



VIBRANTZ STANDARD TERMS AND CONDITIONS OF PURCHASE

The following general Terms and Conditions (the "Terms") are applicable to the purchase of all goods and/or services by Vibrantz Technologies Inc., on behalf of itself and its affiliates ("Buyer"), from any seller of goods and/or services ("Seller").

1. CONTRACT OF PURCHASE.

Subject to the terms and conditions stated herein and on the order (including all drawings, specifications and other documents attached to or referred to in the order), Seller agrees to sell and Buyer, agrees to purchase from Seller, the goods and/or services described in the order. Seller shall acknowledge receipt and acceptance of each order or release within one (1) business day; however, if for any reason Seller shall fail to return to Buyer the signed acknowledgement copy of the order, any conduct by Seller which recognizes the existence of a contract pertaining to the subject matter of the order shall constitute unqualified acceptance by Seller of the order and all of its terms and conditions, including the terms herein. The terms of the order, including the terms herein, shall constitute the complete and exclusive statement of the terms and conditions of the contract between the parties and may be modified only by written instrument executed by the authorized representatives of both parties. Buyer's submission of a purchase order is conditioned on Seller's agreement that any terms different from or in addition to the terms of the purchase order, whether communicated orally or contained in any purchase order confirmation, invoice, acknowledgement, release, acceptance or other written correspondence, irrespective of the timing, shall not form a part of the purchase order, even if Seller purports to condition its acceptance of the purchase order on Buyer's agreement to such different or additional terms. Any terms proposed by Seller which add to, vary from or conflict with the terms of the order, including the terms herein, are hereby objected to. If the order has been issued by Buyer in response to Seller's offer, and if any of the terms on the order or herein are additional to or different from the terms of such offer, then the issuance of the order by Buyer shall constitute an acceptance of such offer, subject to the express condition that the terms of the order and the terms herein constitute the entire agreement between Buyer and Seller with respect to the subject matter hereof and the subject matter of such offer. Further, Seller shall be deemed to have so assented and acknowledged unless Seller notifies Buyer to the contrary in writing within two (2) business days of receipt of the order. Any reference by Buyer to Seller's proposal is solely for the purpose of incorporating the description and specifications of the goods and/or services contained therein to the extent that such description and specifications do not conflict with the description and specifications on the face of the order.

2. PRICE.

The price for the goods and/or services shall be the price as shown on the order.

3. TAXES.

Unless exempt therefrom, all duties and taxes which Seller is required by law to collect from Buyer are included in the price stated on the order; any such items included in the prices or otherwise payable by Buyer shall be separately identified on Seller's invoice.

4. INVOICES.

Unless otherwise agreed in writing, invoices are paid net sixty (60) days from date of receipt of the goods or completion of any required services, and not on the basis of Seller's invoice date. Seller shall issue invoices in accordance with the foregoing sentence. All invoices must contain the following information: purchase order number, item number, description of items, sizes, quantities, unit prices. Payments of invoices shall be subject to adjustment for shortages, defects and other failures of Seller to meet the requirements of the order. Buyer shall have the right to reduce and set-off against amounts payable hereunder any indebtedness or other claims which Buyer may have against Seller however and whenever arising.

5. DELIVERY.

Unless otherwise agreed in writing, the goods shall be delivered to Buyer assembled, completed, and ready for use, and Buyer shall accept delivery of such goods or performance of any required services at the location designated on the order. The obligation by Seller to meet the delivery or performance date is material; time is of the essence. Upon request, Seller shall give Buyer advance notice of when shipments will be made. Delivery of goods or performance of any required services is not complete until goods or services have been actually received and accepted by Buyer.

6. EXCUSABLE DELAY.

Seller shall not be deemed to be in default on account of delays in the delivery of goods or in the performance of services to the extent it is beyond Seller's control and not occasioned by Seller's fault or negligence, provided that promptly upon the occurrence of any event which may result in a delay, Seller shall give notice thereof to Buyer, which notice shall identify such occurrence and specify the period of delay which may be reasonably expected to result therefrom. In the event delivery of the goods or performance of services shall be delayed due to any cause beyond Seller's control and not occasioned by Seller's fault or negligence for a period of more than fifteen (15) days, Buyer shall have the option to terminate the order upon written notice given to Seller within five (5) business days after the expiration of such 15-day period, and such termination shall discharge all obligations and liabilities of the parties hereunder with respect to undelivered goods, services, data or other items to be furnished hereunder.

7. WARRANTY.

Seller warrants to Buyer and its affiliates, its successors, assigns, customers, and users of the goods sold by Buyer that all goods provided hereunder shall be (i) merchantable; (ii) new; (iii) free from defects in material and workmanship; (iv) with regard to goods designed by Seller, free from defects in design; (v) in compliance with all applicable specifications, drawings, and performance requirements; (vi) fit for the purpose intended; (vii) free from liens and encumbrances on title; and (viii) free from infringement of third party intellectual property. Delivery, inspection, test, acceptance or use of, or payment for the goods furnished hereunder shall not affect Seller's obligation under this warranty, and such warranties, and all other warranties, express or implied, shall survive delivery, inspection, test, acceptance, payment, and use. If defects are identified before shipment to Buyer's customer, and provided Buyer elects to provide Seller with the opportunity to make the repair or provide the replacement, Seller agrees, at Buyer's option, to correct defects in or replace any goods not conforming to the foregoing warranty promptly, but in no event, will repair or replacement and delivery be completed more than ten (10) days from notice of such nonconformity by Buyer. A written notice specifying that such goods are corrections or replacements shall accompany deliveries of corrected or replaced goods. In the event that Seller fails to correct defects in or replace nonconforming goods promptly, Buyer, after reasonable notice to Seller, shall have the right to correct or replace such goods and charge Seller for the cost incurred by Buyer in doing so, such right to include, without limitation, Buyer's right to deduct or offset. If

defects are identified after shipment to Buyer's customer, goods may be scrapped, retained, or held for Seller's disposition, at the discretion of Buyer's customer. Seller shall promptly reimburse Buyer for any expenses or damages incurred by Buyer regardless of the nature of such expenses or damages as a result of or relating to Seller's failure to comply with (i) – (viii) above, including but not limited to repair, replacement, rework, removal and reinstallation costs, shipping costs, production delays, payment withholds, field service costs, recall costs, and costs of filing and complying with legal and regulatory requirements. If services or technical data are to be provided by Seller hereunder, Seller warrants to Buyer that such services and/or technical data have been performed or prepared in a professional and workmanlike manner and in compliance with Buyer's instructions or other requirements. Seller further warrants that it has the requisite power, authority and ability to execute, deliver and perform its obligations hereunder. Upon request by Buyer, Seller shall provide Buyer with financial data demonstrating that Seller is financially stable and capable of performing hereunder.

8. QUALITY OF GOODS AND SERVICES.

All goods sold by Seller to Buyer pursuant to the order shall conform to Buyer's quality standards and requirements set forth in any specifications, drawings, samples or other document upon which the order is based. Prior to delivery, Seller shall inspect and test the goods for quality in compliance with the order. Seller shall keep records of all such quality inspections and tests and, if so requested by Buyer, supply Buyer with copies of such records. Buyer, without prejudice to any other rights or remedies, including the right to inspect goods after delivery, shall have the right at all times to inspect and test the goods during manufacture or processing or while stored under Seller's control. Seller shall not make any changes during the term of the order in the quality, in the location of manufacture, or in Seller's processes related to the goods without prior notification to and written acceptance of such changes by Buyer. Any accepted changes shall become the controlling standard of quality for the remaining term of the order.

9. COMPLIANCE WITH LAWS.

Seller warrants that all goods and/or services supplied hereunder will have been produced or provided in compliance with, and Seller agrees to be bound by, all applicable federal, state and local laws, orders, rules, regulations, guidelines, standards, limitations, controls, prohibitions, or other requirements which are contained in, issued under, or otherwise adopted pursuant to such laws.

10. INDEMNIFICATION.

Seller covenants and agrees at all times to defend, protect, hold harmless and indemnify Buyer, its parent, its affiliated companies, and their respective directors, officers, employees, successors and assigns ("Buyer Indemnitees") from and against any and all losses, costs and expenses arising from a breach of this agreement by Seller, and from and against any and all claims for loss, damage or injury and from and against any suits, actions, or legal proceedings of any kind brought against any Buyer Indemnitee, or by such other parties by or on account of any person, persons, or entities, or on account of any injuries received or sustained by any person, persons, or entities in any manner (howsoever arising, including without limitation, by reason of negligence, breach of warranty, defect in design, material or workmanship or otherwise, and even though strict liability be claimed), directly or indirectly caused by, incident to, or growing out of a breach of this agreement, defects in the design, manufacture, or materials used in the goods, negligence in the manufacture, or provision of the goods supplied, or performance of the services hereunder. If directed by Buyer, Seller shall take upon itself the defense and/or settlement of all such claims and the defense of any suit, suits or legal proceedings of any kind brought to enforce such claim or claims, and to pay all judgments entered in such suit, suits or legal proceedings, and all attorneys' fees and other expenses. Seller agrees that in any instance where such claims in any way affect Buyer's interest

under the order or otherwise, Seller shall not consummate any settlement without Buyer's prior written consent. Seller's covenants of indemnity herein shall continue in full force and effect notwithstanding the termination or expiration of the order. Seller will indemnify, defend and hold Buyer Indemnitees harmless from and against all liability and expenses, including attorneys' fees, arising from actual or claimed infringement or violation of patent, trademark, or copyright, including, but not limited to, improper, false, and/or invalid patent, trademark, and/or copyright markings, misappropriation of trade secrets, breach of confidential relationship, or other rights occasioned by the manufacture, sale or use of the goods and/or services provided under the order.

11. INSPECTION AND ACCEPTANCE.

Buyer may inspect all goods at any time, including during manufacture at Seller's facility. Such inspection may at Buyer's option include confirmation of Seller's compliance with all requirements of the order. At no additional cost to Buyer, Seller will permit Buyer and/or its designees access to Seller's facilities at all reasonable times and will provide all tools, facilities and assistance reasonably necessary for such inspection and/or confirmation. All goods are subject to final inspection and acceptance at any time after delivery to Buyer. Buyer, without prejudice to any other rights or remedies, shall have the right to reject defective goods and, at Seller's risk (notwithstanding the terms of delivery) and expense, return the same to Seller or dispose of the same according to Seller's instructions. Payment or transfer of title shall not constitute acceptance. Buyer may return any non-conforming goods to Seller for reimbursement, credit, replacement or correction as Buyer may direct, or Buyer may correct and/or replace such goods at Seller's expense. If Seller fails to correct or replace non-conforming goods, per Buyer's direction, in a timely manner, Buyer may cancel the order as to all such goods, and in addition, may cancel the then remaining balance of the order. Any goods rejected by Buyer will be held by Buyer temporarily at Seller's risk and expense. Seller will not tender goods for acceptance unless any former rejection or requirement of correction is disclosed. Seller will reimburse Buyer for any packaging, handling and transportation costs Buyer incurs with respect to rejected goods. Buyer may revoke its acceptance of goods at any time, whether or not a substantial modification to the goods has been made, if Buyer finds a previously undiscovered defect in the goods.

12. BUYER'S CHANGES.

Buyer shall have the right at any time prior to the delivery date of the goods or services to make changes in drawings, designs, specifications, packaging, time and place of delivery, nature and duration of services, and method of transportation. Within three (3) days after receipt of a change notice, Seller shall notify Buyer of its proposed pricing for the change, including a cost breakdown and substantiation for the change, whether by way of increase or decrease, and the parties shall negotiate an equitable adjustment in the corresponding prices.

13. CANCELLATION/TERMINATION.

In addition to its other rights hereunder, Buyer reserves the right to cancel the order or any part thereof without further cost or liability if Seller breaches any of the provisions of this agreement, or if Seller becomes insolvent or the subject of any proceeding under the law relating to bankruptcy or the relief of debtors. Buyer further reserves the right to terminate the order or any part thereof for the sole convenience of Buyer. If such termination right is invoked, all reasonable costs incurred up to the date of termination will be reimbursed, provided Seller establishes an entitlement thereto.

14. ASSIGNMENT.

No right or interest in this contract shall be assigned by either party to the order without the written permission of the other party. Any attempted assignment or delegation shall be wholly void and totally ineffective for all purposes. The assignor shall remain liable for performance

notwithstanding the approval of an assignment. Any person or entity to which the order is assigned pursuant to the provisions of Bankruptcy Code 11 U.S.C., Section 101 et seq., shall be deemed without further act or deed to have assumed all of the obligations arising under the order on and after the date of such assignment. Any such assignee shall upon demand execute and deliver to Buyer an instrument confirming such assumption.

15. BUYER'S PROPERTY.

All tools, equipment dies, gauges, models, drawings or other materials furnished by Buyer to Seller or made by Seller for the purpose of the order or paid for by Buyer, and all replacements thereof and materials fixed or attached thereto, shall be and remain the property of Buyer. All of Buyer's property and, whenever applicable, each individual item thereof, will be kept free of all liens, claims, encumbrances and interests of third parties. Seller will not substitute any property for Buyer's property, will not deliver or make available to any third party any of Buyer's property or any property or goods developed, manufactured or created with the aid of any of Buyer's property and will not use any of Buyer's property or any property or goods manufactured, developed or created with the aid of Buyer's property, except in filling the orders of Buyer. Upon completion of the order, or upon the written request of Buyer at any time, Seller will prepare all Buyer's property for shipment and deliver such property to Buyer in the same condition as originally received by Seller, reasonable wear and tear excepted. Buyer shall have the right, at all reasonable times upon prior notice, to enter Seller's premises to inspect any and all Buyer's property and any property or goods manufactured, developed or created with the aid of any Buyer's property. Seller shall have such responsibility for Buyer's property as is chargeable to Seller by law by reason of its position as a bailee.

16. CONFIDENTIAL AND/OR PROPRIETARY INFORMATION.

(a) "Confidential Information" shall, for the purpose of Buyer's and Seller's agreement, mean: (i) information, knowledge or data disclosed by Buyer to Seller, regardless of whether disclosed in written, tangible, oral, visual or other form, and (ii) information, knowledge or data which was obtained by Seller from visiting any of Buyer's facilities. In the event Buyer furnishes sample products, equipment, or other objects or material, including software, to Seller, the items so received and any information contained therein shall be treated as Confidential Information disclosed to Seller under this agreement. Furthermore, any and all information obtained or derived from said items, including results from testing, shall be treated as if they were Confidential Information disclosed pursuant to this agreement. All Confidential Information disclosed in any documentary or tangible form, whether in written or electronic form will be considered confidential if by its nature or the circumstances under which it is disclosed one would reasonably consider it to be confidential. Seller shall use Buyer's Confidential Information solely for the purposes of supporting the current business relationship with Buyer and not for any other purpose. Seller shall not disclose Buyer's Confidential Information to any third party without Buyer's express written consent. Seller may disclose Buyer's Confidential Information to contract workers, consultants and agents of Seller who have a need to know and who have executed agreements with Seller obligating them to treat such information in a manner consistent with the terms of this agreement. Seller shall not (a) sell Buyer parts or components incorporating or containing Buyer's Confidential Information to any third party, or (b) sell any goods to any third party which have been produced using Buyer's Confidential Information.

(b) Notwithstanding the foregoing provisions, this agreement shall not restrict or affect Seller's rights to use or disclose information: (1) which is or may hereafter be in the public domain through no fault of Seller; (2) which Seller can show, as reflected by its written documents, was known to it prior to the disclosure by Buyer; (3) which is disclosed to Seller by a third party, without

restrictions similar to those herein imposed, subsequent to disclosure by Buyer; or (4) which Seller can show, as reflected by its written documents, was independently developed by Seller without the use of Buyer's Confidential Information.

17. INTELLECTUAL PROPERTY.

All inventions, patents, copyrights, trade secrets, know-how, test results, tooling, jigs and fixtures, or other industrial or intellectual property, associated with, or used in or for, the manufacturing of the products shall be identified herein as "Property". All Property owned by Seller prior to entering into this agreement ("Seller Background Property") shall remain owned by Seller.

Unless otherwise agreed in writing, if the work performed by Seller pursuant to this agreement is funded wholly or in part by Buyer, or utilizes or is derived from Buyer's Confidential Information or Buyer's property, the resulting Property shall belong exclusively to and is hereby assigned to Buyer ("Buyer's Project Property"). Seller shall not have any rights in Buyer's Project Property except as Buyer may grant for the purposes of manufacturing goods for Buyer. Seller shall execute assignments and other documents which, in the opinion of Buyer, are necessary to secure Buyer's rights hereunder. If Seller uses any subcontractor in connection with the work called for by this agreement, Seller agrees to procure from them similar rights and agreements on behalf of Buyer, including agreements that protect Buyer's Confidential Information directed to Property and goods.

Seller shall not sell to any third party any parts, goods, or components ("PGC") produced using Buyer's Confidential Information, Buyer's property, or Buyer's Project Property. Seller shall not label, advertise, market, or promote any PGC in any way that indicates that such PGC are a "replacement" or "substitute" for any PGC that Seller manufactures or has manufactured for Buyer.

18. REMEDIES CUMULATIVE.

Buyer's remedies shall be cumulative, and remedies herein specified do not exclude any remedies allowed by law or equity.

19. TITLE/LIENS.

Unless otherwise specified in Buyer's purchase order, risk of loss of the goods remains with Seller and title will not pass to Buyer until the goods are delivered to and accepted by Buyer at the agreed delivery location. Seller shall pay for labor, services, materials, equipment and parts thereof, and other expenses incurred by it or its suppliers in connection with the order and indemnify and defend Buyer Indemnitees against all claims and liens arising out of unpaid accounts.

20. APPLICABLE LAW.

Unless otherwise agreed in writing, the terms and conditions contained herein shall be governed by and construed under the laws of the state of Texas, USA, without regard to its conflicts of laws principles.