



## **Gibson Innovations Limited General Conditions of Purchase**

### **1. Definitions and Scope**

In this document: (a) "Affiliate(s)" shall mean any and all other companies, firms and legal entities with respect to which now or hereafter Gibson Innovations Limited or Supplier respectively, directly or indirectly holds 50% or more of the nominal value of the issued share capital or 50% or more of the voting power at general meetings or has the power to appoint a majority of directors or otherwise to direct the activities of such company, firm or legal entity and includes for Gibson Innovations Limited, without limitation, any and all other companies, firms and legal entities that are under common control with Gibson Innovations Limited and contains Gibson Innovations in its entity name; (b) "Agreement" shall mean the binding contract formed as described in Clause 2.1 herein; (c) "Goods" shall mean both tangible and intangible goods, including software and related documentation and packaging. References to Goods shall, where appropriate, be deemed to include Services; (d) "Gibson Innovations" shall mean the purchasing Affiliate of Gibson Innovations Limited identified in Gibson Innovations' order and where applicable includes other Affiliates of Gibson Innovations; (e) "Services" shall mean the services to be performed by Supplier for Gibson Innovations under the Agreement; (f) "Supplier" shall mean each person or entity (including, where relevant, its Affiliates) that enters into the Agreement.

These General Conditions of Purchase shall apply to any Gibson Innovations' purchase unless otherwise provided in a relevant signed agreement between Gibson Innovations and the Supplier.

### **2. Acceptance**

2.1. These General Conditions of Purchase, together with the relevant Purchase Order issued by Gibson Innovations, set forth the terms under which Gibson Innovations' offers to purchase Goods and/or Services from Supplier. When Supplier accepts Gibson Innovations' offer, either by acknowledgement, delivery of any Goods and/or commencement of performance of any Services, a binding contract shall be formed. Such Agreement is limited to these General Conditions of Purchase as specified on the face and reverse of this document, the relevant Purchase Order and any attachments. Gibson Innovations does not agree to any proposed amendment, alteration, or addition by Supplier. The Agreement can be varied only in writing signed by Gibson Innovations. Any other statement or writing of Supplier shall not alter, add to, or otherwise affect the Agreement.

2.2. Gibson Innovations is not bound by and hereby expressly rejects Supplier's general conditions of sale and any additional or different terms or provisions that may appear on any proposal, quotation, price list, acknowledgment, invoice, packing slip or the like used by Supplier. Course of performance, course of dealing, and usage of trade shall not be applied to modify these General Conditions of Purchase.



2.3. All costs incurred by Supplier in preparing and submitting any acceptance of Gibson Innovations' offer shall be for the account of Supplier.

### 3. Time of the Essence

Time is of the essence and all dates referred to in the Agreement shall be firm. In the event that Supplier anticipates any difficulty in complying with any delivery date or any of its other obligations under the Agreement, Supplier shall promptly notify Gibson Innovations in writing.

### 4. Delivery of Goods

4.1. Unless expressly agreed otherwise in writing, all Goods shall be delivered FCA (named port or place of departure) except that maritime transport shall be delivered FOB (named port of shipment) (as defined in the Incoterms 2010) final destination determined by Gibson Innovations.

4.2. Delivery shall be completed as per the applicable Incoterm, but this shall not constitute acceptance of the Goods.

4.3. Supplier shall, concurrently with the delivery of the Goods, provide Gibson Innovations with copies of all applicable licenses. Each delivery of Goods to Gibson Innovations shall include a packing list which contains at least (i) the applicable order number, (ii) the Gibson Innovations part number, (iii) the quantity shipped, and (iv) the date of shipment.

4.4. Supplier shall make no partial delivery or delivery before the agreed delivery date(s). Gibson Innovations reserves the right to refuse delivery of Goods and return same at Supplier's risk and expense if Supplier defaults in the manner and time of delivery or in the rate of shipment. Gibson Innovations shall not be liable for any costs incurred by Supplier related to production, installation, assembly or any other work related to the Goods, prior to delivery in accordance with the Agreement.

4.5. Any design, manufacturing, installation or other work to be performed by or on behalf of Supplier under the Agreement shall be executed with good workmanship and using proper materials.

4.6. Supplier shall pack, mark and ship the Goods in accordance with sound commercial practices and Gibson Innovations' specifications in such manner as to prevent damage during transport and to facilitate efficient unloading, handling and storage, and all Goods shall be clearly marked as destined for Gibson Innovations. Notwithstanding the provisions of the applicable Incoterms, Supplier shall be responsible for any loss or damage due to its failure to properly preserve, package, handle (before delivery as per the applicable Incoterm) or pack the



Goods; Gibson Innovations shall not be required to assert any claims for such loss or damage against the common carrier involved.

## **5. Changes to Goods**

Supplier shall not, without prior written consent of Gibson Innovations, make any changes affecting Goods, including process or design changes, changes to manufacturing processes (including geographic location) changes affecting electrical performance, mechanical form or fit, function, environmental compatibility, chemical characteristics, life, reliability or quality of Goods or changes that could have significant impact upon Supplier's quality system.

## **6. Performance of Services**

6.1. Supplier shall perform the Services with due skill and care, using the proper materials and employing sufficiently qualified staff.

6.2. Supplier shall be fully liable for the acts and omissions of any and all third parties with which it has contracted in connection with the Services.

6.3. Only written confirmation by Gibson Innovations shall constitute acceptance of the Services performed.

## **7. Inspection, Testing, Rejection of Goods**

7.1. Inspection, testing of or payment for the Goods by Gibson Innovations shall not constitute acceptance. Inspection or acceptance of or payment for the Goods by Gibson Innovations shall not release Supplier from any of its obligations, representations or warranties under the Agreement.

7.2. Gibson Innovations may, at any time, inspect the Goods or the manufacturing process for the Goods. If any inspection or test by Gibson Innovations is made on the premises of Supplier, Supplier shall provide reasonable facilities and assistance for the safety and convenience of Gibson Innovations' inspection personnel.

7.3. If Gibson Innovations does not accept any of the Goods or Services, Gibson Innovations shall promptly notify Supplier of such rejection, and Clause 11 below shall apply. Within two (2) weeks from such notification, Supplier shall collect the Goods from Gibson Innovations at its own expense or shall promptly perform the Services in accordance with Gibson Innovations' instructions. If Supplier does not collect the Goods within said two (2) week period, Gibson Innovations may have the Goods delivered to Supplier at Supplier's cost, or with the Supplier's prior consent destroy the Goods, without prejudice to any other right or remedy Gibson Innovations may have under the Agreement or at law. Goods or Services not accepted but already paid by Gibson Innovations shall be



reimbursed by Supplier to Gibson Innovations and Gibson Innovations shall have no payment obligation for any Good or Service not accepted by Gibson Innovations.

7.4. If, as a result of sampling inspection, any portion of a lot or shipment of like or similar items is found not to conform to the Agreement, Gibson Innovations may reject and return the entire shipment or lot without further inspection or, at its option, complete inspection of all items in the shipment or lot, reject and return any or all nonconforming units (or accept them at a reduced price) and charge Supplier the cost of such inspection.

## **8. Prices; Payment**

8.1. Unless provided otherwise in the Purchase Order, title in the Goods shall pass to Gibson Innovations at the time risk is transferred to Gibson Innovations pursuant to the applicable Incoterm.

8.2. All prices quoted in the Agreement shall be fixed prices. Supplier warrants that such prices are not in excess of the lowest prices charged by Supplier to other similarly situated customers for similar quantities of Goods or Services of like kind and quality.

8.3. (i) All prices are gross amounts but exclusive of any value added tax (VAT), sales tax, GST, consumption tax or any other similar tax only. (ii) If the transactions as described in the Agreement are subject to any applicable VAT, sales tax, GST, consumption tax or any other similar tax, Supplier may charge VAT, sales tax, GST, consumption tax or any other similar tax to Gibson Innovations, which shall be paid by Gibson Innovations in addition to the prices quoted. Supplier is responsible for paying any applicable VAT, sales tax, GST, consumption tax or any other similar tax to the appropriate (tax) authorities. At or after the time delivery has been completed as per Clause 4.2 but ultimately within six months from delivery, Supplier shall issue an invoice meeting all applicable legal and fiscal requirements and which shall contain: (i) the Gibson Innovations purchase order number, and (ii) wording that shall allow Gibson Innovations to take advantage of any applicable "input" tax deduction. In addition, Supplier shall inform Gibson Innovations whether Gibson Innovations is allowed to apply for an exemption if and to the extent allowed under applicable law in such specific situation.

8.4. Any license fees shall be included in the price.

8.5. Subject to the acceptance of the Goods and/or Services by Gibson Innovations, and unless provided otherwise in the Purchase Order or in any other related relevant signed agreement between Gibson Innovations and the Supplier, payment shall be made within sixty (60) days from the end of the month of the date of the correct invoice in accordance with 8.3 in the proper form by Gibson Innovations and/or any of its Affiliates in the world unless otherwise provided by local laws or relevant regulation.



8.6. If Supplier fails to fulfill any of its obligations under the Agreement, Gibson Innovations may suspend payment to Supplier upon notice to Supplier.

8.7. Gibson Innovations and any of its Affiliates shall at all times have the right to set-off any amounts that any Gibson Innovations Affiliate owes to Supplier or its Affiliates under this Agreement with any amounts that Supplier or its Affiliates owes to any Affiliate of Gibson Innovations under the Agreement or any other agreement. Supplier unconditionally accepts all payments by way of setting off amounts between Supplier and its Affiliates and any Gibson Innovations Affiliate.

8.8. Supplier acknowledges and agrees that any amount to be paid by Gibson Innovations to Supplier may be paid on Gibson Innovations' behalf by another Affiliate of Gibson Innovations and/or a third party designated by Gibson Innovations. Supplier shall treat such payment as if it were made by Gibson Innovations itself and Gibson Innovations' obligation to pay to Supplier shall automatically be satisfied and discharged in the amount paid by such entity or third party.

## 9. Warranty

9.1. Supplier represents and warrants to Gibson Innovations that:

- (a) all Goods are suitable for the intended purpose and shall be new, merchantable, of good quality and free from all defects in design, materials, construction and workmanship;
- (b) all Goods strictly comply with the specifications, approved samples and all other requirements under the Agreement;
- (c) all required licenses in relation to the Goods are and shall remain valid and in place, that the scope of such licenses shall properly cover the intended use of the Goods and all such licenses shall include the right to transfer and the right to grant sublicenses;
- (d) all Goods shall be free from any and all liens and encumbrances; (i) all Goods have been designed, manufactured and delivered, and all Services have been provided in compliance with all applicable laws (including labor laws), regulations, EC Directive 2001/95 on General Product Safety and the then current Supplier Sustainability Declaration which can be found at: <http://www.Gibson Innovations.com>. (ii) Goods and Services are provided with and accompanied by all information and instructions necessary for proper and safe use;
- (e) all its packaging, components and or Goods supplied to Gibson Innovations comply with the Regulated Substances List (RSL), which can be found at: <http://www.Gibson Innovations.com> or will be sent to Supplier upon its first written request. Supplier shall furnish to Gibson Innovations any information required to enable



Gibson Innovations to comply with such laws, rules, and regulations in its use of the Goods and Services. Supplier agrees that, upon request of Gibson Innovations, it shall register and use BOMcheck (www.bomcheck.net) to make substance compliance declarations including ROHS, REACH and other applicable regulatory requirements by making declarations in BOMcheck to fully comply with the Gibson Innovations RSL, unless otherwise agreed with Gibson Innovations;

- (f) it will also adhere to future RSL changes following notification from BOMcheck or other non-registered correspondence and is and will be fully compliant with the updated Gibson Innovations RSL within 3 months of receiving the notification, unless otherwise agreed with Gibson Innovations. Gibson Innovations may reject deliveries that do not comply with these requirements.
- (g) the Goods will be accompanied by written and detailed specifications of the composition and characteristics of the Goods, to enable Gibson Innovations to transport, store, process, use and dispose of such Goods safely and in compliance with law.
- (h) all Goods do not violate or infringe any third party domestic or foreign patent, copyright (including portrait rights and moral rights), trade secret, trademark or other intellectual property rights.

9.2. These warranties are not exhaustive and shall not be deemed to exclude any warranties set by law, Supplier's standard warranties or other rights or warranties which Gibson Innovations may be entitled to. These warranties shall survive any delivery, inspection, acceptance, payment or resale of the Goods, and shall extend to Gibson Innovations and its customers. Acceptance of, or payment for, all or any part of the Goods or Services furnished under the Agreement shall not be deemed to be a waiver of Gibson Innovations' right to cancel or return or reject all or any part thereof because of failure to conform to order or by reason of defects, latent or patent, or other breach of warranties, or to make any claim for damages, including manufacturing costs and loss of profits or other special damages incurred by Gibson Innovations.

9.3. Without prejudice to any other rights accruing under the Agreement or law, the warranties set forth in Article 9.1 will subsist for a period of thirty-six (36) months from the date of delivery as per Clause 4.2, or such other period as agreed in the Agreement (the "Warranty Term"). Goods repaired or replaced within the Warranty Term are warranted for the remainder of the original Warranty Term of said Goods, or twelve (12) months following the delivery date of such repaired or replaced Goods, whichever is longer.

## 10. Open Source Software Warranty

Unless the inclusion of same is specifically authorized in writing by duly authorized officers of Gibson Innovations and unless otherwise stated in the Agreement, Supplier represents and warrants that the Goods do not include any portion of any Open Source Software. As used herein, "Open Source Software" shall mean:

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- (a) any software that requires as a condition of use, modification and/or distribution of such software, that such software: (i) be disclosed or distributed in source code form; (ii) be licensed for the purpose of making derivative works; (iii) may only be redistributed free from enforceable intellectual property rights; and/or
- (b) any software that contains, is derived from, or statically or dynamically links to, any software specified under 10(a).

## 11. Non-conformity of Goods or Services

11.1. If any Goods or Services are defective or otherwise do not conform to the requirements of the Agreement, Gibson Innovations shall notify Supplier and may, without prejudice to any other right or remedy available to it under the Agreement or at law, at its sole discretion:

- (a) claim a full refund of the price paid to Supplier; or
- (b) require Supplier promptly to remedy the non-conformance or to replace the nonconforming Goods with Goods meeting the specifications.

11.2. Supplier shall bear all cost of repair, replacement and transportation of the nonconforming Goods, and shall reimburse Gibson Innovations in respect of all costs and expenses (including, without limitation, inspection, handling and storage costs) reasonably incurred by Gibson Innovations in connection therewith.

11.3. Risk in relation to the nonconforming Goods shall pass to Supplier upon the date of notification thereof.

## 12. Ownership and Intellectual Property

12.1. All machinery, tools, drawings, specifications, raw materials and any other property or materials furnished to Supplier by or for Gibson Innovations, or paid for by Gibson Innovations, for use in the performance of the Agreement, shall be and remain the sole exclusive property of Gibson Innovations and shall not be furnished to any third party without Gibson Innovations' prior written consent, and all information with respect thereto shall be confidential and proprietary information of Gibson Innovations. In addition, any and all of the foregoing shall be used solely for the purpose of fulfilling orders from Gibson Innovations, shall be marked as owned by Gibson Innovations, shall be held at Supplier's risk, shall be kept in good condition and, if necessary, shall be replaced by Supplier at Supplier's expense, shall be subject to periodic inventory check by Supplier as reasonably requested from time to time by Gibson Innovations, and shall be returned promptly upon Gibson Innovations' first



request. Except as otherwise expressly agreed in writing, Supplier agrees to furnish at its own expense all machinery, tools, and raw materials necessary to perform its obligations under the Agreement.

12.2. Supplier represents and warrants to Gibson Innovations that the Goods and Services do not and shall not, alone or in any combination, infringe or violate any patent, trademark, copyright (including portrait rights and moral rights), trade name, trade secret, license or other proprietary right of any other party (including Supplier's employees and subcontractors), and (ii) that it holds all rights, title and interest necessary to license to Gibson Innovations any intellectual property right (including patents, trademarks, copyrights, trade names, trade secret, licenses or other proprietary right) of every component of the Goods and/or Services provided to Gibson Innovations, as a whole or as integrated part of another Good/Service, including but not limited to machinery, tools, drawings, designs, software, demos, moulds, specifications or pieces.

12.3. Gibson Innovations shall retain all rights in any samples, data, works, materials and intellectual and other property provided by Gibson Innovations to Supplier. All rights in and titles to deliverables (including future deliverables) and other data, reports, works, inventions, know-how, software, improvements, designs, devices, apparatus, practices, processes, methods, drafts, prototypes, products and other work product or intermediate versions thereof produced or acquired by Supplier, its personnel or its agents for Gibson Innovations under the Agreement (the "Work Product") shall become Gibson Innovations' property. Supplier shall execute and deliver any documents and do such things as may be necessary or desirable in order to carry into effect the provisions of this Clause 12.3.

12.4. Supplier shall not have any right, title or interest in or to any of Gibson Innovations' samples, data, works, materials, trademarks and intellectual and other property nor shall the supply of Goods and/or Services alone or in any combination, or the supply of packaging containing Gibson Innovations' trademarks or trade names give Supplier any right or title to these or similar trademarks or trade names. Supplier shall not use any trademark, trade name or other indication in relation to the Goods or Services alone or in any combination without Gibson Innovations' prior written approval and any use of any trademark, trade name or other indication as authorized by Gibson Innovations shall be strictly in accordance with the instructions of and for the purposes specified by Gibson Innovations.

12.5. Supplier shall not, without Gibson Innovations' prior written consent, publicly make any reference to Gibson Innovations, whether in press releases, advertisements, sales literature or otherwise.

### **13. Intellectual Property Indemnification**

13.1. Supplier shall indemnify and hold harmless Gibson Innovations, its Affiliates, agents and employees and any person selling or using any of Gibson Innovations' products in respect of any and all claims, damages, costs and





expenses (including but not limited to loss of profit and reasonable attorneys' fees) in connection with any third party claim that any of the Goods or Services alone or in any combination or their use infringes any patent, trademark, copyright (including portrait rights and moral rights), trade name, trade secret, license or other proprietary right of any other party or any intellectual property right, or, if so directed by Gibson Innovations, shall defend any such claim at Supplier's own expense.

13.2. Gibson Innovations shall give Supplier prompt written notice of any such claim, provided, however, any delay in notice shall not relieve Supplier of its obligations hereunder except to the extent it is prejudiced by such delay. Supplier shall provide all assistance in connection with any such claim as Gibson Innovations may reasonably require.

13.3. If any Goods or Services alone or in any combination, supplied under the Agreement are held to constitute an infringement or if their use is enjoined, Supplier shall, as directed by Gibson Innovations, but at its own expense: either

- (a) procure for Gibson Innovations or customers the right to continue using the Goods or Services alone or in any combination; or
- (b) replace or modify the Goods or Services alone or in any combination with a functional, non- infringing equivalent.

13.4. If Supplier is unable either to procure for Gibson Innovations the right to continue to use the Goods or Services alone or in any combination or to replace or modify the Goods or Services alone or in any combination in accordance with the above, Gibson Innovations may terminate the Agreement and upon such termination, Supplier shall reimburse to Gibson Innovations the price paid, without prejudice to Supplier's obligation to indemnify Gibson Innovations as set forth herein.

#### 14. **Indemnification**

Supplier shall indemnify and hold harmless Gibson Innovations, its Affiliates, agents and employees and anyone selling or using any of Gibson Innovations' products, from and against all suits, actions, legal or administrative proceedings, claims, demands, damages, judgments, liabilities, interest, attorneys' fees, costs and expenses of whatsoever kind or nature (including but not limited to special, indirect, incidental, consequential damages), whether arising before or after completion of the delivery of the Goods or performance of the Services covered by the Agreement, in any manner caused or claimed to be caused by the acts, omissions, faults, breach of express or implied warranty, breach of any of the provisions of this Agreement, or negligence of Supplier, or of anyone



acting under its direction or control or on its behalf, in connection with Goods or Services furnished by Supplier to Gibson Innovations under the Agreement.

## 15. Compliance with Laws

Supplier shall at all times comply with all laws, rules, regulations, and ordinances applicable to the Agreement, including, but not limited to, all fair labor, equal opportunity, and environmental compliance laws, rules, regulations, and ordinances. Supplier shall furnish to Gibson Innovations any information required to enable Gibson Innovations to comply with any applicable laws, rules, and regulations in its use of the Goods and Services. If Supplier is a person or legal entity doing business in the United States, and the Goods and/or Services are sold to Gibson Innovations under federal contract or subcontract, all applicable procurement regulations required by federal statute or regulation to be inserted in contracts or subcontracts are hereby incorporated by reference. Additionally, if Supplier is a person or legal entity doing business in the United States, the Equal Employment Opportunity Clauses set forth in 41 Code of Federal Regulations, Chapters 60-1.4, 60-250.5, and 60-741.5, are hereby incorporated by reference.

## 16. Personal Data

16.1. Where Supplier in the performance of the Agreement processes personal data (as defined by applicable law) of Gibson Innovations' employees, contractors or business partners (hereafter collectively referred to as "Personal Data"), then Supplier agrees and warrants that Supplier shall:

- (a) comply with all privacy and data protection law and regulations applicable to its Services.
- (b) process Personal Data only insofar necessary for the Services rendered to Gibson Innovations and as permitted or required by law; (c) keep the Personal Data confidential;
- (d) take appropriate technical, physical and organizational security measures to protect the Personal Data against loss, unauthorized or unlawful processing; and
- (e) promptly inform Gibson Innovations of any actual or suspected security incident involving the Personal Data;
- (f) insofar Supplier is located in the United States of America and receives or processes Personal Data of a Gibson Innovations ordering entity located in one of the Member States of the European Union, abide by the Safe Harbor Privacy Principles of the US Department of Commerce, as may be amended from time to time, excluding the Notice, Choice and Enforcement provisions contained herein.



16.2. To the extent that Supplier allows a (sub)contractor to process the Personal Data, Supplier shall ensure that it binds such (sub)contractor to obligations which provide a similar level of protection as this Clause 16.

16.3. Supplier shall, upon the termination of the Agreement, securely erase or destroy all records or documents containing the Personal Data. Supplier accepts and confirms that it is solely liable for any unauthorized or illegal processing or loss of the Personal Data, if Supplier fails to erase or destroy the Personal Data upon termination of the Agreement.

16.4 Supplier shall indemnify and hold harmless Gibson Innovations, their officers, agents and personnel from any damages, fines, losses and claims arising out of a breach of Clauses 16.1, 16.2 and 16.3.

## **17. Export Controls Compliance**

17.1. Supplier agrees and warrants that it will comply with all applicable international and national export control laws and regulations and it will not export or re-export, directly or indirectly, any information, goods, software and/or technology to any country for which the European Union or the United States of America or any other country, at the time of export or re-export, requires an export license or other governmental approval, without first obtaining such license or approval.

17.2. Supplier agrees to inform Gibson Innovations in writing whether or not the supplied information, goods, software and/or technology is US controlled and/or controlled under the export control laws of its own country, and if so, Supplier will inform Gibson Innovations about the extent of the restrictions (including but not limited to export control legal jurisdiction, export control classification numbers, export control licenses and/or CCATS as applicable).

17.3. Supplier shall obtain all international and national export licenses or similar permits required under all applicable export control laws and regulations and shall provide Gibson Innovations with all information required to enable Gibson Innovations and its customers to comply with such laws and regulations.

17.4. Supplier agrees to indemnify and hold Gibson Innovations harmless from any claims, liabilities, penalties, forfeitures, and associated costs and expenses (including attorney's fees), which Gibson Innovations may incur due to Supplier's noncompliance with applicable laws, rules and regulations. Supplier agrees to notify Gibson Innovations promptly of Supplier's receipt of any such notice of a violation of any export control related law, rule or regulation, which may affect Gibson Innovations.



## 18. Customs Compliance

18.1. On an annual basis, or upon earlier request of Gibson Innovations, Supplier shall provide Gibson Innovations with a supplier declaration of origin in relation to the Goods sufficient to satisfy the requirements of (i) the customs authorities of the country of receipt, and (ii) any applicable export licensing regulations, including those of the United States. In particular, the declaration should explicitly mention whether the Goods, or part thereof, have been produced in the United States or originate in the United States. Dual-use Goods, or otherwise classified Goods supplied by Supplier should be clearly identified by their classification code.

18.2. For all Goods that qualify for application of Regional or Free Trade Agreements, General Systems of Preference or other preferential arrangements, it is the responsibility of the Supplier to deliver products with the appropriate documentary evidence (e.g. Supplier's declaration, preferential origin certificate/invoice declaration) to confirm the preferential origin status. 18.3. Supplier shall mark every Good (or the Good's container if there is no room on the Good itself) with the country of origin. Supplier shall, in marking the Goods, comply with the requirements of the customs authorities of the country of receipt. If any Goods are imported, Supplier shall when possible allow Gibson Innovations to be the importer of record. If Gibson Innovations is not the importer of record and Supplier obtains duty drawback rights to the Goods, Supplier shall, upon Gibson Innovations request, provide Gibson Innovations with documents required by the customs authorities of the country of receipt to prove importation and to transfer duty drawback rights to Gibson Innovations.

## 19. Limitation of Liability

19.1. Neither Party excludes or limits its liability for death or personal injury arising from its own negligence, fraud, or for any liability that cannot by law be excluded or limited.

19.2 Subject to Clause 19.1, IN NO EVENT SHALL GIBSON INNOVATIONS BE LIABLE UNDER ANY THEORY OF LIABILITY, FOR INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, WHICH INCLUDES WITHOUT LIMITATION DAMAGES FOR LOST PROFITS OR REVENUES, LOST BUSINESS OPPORTUNITIES, LOSS OF IMAGE OR LOST DATA, EVEN IF GIBSON INNOVATIONS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES and in no event shall Gibson Innovations be liable to Supplier, its successors or assigns for damages in excess of the amount due to Supplier for complete performance under the Agreement, less any amounts already paid to Supplier by Gibson Innovations.



## 20. Force Majeure

In the event that Supplier is prevented from performing any of its obligations under the Agreement for reason of force majeure (being an event unforeseeable and beyond the control of Supplier) and Supplier has provided sufficient proof for the existence of the force majeure, the performance of the obligation concerned shall be suspended for the duration of the force majeure. Gibson Innovations shall be entitled to terminate the Agreement with immediate effect by written notice to Supplier, immediately if the context of the non-performance justifies immediate termination, and in any event if the circumstance constituting force majeure endures for more than thirty (30) days and, upon such notice, Supplier shall not be entitled to any form of compensation in relation to the termination. Force majeure on the part of Supplier shall in any event not include shortage of personnel or production materials or resources, strikes, not officially declared epidemic or pandemic, breach of contract by third parties contracted by Supplier, financial problems of Supplier, nor the inability of Supplier to secure the necessary licenses in respect of software to be supplied or the necessary legal or administrative permits or authorizations in relation to the Goods or Services to be supplied.

## 21. Suspension and Termination

21.1. Without prejudice to any other right or remedy available to Gibson Innovations under the Agreement or at law, Gibson Innovations shall be entitled at its discretion to suspend the performance of its obligations under the Agreement in whole or in part or to terminate the Agreement in whole or in part by means of written notice to Supplier in the event that:

- (a) Supplier files a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, assignment for the benefit of creditors or similar proceeding;
- (b) Supplier becomes the subject of a petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation, assignment for the benefit of creditors or similar proceeding
- (c) Supplier ceases or threatens to cease to carry on business in the ordinary course;
- (d) Supplier breaches any of its obligations under the Agreement or Gibson Innovations's, in its reasonable discretion, determines that Supplier cannot or shall not deliver the Goods or perform the Services as required, or
- (e) Supplier fails to provide adequate assurance of performance following request by Gibson Innovations.

21.2. Gibson Innovations shall not be liable to Supplier by virtue of such termination.



## 22. Confidentiality

22.1. Supplier shall treat all information provided by or on behalf of Gibson Innovations or generated by Supplier for Gibson Innovations under the Agreement as confidential. All such information shall be used by Supplier only for the purposes of the Agreement. Supplier shall protect Gibson Innovations's information using not less than the same degree of care with which it treats its own confidential information, but at all times shall use at least reasonable care. All such information shall remain the property of Gibson Innovations and Supplier shall, upon Gibson Innovations's demand, promptly return to Gibson Innovations all such information and shall not retain any copy thereof.

22.2. The existence and the contents of the Agreement shall be treated as confidential by Supplier.

## 23. Miscellaneous

23.1. Supplier will maintain comprehensive or commercial general liability insurance (including products liability, property damage and personal injury liability, and any other liability as may be requested by Gibson Innovations) with, unless otherwise agreed by Gibson Innovations, a minimum limit of five million Euro for claims of bodily injury, including death, and any other damages that may arise from use of the Goods or Services or acts or omissions of Supplier under the Agreement. Such insurance policies will be written with appropriately licensed and financially responsible insurers. Supplier shall inform Gibson Innovations of any cancellation or reduction in coverage with a minimum of 30 days prior written notice. Certificates of insurance evidencing the required coverage and limits and insurance policies shall be furnished to Gibson Innovations upon Gibson Innovations' request.

23.2. Supplier shall provide Goods and render Services hereunder as an independent contractor and not as an agent of Gibson Innovations and nothing contained in the Agreement is intended to create a partnership, joint venture or employment relationship between the parties irrespective of the extent of economic dependency of Supplier on Gibson Innovations.

23.3. Supplier shall not subcontract, transfer, pledge or assign any of its rights or obligations under the Agreement without the prior written consent of Gibson Innovations. Any such pre-approved subcontracting, transfer, pledge or assignment shall not release Supplier from its obligations under the Agreement.

23.4. The rights and remedies reserved to Gibson Innovations are cumulative and are in addition to any other or future rights and remedies available under the Agreement, at law or in equity.





23.5. Supplier shall provide Gibson Innovations written notice of all product discontinuances twelve (12) months prior to the last order date, including as a minimum Gibson Innovations part numbers, substitutions, and last order and shipment dates.

23.6. Neither the failure nor the delay of Gibson Innovations to enforce any provision of the Agreement shall constitute a waiver of such provision or of the right of Gibson Innovations to enforce each and every provision of the Agreement. No course or prior dealings between the parties and no usage of the trade shall be relevant to determine the meaning of the Agreement. No waiver, consent, modification or amendment of the terms of the Agreement shall be binding unless made in a writing specifically referring to the Agreement signed by Gibson Innovations and Supplier.

23.7. In the event that any provision(s) of these General Conditions of Purchase and of the Agreement shall be held invalid, unlawful or unenforceable by a court of competent jurisdiction or by any future legislative or administrative action, such holding or action shall not negate the validity or enforceability of any other provisions of the Agreement. Any such provision held invalid, unlawful or unenforceable, shall be substituted by a provision of similar import reflecting the original intent of the clause to the extent permissible under applicable law.

23.8. All terms and conditions of the Agreement which are destined, whether express or implied, to survive the termination or the expiration of the Agreement, including but not limited to Warranty, Intellectual Property, Confidentiality and Personal Data, shall survive.

23.9. The Agreement shall be governed by and construed in accordance with the laws of the country or state in which the Gibson Innovations ordering entity is located, as applicable.

23.10. Supplier and Gibson Innovations each consents to the exclusive jurisdiction of the competent courts in (i) the country or state in which the Gibson Innovations ordering entity is located; or (ii), at the option of Gibson Innovations, the jurisdiction of the entity of Supplier to which the order was placed, or (iii), at the option of Gibson Innovations, for arbitration in which case Clause 23.11 applies. Supplier hereby waives all defenses of lack of personal jurisdiction and forum non-convenience.

23.11. If so chosen by Gibson Innovations in accordance with Clause 23.10, any dispute, controversy or claim arising out of or in connection with this Agreement, or their breach, termination or invalidity shall be finally settled solely under the International Chamber of Commerce Rules of arbitration, which Supplier and Gibson Innovations declare to be known to them. Supplier and Gibson Innovations agree that: (i) the appointing authority shall be the ICC-International Chamber of Commerce of Paris, France; (ii) there shall be three (3) arbitrators; (iii) arbitration shall take place in the jurisdiction of the Gibson Innovations ordering entity or, at the option of Gibson Innovations, the jurisdiction of the Supplier's entity having received the order; (iv) the language to be used in the



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arbitration proceedings shall be English; and (v) the material laws to be applied by the arbitrators shall be the laws as determined under Clause 23.9.

23.12. The United Nations Convention on International Sale of Goods shall not apply to the Agreement.