



SALES TERMS AND CONDITIONS OF GIBSON INNOVATIONS LIMITED

1. OFFER, CONFIRMATION OR AGREEMENT

These terms and conditions of sale of Gibson Innovations Limited (the "Terms and Conditions") apply to and form an integral part of all quotations and offers made by Gibson Innovations Limited or any entity controlled by or under common control with Gibson Innovations Limited and contains Gibson Innovations in its entity name ("Gibson Innovations"), all acceptances, acknowledgements and confirmations by Gibson Innovations of any orders by Buyer and any agreements ("Agreements") regarding the sale by Gibson Innovations and purchase by Buyer of goods and services ("Products"), unless and to the extent Gibson Innovations explicitly agrees otherwise.

Any terms and conditions set forth on any document or documents issued by Buyer either before or after issuance of any document by Gibson Innovations setting forth or referring to these Terms and Conditions are hereby explicitly rejected and disregarded by Gibson Innovations, and any such terms shall be wholly inapplicable to any sale made by Gibson Innovations to Buyer and shall not be binding in any way on Gibson Innovations.

Gibson Innovations' offers are open for acceptance within the period stated by Gibson Innovations in the offer or, when no period is stated, within thirty (30) days from the date of the offer, but any offer may be withdrawn or revoked by Gibson Innovations at any time prior to the receipt by Gibson Innovations of Buyer's acceptance thereof.

2. PRICING

Prices in any offer, confirmation or Agreement are in Hong Kong Dollars, based on delivery Ex-Works (INCOTERMS latest version) Gibson Innovations' manufacturing facility or other facility designated by Gibson Innovations, unless agreed otherwise in writing between Buyer and Gibson Innovations and do not include any taxes, duties or similar levies, now or hereafter enacted, applicable to the Products. Gibson Innovations will add taxes, duties and similar levies to the sales price where Gibson Innovations is required or enabled by law to pay or collect them and these will be paid by Buyer together with the price.



3. PAYMENT

(a) Unless agreed otherwise between Gibson Innovations and Buyer in writing, Gibson Innovations may invoice Buyer for the price of the Products delivered upon delivery of the Products in accordance with the applicable INCOTERM. Net payment is due within thirty (30) days of date of invoice unless agreed otherwise between Gibson Innovations and Buyer in writing. All payments shall be made to the designated Gibson Innovations address. If deliveries are made in installments, each installment may be separately invoiced and shall be paid for when due. No discount is allowed for early payment unless agreed to in writing by Gibson Innovations. In addition to any other rights and remedies Gibson Innovations may have under applicable law, interest will accrue on all late payments at the rate of eighteen percent (18%) per annum or the applicable statutory rate, whichever is higher and to the extent permitted by applicable law, from the due date until payment in full.

(b) All deliveries of Products agreed to by Gibson Innovations shall at all times be subject to credit approval of Gibson Innovations. If, in Gibson Innovations' judgment, Buyer's financial condition at any time does not justify production or delivery of Products on the above payment terms, Gibson Innovations may require full or partial payment in advance or other payment terms as a condition to delivery, and Gibson Innovations may suspend, delay or cancel any credit, delivery or any other performance by Gibson Innovations.

(c) In the event of any default by Buyer in the payment of any fees or charges due, or any other default by Buyer, Gibson Innovations shall have the right to refuse performance and/or delivery of any Products until payments are brought current and Gibson Innovations may suspend, delay or cancel any credit, delivery or any other performance by Gibson Innovations. Such right shall be in addition to, and not in lieu of, any other rights and remedies available under the Agreement or at law.

4. DELIVERY AND QUANTITIES

(a) Products shall be delivered Ex-Works (INCOTERMS latest version) as designated by Gibson Innovations, unless otherwise agreed in writing. Delivery dates communicated or acknowledged by Gibson Innovations are approximate only, and Gibson Innovations shall not be liable for, nor shall Gibson Innovations be in breach of its obligations to Buyer, for any delivery made within a reasonable time before or after the communicated delivery date. Gibson Innovations agrees to use commercially reasonable efforts to meet the delivery dates communicated or acknowledged by it on the condition that Buyer provides all necessary order and delivery information sufficiently prior to the such delivery date.

(b) Buyer will give Gibson Innovations written notice of failure to deliver and thirty (30) days within which to cure. If Gibson Innovations does not deliver within such thirty (30) day period, Buyer's sole and exclusive remedy is to cancel the affected and undelivered portions of the Agreement.



(c) Title in the Products shall pass to Buyer upon payment in full of the purchase price in respect thereof. Risk of loss in the Products shall pass to Buyer upon Gibson Innovations' delivery in accordance with the applicable INCOTERMS.

(d) If Buyer fails to take delivery of Products ordered, then Gibson Innovations may deliver the Products in consignment at Buyer's cost.

(e) In the event Gibson Innovations' production is curtailed for any reason, Gibson Innovations shall have the right to allocate its available production and Products, in its sole discretion, among its various customers and as a result may sell and deliver to Buyer fewer Products than specified in the Agreement, as the case may be.

5. FORCE MAJEURE

Gibson Innovations shall not be liable for any failure or delay in performance if: (i) such failure or delay results from interruptions in the Product manufacturing process; or (ii) such failure or delay is caused by Force Majeure as defined below or by law.

In case of such a failure as set forth above, the performance of the relevant part(s) of the Agreement will be suspended for the period such failure continues, without Gibson Innovations being responsible or liable to Buyer for any damage resulting therefrom.

The expression "Force Majeure" shall mean and include any circumstances or occurrences beyond Gibson Innovations' reasonable control - whether or not foreseeable at the time of the Agreement - as a result of which Gibson Innovations cannot reasonably be required to execute its obligations including force majeure and/or default by one of Gibson Innovations' suppliers. In the event that the Force Majeure extends for a period of three (3) consecutive months (or in the event that the delay is reasonably expected by Gibson Innovations to extend for a period of three (3) consecutive months), Gibson Innovations shall be entitled to cancel all or any part of the Agreement without any liability towards Buyer.

6. RIGHTS IN SOFTWARE, DOCUMENTATION AND INTELLECTUAL PROPERTY

Subject to the provisions set forth herein, the sale by Gibson Innovations of a Product implies the non-exclusive and non-transferable limited license to Buyer under any of Gibson Innovations' and/or its affiliates' intellectual property rights ("Gibson Innovations' IPR") in the territory to use and resell Products as sold by Gibson Innovations to Buyer.

To the extent that software and/or documentation is embedded in or delivered with a Product, the sale of such Product shall not constitute the transfer of ownership rights or title in such software and/or documentation to Buyer, but, subject to the provisions set forth herein, shall only imply a non-exclusive and non-transferable license to Buyer under Gibson Innovations intellectual property rights to

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use such software and/or documentation in conjunction with and as embedded in or delivered with the Products as supplied by Gibson Innovations in the territory.

Buyer shall not: (a) modify, adapt, alter, translate, or create derivative works from any software residing in or provided by Gibson Innovations in conjunction with any Products; (b) assign, sublicense, lease, rent, loan, transfer, disclose, or otherwise make available such software; (c) merge or incorporate such software with or into any other software; or (d) reverse assemble, decompile, disassemble, or otherwise attempt to derive the source code for such software without written authorization from Gibson Innovations except as explicitly allowed under applicable law. Buyer shall reproduce, without any amendments or changes thereto, any proprietary rights legends of Gibson Innovations and/or its affiliates or its third party suppliers in any software or documentation provided by Gibson Innovations. License terms of third parties may apply.

7. LIMITED WARRANTY AND DISCLAIMER

(a) Gibson Innovations warrants that under normal use in accordance with the applicable user manual the Products, (excluding any software that is not embedded in a Product by Gibson Innovations) shall, at the time of delivery to Buyer and for a period of twelve (12) months from the date of delivery (or such other period as may be agreed upon in writing by the parties), be free from defects in material or workmanship and shall substantially conform to Gibson Innovations' specifications for such Product, or such other specifications as Gibson Innovations has agreed to in writing, as applicable. Gibson Innovations' sole and exclusive obligation, and Buyer's sole and exclusive right, with respect to claims under this warranty shall be limited, at Gibson Innovations' option, either to the replacement or repair of a defective or non-conforming Product or to an appropriate credit for the purchase price thereof. Gibson Innovations will have a reasonable time to repair, replace or credit. The non-conforming or defective Products shall become Gibson Innovations' property as soon as they have been replaced or credited.

(b) Buyer may ship Products returned under warranty to Gibson Innovations' designated facility only in conformance with Gibson Innovations' then-current return material authorization policy. Where a warranty claim is justified, Gibson Innovations will pay for freight expenses. Buyer shall pay for returned Products that are not found to be defective or non-conforming together with the freight, testing and handling costs associated therewith.

(c) Notwithstanding the foregoing, Gibson Innovations shall have no obligations under warranty if the alleged defect or non-conformance is found to have occurred as a result of environmental or stress testing, misuse, use other than as set forth in the user manual, neglect, improper installation or accident, or as a result of improper repair, alteration, modification, storage, transportation or improper handling.

(d) The express warranty granted above shall extend directly to Buyer and not to Buyer's customers, agents or representatives and is in lieu of all other warranties, whether express or implied, including without limitation any implied warranties of fitness for a particular purpose, merchantability, or non-
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infringement of intellectual property rights. All other warranties are hereby specifically disclaimed by Gibson Innovations.

(e) Subject to the exclusions and limitations set forth in Section 9 of the Terms and Conditions, the foregoing states the entire liability of Gibson Innovations in connection with defective or non-conforming Products supplied hereunder to the extent permitted by law.

8. INTELLECTUAL PROPERTY RIGHTS INDEMNITY

(a) Gibson Innovations, at its sole expense, shall: (i) defend any legal proceeding brought by a third party against Buyer to the extent that the proceeding includes a claim that any Product as furnished by Gibson Innovations under an Agreement directly infringes the claimant's patent, copyright, trademark, or trade secret; and (ii) hold Buyer harmless against damages and costs awarded by final judgment in such proceeding to the extent directly and solely attributable to such infringement.

(b) Gibson Innovations shall have no obligation or liability to Buyer under Section (a) (1) if Gibson Innovations is not: (i) promptly notified in writing of any such claim; (ii) given the sole right to control and direct the investigation, preparation, defense and settlement of such claim, including the selection of counsel; and (iii) given full reasonable assistance and cooperation by Buyer in such investigation, preparation, settlement and defense; (2) if the claim is made after a period of three (3) years from the date of delivery of the Product.

(c) If any Product is, or in Gibson Innovations' opinion is likely to become, the subject of a claim of infringement as referred to under Section 8 (a) above, Gibson Innovations shall have the right, without obligation and at its sole option, to: (i) procure for Buyer the right to continue to use or sell the Product; (ii) provide replacement Product, or (iii) modify the Product in such a way as to make the modified Product non-infringing; or (iv) terminate any Agreement to the extent related to such Product.

(d) Subject to the exclusions and limitations set forth in Section 9 of the Terms and Conditions, the foregoing states Gibson Innovations' entire liability and obligation to Buyer and Buyer's sole remedy with respect to any actual or alleged infringement of any intellectual property rights or any other proprietary rights of any kind.

9. LIMITATION OF LIABILITY

(a) GIBSON INNOVATIONS SHALL NOT BE LIABLE FOR ANY LOST PROFITS, LOST SAVINGS, LOSS OF REPUTATION, LOSS OF GOODWILL, INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT OR THE SALE OF ANY PRODUCTS OR SERVICES BY GIBSON INNOVATIONS OR THE USE THEREOF WHETHER OR NOT SUCH DAMAGES ARE BASED ON TORT, WARRANTY, CONTRACT OR ANY OTHER LEGAL



THEORY – EVEN IF GIBSON INNOVATIONS HAS BEEN ADVISED, OR IS AWARE, OF THE POSSIBILITY OF SUCH DAMAGES.

GIBSON INNOVATIONS' AGGREGATE AND CUMULATIVE LIABILITY TOWARDS BUYER UNDER ANY AGREEMENT SHALL NOT EXCEED AN AMOUNT OF TEN PERCENT (10%) OF THE RELATED AGREEMENT.

(b) Any Buyer's claim for damages must be brought by Buyer within ninety (90) days of the date of the event giving rise to any such claim, and any lawsuit relative to any such claim must be filed within one (1) year of the date of the claim. Any claims that have been brought or filed not in accordance with the preceding sentence are null and void.

(c) The limitations and exclusions set forth above in this Section 9 shall apply only to the extent permitted by applicable mandatory law.

10. CONFIDENTIALITY

Buyer acknowledges that all technical, commercial and financial data disclosed to Buyer by Gibson Innovations and/or its affiliates is the confidential information of Gibson Innovations and/or its affiliates. Buyer shall not disclose any such confidential information to any third party and shall not use any such confidential information for any purpose other than as agreed by the parties and in conformance with the purchase transaction contemplated herein.

11. EXPORT/IMPORT CONTROLS

If the delivery of Products under the Agreement is subject to the granting of an export or import license by a government and/or any governmental authority under any applicable law or regulation, or otherwise restricted or prohibited due to export or import control laws or regulations, Gibson Innovations may suspend its obligations and Buyer's rights regarding such delivery until such license is granted or for the duration of such restriction and/or prohibition, respectively, and Gibson Innovations may even terminate the Agreement, without incurring any liability towards Buyer.

Furthermore, if an end-user statement is required, Gibson Innovations shall inform Buyer immediately thereof and Buyer shall provide Gibson Innovations with such document upon Gibson Innovations' first written request; if an import license is required, Buyer shall inform Gibson Innovations immediately thereof and Buyer shall provide Gibson Innovations with such document as soon as it is available. By accepting Gibson Innovations' offer, entering into any Agreement and/or accepting any Products, Buyer agrees that it will not deal with the Products and/or documentation related thereto in violation of any applicable export or import control laws and regulations.

12. ASSIGNMENT AND SETOFF



Buyer shall not assign any rights or obligations under the Agreement without the prior written consent of Gibson Innovations. Buyer shall have no right to withhold or reduce any payments or to offset existing and future claims against any payments due for Products sold under the Agreement or under any other agreement that Buyer may have with Gibson Innovations or any of its affiliates may have and agrees to pay the amounts hereunder regardless of any claimed offset which may be asserted by Buyer or on its behalf.

13. GOVERNING LAW AND FORUM

All offers, confirmations and Agreements are governed by and construed in accordance with the laws of Hong Kong. All disputes arising out of or in connection with any Agreement shall first be attempted by Buyer and Gibson Innovations to be settled through consultation and negotiation in good faith in a spirit of mutual cooperation. All disputes which cannot be resolved amicably shall be submitted to the exclusive jurisdiction of the courts of Hong Kong, provided that Gibson Innovations shall always be permitted to bring any action or proceedings against Buyer in any other court of competent jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to any offer, confirmation or Agreement. Nothing in this Section 13 shall be construed or interpreted as a limitation on either Gibson Innovations' or Buyer's right under applicable law for injunctive or other equitable relief or to take any action to safeguard its possibility to have recourse on the other party.

14. BREACH AND TERMINATION

Without prejudice to any rights or remedies Gibson Innovations may have under the Agreement or at law, Gibson Innovations may, by written notice to Buyer, terminate with immediate effect the Agreement or any part thereof without any liability whatsoever, if:

- (a) Buyer violates or breaches any of the provisions of the Agreement;
- (b) any proceedings in insolvency, bankruptcy (including reorganization) liquidation or winding up are instituted against Buyer, whether filed or instituted by Buyer, voluntary or involuntary, a trustee or receiver is appointed over Buyer, or any assignment is made for the benefit of creditors of Buyer.

Upon occurrence of any of the events referred to above, all payments to be made by Buyer under the Agreement shall become immediately due and payable.

In the event of cancellation, termination or expiration of an Agreement the terms and conditions destined to survive such cancellation, termination or expiration shall so survive.

15. MISCELLANEOUS

- (a) In the event that any provision(s) of these Terms and Conditions shall be held invalid or unenforceable by a court of competent jurisdiction or by any future legislative or administrative action,
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such holding or action shall not negate the validity or enforceability of any other provisions thereof. In the event that any provision of these Terms and Conditions shall finally be determined to be unlawful or unenforceable, such provision shall be deemed severed from these Terms and Conditions, but every other provision shall remain in full force and effect, and in substitution for any such provision held unlawful or unenforceable, there shall be substituted a provision of similar import reflecting the original intent of the clause to the extent permissible under applicable law.

(b) The failure on the part of either party to exercise, or any delay in exercising, any right or remedy arising from the Agreement shall not operate as a waiver thereof; nor shall any single or partial exercise of any right or remedy arising there from preclude any other or future exercise thereof or the exercise of any other right or remedy arising from the Agreement or from any related document or by law.