



General Terms and Conditions

Except as otherwise agreed by VIBRANT CORPORATION ("VIBRANT") in writing, these General Terms and Conditions ("General Terms and Conditions"), together with any specific conditions of sale set forth in VIBRANT's quotation, if applicable (the "Specific Terms and Conditions"), and the non-preprinted provisions on the face of Buyer's purchase order shall be the entire contract for sale (collectively, the "Contract").

1. PRICE

- All prices are in United States dollars. If pricing is dependent upon the number of parts tested, Buyer agrees to permit VIBRANT access on a monthly basis to Buyer's computer systems necessary to confirm the number of parts tested. Any and all changes and modifications requested by Buyer in connection with the Services not expressly priced in VIBRANT's quotation shall be made at the sole cost and expense of Buyer.

2. DELIVERY

- Delivery dates and times are approximate and based on (i) prompt receipt by VIBRANT of all information necessary to permit VIBRANT to proceed with work immediately and without interruption, including purchase order, (ii) Buyer's compliance with the payment terms, (iii) receipt of Buyer parts, if applicable, and (iv) prompt receipt by VIBRANT of all evidence VIBRANT may request that any required Export or Import License, as applicable, is in effect.
- If VIBRANT delivers one or more Systems to Buyer's facility for performance of Services, VIBRANT shall use commercially reasonable efforts to cause its System to perform the Services not later than fourteen (14) days after System failure, subject to Section 7.1 and any failures caused by the negligence or willful misconduct of Buyer or any of its employees or contractors.. Failure to perform the Services within that time period in the immediately preceding sentence shall result in liquidated damages owing from VIBRANT to Buyer in the amount of \$500.00 per day of such unexcused delay.
- VIBRANT shall determine the method and routing of all deliveries.

3. PAYMENT

- VIBRANT shall invoice Buyer monthly for Services, which shall be due and payable to VIBRANT's address as shown on its invoice within thirty (30) days from invoice date. In the event that any invoice is not paid when due, VIBRANT may either suspend deliveries or terminate this Contract. Interest shall accrue on all past-due payments at one and one-half percent (1.5%) per month. If Buyer elects to pay by credit card, Buyer shall pay an additional processing fee equal to two and one-half percent (2.5%) of the invoiced amount.

4. QUALITY CONTROL

- All quality control for Services shall comply with VIBRANT's normal quality control policies, procedures and practices. To the extent that Services are provided at Buyer's facility, Buyer shall be responsible for reporting immediately to VIBRANT of any damage or destruction to any equipment provided by VIBRANT used in connection with such Services. Buyer shall not modify any Systems or Licensed Software without VIBRANT's prior written authorization.

5. TAXES

- Unless expressly provided otherwise, Prices set forth in this Contract do not include sales, use, excise, gross receipts, export or similar taxes, which shall be the responsibility of Buyer.

6. PACKING, MARKING AND SHIPPING

- Systems and return of Buyer-owned parts shall be prepared, packed and shipped by or on behalf of VIBRANT in accordance with good commercial practices unless otherwise directed in the non-preprinted portion of the purchase order. A complete packing list shall be enclosed with

all shipments. Buyer agrees to reimburse VIBRANT for any costs for any non-standard packing, marking or shipping directions contained in Buyer's directions..

- Upon termination of Services, Buyer shall immediately prepare, pack and ship all Systems located at Buyer's facilities to VIBRANT FOB Destination in accordance with good commercial practices.
- All shipping costs and risk of loss during transportation of Systems shall be the responsibility of VIBRANT. All shipping costs and risk of loss during transportation of Buyer parts shall be the responsibility of Buyer. Buyer shall insure all shipments for their full replacement cost.

7. DELAYS

- VIBRANT shall not be liable for delays in performing its obligations, and VIBRANT's deadlines shall be extended, for any delay arising directly or indirectly from (i) acts of God, unforeseeable circumstances, acts (including delay or failure to act) of any governmental authority, war, riot, revolution, civil unrest, delay or defaults of common carriers, priorities, fires, strikes, sabotage or epidemics, or (ii) failure or curtailment due to causes beyond VIBRANT's reasonable control of VIBRANT's usual source of supply, labor, materials, components, facilities, or transportation, including any vendor's alleged infringement of third party intellectual property rights, or (iii) any other cause beyond VIBRANT's control.

8. TERMINATION

- Subject to Sections 8.2 and 15, an order may be terminated in whole or in part upon written notice by either party to the other party.
- In the event that VIBRANT has incurred expenses for construction or modification of Systems or development of custom application of Services to Buyer ("**Customization Costs**") in anticipation of the performance of this Contract and Buyer terminates this Contract before such Customization Costs have been fully amortized in VIBRANT's reasonable determination, Buyer agrees to pay to VIBRANT the unamortized Customization Costs.

9. CONFIDENTIALITY

- Each party agrees to comply with the terms of any nondisclosure or propriety information agreement between VIBRANT and Buyer and to comply with all proprietary information markings and restrictive legends applied to anything provided by one party to the other. Any other knowledge or information that Buyer shall have disclosed or may hereafter disclose to VIBRANT incident to any order hereunder shall not, unless specifically agreed upon in writing by VIBRANT, be deemed to be confidential or proprietary information and accordingly shall be acquired free from any restriction (other than a claim for patent infringement).

10. WARRANTY

- VIBRANT warrants to Buyer that Services provided hereunder will be provided in a good and workmanlike manner consistent with prevailing industry practices. VIBRANT's liability and Buyer's remedy under this warranty are limited to re-performance of defective Services consistent with the warranty contained herein; provided that written notice of the defective Services shall have been given by Buyer to VIBRANT within ten days of discovery. This warranty shall not apply to repair or replacement of Systems or Services necessitated by accident, disaster, improper or inadequate maintenance, unauthorized modification or repairs, or electrical or physical misuse, misapplication or abuse. This warranty, as it relates to Licensed Software, shall apply only to the media on which the Licensed Software is recorded.
- VIBRANT's warranty shall be as stated herein in Section 10.1 and shall be in lieu of all other warranties, whether oral, written, express, implied or statutory. VIBRANT's warranty obligations, and Buyer's remedies thereunder, are solely and exclusively as stated herein. **ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED ARE HEREBY DISCLAIMED.**



INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

11. LIMITATION OF LIABILITY

- The total liability of VIBRANT, and any other agent, division, subsidiary, parent corporation, subcontractor or supplier of VIBRANT (collectively, “**VIBRANT Indemnified Party**”), on any claim, whether in contract, warranty, tort (including negligence or patent infringement) or otherwise, arising out of, connected with, or resulting from the performance of nonperformance of this Contract or from the manufacture, sale, delivery, resale, repair, replacement or use of any System or the furnishing of any service, shall not exceed the price allocable to the same Services provided during the immediately preceding six-month period which gave rise to the claim.
- In no event, whether as a result of breach of contract, warranty, tort (including negligence or patent infringement) or otherwise, shall any VIBRANT Indemnified Party be liable for any special, consequential, incidental, indirect, punitive or exemplary damages.

12. RIGHTS IN SYSTEMS, LICENSED SOFTWARE AND DATA

- VIBRANT shall retain exclusive ownership and rights to its Systems, Licensed Software, data, intellectual property rights, including copyrights, trademarks, patents and trade secrets, schematics, logic diagrams, and manufacturing and inspection processes and procedures, whether developed by VIBRANT entirely at VIBRANT’s expense or modifications to VIBRANT’s Systems funded by Buyer purchase orders. VIBRANT shall retain ownership and does not convey, nor does Buyer or Buyer’s final customer obtain any right, title, or interest in Licensed Software, specifications or data furnished or developed by VIBRANT either prior to or in the performance of this Contract. Schematics and source code for Systems or Services shall not be furnished. VIBRANT grants to Buyer a nonexclusive license to use Licensed Software with, and only with, Systems supplied by VIBRANT hereunder and only for purposes of the Services. This license is nontransferable and personal to Buyer, both parties agreeing not to disclose the Licensed Software to third parties or otherwise make it available for use by third parties, except as provided hereinafter. Buyer’s right to use Licensed Software owned by any third party is subject to all limitations contained in the license granted by the third party to VIBRANT.
- Buyer agrees not to copy or reproduce Licensed Software supplied hereunder without VIBRANT’s prior written authorization which VIBRANT may withhold or delay in its absolute discretion, and in making any authorized copy or reproduction, both parties agree to retain any statutory copyright or other legal or proprietary notice on all copies and partial copies and portions thereof unless otherwise permitted by VIBRANT in writing.
- The software license granted herein shall continue for as long as VIBRANT is providing Services to Buyer; provided, however, that in the event Buyer breaches any of the obligations in this Contract or otherwise become in default hereunder, this license shall terminate immediately and Buyer shall immediately return all Licensed Software to VIBRANT or certify to its destruction. Such termination shall not relieve the Buyer of any of its obligations assumed prior to termination and shall not impair any right or remedies of VIBRANT accrued prior thereto, whether granted by this Contract or existing at law or in equity.

13. INTELLECTUAL PROPERTY INDEMNITY

- VIBRANT agrees that it will defend any suit or proceeding brought against Buyer insofar as such suit or proceeding is based on a claim that any Services based upon VIBRANT’s design and purchased under this Contract infringes any United States patent, if VIBRANT is notified promptly in writing of any such suit or proceeding and is given full and complete authority, information and assistance by Buyer for such defense. VIBRANT shall pay damages and costs, other than (a) attorneys’ fees and (b) damages and costs arising from any willful infringement



by Buyer after receipt of notice of the claimed infringement, finally awarded in any such suit or proceeding against Buyer but shall not be responsible for any compromise made by Buyer without the prior written consent of VIBRANT.

- In the event that any Services are held in such suit or proceeding to infringe a United States patent and its use is enjoined, or if in the opinion of VIBRANT the Services are likely to become the subject of a claim of infringement of a United States patent, VIBRANT, at its own election and at its own expense, shall:
 - (i) Procure for Buyer the right to continue using the Services;
 - (ii) Modify the Services so that it becomes noninfringing while giving equivalent performance;
 - (iii) Replace the Services with noninfringing services which gives equivalent performance or accuracy; or
 - (iv) If (i), (ii), and (iii) are not reasonably feasible, cease Services, granting Buyer a refund equal to the purchase price for the infringing Services purchased by Buyer over the most recent six-month period.
- VIBRANT shall have no liability to Buyer under any provision of this Section 13 if any infringement or claim is based upon a modification of the System or Services not introduced or approved in writing by VIBRANT; the interconnection or use of the System or Services in combination with equipment, software or other devices not made or supplied by VIBRANT; or use of the System inconsistent with VIBRANT's specifications.

14. MODIFICATIONS

- VIBRANT reserves the right to modify Services without notice to Buyer as long as the Services are deemed by VIBRANT in good faith to achieve the same or better accuracy.

15. SPECIAL ORDERS

- If any System shall be manufactured by VIBRANT to meet Buyer's particular specifications or requirements, Buyer shall defend, protect, and save harmless VIBRANT against all suits at law or in equity and from all damages, claims, and demands for actual or alleged infringement of any United States or foreign patent and shall defend any suit or actions which may be brought against VIBRANT for any alleged infringement because of the specifications or requirements provided by Buyer.

16. GENERAL PROVISIONS

- This Contract shall be governed in all respects by the law of the State of New Mexico without regard to the New Mexico's choice of law rules. Any legal action shall be brought in a court of competent jurisdiction in the State of New Mexico. In the event of any dispute under this Contract, the prevailing party shall be entitled to an award of its attorneys' fees.
- The assignment of this Contract or any order, or any rights or obligations thereunder by either party without the prior written consent of the other party shall be void except that VIBRANT may assign this Contract upon written notice to Buyer to an entity controlling, controlled by or under common control with VIBRANT, an entity that acquires VIBRANT or substantially all of VIBRANT's assets, and a financial institution as collateral security. In the event of such assignment, Buyer shall be advised thereof in writing.
- Subject to Section 16.6 below, this Contract supersedes all prior offers, negotiations, discussions and writings and constitutes the entire agreement between Buyer and VIBRANT. Any purchase order is subject exclusively to the terms of this Contract, and any conditions or terms which appear on Buyer's pre-printed purchase order form which are inconsistent shall not apply.
ADDITIONAL OR DIFFERING TERMS OR CONDITIONS PROPOSED BY BUYER OR INCLUDED IN BUYER'S ACKNOWLEDGMENT HEREOF ARE HEREBY OBJECTED TO BY

VIBRANT AND HAVE NO EFFECT UNLESS ACCEPTED IN WRITING BY VIBRANT. No waiver, modification or amendment of this Contract shall be binding upon VIBRANT unless made in writing and signed by a duly authorized representative of VIBRANT.

- All proposals of VIBRANT are subject to change at any time prior to acceptance of an order and expire at the end of the validity period stipulated in such proposal. The unenforceability of any provision of this Contract shall not affect any other provisions of this Contract, which shall remain in full force and effect. Time is of the essence to this Contract.
- VIBRANT is acting solely as an independent contractor under this Contract.
- Any inconsistencies in this Contract shall be resolved in accordance with the following descending order or precedence: (i) the terms and conditions of any controlling master agreement between Buyer and VIBRANT, if applicable, (ii) the terms and conditions of any Specific Terms and Conditions, (iii) face of the Purchase Order, as applicable (excluding any general terms and conditions that differ from these General Terms and Conditions), (iv) the License Agreement, and (v) these General Terms and Conditions.

17. DEFINITIONS

- The term "**Hardware**" shall mean a computer provided by VIBRANT on which Licensed Software has been or will be installed along with the PCRT equipment and all its components.
- The term "**Licensed Software**" shall mean and include all software and programming, including all source code, user documentation, updates and modifications thereof, whether in printed or machine-readable form or resident on VIBRANT-supplied equipment, and whether or not separately priced, which is furnished by VIBRANT with or for use with the Hardware, if any, delivered hereunder, including any changes or updates of such software and programming which may subsequently be furnished by VIBRANT.
- The term "**Services**" means any inspection, testing, and other services provided by VIBRANT to Buyer.
- The term "**System**" means the combination of Hardware and Licensed Software used in providing the Services.