



## VIBRANTZ STANDARD TERMS AND CONDITIONS OF SALE

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

**1. GENERAL.** The Terms set forth herein as well as any terms and conditions printed on the face of Seller's order acknowledgment constitute the sole and entire agreement between Seller and Buyer with respect to the subject matter hereof. Any term or condition in any printed form of Buyer, including but not limited to any order, confirmation or other document, which is in any way inconsistent with or in addition to the terms and conditions hereof is hereby expressly rejected, and Seller's acceptance of any offer or order of Buyer is hereby expressly made in reliance on Buyer's assent to all terms and conditions hereof. If Buyer objects to any of the terms or conditions hereof, such objection must be made in writing and received by Seller within three (3) calendar days after placing a purchase order. Failure to so object shall be conclusively deemed to be acceptance of the terms and conditions hereof. Seller's failure to object to any term or condition in any oral or written communication from Buyer, whether delivered before or after the date hereof, shall not constitute an acceptance thereof or a waiver of any term or condition hereof. Electronic commerce transactions between Buyer and Seller will be solely governed by this Agreement, and any terms and conditions on Buyer's internet site will be null and void and of no legal effect on Seller.

**2. TAXES.** All prices are exclusive of any present or future sales, revenue or excise tax, value added tax, turnover tax, import duty (including brokerage fees) or other tax applicable to the manufacture or sale of any product. Such taxes, when applicable, shall be paid by Buyer unless Buyer provides a proper tax exemption certificate.

**3. PRICES.** The sale price(s) for goods delivered hereunder ("Products") are accepted as stated on Seller's order acknowledgment. All quotations of Seller expire thirty (30) calendar days from the date given. The price to Buyer for any Products shall be the applicable published price or valid quote in effect at the time of order entry. All prices are subject to change without notice and may be subject to any increase which may be in effect on the date of shipment. Except as otherwise expressly stated herein, any service calls or other service work performed by Seller shall be at Buyer's expense in accordance with Seller's standard rates for such services. Buyer acknowledges that the pricing of the Products and services and the other terms of this Agreement have been set based on the sections of this Agreement providing for an agreed allocation of the risk for any defective Products or services between the parties. Buyer further acknowledges that the pricing and terms would have been different if there had been a different allocation of the risk.

### **4. DELIVERY; TITLE PASSAGE AND RISK OF LOSS.**

**(a) Delivery.** Delivery or shipping dates are approximate only and merely represent Seller's best estimate of the time required to make delivery or shipment. Time is not of the essence with respect to the transaction(s) covered by this Agreement, except with respect to Buyer's obligation to make

all related payments. Seller's obligations hereunder will be dependent upon Seller's ability to obtain the necessary raw materials. Seller will not be liable for any loss or expense (incidental, indirect, economic, consequential or otherwise) incurred by Buyer as a result of any delay in delivery for any reason other than arbitrary refusal by Seller to perform. Seller reserves the right to make partial deliveries and ship in advance of shipping date. Lead time on orders and rescheduling are governed at Seller's discretion.

**(b) Title Passage and Risk of Loss.** All deliveries hereunder will be EX WORKS Seller's plant via a carrier selected by Buyer at its option, or otherwise by Seller, freight collect, to Buyer, or at Seller's option, Seller will select such carrier and ship the Products freight prepaid and added to the price of the relevant Products. In all such cases title and risk of loss or damage will pass to Buyer upon Seller's delivery of the Products to the initial carrier for shipment to Buyer and no loss or damage will relieve Buyer of any obligation hereunder, including payment for lost or damaged Products. Charges for shipping may not reflect net transportation costs paid by Seller. Buyer shall reimburse Seller for any and all costs of storage incurred by Seller after the date that Seller is prepared to make shipment.

**5. PAYMENT TERMS.** Unless otherwise agreed in writing, payment terms shall be net thirty (30) days from the date of invoice. Buyer agrees to pay interest on any unpaid balance at a rate of 1.5% per month or the maximum rate under applicable law. Interest shall begin to accrue on the date payment is due. Payments processed by any credit card accepted by Seller will include a surcharge of 4%. No surcharge will be charged for payments made by debit card. Unless otherwise agreed in writing, all payments are to be in United States dollars. Seller may require payment to be secured by an irrevocable letter of credit or a bank guarantee acceptable to Seller. Where payment is made by letter of credit, all costs of collection shall be for Buyer's account. In the event that Seller brings legal action to collect delinquent accounts, Buyer agrees to pay Seller's reasonable attorneys' fees and costs of suit.

**6. NON-CONFORMING DELIVERY.** Seller's weights taken at Seller's shipping point shall govern. Buyer shall notify Seller of any visible defects, quantity shortages or incorrect Product shipments within seven (7) days of receipt of the shipment. Failure to notify Seller in writing of any visible defects in the Products or of quantity shortages or incorrect shipments within such period shall be deemed an unqualified waiver of any rights to return Products on the basis of visible defects, shortages or incorrect shipments.

## **7. TRADE COMPLIANCE.**

**(a) EXPORT CONTROL REGULATIONS.** Buyer warrants that it (i) will adhere to and comply with (x) all applicable export and re-export restrictions under U.S. and other countries' export control regulations, including without limitation the U.S. Export Administration Regulations, regulations of the U.S. Office of Foreign Asset Control and comparable laws and regulations of other countries ("Export Control Regulations"), and (y) any applicable terms, conditions, procedures and documentation requirements made known to Buyer that may be promulgated by Seller from time-to-time to comply with the Export Control Regulations; (ii) will not, directly or indirectly through a third party, ship Seller materials to the Crimea region of Ukraine, Cuba, Iran, North Korea, Syria, Sudan or any other country subject to trade embargoes in violation of Export Control Laws. Buyer acknowledges that Seller will not proceed with a shipment when Seller knows that Seller products in that shipment are destined for a sanctioned country. Buyer represents that neither Buyer nor any of its principals, officers, or directors, or any person or entity known to Buyer to be directly involved in this transaction as freight forwarder, customer, end-user, consultant, agent or otherwise is designated on any of the U.S. government restricted parties lists, including without limitation the U.S.

Commerce Department Bureau of Industry and Security Denied Persons List, Entity List or Unverified List, the U.S. Treasury Department Office of Foreign Asset Controls Specially Designated National and Blocked Persons List or the U.S. State Department Directorate of Defense Trade Controls Debarred Parties List or restricted parties lists of any country having jurisdiction over Buyer or the transaction involving the goods that are the subject of this Agreement or related technology.

**(b) ANTIBOYCOTT PROVISIONS.** Buyer will not request of Seller information or documentation where the purpose of such request is to support, give effect to or comply with a boycott of any country in contravention of the laws or policies of the United States, including but not limited to the Arab League boycott of Israel. Seller hereby rejects any such request by Buyer and will report receipt of any such request to the relevant U.S. government office, as required by law.

**(c) ANTICORRUPTION/ANTIBRIBERY.** In relation to any transaction involving the goods that are the subject of this Agreement or related technology, Buyer shall not seek to obtain or retain business or gain any other advantage by making or offering to make any payment of money or by providing or offering to provide anything of value, directly or indirectly, to: (i) any government official; or (ii) any non-governmental person, in either case with the intent that such official or person will perform their responsibilities improperly. Buyer warrants that it will comply with the anticorruption laws and antibribery laws of any country having jurisdiction over Buyer or the transaction involving the goods that are the subject of this Agreement or related technology and will in all cases comply with the U.S. Foreign Corrupt Practices Act and the U.K. Bribery Act.

**(d) NONCOMPLIANCE.** In the event that Seller reasonably believes that any provision of this Clause 7 has or may have been breached, Buyer shall cooperate fully with Seller's investigation to clear the matter and Seller shall not be obligated to sell or provide goods or technology or take any other act in furtherance of any transaction or agreement while such investigation is pending and such suspension or forbearance by Seller shall not constitute breach of any obligation in respect of the transaction to which this Agreement applies or otherwise

**8. SECURITY INTEREST.** Buyer hereby grants to Seller a security interest in all Products and all proceeds and products thereof until all amounts due or to become due hereunder have been paid. Any repossession and removal of Products shall be without prejudice to any of Seller's other remedies at law or in equity. Buyer agrees, at any time and without further consideration, to do or cause to be done, executed and delivered, all such further acts and instruments (including without limitation financing statements appropriate for filing) as Seller may reasonably request in order to perfect Seller's security interest.

**9. BUYER'S FINANCIAL CONDITION.** This Agreement and all shipments made hereunder shall at all times be subject to the approval by Seller of Buyer's financial condition. If the financial condition of Buyer at any time becomes unsatisfactory to Seller, in Seller's sole discretion, or if Buyer fails to make any payment when due, in addition to any other rights Seller may have, Seller may defer or decline to make any shipment or shipments hereunder or may condition any such shipment upon receipt of satisfactory security or cash payments in advance.

**10. LIMITED WARRANTY.** Except as specified below, products sold hereunder shall, at the time of delivery, be free from defects in materials and workmanship and shall conform to Seller's specifications or other specifications accepted in writing by Seller at the time of delivery. The foregoing warranty does not apply to any Products which have been subject to misuse, neglect, accident or modification or which have been altered such that they are not capable of being tested under normal test conditions. Seller shall make the final determination as to whether the Products

are defective. Seller's sole obligation for Products failing to comply with this warranty shall be, at its option, to replace or issue credit for the nonconforming Products where, within fourteen (14) days of delivery, (i) Seller has received written notice of any nonconformity; (ii) after Seller's written authorization, Buyer has returned the nonconforming product to Seller; and (iii) Seller has determined that the Product is nonconforming and that such nonconformity is not the result of improper installation, repair or other misuse.

THE FOREGOING WARRANTY AND REMEDIES ARE EXCLUSIVE AND MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED, IMPLIED OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. SELLER DOES NOT ASSUME OR AUTHORIZE ANY OTHER PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH ITS PRODUCTS. Buyer shall pass this warranty to any third-party buyer of Seller's Products.

SELLER'S LIABILITY UNDER THE WARRANTY SHALL BE LIMITED TO A REFUND OF THE PURCHASE PRICE OF THE PRODUCT. IN NO EVENT SHALL SELLER BE LIABLE FOR THE COST OF PROCUREMENT OR INSTALLATION OF SUBSTITUTE GOODS BY BUYER OR FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES OF ANY KIND WHATSOEVER, OR CLAIMS OF ANY THIRD PARTIES.

**11. LIMITATION OF LIABILITY AND INDEMNITY.** NOTWITHSTANDING ANY OTHER PROVISION HEREIN OR IN ANY OTHER DOCUMENT OR COMMUNICATION, (A) SELLER'S LIABILITY AND OBLIGATIONS WITH RESPECT TO ANY CLAIM(S) RESULTING OR ARISING FROM OR RELATING TO THIS AGREEMENT, WHETHER IN CONTRACT, STRICT LIABILITY, TORT OR OTHERWISE, AND EVEN IF BUYER'S EXCLUSIVE REMEDY FAILS OF ITS ESSENTIAL PURPOSE, SHALL IN NO EVENT EXCEED IN THE AGGREGATE THE TOTAL PURCHASE PRICE RECEIVED BY SELLER FOR THE PRODUCTS (OR, IN THE CASE OF OBLIGATIONS ARISING FROM OR RELATING TO PARTICULAR PRODUCTS OR SERVICES RENDERED IN CONNECTION HERewith, THE PURCHASE PRICE OF SUCH PRODUCTS OR AMOUNT RECEIVED BY SELLER FOR SUCH SERVICES, RESPECTIVELY), AND (B) SELLER SHALL IN NO EVENT BE LIABLE TO BUYER OR ANY OTHER PERSON OR ENTITY, WHETHER IN CONTRACT, STRICT LIABILITY, TORT OR OTHERWISE, FOR SPECIAL, CONSEQUENTIAL INDIRECT OR INCIDENTAL DAMAGES OF ANY KIND WHATSOEVER, OR CLAIMS OF ANY THIRD PARTIES. By accepting delivery of the Products ordered, Buyer agrees that it indemnifies and holds harmless Seller from and against all claims, loss, damage and liability, including without limitation for personal injury, property damage or commercial loss of whatever kind, directly or indirectly arising from or relating to the hazards inherent in Buyer's facilities or activities.

**12. INDEMNITY.** Buyer shall indemnify, defend and hold Seller and its directors, officers, employees, agents, suppliers, parents, affiliates, subsidiaries, successors and assigns harmless from and against any and all fines, penalties, suits, actions, claims, liabilities, judgments, losses, damages, costs and expenses (including attorneys' fees) resulting or arising from (a) Buyer's negligence or willful misconduct, (b) Buyer's use, sale, handling, storage, or disposal of the goods or any product or waste derived therefrom, (c) Buyer's discharge or release of the goods or any product or waste derived therefrom into water, onto land or into the air, (d) Buyer's exposing any person (including Buyer's employees) to the goods or any product or waste derived therefrom, including failure to warn of such exposure, or (e) the transportation of the goods to Buyer after tender of the goods by Seller to the carrier at Seller's shipping point. The foregoing shall apply, without limitation, to injury to person (including death) or damage or harm to property or the environment. This indemnity shall not apply to any fine, penalty, suit, action, claim, liability, judgment, cost or expense caused solely by Seller's negligence or willful misconduct, but shall apply where there is concurrent negligence or willful misconduct on the part of Seller and Buyer in proportion to Buyer's negligence or willful misconduct.

**13. FORCE MAJEURE.** Seller shall not be liable for any damage or penalty for delay in delivery or for failure to give notice of delay when such delay is due to the elements, pandemic, epidemic, acts of God, acts of Buyer, act of civil or military authority, war, riots, concerted labor action, shortages of materials, or any other causes beyond the reasonable control of Seller. The anticipated delivery date shall be deemed extended for a period of time equal to the time lost due to any delay excusable under this provision.

**14. ASSIGNMENT.** Buyer may not transfer or assign this Agreement or any interest herein, by operation of law or otherwise, without the prior express written consent of Seller. Any attempted transfer or assignment without such consent shall be void. Seller may assign its rights and delegate its duties hereunder.

**15. ENTIRE AGREEMENT; MODIFICATION.** This Agreement supersedes all prior or contemporaneous written and oral agreements and understandings between Seller and Buyer with respect to the Products and services specified herein. No representation or statement not contained herein shall be binding upon Seller as a representation, warranty or condition or otherwise. No addition to or waiver, modification or cancellation of any provision hereof shall be binding upon Seller unless in writing and signed by a duly authorized representative of Seller.

**16. NOTICES.** All notices and other communications hereunder shall be in writing and shall be mailed by first-class, registered, express or certified mail, postage prepaid, to the parties hereto at their respective designated addresses, subject to the right of either party to change such address upon ten (10) calendar days prior written notice.

**17. WAIVER.** Failure by Seller to exercise or enforce any rights hereunder shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter.

**18. COMPLIANCE WITH RESPONSIBILITY AND SUSTAINABILITY REQUIREMENTS.** Buyer shall comply with all applicable state, national, and international laws, rules, regulations, and other legal requirements relating to ethical and responsible standards of behavior, including, without limitation, those dealing with human rights (including, without limitation, human trafficking, and slavery and conflict mineral sourcing), environmental protection, sustainable development, and bribery and corruption.

#### **19. DISPUTE RESOLUTION.**

**(a) GOVERNING LAW; JURISDICTION; VENUE FOR U.S. ORDERS.** If the order is issued to Seller's principal place of business located within the United States of America or its territories, then: (i) such order is to be construed according to the laws of the State of Texas, excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods, and any choice of law provisions that require application of any other law, and (ii) each party agrees that the forum and venue for any legal or equitable action or proceeding arising out of, or in connection with, such order, will lie exclusively in the Federal District Court for the Southern District of Texas or in the state courts of Harris County in the State of Texas, or, at Seller's option in actions or proceedings by Seller against Buyer, in any court(s) having jurisdiction over (A) Buyer or (B) Seller's principal place of business, and each party specifically waives any and all objections to such jurisdiction and venue.

**(b) GOVERNING LAW; JURISDICTION; VENUE FOR NON-U.S. ORDERS.** In all cases not covered by Subsection (a) above, such order is to be construed exclusively according to the laws of the country (and state or province, if applicable) applicable at Seller's principal place of business (registered office) in the country to which the order is issued, without recourse to the rules on conflict of laws. The United Nations Convention on Contracts for the International Sale of Goods does not apply. Any legal or equitable action or proceedings by Seller against Buyer arising out of, or in connection with, such order may be brought by Seller in any court(s) having jurisdiction over Buyer or, at Seller's option, in any court(s) having jurisdiction over the location of Seller's principal place of business, in which event Buyer consents to such jurisdiction and venue, including, without limitation, service of process in accordance with applicable procedures. Any legal or equitable actions or proceedings by Buyer against Seller arising out of, or in connection with, such order may be brought by Buyer only in the court(s) having jurisdiction over the location of Seller's principal place of business.

**20. SEVERABILITY.** Any term or condition that is declared unlawful or unenforceable by a court of competent jurisdiction will not apply. The unenforceability of any such term or condition will not affect the enforceability of any other term or condition.

**21. CONTROLLING LANGUAGE.** The English version of the Vibrantz Standard Terms and Conditions of Sale will apply in the event of any disagreement over any translation.