

VIBRACOUSTICS LTD - CONDITIONS OF SALE

1) DEFINITIONS

a) Vibracoustics Ltd., Unit 1, Brook House, Cross Street, Syston, Leicester. LE7 2JG shall be called 'the Company'.

b) Any other party with whom 'the Company' contracts to supply goods or services, shall be called 'the Customer'.

c) 'The Goods' are all products or services including Consultancy, which 'the Company' supplies whether they are designed and manufactured to 'the Customers' specific requirements, are designed and manufactured to 'the Company's' own specification or are products manufactured by others and supplied by 'the Company' whether for payment or not, whether provided for a fee or not are also 'Goods' within the meaning of these Conditions of Sale.

2) BASIS OF CONTRACT

a) All contracts for the sale of goods or services shall be subject to the 'Terms and Conditions of Sale' set out herein. Any contract will be governed by these conditions to the exclusion of any other terms and conditions.

b) No variation of these conditions will be binding on the Company unless agreed in writing by the Company.

c) Where variations in terms are required by the Customer, these must be mutually agreed and accepted in writing by the Company before any order number or order instructions are issued to the Company.

d) Supply of any order instruction or order number by the Customer will be interpreted as acceptance of the Company's Terms and Conditions of Sale and quotation details and will be processed accordingly.

e) Any order received following a quotation will be processed strictly in line with the quotation and under the Company's Terms and Conditions of Sale, which are not negotiable or variable under any terms of purchase, unless agreed prior to submission of the order and acknowledged as such in writing by the Company.

3) QUOTATIONS

a) All quotations by the Company, are subject to the conditions set out herein and remain open for sixty days or a period specified within the quotation from the date of the quotation, but may be withdrawn without notice at any time during that period.

b) Quotations which are based on specified quantities, dates or times indicated by the Customer may be amended if changes are made by either party.

c) All orders accepted by the Company for scheduled deliveries must be accepted for delivery by the Customer within a twelve month period.

d) The Company reserves the right to amend prices or fees quoted against specific orders if the Goods or Services ordered are subsequently changed by the Company.

4) PRICES or FEE

a) Fees and terms of payment are as agreed in writing in the quotation. Any subsequent variation is at the Company's discretion and will be confirmed to the Customer in writing.

b) In the event of any suspension or additional work arising from the Customer's instructions or lack or change in instructions the price or fees chargeable to the Customer shall be increased pro-rata.

c) Prices quoted are exclusive of all taxes which will be charged extra at the rate ruling on the day of dispatch.

5) PAYMENT TERMS

All invoices to be paid within 30 days from the end of the month of invoice (s) dates. If payment is not made by the due date the Company shall be entitled to charge interest on the outstanding amount at the rate of 8% per annum above the current National Westminster Bank plc base lending rate accruing daily.

6) PASSING OF RISK AND TITLE

a) All risk in relation to the Goods passes to the Customer upon delivery.

b) Notwithstanding the above clause, title to the Goods shall not pass to the Customer until payment in full under the terms of the contract has been received by the Company. This provision shall also apply to associates or subsidiaries of the Customer.

Until such a time the Customer holds the Goods as bailee on the Company's behalf subject to the following provisions: i) the Goods will be stored separately and be identified as belonging to the Company; ii) the Goods are covered by the Customer's policy of insurance with the benefits of the policy assigned to the Company; iii) the Goods are to be maintained in a usable condition and iv) the Company shall, subject to written notice, be entitled to enter any premises where the contract goods are stored and take possession of such goods at any time before full payment is received.

c) Reference to invoice price shall be taken to be a reference to the price to be charged to the Customer on due performance of the contract, and shall also include any further sums the Company are entitled to claim.

7) DELIVERY

a) The date of delivery is to be accepted as an estimate only by the Customer and no action will lie for failure by the Company, however caused to meet such dates.

b) Where the Customer fails to accept delivery of the Goods, or fails to arrange for their collection at the agreed time, then the risk in such goods is to lie with the Customer and the Company, may without prejudice to any other rights it may have, make such of the following provisions as it considers appropriate:- i) Store the Goods at the Customer's expense; ii) insure the Goods at the Customers expense; iii) make additional charges for any further transportation costs; iv) sell the Goods on giving written notice to the Customer, and any loss suffered shall be a debt owed by the Customer to the Company as though it were part of the invoice price.

c) The foregoing provisions are also to apply where delivery or collection of the Goods has been delayed or deferred at the Customer's request, even though the Company may have agreed to such a request.

d) Where the Goods have been received by the Customer, whether or not such receipt is acknowledged in writing, the Customer hereby agrees that on receipt he will be deemed to have examined the Goods and to have accepted that they meet fully the obligations imposed by this agreement on the Company.

e) The place of delivery shall be such a place as previously expressly agreed or implied or where there is no indication, it shall be the Customers usual place of business.

8) DAMAGE OR LOSS IN TRANSIT

The carrier and the Company must be notified by the Customer within seven days of receipt of advice note or invoice if the Goods covered by the invoice have not been delivered, or within two days of delivery if damage, pilferage or shortage is revealed upon receipt of the Goods. If such notice is given, the Company will assist the Customer to obtain proof of delivery to the carrier.

9) INSOLVENCY

The Company may terminate or suspend the contract, by notice in writing without liability to itself, but without prejudice to liability on the Customer's part accruing before such termination or suspension and treat the Customer in breach of contract, in the following circumstances:-

a) where the Customer ceases to pay his debts in the ordinary course of business or cannot pay his debts as they become due;

b) where the Customer has a receiver or administrator appointed for the whole or part of his assets;

c) where third parties cease, with apparent good cause, to regard the Customer, as of good financial standing;

d) where the Company has reasonable cause to suspect that all or any of the above are likely to occur.

Where the Company has elected to suspend the contract, it may at any later date, by notice in writing, elect to terminate the contract with results as aforesaid.

10) MOULDS, TOOLS AND FIXTURES

Unless otherwise agreed between the Customer and the Company, where special moulds and/or tools and/or fixtures are required to enable the Company to produce the Goods, the subject of the order, the Company will charge a portion of the cost of such moulds, tools, and/or fixtures to the Customer, and the moulds etc. shall remain the property of the Company.

Where specifically requested, and agreed between the Company and the Customer, said moulds/tools/fixtures will only be used for the execution of orders placed by the Customer.

The Company will undertake to maintain said moulds/tools/fixtures to ensure a reasonable working life but does not itself responsible for major repairs or replacement when said moulds etc., have become worn through fair wear and tear.

Where the Customer wishes to purchase the moulds/tools/fixtures, written instructions must be given with the order and the Customer will be charged the full cost of said moulds/tools/fixtures.

11) FREE ISSUE COMPONENTS

Unless otherwise agreed, free issue components for goods to be manufactured by the Company must be supplied by the Customer within 30 Days from the date of order, for the agreed price of the Goods to remain firm. An allowance of 5% must be added to the quantity to allow for spillage.

12) CANCELLATION

Without prejudice to any of the rights of the Company, if the Customer cancels any order or part of any order, all the costs and expenses incurred up to the time of cancellation of the order, must be paid for in full by the Customer.

13) WARRANTY

All Goods manufactured and supplied by the Company are thoroughly checked and inspected prior to dispatch. Where it is shown that Goods are defective due to faulty material or workmanship, and are returned to the Company within 12 months, from the date of dispatch, the Company agree to make good or replace such Goods free of charge.

14) LIABILITY

The Company shall incur no liability whatsoever in relation to any representations made by itself or by its agents before the contract was made where such representations are taken to refer in any way to correspondence of goods or services with description, to the fitness of the Goods for any purpose or to the quality of the Goods. Neither will the Company be taken to incur any liability to the Customer in respect of any statutory or express condition, warranty or other terms of the contract that relates to correspondence of Goods with description, fitness for purpose or quality.

15) LIMITATION OF LIABILITY

To the extent permitted by law, neither the Company nor its employees or agents are liable for and the Customer is not entitled to any indirect, special, incidental or consequential damages (for example, loss of profits or revenue, loss of data, loss of use, rework, manufacturing expense, injury to reputation, or loss of Customers). To the extent permitted by applicable law, Customer's recovery from the Company for any direct damages will not exceed the price of the Product at issue. Customer will indemnify, defend and hold the Company harmless from any claims based on: (i) the Company's compliance with Customer's designs, specifications, or instructions, (ii) modification of any Product by anyone other than the Company, or (iii) use of Products in combination with other products. It is accepted by the parties to this contract that if any part of these conditions is found to be unreasonable, invalid or unlawful under any enactment or rule of law pertaining thereto, then a Court or other competent tribunal shall have the power to strike out such part, whether it be an entire condition or conditions as if such parts aforesaid had not been included. However, the Customer agrees and is taken to have accepted that the terms of this contract satisfy the test of reasonableness specified in the Unfair Contract Terms Act.

16) TECHNICAL RECOMMENDATIONS

Any recommendation or suggestion relating to the use of the Goods in technical literature or in response to a specific inquiry is given in good faith but it is for the buyer to satisfy himself of the suitability of the Goods for his own particular purpose and he shall be deemed to have done so.

17) CUSTOMERS' DESIGNS

The Company does not accept any responsibility for or costs incurred by the incorrect functioning of Goods manufactured by it in accordance with drawings, designs or specifications supplied by the Customer.

18) PATENT OR INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT INDEMNITY

The Customer will indemnify the Company against any claim for infringement of any patent, copyright, registered design, trademark or other intellectual property right etc., as a result of carrying out Customers instructions.

19) FORCE MAJEURE

The Company shall be relieved of all liabilities under the contract to the extent to which fulfillment of such obligation is prevented, frustrated or impeded in the event of strikes, fire, flood, lock-out, trade disputes, accidents or sickness, war, (declared or otherwise) Government restrictions, machinery breakdown or any Act of God or other cause over which the Company has no control. If the Consultancy work is wholly or partly suspended the period of suspension may be added to the original period of service agreement, provided always that the Company agree it is reasonable.

20) DATA PROTECTION

Where the Company enters any detail of a contract on a computer database, involving reference to living persons, the Customer hereby consents hereto and consents to the further disclosure or use of such information.

21) JURISDICTION & ARBITRATION

The contract is to be governed in all respects by English law and deemed to have been entered into in Leicester in the county of Leicestershire and the parties are required to submit to the jurisdiction of the English courts. However, the parties may agree to refer all matters arising under or out of this contract to arbitration by a mutually agreed person. If such a person cannot be agreed between the parties within 14 days, an appropriate arbitrator shall be appointed by the then current President of the Law Society.

22) GENERAL

a) **Notice** - Any notice required or permitted to be given by either party to the other under these Conditions will be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice. A notice by first class post will be deemed served on the next working day after posting. A notice by e-mail, telex or facsimile will be deemed served at the time of sending.

b) **Waiver** - No waiver by the Company of any breach of contract by the Customer will operate as a waiver of any other or subsequent breach.

c) **Invalid provisions** - If any provision of these conditions is found to be invalid or unenforceable in the whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question will not be affected.