

**Vibracoustic**  
**General Terms and Conditions of Purchase**  
**(valid as from 26 November 2020)**

**1. Scope of Application, Definitions**

1.1 These General Terms and Conditions of Purchase ("Conditions of Purchase") of the Vibracoustic group of companies (collectively, "we"; "us"; "our") shall apply exclusively to all purchase contracts, purchase orders and scheduling agreements (collectively, "Contract(s)") issued by us to the supplier ("Supplier"), governing the purchase of (i) goods, material, tooling or equipment (collectively, "Goods"), or (ii) services or work performances (collectively "Services"), and the delivery of Goods and Services ("Delivery"). Any terms, conditions or requirements set out by Supplier, especially if they conflict with or deviate from these Conditions of Purchase, will not be accepted and shall not be binding on us. These Conditions of Purchase shall also be exclusively valid even if we do not object to the incorporation of the Supplier's terms, conditions or requirements in a particular case or if, even in recognition of contrary or supplementary terms, conditions or requirements of Supplier, we accept Delivery and/or pay Supplier's invoice without reservation.

1.2 These Conditions of Purchase shall also apply to all prior negotiations once the Contract has been accepted.

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 provision of these Conditions of Purchase is or becomes invalid or unenforceable, either in whole or part, the validity of the remaining provision or provisions 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, Changes of Process**

2.1 Contracts shall only be considered binding on us if they are in writing. Any modification, addition or subsidiary agreement before, at or after the acceptance 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 Supplier shall have 24 hours from receipt of the Contract to reject such Contract in writing. If Supplier fails to reject, at our discretion the Contract may either (i) be binding on Supplier or (ii) we can revoke the Contract, at our sole discretion. Any deviation from, modification of or supplement to the Contract 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 with or without prior confirmation of the Contract, Supplier shall be deemed to have accepted the Contract as well as these Conditions of Purchase.

2.3 For the purpose of initiating Contracts, we will send a letter of inquiry (i.e., a request for quote) 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, 2020 edition.

2.5 All Goods are to be packaged and processed by Supplier according to the provided purchase specifications. In the event 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 IATF 16949: 2016 that ensures the proper quality of Deliveries, monitors 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 shall take all efforts to 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 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) is incorporated by reference into these Conditions of Purchase. By accepting any Contract issued by 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 agrees 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 Supplier will comply, in all respects, with our delivery and logistics requirements, as amended or updated from time to time and as incorporated by reference in these Conditions of Purchase. Time is of the essence, and deliveries must be made both in quantities and at times specified in our delivery schedules. Supplier shall notify us in writing within 24 hours of receiving notice of the delivery schedule if they expect any delays in complying with the full quantity for the respective delivery schedule, explaining the reasons for the delay and specifying how long the delay is expected to last. If such notice is not received, the delivery schedule is binding upon Supplier.

If Supplier's acts or omissions result in or are likely to result in Supplier's failure to meet the delivery schedule and a more expeditious method of transportation for the Goods than the transportation method originally specified in our Supply Contract, Supplier will be solely responsible for all costs and expenses associated with such expedited shipments.

In addition to other rights and remedies we may have in the event of Deliveries after the date specified in the delivery schedule, we may choose to cancel the delayed Delivery or cancel the entire Contract without any obligation or liability to Supplier and contract a third party instead of Supplier.

- 4.2 If Supplier is unable to produce, sell or deliver any Goods or perform any Services, or we are unable to accept Delivery, buy or use any Goods or Services, as a result of an event or occurrence beyond the reasonable control of the affected party and without such party's fault or negligence, then any delay or failure to perform under the Contract that results from such event or occurrence will be excused for only so long as such event or occurrence continues, provided, however, that the affected party gives written notice of each such delay (including the anticipated duration of the delay) to the other party as soon as possible after the event or occurrence (but in no event more than seventy-two (72) hours thereafter). Such events and occurrences may include, by way of example and not limitation, natural disasters, fires, floods, windstorms, severe weather, explosions, riots, wars, sabotage and power failures. However, Supplier's inability to perform as a result of or delays caused by, Supplier's insolvency or lack of financial resources will not excuse Supplier's performance under the Contract. The change in cost or availability of materials or components based on market conditions, Supplier or its suppliers' actions, customs duties and expenses (including tariffs), or contract disputes or any labor strike or other labor disruption applicable to Supplier or any of its subcontractors or suppliers will not excuse Supplier's performance under the Contract (under theories of force majeure, commercial impracticability or otherwise), and Supplier assumes these risks. During any delay or failure to perform by Supplier (including a force majeure event), we may (i) purchase substitute goods or services from other available sources, in which case the quantities under the Contract will be reduced by the quantities of such substitute goods or services, without liability to Supplier, and Supplier will reimburse us for any additional costs to us of obtaining the substitute goods or services compared to the prices set forth in the Contract and/or (ii) have Supplier provide substitute goods or services from other available sources in quantities and at times we request and at the prices set forth in the Contract. If Supplier fails to provide adequate assurances that any delay will not exceed thirty (30) days within forty-eight (48) hours of our request for such assurances, or if any delay lasts more than thirty (30) days, we may terminate the Contract without any liability to Supplier whatsoever.
- 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 2020). 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*", *Documents for Suppliers*") is incorporated by reference into these Conditions of Purchase and is binding on Supplier.

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

- 5.1 The place to which, according to the Contract, 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 Contract 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 Contract. 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 Contract number, the content (kind and quantity) of the Contract, 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 of service and replacement Goods for a period of fifteen (15) years following the end of serial production of the vehicle program for which the production Goods are being 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 the end of serial production for material used for Goods used in all other parts. For the first five (5) years of the post-production

- period, the price for the service or replacement Goods shall be fixed at the price in effect at the commencement of the post-production period. If applicable, Supplier must be able to provide maintenance for Goods for a period of four (4) years after the end of serial production. 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 Contract are fixed prices. Unless mutually agreed in writing, prices are DAP (INCOTERMS 2020) 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. 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. Supplier will provide us with all information and documentation that is required under applicable law to allow us to recover any sales, value added, or similar turnover taxes or charges.
- 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 and provided each invoice is proper and complete. Each order under a Contract 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 Unless stated otherwise in the Contract, mutually agreed in writing by the parties or required by mandatory law, invoices must be made out in euros and payments will be made in euros.
- 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 a proper and complete invoice as well as after receipt of all documents pertaining to vendor set-up and Delivery. Unless otherwise agreed upon in writing or stated differently by mandatory law, we shall pay either within 15 days with a 3% discount, within 45 days with a 2% discount or within 90 days without discount. In the event delays occur due to Supplier sending the invoices different from such as stipulated in this Article 6.6 or Article 6.3, our rights, in particular the right to apply discounts, remain unaffected, and we are not obligated to make payment to Supplier. In addition to its other rights and remedies, we may withhold payment for any Goods or Services until we receive evidence, in such form and detail as we require, of the absence of any liens, encumbrances and claims on such Goods or Services.
- 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 counterclaims, unless such counterclaims 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.
- 6.10 Promptly upon our request, Supplier agrees to recover at its sole expenses, any of the Goods, licenses and/or services stored at any site that we are no longer able to use.
- 7. Warranty, Liability for Defects, Other Liability, Recourse**
- 7.1 Supplier warrants and guarantees to us, our successors, assigns and customers, for the duration set forth in Article 7.8, that the Goods and Services covered by these Conditions of Purchase will (a) be new, (b) be free from all liens, claims and encumbrances whatsoever, (c) conform to the then current release/revision level (based on date our release is issued to Supplier) of our applicable specifications and drawings, (d) conform to all samples, descriptions, brochures, standards and manuals furnished by Supplier or us, (e) be merchantable, (f) be of good material and workmanship, (g) be free from defect, (h) be selected, designed (to the extent designed by Supplier), manufactured and assembled by Supplier based upon our stated use and be fit and sufficient for the particular purpose intended by us and any customer of ours, and (i) be packaged and marked in conformity with the requirements set out in Article 5.2 of these Conditions of Purchase. Our approval of any design, drawing, material, process or specifications will not relieve Supplier of these warranties. The foregoing warranties are in addition to those available to us by law.
- 7.2 If any Goods or Services are determined (including by use of statistical analysis or other sampling methodology) to fail to conform to the warranties set forth in these Conditions of Purchase, Supplier shall reimburse us for all direct, incidental and consequential damages (including reasonable attorney and professional fees), losses, costs, expenses and fees caused by such defective Goods or Services. Such costs and damages may include, without limitation, costs, expenses and losses suffered by us and/or our customer arising from (i) inspection, sorting, repair or replacement of any defective Goods or Services or any system or component that incorporates such defective Goods or Services, (ii) production interruptions or slowdowns, (iii) off-lining of vehicles or component systems, and (iv) field service campaigns, recalls or other corrective service actions, including, without limitation, the amounts paid to distributors and dealers for materials and replacement parts (including reasonable markup to recover administrative costs or other capital expenses) and the labor costs to perform such work.
- 7.3 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.
- 7.4 Unless stipulated otherwise in this Article 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, defend and hold us harmless from and against any third party's claims.

- 7.5 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.
- 7.6 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.
- 7.7 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 Article 7.3 of these Conditions of Purchase.
- 7.8 Unless otherwise set forth in the Supply Contract, the duration of the warranty provided by Supplier to us for the Goods will begin on the date of receipt of the Goods by us and end on the later of (a) the date of expiration of any warranty period provided under applicable law for the Goods, (b) expiration of any warranty applicable to the Goods provided by us to our customer for the vehicle into which the Goods are incorporated, or (c) the expiration of any specific warranty period or performance standard provided in any document incorporated by reference into the Supply Contract, including our specifications or quality standards.
- 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 Article 7.8 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 75.00 for the processing of such defect.
- 7.11 Supplier acknowledges and agrees that money damages will not be a sufficient remedy for any actual or threatened breach of the Contract by Supplier and that, in addition to all other rights and remedies that we may have, we will be entitled to specific performance and temporary, preliminary and permanent injunctive relief in connection with any action to enforce the Contract, without any requirement of a bond or other security to be provided by us.
- 8. Product Liability, Recall, Insurance**
- 8.1 Supplier assumes full responsibility for, indemnifies, defends 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.
- 8.2 Notwithstanding the expiration of the warranty period set forth in Article 7.8, if we and/or the manufacturer of the vehicles (or other finished product) on which the Goods or Services, or any parts, components or systems incorporating the Goods or Services, are installed, voluntarily or pursuant to a government mandate, makes an offer to owners of such vehicles to provide remedial action to address a defect that relates to motor vehicle safety or the failure of the vehicle to comply with any applicable law, safety standard or guideline (a so-called "recall"), Supplier will nonetheless be liable for all costs and damages associated with the conduct of such recall to the extent that such recall is based upon a determination by us or our customer (including by use of statistical analysis or other

sampling methodology) that the Goods or Services fail to conform to the warranties set forth in these Conditions of Purchase.

- 8.3 Supplier and Supplier's subcontractors must provide evidence in adequate form (e.g., certificate of insurance) to us, (1) verifying 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 Contract is issued; or some other amount mutually agreed upon in writing); (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 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 Notwithstanding the provisions under Article 11 which in case of conflict shall prevail over the provisions in this Article 9, the following shall be applicable for the entirety of the respective Party's intellectual property rights which are already in existence at the time of the conclusion of this Agreement ("**Background IP**") and all intellectual property rights created by the respective Party after entering into this Agreement ("**Results**"). Intellectual property rights shall include but are not limited to patents, utility models, trademarks, designs, design patents, copyrights, *droits d'auteur* and rights of database creators, regardless of whether the aforementioned rights - where applicable - have already been applied for and/or are registered at the effective date of this Agreement or will be applied for and/or registered later on, as well as know-how of any kind, particularly inventions, test and development reports, drawings, models, ideas, suggestions and calculation results ("**Intellectual Property Rights**"). "**Right of Use**" shall be the right to exploit Intellectual Property Rights and encompasses, in particular, the right of manufacturing, of performing further development, reproduction, dissemination, presentation, adaptation, redesign, use, and marketing; unless otherwise expressly provided, for the duration of the Intellectual Property Rights the Right of Use is irrevocable and valid worldwide and can be freely transferred and/or sub-licensed.
- 9.2 Each Party shall remain the owner of its Background IP. Use of the Background IP of the other Party shall, unless otherwise provided in this Article 9, only be permissible with the prior written consent of that Party.
- 9.3 If the Background IP of the Supplier is necessary for the use or further development of the Goods, licenses and/or services, Supplier shall grant us a Right of Use to its Background IP free of charge. If Supplier cannot grant the Right of Use to its Background IP without the assistance of a third party, Supplier shall reach an agreement with such third party on a Right of Use in favor of us.
- 9.4 Unless otherwise set forth in the relevant Supply Contract, the grant by Supplier of the Right of Use to its Background IP shall be compensated by the payment of the price indicated in the Supply Contract.
- 9.5 All Results shall belong to and be owned by us. As the owner of the Results, we may, for all countries, freely use, grant Right of Use, operate or transfer the Results. Use of the Results by Supplier or third parties shall only be permissible with the prior

written consent of us.

- 9.6 If necessary and legally permissible, Supplier shall be required to transfer all ownership rights or other possessory rights to the Results, to us or, if a transfer is not legally permissible, grant us an irrevocable, exclusive, royalty free, and world-wide right of use of such rights. Supplier shall undertake the transfer of the right of use incrementally as the Results come into existence.
- 9.7 Unless otherwise set forth in the relevant Supply Contract, the transfer of the Results shall be compensated by the payment of the price indicated in the Supply Contract.
- 9.8 Supplier shall ensure that it is not using any Intellectual Property Rights of third parties (including its sub-suppliers) within the framework of the performance of the Agreement.
- 9.9 If Supplier needs to use the Intellectual Property Rights of third parties, Supplier shall obtain our prior written consent, and if authorized, Supplier shall conclude a license agreement with said third parties which should also contain an appropriate Right of Use in favor of us. Supplier shall bear any royalty payments or other remuneration that is incurred for the use of such Intellectual Property Rights of third parties.
- 9.10 Supplier warrants that the use of the Background IP, Results and the Goods, licenses and/or services by us does not infringe or will not infringe any Intellectual Property Rights of any third party. Supplier shall indemnify, defend and hold us and our customers harmless against any judicial or extrajudicial claims asserted in any manner by a third party on the grounds of infringement of Intellectual Property Rights resulting from the use of the Background IP, the Results or the Goods, licenses and/or services. Supplier shall bear all costs, expenses and financial consequences resulting from such proceedings. Supplier will be responsible for and shall coordinate substantial decisions in relation to such proceedings with us, in particular, conclusion of settlement agreements, withdrawal of complaints, acknowledgment of claim, etc.
- 9.11 If the Supplier's Background IP, Results, Goods, licenses and/or services supplied by the Supplier are found to be infringing upon any third party's Intellectual Property Rights, Supplier will obtain from the relevant third party a Right of Use for the Background IP, Results, the Goods, licenses and/or services for us or our customers with no additional cost; replace or modify the Goods, licenses and/or services within a reasonable time period only to the extent necessary to cease any infringement of the third party's Intellectual Property Rights, as described in this Article 9.
- 9.12 Promptly upon our request, Supplier agrees to recover at its sole expenses, any of the Goods, licenses and/or services stored at any site that we are no longer able to use.

#### **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 or work product (including all copyrightable works) paid for by us, made available by us or acquired by Supplier through us during or because of the business relationship will be owned by us or 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. If necessary, Supplier hereby assigns and agrees to assign to us all right, title and interest in and to the intellectual property generated as a result of the services provided by Supplier under the Contract. In addition to the foregoing, Supplier must comply with the confidentiality obligations as set out in Article 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, and must be clearly marked 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 Contracts are issued or orders 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, at their own cost, ensure the proper maintenance and repair of their own tools and our tools. Supplier agrees to provide written notice to us before our tool (i) reaches the end of its useful life (i.e., the minimum output quantity for the tool is reached), or (ii) becomes unserviceable or deteriorates beyond repair, through no fault of Supplier. The written notice provided by Supplier shall be early enough, taking into account the period needed to repair or replace the existing tool, and to ensure the continued uninterrupted production of Goods to be supplied to us. At a minimum, this period shall be at least 14 weeks (excluding bank holidays) to ensure we can comply with our internal procedures but could be longer if Supplier needs additional time to satisfy all required lead times considering the forecasted demand of Goods, the remaining useful life of the existing tool, the lead time for building a replacement tool and the lead time the Supplier needs to present samples including necessary documents to our Supplier Quality Assurance team. If the Supplier fails or is late in providing the written notice to us, the Supplier shall guarantee the uninterrupted supply of conforming Goods (i.e., Goods that meet the required specifications) even if the tool has reached the end of its useful life. In this case, the Supplier will be responsible for any costs for tool maintenance or repair, the reworking or sorting of Goods, and expedited freight. In addition, Supplier will also be responsible for any costs or expenses incurred by us or our customers through such omission of, or late notice.
- 11.6 At the end of the Contract, Supplier shall surrender our tools without delay at our request while no right of retention may be derived by it. Upon surrender, our tools must be in apparent good order and condition corresponding to their earlier use. Costs of repair shall be borne by Supplier. Under no circumstances may Supplier scrap our tools without our prior written approval.
- 11.7 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 Contract 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 we are subject to any liabilities, cost, damages, fees, fines, etc. due to a violation of any of the obligations mentioned in this Article 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. Customs, Origin

Credits or benefits resulting or arising from the Contract, including trade credits, export credits or the refund of duties, taxes or fees, will belong to us. Supplier will timely and accurately provide all information necessary (including written documentation and electronic transaction records) to permit us to receive such benefits or credits, as well as to fulfill its import and, where required by the Contract, export customs related obligations, origin marking or labeling requirements and local content origin requirements, if any. Supplier will undertake such arrangements as necessary for the Goods to be covered by any duty deferral or free trade zone program(s) of the country of import. Supplier will ensure compliance with the recommendations or requirements of all applicable Authorized Economic Operator (AEO), governmental security/anti-terrorism and enhanced border release programs (including, without limitation, the United States Bureau of Customs and Border Protection's Customs-Trade Partnership Against Terrorism (C-TPAT), Canada Border Services Agency's Partners in Protection initiative and Administracion General de Aduanas de Mexico's Nuevo Esquema Empresa Certificada (NEEC) program). At our request or the appropriate Customs Authority, Supplier will certify in writing its compliance with the foregoing.

## 15. 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.

## 16. Cancellation of Contract

We reserve the right to entirely or partially cancel a Contract or an individual order under a Contract without liability in the event that (1) Goods (a) are defective; (b) are not shipped according to the specifications in our original or subsequently amended order; (c) deviate from agreed specifications or provided samples, or (d) are not delivered according to the delivery schedule; (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 Article 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) anytime 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, but in no event more than 2 weeks of finished Goods (at the contracted price) or 2 weeks of material at a price to be determined in good faith by the parties.

## 17. Ethics, Supplier Code of Conduct

Our employees and agents 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 employees and agents 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 these requirements. Additionally, Supplier is required to comply with our Supplier Code of Conduct that is available on our website [www.vibracoustic.com](http://www.vibracoustic.com) - Downloads - Documents for

Suppliers – Supplier Code of Conduct – or that is published by us in any other form and made accessible to Supplier and as may be amended by us from time to time.

#### **18. Compliance with Laws**

18.1 Supplier and Supplier's subcontractors are obliged to comply with all effective and relevant legal provisions (e.g., laws, regulations, directives, guidelines, rules, and orders), 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 at our request, provide us all information necessary by such norms and/or certify in writing your compliance. Supplier's and Supplier's subcontractors are obliged to maintain their own compliance rules as to the aforesaid that satisfy local regulatory requirements. Supplier will indemnify, defend, and hold us harmless from and against any liability, claims, demands or expenses (including, without limitation, legal or other professional fees) arising from or relating to Supplier's noncompliance with the obligations of this Article.

18.2 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, defend, 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 Article.

#### **19. Export Controls, Sanctions Compliance**

Supplier agrees to comply with all applicable export control and sanctions laws and regulations of the member States of the European Union, the United States of America, and any other relevant country (the "Export Control Laws"). Supplier will not violate, and will not cause us to violate, any Export Control Laws (e.g., by transshipping Goods through, or supplying Goods from, sanctioned countries). Supplier will immediately inform us if any Contract or Goods, in whole or part, are subject to any Export Control Laws. Licenses or other authorizations required for the export of Goods will be the responsibility of Supplier unless otherwise indicated in these Conditions of Purchase, in which event Supplier will provide such information as may be requested by us to enable us to obtain such licenses or authorizations.

#### **20. 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 - Documents for Suppliers, 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 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.

#### **21. Applicable Law, Place of Jurisdiction, Compliance**

21.1 The Contract, and any claims relating to the Goods provided under the Contract, will be governed by the laws of the country (and state/province, if applicable) of our location as shown by our address as set forth in the applicable Contract ("**Our Location**"). For the avoidance of doubt, the United Nations 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.

21.2 Any action or proceedings by us against Supplier may be brought by us in any court(s) having jurisdiction over Supplier or, at our option, in the court(s) having jurisdiction over Our Location, in which event Supplier consents to such jurisdiction and service of process in accordance with applicable procedures. Any actions or proceedings by Supplier against us may be brought by Supplier only in the court(s) having jurisdiction over Our Location.

#### **22. Nature of the Relationship of Parties**

We and Supplier are independent contracting parties and nothing in the Contract or these Conditions of Purchase will make either party the agent or legal representative of the other for any purpose whatsoever, nor does it grant either party any authority to assume or to create any obligation on behalf of or in the name of the other.

#### **23. Waiver of Jury Trial**

SUPPLIER ACKNOWLEDGES THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED. SUPPLIER, AFTER CONSULTING (OR HAVIGN THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF ITS CHOICE, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF OR RELATING TO ANY CONTRACT OR THESE CONDITIONS OF PURCHASE, OR OTHER DOCUMENT PERTAINING TO ANY CONTRACT OR THESE CONDITIONS OF PURCHASE.

#### **24. Claims by Supplier**

Any legal action by Supplier under these Conditions of Purchase or the Contract must be commenced no later than one (1) year after the breach or other event giving rise to Supplier's claim occurs, or Supplier becomes aware of the existence (or facts and circumstances giving rise to the existence) of such claim, whichever occurs first. Under no circumstances will we be liable for nor will we be required to make payments to Supplier, directly or on account of claims by Supplier's subcontractors, for loss of anticipated profit, overhead, interest on claims, facilities and equipment rearrangement costs or rental, unamortized depreciation costs, or general and administrative burden charges.

#### **25. Severability**

If any term of these Conditions of Purchase is invalid or unenforceable under applicable law or regulation, such term will be deemed reformed or deleted, as the case may be, but only to the extent necessary to comply with such applicable law or regulation, and the remaining provisions of these Conditions of Purchase will remain in full force and effect.

[END]