42.3 A sentence is added to Clause 6.4 which reads: "If we subsequently accept the Goods or works, a suspension of payment under this Clause 6.4 shall not be subject to any interest or penalty for late payment."

42.4 The second sentence of Clause 19.2 is deleted and replaced by: "Any Dispute may first be settled by arbitration in accordance with the Arbitration Rules of the Thai Arbitration Institute, Office of the Judiciary, applicable at the time of submission of the Dispute to arbitration and the conduct of the arbitration thereof shall be under the auspices of the Thai Arbitration Institute.

The juridical seat and the venue of arbitration shall be Bangkok, Thailand, and the arbitration shall be held in the following manner:

a) All proceedings in any such arbitration shall be conducted in English;

b) There shall be three (3) arbitrators, all of whom shall be fluent in English. The party making the reference shall appoint one arbitrator and the other party shall appoint one arbitrator in accordance with the Arbitration Rules of the Thai Arbitration Institute. The third presiding arbitrator shall be appointed by the two (2) appointed arbitrators in accordance with the Arbitration Rules of the Thai Arbitration Institute. No arbitrator will have the power to alter, amend, or add to the provisions of these Conditions of Purchase;

c) The arbitration award made by all or a majority of the arbitrators shall be final and binding on the parties and the parties agree to be bound thereby and to act accordingly. The award shall be enforceable in any competent court of law in Thailand;

d) The award shall be in writing and shall be a reasoned award;

e) The panel may (but shall not be required to) award to the party that substantially prevails on merits, its costs and reasonable expenses (including reasonable fees of its counsel);

f) Each party shall bear its respective costs for such arbitration including without limitation the fees of the arbitrator, counsel fees and all expenses in relation to such arbitration;

g) When any Dispute is under arbitration, except for the matters under Dispute, the parties shall continue to exercise their remaining respective rights and fulfill their remaining respective obligations under these Conditions of Purchase, to the extent possible during the pendency of the arbitration proceedings.

In addition to the above, we shall be entitled to elect to take legal action against Supplier at a court with jurisdiction over the registered office or branch office of Supplier or at the court with jurisdiction over the place of performance, at our discretion, without being obliged to proceed with the arbitration procedure first."

**43. Applicable to Contracts governed by Turkish law only**

43.1 Supplier agrees, declares and undertakes that we are exempted from the obligation to post security in any lawsuit or enforcement proceedings initiated in Turkey arising out of or in connection with this agreement, which obligation arises from Article 32 of the International Private and Procedural Law of Turkey.

43.2 Supplier agrees and accepts that in any lawsuit or enforcement proceeding, our books and records shall constitute exclusive evidence.

**44. Applicable to Contracts governed by US law only**

44.1 If the Order is issued from within the US Clause 19.1 reads:  
"The legal relationship between the parties shall be governed by and construed in accordance with the laws of the State of Michigan without giving effect to the principles thereof relating to conflicts of law. The parties hereby submit and consent to the exclusive jurisdiction and venue of state courts sitting in Oakland County, Michigan or the United States District Court for the Eastern District of Michigan for the purpose of hearing and determining any disputes."

44.2 If Supplier is eligible for C-TPAT certification, we must have documentation (e.g. C-TPAT certificate, SVI number, etc.) verifying certification. For those Suppliers not eligible for C-TPAT certification, we require Supplier to demonstrate it is meeting C-TPAT security criteria via a written/electronic confirmation (e.g., contractual obligation; via a letter, from the Senior Officer of Supplier's company, attesting to compliance; a written statement from Supplier demonstrating its compliance with C-TPAT security criteria or an equivalent WCO accredited security program administered by a foreign customs authority; or, by providing a completed version of our security questionnaire). Based upon documented risk assessment process, non-C-TPAT eligible Suppliers must be subject to certification of compliance with our C-TPAT security criteria. In order to enhance the integrity of the shipment at point of origin, periodic review of Supplier's processes and procedures will be conducted based on risk and Supplier will maintain the security standards required by us.