

## **VIBRACOUSTIC GENERAL TERMS AND CONDITIONS OF SALE (VALID AS FROM 1 FEBRUARY 2020)**

### **1 SCOPE OF APPLICATION AND DEFINITIONS**

1.1 All sales of goods, works and services by any Vibracoustic group company (collectively, “**VC**”), including future transactions and the phase of initiation of a transaction, contract negotiations, quotations submitted by VC to Customer as defined in Section 1.2 herein or answers of VC to inquiries, shall be governed exclusively by these Vibracoustic General Terms and Conditions of Sale (“**VC Sales T&C**”). All other general terms and conditions from Customer are strictly and expressly rejected in whole.

Silence of any representative of VC shall not be deemed as acceptance. Any deviation from these VC Sales T&C shall be effective only if signed in written form with 2 signatures of VC’s duly authorized representatives.

1.2 “**Customer**” as used in these VC Sales T&C is each purchaser of VC goods, works or services (such VC goods, works or services, collectively “**Products**”) based upon contractual agreement. VC and Customer are jointly “**Parties**” and each individually a “**Party**”. Technical terms are primarily defined according to the definitions set forth in DIN/ISO 8402.

### **2 QUOTATIONS, OFFERS, PURCHASE ORDERS**

2.1 Quotations or offers provided by VC are non-binding until VC’s purchase order confirmation is sent to Customer or VC delivers the ordered Products to Customer.

2.2 In the event Customer submits a purchase order for Products (“**PO**”), VC may accept this PO within 2 weeks from receipt by sending a PO confirmation or by delivering the ordered Products. VC shall not have any liability to Customer or any third party if it cancels a PO within 2 weeks of receipt.

2.3 Each PO is only valid for the market for which the Products are destined according to the Parties’ written agreement. VC shall be informed about the target market(s) by Customer in advance and before Customer issues the PO. In the event Customer may not deliver into a target country, e.g. because of an embargo, Customer, upon VC’s request, must return to VC the Products delivered. Any non-compliance herewith obligates Customer to compensate VC for the damages arising out of such non-compliance.

2.4 In the event the PO is based on or reference is made to Product and/or material specifications used by VC, the respective work specifications applicable for these Products and materials at VC shall be mutually agreed upon (the “**VC Specifications**”). Upon request of Customer, VC shall provide information about VC Specifications. If Customer approves Products deviating from the particulars or VC Specifications set out in the PO, the Products shall be deemed approved and accepted notwithstanding the particulars or the VC Specifications. Further information, e.g. in brochures, pamphlets, catalogues etc. shall not be the terms of any contract or agreement between the Parties unless expressly agreed upon in writing. Any statements, standards, conformity designations or declarations in such brochures, pamphlets, catalogues, etc., shall not be binding on the Parties and are not statements, representations or warranties as to any assured qualities, independent assurances (guarantees) otherwise, merchantability or fitness or definite action directives.

2.5 The Customer shall assume sole responsibility regarding the fitness of the Products to be delivered by VC for the purpose chosen by the Customer or fitness of putting the Products into operation. A purpose of use of VC’s Products determined by Customer only becomes part of the contract if

expressly agreed in writing between the Parties. This also applies to the extent VC was involved by Customer in the development of the Products created by Customer and may thereby have cooperated by giving advice and recommendations. Customer is barred from claiming that Products delivered by VC had not been or had not sufficiently been tested. In case of resale, nobody shall be permitted to make further statements and specifications or undertakings without VC’s prior written consent. Article 2.4 shall apply accordingly.

2.6 Customer shall assume responsibility for determining whether the Products are ready for use. Customer shall be precluded from claiming that delivered Products were not sufficiently ready for use.

2.7 Customer shall provide to VC, traceability of Products delivered by VC. Customer shall not exercise a right to refuse performance in this regard. At any time, VC may request evidence on the keeping of proper documentation to trace Products.

2.8 Customer shall inform VC in advance (but at a minimum before issuance of the PO) and in writing if Products are to be used as a safety-related part or a part requiring special documentation including whether the Products are required to comply with any applicable local laws for any target market. Customer shall indemnify, defend, and hold VC harmless for all damages, costs and expenses incurred by VC if Customer breaches this obligation.

2.9 Customer shall not use the Products for the purposes of aviation or in nuclear plants without prior written consent by VC.

2.10 Any illustrations, drawings, calculations and other documents, sketches, models, samples patterns, or other information related to the Products made available to Customer (“**VC Materials and Information**”) shall remain the sole property of VC along with all copyrights or other proprietary rights therein, notwithstanding any discussions or communications between the Parties. Nothing in this Agreement grants, or should be interpreted as granting any rights or license to Customer with respect to any VC Materials and Information under any patent, patent applications, trademark, copyright or trade secret, as all these rights are reserved by VC, especially any rights to inventions and (industrial) property rights. Customer shall be precluded from disclosing VC Materials and Information to third parties without the prior express written consent of VC. Any transfer of VC Materials and Information or the related Intellectual Property rights whatsoever must be subject to a separate written agreement, including a fair compensation to be paid for it, signed by both Parties’ representatives. Any documents obtained by VC from a third party for which VC is authorized to submit to Customer may be disclosed to Customer only after VC has permissibly sub-contracted such third parties in delivery of services or goods for the fulfillment of its contractual obligations towards Customer.

2.11 VC grants Customer a non-exclusive and non-transferable right of utilization to patented VC intellectual property rights which are necessary for the utilization (sale or use) of the Products.

2.12 Customer is herewith informed of and agrees that VC is entitled to process for its own purposes the personal data originating from the business relationship in accordance with applicable data protection law.

2.13 If a PO or other correspondence contains terms or conditions contrary to the terms and conditions contained in VC’s acknowledgement, VC’s acceptance of any order shall not be construed as assent to any additional

terms and conditions, nor will that constitute a waiver by VC of any of these VC Sales T&C nor an acceptance of any such additional provisions. No such additional or different terms or conditions will be of any force or effect, unless specifically agreed to by an executive officer of VC.

### 3 PRICES, INVOICES AND PAYMENT CONDITIONS

3.1 Only prices confirmed by VC in accordance with Section 2.1 are binding. In the event deliveries and partial deliveries under these VC Sales T&C are carried out later than two months after the date of the PO confirmation and in case that VC has meanwhile increased its sales price in general, VC is entitled to increase the agreed price accordingly. VC is entitled to reasonably increase prices as well in the event the price for materials to be used for the manufacturing and supply of parts to Customer has increased in general in the market.

3.2 Unless otherwise stated in the PO confirmation, VC's prices are understood net as *ex works* (EXW as defined by INCOTERMS 2020) VC's factory. Products will be provided in standard packaging only. Any special packaging required by Customer for transport is not included in the price. As *ex works*, the price does not include freight, transfer, insurance, customs, assembly and the applicable value added tax. The value added tax applicable on the date of invoicing will be shown in its legal amount separately on the invoice.

3.3 All invoices shall be paid within 30 days after shipment. If Customer fails to pay any invoice when due or if, in the judgment of VC, the financial condition of Customer at any time prior to shipment does not justify the extension of credit, then VC may require payment in advance or otherwise modify the payment terms upon notice to Customer. All delays occasioned by acts of Customer shall be at the expense of Customer. VC reserves the right to assess reasonable charges for its expenses resulting from such delays. No discounts are granted unless so agreed in writing. VC may request payment in advance or collateralization prior to delivery. In the event of default of Customer, VC is entitled to a default interest of at least 9% per annum over and above the applicable basic interest rate applicable by law or in absence of such rule set by the central bank in the jurisdiction of VC. VC reserves the right to assert further damages.

3.4 Payments are only to be made in the currency determined in the invoice. Bills of exchange and cheques will only be accepted subject to execution of a separate agreement which provides for payment by bills of exchange or cheques and only on the account of payment. Any cost of discounting and charges for collection are to be borne by Customer.

3.5 Customer will reimburse VC for all costs and expenses (including attorneys' fees and the costs of bringing any action) incurred in collecting any amounts past due. Customer may only setoff counterclaims which either have been expressly accepted by VC or are adjudicated by a final non-appealable judicial decision. If a dispute arises between the Parties concerning Customer's alleged right to setoff or recoupment against VC or its affiliates, the Parties shall negotiate in good faith to resolve such dispute. Customer is only entitled to exercise a right of setoff or retention insofar as its counterclaim is based on the same legal relationship for affected supply. Notwithstanding the foregoing, Customer acknowledges and agrees that payments owed to VC for Products supplied under these VC Sales T&C are not subject to any setoff or recoupment by Customer unless and until VC agrees in writing to such setoff or recoupment, and that Customer shall not exercise its right to setoff or recoupment in connection with any disputed, contingent, or unliquidated claim. Customer is not entitled to a right of partial retention in cases of partial performance. Claims of Customer against VC may only be assigned or pledged with the express written consent of VC.

3.6 Customer's rights and obligations resulting from another contract entered into with VC continue to be in full force and effect and shall not be subject to the setoff rights set forth in Section 3.5 including when a good delivered by Customer thereunder to VC becomes part of the Product to be delivered by VC hereunder and when such Products delivered by VC hereunder are not marketable for reasons which are not within VC's responsibility.

### DELIVERY TIME AND DEFAULT IN DELIVERY

Timely delivery is subject to all documents (especially drawings), and necessary authorizations and releases, being provided by Customer to VC in due time as well as Customer's compliance with its payment conditions and other obligations. If Customer violates these obligations, VC may delay delivery times.

Unless VC and Customer otherwise agree in writing, the delivery time is deemed to be met if readiness of the Products for collection by Customer or its freight carrier at VC's factory has been announced by the expiration of the time period agreed for delivery. The Product shall be deemed delivered upon VC's notification to Customer that the Product is available for pick up at VC's facility.

If delivery is delayed for reasons only VC is responsible for, the Customer is, unless actual damages are proven to be lower, entitled to a lump-sum compensation for each complete week of such delay of 0.5 % (one half of a percent), but not more than a total of 5 % (five percent) of the price of the delayed Products provided that Customer shows probable cause that it incurred damages solely due to such delay. Further compensation claims of Customer for delay of performance are excluded. The foregoing limitation does not apply in cases of damage to health, bodily injury or bodily injury followed by death as well as in cases of intentional or grossly negligent violation of cardinal contractual obligations by VC or its representatives and agents.

Upon request of VC, the Customer is obliged to declare within a reasonable time frame, whether Customer still desires delivery of the Products despite a delay in delivery.

In the event that the collection of the Products by the Customer or Customer's freight carrier is delayed upon request of the Customer for more than 2 weeks after (i) the agreed delivery time or, (ii) after VC has given notice of readiness, Customer shall pay a storage charge amounting to 0.5 % (one half of a percent) of the Product price per month, however not more than a total of 5 % (five percent) in aggregate. The right of VC to claim proven damages in excess of the percentage amounts above remains unaffected. After expiration of a reasonable time limit set by VC which will occur no sooner than 2 weeks after the agreed delivery time, and communicated to Customer, VC is entitled at its discretion to either dispose of the Products or eventually deliver Products to Customer within an adequately prolonged time limit at Customer's expense.

At any time, VC is entitled to have its delivery obligations fulfilled by an Affiliated Company or to have the Products manufactured by an Affiliated Company. "Affiliated Company" shall mean all legal entities, including limited liability corporations and partnerships (including limited partnerships), which are directly or indirectly (i) Controlled by VC, (ii) Controlling VC or (iii) being under common control by a company which directly or indirectly Controls VC. "Control" shall mean holding the majority of the shares or voting rights or otherwise being able to direct the affairs of such company.

With respect to a contract for work and services, acceptance must be given by Customer at an acceptance appointment located at the premises of VC at Customer's cost. If Customer does not attend an acceptance appointment set by VC and notified in writing to Customer with 1 weeks' notice, acceptance will be deemed to have taken place at the time the minutes of acceptance are signed by VC.

Delivery of the Products in accordance with logistic systems, e.g. just-in-time, requires a written agreement between the Parties.

### DELIVERY, PASSING OF RISK

Unless otherwise stipulated in the PO confirmation, the Parties agree to the delivery term FCA as defined by INCOTERMS 2020 at VC's factory.

Partial deliveries are permissible and shall be accepted by Customer.

- 5.3 The risk of loss, including accidental loss, passes with the dispatch of the Products, meaning the handing over of the Products to the Customer or its designated freight carrier, at VC's factory. In the event Customer has given express acceptance of the Products prior to the dispatch date, then such acceptance date shall be the date on which risk of loss is transferred. In the event either dispatch or acceptance is delayed due to the fault of the Customer, the risk of loss shall pass to the Customer on the date of notification of dispatch. Notwithstanding the foregoing provision, the Products sold shall remain the sole and exclusive property of VC and shall remain personal property until full and final payment has been made.
- 5.4 The date on which risk of loss passes shall not be affected, even in instances where VC agrees on the account of Customer to arrange for insurance coverage of the Products.
- 6 FORCE MAJEURE**
- 6.1 In case of a force majeure event or other unforeseen, extraordinary circumstances not due to either Party's fault (including interruption of business, strike, lockout, interventions by authorities, terror acts, difficulties in power supply, delayed supply of or supply of defective raw material, semi-finished or finished preliminary products necessary for the production of the Products, etc.) ("**Force Majeure Event**") both Parties are released from rendering their obligations under the contract to the extent and for the duration of the Force Majeure Event plus an appropriate startup time thereafter. Both Parties are also released from rendering their obligations under the contract to the extent and for the duration of any Force Majeure Events which may occur at third party sub-suppliers. Either Party will inform the other Party without undue delay on the commencement and end of such Force Majeure Events.
- 6.2 If delivery or performance becomes impossible or unreasonable for VC due to a Force Majeure Event, VC is released from any delivery obligations hereunder. To the extent VC is released from a delivery obligation pursuant to this Section 6.2, any advance payments will be returned to Customer. Customer shall not be entitled to any damages including those set forth in Section 4.3 in the event the delivery is delayed or VC fails to fulfill any of its other obligations hereunder due to a Force Majeure Event.
- 6.3 If a Force Majeure Event lasts longer than six months, either Party may terminate the PO and these VC Sales T&C without penalty.
- 7 COLLATERAL, RIGHT OF RETENTION, SEIZURE BY THIRD PARTY**
- 7.1 VC reserves all rights of ownership in the Products delivered until the purchase price for the Products has been duly paid in full. VC further reserves all rights of ownership in the Products until all payments outstanding in the business relationship with Customer have been duly settled. For as long as the title to the Products lies with VC, the Customer shall not pledge, assign, or transfer the Products as collateral to a third party.
- 7.2 In case of a breach of these VC Sales T&C or other agreements with VC by the Customer, especially in case of delayed payment, VC is, after having granted Customer a reasonable time period to cure, entitled to repossess and to utilize the Products for its own purposes. In case of successful utilization, the revenues less disbursements and costs including costs of repossession will be deducted from the debts of Customer. Retrieval of the Products by VC shall, however, not be construed as termination or rescission of any contract by VC.
- 7.3 For as long as the title to the Products lies with VC, Customer is obligated to handle the Products properly and to store them with appropriate care. Customer must clearly mark the Products as being the property of VC. Customer is further obligated to obtain at its own cost, proper insurance for the Products at replacement value against damage by fire and water and theft. Claims against the insurer are herewith assigned to VC and VC herewith accepts such assignment. Customer shall direct insurer to perform payment only directly to VC. Necessary maintenance and inspection work must be carried out by Customer in due time at its own cost.
- 7.4 In the event of seizures of or other interferences with the Products by third parties, Customer shall inform VC in writing without undue delay, so that VC may take appropriate action to protect its property. Customer shall take all measures necessary for annulment and defense of such third party seizures, interventions and claims and shall support VC in securing Customer's and VC's rights in every manner. Customer shall reimburse VC for any in-court and out-of-court costs, fees, and expenses which VC incurs and cannot recover in any such proceeding.
- 7.5 Customer is entitled to process the Products within the ordinary course of business and/or to resell them also during the time for which the title to the Products still lies with VC, provided, however, Customer receives complete payment from its business partners at the time of transfer of ownership or sells and transfers the Products to its business partners also only under retention of title. Independent of whether the Products are sold onward by Customer after further processing, Customer assigns to VC all receivables accruing as a result of such sales to its business partners up to the amount invoiced by VC (including value added tax) (such receivables assigned, "**Assignments**").
- If Customer has established a current account agreement with its business partners, the Assignment shall extend to the acknowledged balance or in case of insolvency of such business partner to the actual balance. Customer remains authorized to collect these receivables even after assignment. The right of VC to collect these receivables remains unaffected. Should the Customer fail to fulfil its obligations described herein, VC may request Customer identify all assigned claims and debtors along with all details necessary for collection in order to produce the relevant documents and to inform its business partners about the Assignment. Customer herewith assigns all claims under bills of exchange that are given by Customer's business partners for a sale of the property of VC to them. VC may also require at any time that Customer endorse and produce the bills of exchange. VC is at any time entitled to notify third parties of the abovementioned assignment. All Assignments are herewith accepted by VC.
- 7.6 For as long as title to the Products lies with VC, regardless of whether the Products are processed, assembled or transformed by Customer, ownership of the Product lies with VC. Customer shall not obtain any rights from any transfer of possession. In the event the Products are processed with other goods not owned by VC, VC acquires co-ownership in the final good in the proportion of the value of the Products (final invoice amount including value added tax and any other charges) to the other processed goods at the time of processing. For the final good created by the processing, the same provisions apply as for Products delivered under reservation of title.
- 7.7 In order to secure all claims arising under these VC Sales T&C, VC retains a right of retention as well as a contractual pledge regarding all movable properties that are passed into its possession by Customer for the purpose of processing, repairing or performing other works.
- 7.8 Upon request of Customer, VC shall release the securities interests granted to it in accordance with applicable law in the event of over collateralization. The choice of securities interests to be released is at the discretion of VC.
- 8 WARRANTY CLAIMS**
- 8.1 In the event the PO is based on product and/or material specifications or reference is made to them, the VC Specifications are binding. Upon request, VC will provide to Customer information on the VC Specifications. The particulars of the VC Specifications exclusively determine the performance criteria if any as to the Products. In the event that Customer approves Products differing from the PO stipulations or VC specifications, these approved Products are deemed to comply with the PO, and Customer shall have no claim that such Products failed to comply

or perform in accordance with the PO stipulation or VC Specification. It is solely Customer's responsibility to provide to VC accurate and complete PO stipulations and the documents related thereto.

The VC Specifications or any references to norms labeling or conformity labeling do not constitute a guarantee granted by VC. Guarantees will only be granted in express written declarations. Likewise; drawings and technical stipulations or documentation, do not give rise to any guarantee or constitute any assurance to quality or can otherwise be a basis for claims against VC unless expressly agreed to in writing in advance. Any documents, drawings etc., received from the Customer shall only be considered binding criteria for quality and performance if they are expressly agreed to by VC in advance.

8.2 Customer undertakes to inspect the delivered Products without undue delay and to give to VC notice of a defect in writing by explaining its nature and extent. Apparent defects must be reported to VC within 10 days after delivery, and defects which are despite proper examination not apparently detectable, must be reported to VC within 10 days after their detection. In case Customer fails to give notice of a defect within these time limits, Customer shall not be entitled to claims and rights based on these defects.

8.3 Upon claiming a defect, the Customer shall immediately provide to VC the defective Products along with the entire corresponding documentation, description of the defect, any analysis carried out as well as information concerning maintenance, storage, utilization of any machinery, handling and delivery of the Products concerned.

A part shall be deemed to be free from a defect, when it complies with the agreed specification and is of good workmanship. Upon request of VC, the Customer shall allow inspection of its site to evaluate the storage or manufacturing processes used for or applied to the Products or other impacts the Products are exposed to. VC assumes no liability as to defects occurring due to (a) processing or remedy or misuse by the Customer, (b) wear and tear, (c) failure of Customer to comply with any operational or maintenance guidelines or requirements, (d) physical abuse of the Products or any components or acts of vandalism by any persons other than VC, its employees, agents, or subcontractors, or (e) alterations, modifications, additions, or repairs made during the applicable warranty period by anyone other than VC, its employees, agents or subcontractors.

8.4 If the Products show a defect within the limitation period prescribed by Section 9.6 below, Customer shall have the right to claim supplementary performance by way of, at VC's sole discretion, either removal of defect or replacement of the Products. In case of removal, VC may reimburse the proven necessary and foreseeable expenses caused by the removal, especially agreed transport and transportation charges, labor and material costs but only insofar and to the extent these are not increased due to the Products having been transferred to a place different from the place of delivery, unless such transfer is in accordance with the specified use of the Products. VC shall be entitled to recovery for subsequent improvement or replacement delivery in case of material defects.

8.5 VC shall be given reasonable and prompt opportunity to examine any claim of defect by the Customer. After coordinating with VC, Customer shall grant the necessary time to allow VC to carry out all subsequent improvement and replacement deliveries deemed necessary by VC in its sole discretion. Otherwise VC is released from any damages caused by failing to conduct such improvement or replacement delivery.

8.6 Subject to Article 9 below, claims for damages or compensation claims for expenditures are excluded unless expressly provided for in Article 8.

## 9 GENERAL LIABILITY, LIMITATION OF LIABILITY AND LIMITATION PERIODS

9.1 VC is liable for reimbursement of claimed and proven expenses under applicable law, if the claim is based on intent or gross negligence by VC,

its representatives or its agents. In case of a claim for gross negligence, however, liability shall be limited to foreseeable and typical damages.

9.2 If it is determined that VC is in breach of essential contractual obligations, liability shall be limited to foreseeable direct and typical damages. The contribution of third parties impact, or possible refunds of insurances of Customer shall reduce any liability attributable to VC.

9.3 Liability for culpable injury of life, body or health remains unaffected. The same shall apply to mandatory liability under applicable enforceable product liability laws.

9.4 Any claims of Customer for damage or compensation for expenditures going beyond those laid out in these VC Sales T&C, regardless of which reason, are excluded. Section 9.3 applies accordingly.

9.5 All obligations of VC to reimburse or indemnify, defend or hold Customer harmless hereunder must be expressly accepted by VC in accordance with the terms herein in advance of any debiting. Debit notes, invoices, set-off or similar statements by Customer without such prior acceptance are hereby rejected.

9.6 All claims of Customer under these VC Sales T&C for damages or compensation become time barred after one year (i) from acceptance by Customer of the Products in case of work performances or (ii) from delivery of the Products to Customer in all other cases. This shall not apply if and to the extent mandatory law provides for longer time periods.

9.7 As far as the liability of VC is excluded or limited such liability also applies as to the liability of the employees, staff members, representatives and agents of VC.

9.8 During the term of this Agreement, Customer shall, at its own expense, maintain and carry sufficient insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability) with financially sound and reputable insurers. Upon VC's request, Customer shall provide VC with a certificate of insurance from Customer's insurer evidencing the insurance coverage specified in these VC Sales T&C. Customer shall provide VC with advance written notice in the event of a cancellation or material change in Customer's insurance policy. Except where prohibited by law, Customer shall require its insurer to waive all rights of subrogation against VC's insurers and VC. Customer shall inform its insurer of its obligations hereunder.

9.9 Any property of Customer placed in VC's custody for performance of the VC Sales T&C or PO is not covered by insurance, and no risk shall be assumed by VC in the event of loss or damage to such property by, including but not limited to, fire, water, burglary, theft, civil disorder or any event beyond VC's control.

9.10 Notwithstanding anything to the contrary in these VC Sales T&C, VC shall not be responsible for, and shall incur no liability with respect to, any information supplied by Customer or any of its subcontractors to VC.

## 10 TOOLS AND INVENTOR'S RIGHTS

10.1 Tools assembled by or on behalf of VC in connection with the delivery of the Products to Customer and all rights, title and interests including intellectual property rights therein shall belong exclusively to VC, irrespective of cost contribution by Customer.

10.2 Where Customer provides tools for the manufacture of Products to VC or otherwise is or becomes the holder of tools for the manufacture of Products, VC shall for the duration of the supply relationship have an unrestricted, royalty -free, non-cancellable right to possess, license and use such tools.

10.3 For contracts which involve development work on the part of VC, Customer does not acquire an inventor's right in objects or procedures, in

the know-how of VC, or in the assembly method of VC developed for manufacturing the Products independent of whether Customer contributed part or all of the development and/or manufacturing costs. Rights pursuant to laws governing inventions made by employees in connection with their work tasks remain unaffected.

## 11 CONFIDENTIALITY

Customer agrees to treat confidential, all knowledge, documents and information resulting from the business relationship with VC which is not already in the public domain. This includes knowledge of VC's know-how independent of whether proprietary or not to VC and VC's manufacturing methods and procedures regardless of how acquired, including if acquired through audits of VC or inclusion of VC in the co-development of Customer's products. Customer agrees to impose these confidentiality obligations on any third parties involved by Customer. Customer is liable to VC for all damages arising from the violation of this obligation. A continued violation of this obligation shall not be considered a continuous offense especially where such continuous offense could give rise to arguments against causation of continuing damages by Customer. The confidentiality obligation hereunder constitutes an independent legal duty that survives the termination of the Customer's business relationship with VC.

## 12 WAIVER, MODIFICATION

No waiver of any right under any of the provisions in these VC Sales T&C will constitute a waiver of any other right hereunder. These VC Sales T&C including this Section 12 may only be modified in writing signed by authorized representatives of VC and Customer.

## 13 PAPERLESS COMMUNICATION

No electronic communication shall legally bind VC or otherwise be construed as a declaration of legal content unless such form of communication has been approved and agreed by the Parties in a written document signed by the Parties.

## 14 ETHICS POLICY

VC's agents and employees are prohibited from soliciting or accepting kickbacks, bribes and inappropriate gifts and entertainment. Customer is required to avoid any action to induce VC's agents and employees to accept or offer any improper consideration, whether legal or illegal. Customer warrants that no such consideration has been offered or provided. VC reserves the right, and by placing any PO, Customer hereby agrees to permit VC, to audit any of Customer's relevant records that are deemed necessary by VC to ensure compliance with this Ethics Policy. An expanded version of VC's Code of Conduct is available on [www.vibracoustic.com](http://www.vibracoustic.com), Downloads, Supplier Code of Conduct which may be updated from time to time. Customer further represents and warrants that it and its subcontractors shall comply with all applicable domestic and foreign anti-bribery and anti-corruption laws, and other laws governing improper payments, in connection with the performance of these VC Sales T&C/order/release or any obligation set forth therein, including but not limited to, the requirements of the U.S. Foreign Corrupt Practices Act, the UK Bribery Act of 2010, and any other applicable anti-bribery and anti-corruption laws and regulations in other jurisdictions (collectively, the "Anti-Bribery Laws"), and Customer shall not act in any way that could cause VC to be in violation of the Anti-Bribery Laws (such as, by way of example only, providing a kickback, bribe or inappropriate gift or entertainment to any employee or agent of VC or government official or political party in order to obtain or retain business or to secure an improper commercial advantage).

## 15 EXPORT

Products supplied by VC are for use in and shall remain in the country of delivery agreed on with the Customer. The re-exportation of products may be subject to authority approval and may be governed by

the export regulations of the country where the supplying VC plant is located. Customer is responsible for complying with all applicable export control law. Customer has sole responsibility for applying for any necessary authority approval or permits with the competent foreign trade authority, prior to exporting such Products. Any onward delivery of Products by the Customer to a third party, with or without VC's knowledge, also shall obligate the Customer to impose on such third party all applicable export approval rules so as to comply with these VC Sales T&C. The Customer shall be liable to VC for breach of this provision.

## 16 INDEPENDENT CONTRACTOR

In its relationship with VC, Customer is an independent contractor. Nothing in these VC Sales T&C shall be construed such that Customer shall be considered an employee, agent or partner of VC. These VC Sales T&C shall not confer any rights or remedies upon any third-party, other than the Parties to these VC Sales T&C and their respective successors and permitted assigns.

## 17 APPLICABLE LAW, VENUE

17.1 The legal relationship between the Parties will be governed exclusively by local laws applicable at VC's principal place of business (registered office), without recourse to the rules on conflict of laws or international agreements such as the Convention on Contracts for the International Sale of Goods (CISG).

17.2 If the Customer is an entrepreneur or company, VC's principal place of business (registered office) shall be the place of proper fulfilment and place of venue; however, VC is entitled to institute legal proceedings against the Customer in any courts having jurisdiction over it.

## 18 SEVERABILITY

Should any provision of these VC Sales T&C be or become invalid or unenforceable, the validity or enforceability of the remaining provisions shall not be affected thereby. If any provision is invalid, VC and the Customer shall agree on a valid provision that comes as close as possible to the original provision in legal and economic terms.

## 19 APPLICABLE TO CONTRACTS GOVERNED BY US LAW ONLY

19.1 Section 2.1 reads: "Quotations or offers provided by VC are non-binding until VC confirms its receipt of a final PO from Customer and approves the prices set forth therein."

19.2 In Section 3.3, the seventh sentence is replaced by the words: "In the event of default of Customer, VC is entitled to a default interest of at least the lower of (a) the highest interest rate permitted by law, or (b) 8% per annum over and above the applicable basic interest rate applicable by law or in the absence of such rule, set by the central bank in the jurisdiction of VC."

19.3 In Section 4.3, the second sentence is replaced by the words "THE FOREGOING IS CUSTOMER'S SOLE REMEDY FOR DELAY OF PERFORMANCE AND ADDITIONAL CLAIMS FOR COMPENSATION OR DAMAGES FOR DELAY OF PERFORMANCE ARE EXCLUDED." The words "violation of cardinal contract obligations" are replaced by the word "misconduct."

19.4 In Section 7.1, the words "reserves all rights of ownership" are replaced with the words "retains title." The following sentences are added to the end of Section 7.1 that read, "To secure payment of the price payable under these VC Sales T&C and performance of all of Customer's obligations under these VC Sales T&C, Customer hereby: (i) grants to VC a purchase money security interest in all Products; and (ii) authorizes VC to file such financing statements and other documents, and agrees to execute such other documents and to do such other acts, as VC may reasonably deem necessary or advisable to protect its rights in such Products. In the event

Customer breaches the terms or conditions of these VC Sales T&C, including, but not limited to, any past due balances, together with interest, costs, and attorney fees permitted herein, VC shall have all the rights and remedies of a secured creditor under the Uniform Commercial Code. “

- 19.5 In Section 7.3, after the words “herewith assigned to VC”, the following phrase is added: “, with such assignment effective until Customer has paid the purchase price and all invoiced amounts owing to VC in full.”.
- 19.6 In Section 7.5, after the words “retention of title,” the following words are added: “and with prior notification to such business partners of VC’s retained right, title and interest in and to the Products.” After the words “The right of VC to collect these receivables remains unaffected”, the words “to the fullest extent permissible by law” are added.
- 19.7 In Section 7.6, after the words “to the other processed goods at the time of processing,” the following words are added: “or, if such VC co-ownership is invalid or without effect for any reason, VC shall acquire a security interest in the final good.”
- 19.8 In Section 8.5, the words “is released from any damages caused by” are replaced by the words “shall have no liability to Customer for any damages arising from.”.
- 19.9 In Section 8.6, after the words “Subject to Article 9 below,” the following words are added: “EXCEPT AS EXPRESSLY STATED IN THESE VC SALES T&C, THE PRODUCTS ARE PROVIDED ON AN “AS IS” BASIS. TO THE FULLEST EXTENT PERMITTED BY LAW, VC MAKES NO WARRANTY, REPRESENTATION, OR INDEMNITY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE DELIVERY OR PERFORMANCE OF THE PRODUCTS INCLUDING ANY AND ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE, SATISFACTORY QUALITY OR NON-INFRINGEMENT, OR ARISING FROM A COURSE OF DEALING, USE OR TRADE, AND ALL SUCH WARRANTIES ARE EXPRESSLY DISCLAIMED. THE WARRANTIES SET FORTH IN THESE VC SALES T&C (IF ANY) CONSTITUTE THE ONLY WARRANTIES MADE BY VC TO THE CUSTOMER WITH RESPECT TO THE PRODUCTS AND ARE MADE IN LIEU OF ALL OTHER WARRANTIES, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED.” The remaining words are deleted.
- 19.10 Section 9.1 is replaced by: “VC shall indemnify Customer for direct losses proven under applicable law directly arising from intentional act or gross

negligence by VC, its representatives or its agents in the performance of or related to VC’s obligations under these VC Sales T&C. NOTWITHSTANDING THE FOREGOING, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL VC BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST REVENUES AND PROFITS AND/OR MONETARY REQUESTS RELATING TO RECALL EXPENSES AND REPAIRS TO PROPERTY INCLUDING THIRD PARTY CLAIMS, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER IN CONTRACT OR IN TORT. THE MAXIMUM LIABILITY, IF ANY, OF VC FOR ALL DAMAGES, INCLUDING WITHOUT LIMITATION CONTRACT DAMAGES AND DAMAGES FOR INJURIES TO PERSONS OR PROPERTY, WHETHER ARISING FROM VC’S BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR OTHER TORT, IS LIMITED TO AN AMOUNT NOT TO EXCEED THE PURCHASE PRICE OF THE PRODUCTS AT ISSUE IN THE CLAIM. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE LIMITATION OF DAMAGES PROVISIONS SET FORTH IN THIS SECTION 9 SURVIVE BETWEEN VC AND CUSTOMER EVEN IF THE EXCLUSIVE REMEDY SET FORTH ABOVE IS DEEMED TO FAIL OF ITS ESSENTIAL PURPOSE.” Sections 9.2 – 9.4 are deleted.

- 19.11 The last sentence of Section 9.6 is deleted.
- 19.12 In Section 9.7, the words “affiliates, parents, subsidiaries, officers, directors” are added after the word “employee.”
- 19.13 In Section 10.3, the words “an inventor’s right” are replaced by the words “any patent, copyright or other intellectual property right.”.
- 19.14 If the PO is submitted to VC at an address or place of business in the U.S., Section 17.1 reads: “The legal relationship between Parties will be governed by and construed in accordance with the state of Michigan without giving effect to the principles thereof relating to conflicts of law. Customer hereby submits 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. Notwithstanding the foregoing, VC may institute legal proceedings against Customer in any court having jurisdiction over Customer.” Section 17.2 is deleted.