



**VIBRACOUSTIC AFTERMARKET GENERAL TERMS & CONDITIONS OF SALE**  
(“GTC’s”, January 2023)

**1. APPLICABILITY**

All sales, supply, or provision of aftermarket goods and/or services (collectively, the “**Products**”) by Vibracoustic Aftermarket GmbH, Vibracoustic CVAS GmbH or its applicable business affiliates and subsidiaries (collectively, “**VC**”) to VC’s customer (“**Customer**”) shall be governed exclusively by these Vibracoustic Aftermarket General Terms and Conditions of Sale, and the other VC terms and conditions contained or otherwise incorporated in VC’s quotation, proposal, or other offering document provided to Customer (all of the aforementioned documents are collectively referred to herein as the “**Agreement**”). VC and Customer are referred to herein collectively as the “**Parties**”, and individually each as a “**Party**”.

**2. OFFER & ACCEPTANCE**

2.1 After Customer receives VC’s quotation, proposal, or other offering document, such offer shall be considered a non-binding invitation for Customer to make a binding offer (*invitatio ad offerendum*) subject to VC’s acceptance or confirmation. Customer’s order shall be considered the binding offer which may be accepted or rejected by VC applying the terms of this Agreement. Customer may also enter into a legally binding contract with VC by:

- (a) indicating in writing that Customer wishes to proceed with the transaction that VC’s offer and the Agreement relates to,
- (b) requesting VC to move forward with the transaction that VC’s offer and the Agreement relates to, including by way of example and without any limitation Customer’s request for VC to proceed with work on any design, prototype, sourcing, testing, validation, private labeling or other preparation to manufacture, modify, consolidate, sort, repackage or deliver the Products for Customer;
- (c) accepting delivery of or making payment (in part or in full) for the Products; or
- (d) by any other conduct which recognizes the existence of a contract for the purchase and sale of the Products. VC’s willingness to deliver or otherwise commence its performance regarding the Products is expressly limited to the terms and

conditions contained in the Agreement, and VC rejects any other additional or different terms and conditions as the basis of the formation of a contract with Customer. Furthermore, the Parties acknowledge and agree that any usage or exchange of information through purchase orders, releases, EDI, company websites, supplier portals, or other electronic or hard-copy documents unilaterally generated by Customer shall not amend, modify, supplement, supersede, or have any other effect upon the terms and conditions of the Agreement.

2.2 Any delivery contract as well as any changes, ancillary agreements and other agreements become binding only upon confirmation by VC. The delivery contract as well as any changes, ancillary agreements, declarations regarding its termination or other declarations and notifications require text form (§ 126 b German Civil Code - BGB) to the extent these terms and conditions do not specify otherwise.

2.3 The Customer accepts VC’s GTCs valid at the time of receipt of VC’s confirmation and/or the acceptance of the ordered goods or services. VC is not bound by general terms and conditions of the purchaser that differ from or are in addition to these GTCs. Such additional or deviating terms and conditions do not become part of the contract, either by acceptance of the order or implicitly by another act.

**3. COMMERCIAL TERMS**

3.1 VC quoted prices for a one-time, “spot buy” sale of VC’s Products shall be firm for a period of twenty days from the date of the quote unless stated otherwise in VC’s quote. For all other transactions, VC may increase its price for the Products by providing Customer with prior written notice of the price adjustment. The quantity of Products sold by VC shall be the maximum amount stated in VC’s offering document, subject to VC’s limitations on production capacity, lead time, and any other relevant factors. Without prejudice to any other legal right or remedy, VC may terminate the Agreement (or any part thereof) immediately upon written notice of termination due to Customer’s material breach of contract, or for VC’s convenience without cause upon thirty days written notice of termination.

3.2 Unless stated otherwise in VC’s quote, for “blanket” or reoccurring supply of goods arrangements, Customer is required to submit its firm orders for the Products four

weeks in advance of the delivery date, and at least twelve weeks of non-binding forecasted quantities for the Products. VC shall deliver the Products to Customer in compliance with the delivery schedule which VC has previously agreed in writing to follow.

- 3.3 For deliveries Customer will be responsible for any and all raw materials, semi-finished, and finished Products VC reasonably manufactured, purchased or committed to purchase to satisfy Customer's orders, forecasted or usual demand unless Customer informed VC about its end of demand in writing at least three (3) months in advance.
- 3.4 Notwithstanding the foregoing, all delivery dates and quantities are estimates only and are not guaranteed; provided, however, VC shall use reasonable efforts to meet agreed upon delivery dates and quantities. VC may, in its sole discretion, without liability or penalty, make partial shipments of Products to Customer.
- 3.5 Each shipment will constitute a separate sale, and Customer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Customer's order. All prices are plus any relevant statutory value added tax. Unless stated otherwise in the Agreement, VC's quoted prices do not include any special packaging or applicable taxes or tariffs, which Customer shall be responsible for paying and/or reimbursing VC for on demand.
- 3.6 Unless stated otherwise in VC's quote, VC's quoted prices are based upon the following delivery terms: FCA VC's applicable manufacturing, distribution, or warehouse facility for the Products (INCOTERMS 2020). Customer shall pay VC's invoices within the time frame stated in VC's invoice, in the currency stated on the invoice.
- 3.7 Title to the Products shall pass to Customer upon Customer's payment in full to VC for such Products; provided, however, notwithstanding the passage of title, risk of loss shall pass to Customer upon delivery. Customer will reimburse VC for all costs, expenses, and fees (including attorneys' fees, collection agency fees, and court costs and fees) incurred in collection actions. Customer is prohibited from and shall not setoff against, debit or otherwise recoup from any invoiced amounts due or to become due from Customer or its affiliates any amounts due or to become due from VC or its affiliates, whether or not related to or otherwise arising in connection with the Agreement.
- 3.8 Customer is entitled to resell the Products in the regular course of business. However, until VC has been paid in full, any payment claims of Customer against its customers shall be immediately passed on to VC (including value added tax). Customer is also allowed

to process, install, and modify or commingle the Products, however, this will not affect VC's ownership rights and VC may become co-owner in proportion of contribution with Customer.

#### **4. CREDIT**

Customer's credit terms and actual delivery of the Products shall be subject to VC's approval from time to time and VC reserves the right to alter the payment terms, require additional security, fix a limit of credit, and/or require an irrevocable letter of credit. Failure of Customer to comply with VC's credit terms, as the same may be adjusted from time to time, shall be grounds for VC to cease shipment. If a receiver or trustee is appointed for any of Customer's property, Customer is adjudicated bankrupt, an application for reorganization under applicable bankruptcy law is filed by or against Customer which is not dismissed within ten days, Customer becomes insolvent or makes an assignment for the benefit of creditors or takes, or attempts to take, the benefit of any insolvency acts, an execution is issued pursuant to a judgment rendered against Customer, Customer is unable or refuses to make payment to VC in accordance with any of its obligations to VC, or any financial or other condition exist that could, in VC's sole discretion, endanger Customer's ability to make required payments or otherwise perform, in addition to VC's other rights, Customer shall be deemed in material breach of the Agreement.

#### **5. LIMITED WARRANTY**

- 5.1 The Parties agree that the Products or Services purchased hereunder will be in accordance with the offered or otherwise mutually agreed specifications (the "**Specifications**"). VC warrants to Customer that the Products will be delivered free and clear of liens upon receipt of final payment for such Products, will materially conform to all material Specifications, and will be free from material defects in material and workmanship at the time the Products are delivered, and that the Products' design do not infringe a third party intellectual property right to the extent designed by VC.
- 5.2 Customer shall inspect the delivered Products without undue delay and shall give VC written notice of any warranty claim as soon as possible after delivery of the Products.
- 5.3 Any warranty claim shall become time barred twelve (12) months after delivery.

- 5.4 Customer's written warranty claim must be sufficiently detailed and particularized as to the alleged warranty issue and the background facts related to such claim. Upon VC's request, Customer shall return the allegedly non-conforming Products to VC for inspection, root-cause analysis, and such other actions which VC deems necessary. Customer shall also cooperate in good faith with VC by sharing information relevant to the warranty claim.
- 5.5 VC shall not be liable for any warranty claims or damages caused in whole or in part by (a) misuse, abuse, neglect or accident by the Customer or a third-party (including, without limitation, any transit-related damage), (b) normal wear and tear, (c) unauthorized or improper installation, maintenance (including failure to perform appropriate maintenance), storage, handling, use or operation of the Products by Customer or any third party, (d) alterations, modifications, additions, or repairs made by any party other than VC, (e) equipment, components, systems, or assemblies not manufactured or sold by VC ("**Third-Party Components**") and/or the integration, incorporation, interaction, connection, placement, or use of conforming Products in or with any Third-Party Components, (f) any other acts that are beyond VC's reasonable control. Before using the Products, Customer shall determine the suitability of the Products for their intended use and Customer assumes all risk and liability whatsoever in connection therewith.
- 5.6 The sole and exclusive remedy for a warranty claim that is timely submitted and has been verified by VC pursuant to the foregoing procedures shall be for VC to at its option: (a) repair or replace the non-conforming Products with conforming Products, or (b) refund or provide an account credit to Customer for the purchase price Customer previously paid for such non-conforming Products, (c) additional necessary and reasonable transportation cost, (d) necessary and reasonable sorting costs, and (e) pay for any necessary and reasonable additional installation costs.
- 5.7 EXCEPT FOR THE LIMITED WARRANTIES EXPRESSLY STATED IN THE AGREEMENT, THE PRODUCTS ARE PROVIDED ON AN "AS-IS" BASIS. VC MAKES NO OTHER WARRANTIES, AND TO THE FULLEST EXTENT PERMITTED BY LAW VC EXPRESSLY DISCLAIMS ANY OTHER WARRANTY, REPRESENTATION, OR INDEMNITY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, REGARDING OR RELATED TO THE PRODUCTS OR THE AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY AND ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE, SATISFACTORY QUALITY, NON-INFRINGEMENT OF INTELLECTUAL PROPERTY

RIGHTS OR OTHER RIGHTS, AND COMPLIANCE WITH ANY LAWS, RULES, OR REGULATIONS. IN NO EVENT SHALL VC OR ITS AFFILIATES, OWNERS, AGENTS, EMPLOYEES, AND REPRESENTATIVES BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, LIQUIDATED, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST REVENUES, LOST PROFITS, LOST BUSINESS OPPORTUNITIES, GOODWILL, AND/OR DAMAGES RELATING TO CLASS ACTIONS, VOLUNTARY OR INVOLUNTARY RECALLS, CUSTOMER SATISFACTION OR OTHER SERVICE CAMPAIGNS OR SIMILAR ACTIONS, AND REPAIRS TO PROPERTY, EVEN IF VC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, UNDER ANY LEGAL THEORY OF LIABILITY OR RECOVERY, INCLUDING BUT NOT LIMITED TO CONTRACT, TORT, AND STATUTORY PROVISIONS. THE MAXIMUM LIABILITY OF VC FOR ANY DAMAGES ARISING OUT OF, REGARDING, OR RELATED TO ITS PRODUCTS OR THE AGREEMENT IS LIMITED TO THE REFUND OF THE PURCHASE PRICE ACTUALLY PAID BY THE CUSTOMER FOR THE PRODUCTS AT ISSUE IN THE CLAIM WITHIN ONE YEAR OF THE DATE OF SUCH CLAIM. THE PARTIES ACKNOWLEDGE AND AGREE THAT VC IS RELYING UPON THE LIMITATION OF LIABILITY PROVISIONS SET FORTH IN THE AGREEMENT IN SUPPLYING THE PRODUCTS, THAT SUCH LIMITATIONS OF LIABILITY SHALL APPLY EVEN IF THE EXCLUSIVE REMEDY SET FORTH ABOVE IS DEEMED TO FAIL ITS ESSENTIAL PURPOSE, AND THAT THE LIMITATION OF LIABILITY SHALL SURVIVE AFTER THE AGREEMENT EXPIRES OR TERMINATES.

- 5.8 Unless caused by VC's intentional or grossly negligent conduct, VC will not be liable for any lost profit or business interruption.

## 6. INDEMNIFICATION

Customer will indemnify, defend, and hold VC, its affiliates and its and their owners, agents, employees, and representatives harmless against any claims, damages, costs, expenses, and fees (including but not limited to attorneys' fees) arising out of, regarding, or related to (a) any negligent or criminal act or omission of Customer (including any recklessness or willful misconduct) in connection with the Agreement, (b) any bodily injury, death of any person or damage to real or tangible personal property caused by the Products or acts or omissions of Customer, (c) the purchase or use

of any Product(s) by any person purchasing directly or indirectly through or from Customer, (d) any change, modification or alteration of a Product(s) by Customer or any other person, or (e) any failure of Customer or third-party to comply with applicable law. VC shall have no obligation to indemnify, hold harmless or defend Customer or any other party in connection with the Agreement, the sale of any Product(s) or otherwise.

## 7. INTELLECTUAL PROPERTY RIGHTS

Any documents and information, whether oral or written, which VC uses, directly or indirectly discloses, or otherwise makes available to Customer in connection with the Agreement or VC's goods or services, including but not limited to specifications, illustrations, drawings, data, statistics, calculations, prototypes, sketches, drafts, models, samples, patterns, and plans, as well as any materials that constitute or are subject to a VC patent, copyright, trademark, trade-secret, know-how, or other intellectual property right (collectively, "**VC Materials and Information**") shall remain the sole and exclusive property of VC. Nothing in the Agreement transfers VC's background or foreground intellectual property rights to Customer, even if such rights were used or developed during the performance of the Agreement. Customer shall not use VC Materials and Information for any purpose other than the performance of the Agreement, and Customer shall not disclose VC Materials and Information to third parties without the prior express written consent of VC.

## 8. CONFIDENTIALITY

All documents and information, including but not limited to VC Materials and Information, furnished by VC or otherwise made available, either directly or indirectly, to Customer is VC's confidential and proprietary information (collectively, "**VC Confidential Information**") regardless of whether such materials are marked as confidential and proprietary. Customer agrees to keep all VC Confidential Information in strictest confidence, to limit the use of VC Confidential Information to only what is necessary for the performance of the Agreement, and to limit disclosure of VC Confidential Information to only those Customer agents, employees, or representatives who have a need to know such VC Confidential Information for the performance of the Agreement and each of whom are bound to abide by the confidentiality and non-use provisions set forth herein. Customer shall be responsible for any breach of this Agreement by its agents, employees, or representatives. Customer shall not disclose any VC Confidential Information to a third party without VC's prior express written authorization to make such disclosure.

Customer will use commercially reasonable measures to protect VC Confidential Information against unauthorized use and disclosure, including without limitation safe data encryption for electronic transmission and storage of such information. Upon termination or expiration of the Agreement, Customer shall promptly return or destroy all VC Confidential Information and certify in writing to VC that these provisions have been complied with. The confidentiality provisions in the Agreement shall survive expiration or termination of the Agreement and will continue for the longer of:

(i) a period of seven (7) years from the termination or expiration of the Agreement or the relevant transaction thereunder, or

(ii) for the period of time the VC Confidential Information remains a trade secret. In the event Customer receives a subpoena, court order, audit request, governmental investigative request, or any other type of legal process for the legally compelled disclosure of VC Confidential Information, Customer shall promptly notify VC of such event and Customer shall reasonably cooperate with VC to oppose, limit, obtain a protective order, or otherwise respond to such request or demand. If Customer is ultimately legally required to disclose VC Confidential Information, Customer shall limit its disclosure to the minimum amount necessary to comply with the law.

## 9. FORCE MAJEURE

If VC's performance under the Agreement becomes delayed, impossible, commercially impracticable, or unexpectedly burdensome as a result of an event or occurrence beyond the direct control of VC—including but not limited to natural disasters or extreme weather conditions, fires, floods, explosions, riots, wars, power outages, interruptions of business; epidemics or pandemics; strikes; lockouts; governmental actions, quarantines, trade disputes, changes in laws, rules, or regulations, lockdowns, or other restrictions, terror acts, limitations or delays by sub-contractors or sub-suppliers necessary for the production of the Products, etc. (individually and collectively referred to herein as "**Force Majeure Event**")—then VC shall be excused from its performance under the Agreement for the duration of the Force Majeure Event plus an appropriate startup time thereafter. VC will inform Customer without undue delay on the commencement and end of such Force Majeure Events.

## **10. COMPLAINEE**

Each Party is responsible for its own compliance with all applicable laws, rules, and regulations, including but not limited to those pertaining to data privacy, export controls, government contracts, sanctioned or embargoed countries, antitrust, anti-fraud, anti-money laundering laws, the U.S. Foreign Corrupt Practices Act, the UK Bribery Act of 2010, and any other applicable anti-bribery and anti-corruption laws and regulations; provided however, that Customer acknowledges and agrees that VC generally does not accept any export controlled materials or enter into any government and/or military supply agreements without specific prior written approval of its executive management, and Customer must immediately notify VC in writing regarding any proposed transactions involving these categories of activities. Customer shall indemnify, defend, and hold VC, its affiliates and its and their owners, agents, employees, and representatives harmless against any claims, damages, costs, expenses, and fees (including but not limited to attorneys' fees) arising out of, regarding, or related to Customer's breach of the Agreement or any laws, rules, or regulations regarding the Agreement or the Products. The Parties agree to comply with the most recent version of VC's Code of Conduct (as updated by VC from time to time), a copy of which is available on [www.vibracoustic.com](http://www.vibracoustic.com), Downloads, Supplier Code of Conduct (or any successor website thereto), or upon request to VC.

## **11. WAIVER; MODIFICATION**

VC may only waive its rights under the Agreement in a writing signed by the authorized representatives of VC which expressly identifies the provision being waived and the scope and duration of such waiver. VC's waiver of a right under the Agreement shall not be construed as a continuing waiver of the same right in the future, or of a waiver of any other right not expressly identified in a writing signed by VC's authorized representative. The Agreement and any other documents regarding or related to the Agreement or the Products may only be amended, modified, supplemented, extended, or renewed in writing signed by authorized representatives of VC.

## **12. INDEPENDENT PARTIES**

VC and Customer are independent parties dealing at arms-length under the Agreement, and nothing in the Agreement or in VC sale of the Products to Customer shall be interpreted to create an agency, partnership, fiduciary, or other special relationship between VC and Customer. Customer acknowledges that it has

independently evaluated the Agreement prior to entering it. There are no third-party beneficiaries of the Agreement between VC and Customer.

## **13. APPLICABLE LAW, VENUE, JURISDICTION**

The Agreement and the VC's sale of Products to Customer will be governed exclusively by the laws of Germany, notwithstanding anything to the contrary in the rules on conflict of laws, choice of law, or international agreements such as the Convention on Contracts for the International Sale of Goods (CISG), all of which the Parties expressly exclude from operation under the Agreement. The Parties agree that the courts of Frankfurt am Main, Germany shall have exclusive venue and jurisdiction over any claims and disputes arising out of, regarding, or related to the Agreement or the Products, and each Party expressly waives any objections to the aforementioned courts including but not limited to lack of jurisdiction, improper venue, or inconvenient forum.

## **14. SEVERABILITY**

Should any provision (or portion thereof) of this Agreement be or become invalid or unenforceable under applicable law, such provision (or portion thereof) shall be severed from the Agreement, and the remainder of the Agreement shall continue to be valid and enforceable.