

**VUZIX CORPORATION
TERMS AND CONDITIONS OF SALE**

1. **APPLICATION.** These Terms and Conditions of Sale (these “**Terms**”) apply to the sale of products (“**Products**”) and/or services (“**Services**”) by Vuzix Corporation (“**Vuzix**”) to the customer in the transaction to which these Terms relate (“**Customer**”). If there is a signed written agreement relating to the transaction to which these Terms apply, the signed written agreement shall prevail to the extent there is a conflict with these Terms. Any terms and conditions contained or referred to in any request for proposals, purchase order, acknowledgement or other document issued by Customer shall be of no force or effect, are expressly excluded, and in no way modify these Terms or bind Vuzix. Placement of a purchase order, acceptance by Customer of delivery of Products or performance of Services by Vuzix, or payment made by Customer against a Vuzix invoice, shall be deemed to be acceptance by Customer of these Terms.

2. **PRICE QUOTES.** Price quotations are only solicitations for offers and not offers which may be accepted by Customer. Unless expressly stated otherwise, all quotes expire upon the earlier of 30 days after the date issued or the expiration of the agreed-upon ordering period under which the quote was issued. All prices quoted are valid only if the requested delivery date for the order (including any change order) is within 60 days of the date the order is placed. Notwithstanding the foregoing, prices quoted shall in no case be deemed fixed, and Vuzix reserves the right, in its sole discretion, to adjust the quoted prices at any time prior to acceptance of an Order (as described below), in particular when significant increases in costs occur.

3. **ORDERS.** Any purchase order or other offer to purchase Products and/or Services (each, an “Order”) submitted by Customer shall be subject to Vuzix’s acceptance or rejection, in its sole discretion. In the absence of written acceptance from Vuzix pursuant to a formal order confirmation, an Order shall be deemed accepted upon the earlier of commencement of work on the Products and/or Services under the Order, shipment of the Products or the Services being made available to Customer, or receipt of the Products or performance or use of the Services by Customer. In all cases, Vuzix’s acceptance of an Order is strictly subject to these Terms, and no changes of any kind shall be binding on Vuzix whatsoever except to the extent specifically agreed to by Vuzix in a signed writing. Once accepted, Customer may not cancel an Order except with the written consent of Vuzix.

4. **DELIVERY AND PERFORMANCE.**

(a) Vuzix will deliver the Products and/or perform or make available the Services in material conformance with the details set forth in the applicable quote, order confirmation or other written specifications issued by Vuzix. Vuzix will use reasonable efforts to meet any specified delivery dates (including any requested delivery installments), performance schedules or availability standards, but such target dates and availability are estimates only. In no case will Vuzix be deemed to have breached these Terms or be liable for any failure to meet such delivery dates, performance schedules or availability standards, and Customer may not cancel an Order for any such failure.

(b) Except as otherwise stated in the relevant price quote issued by Vuzix, delivery terms shall be Free On Board (FOB) Vuzix’s nearest distribution facility (Incoterms 2010). Products shall be shipped in Vuzix’s standard packaging, and legal title and risk of loss shall pass to Customer upon delivery by Vuzix to the carrier at Vuzix’s facility. Partial shipments are permitted, and each shipment will constitute a separate sale. Customer hereby grants to Vuzix a first priority lien on and purchase money security interest in all Products and any proceeds thereof (including insurance payments) to secure payment of the purchase price owed to Vuzix.

(c) With respect to performance of Services, Customer shall cooperate with Vuzix and provide access to all such resources, information and/or systems as Vuzix may reasonably require in connection therewith. Customer shall respond promptly to any request by Vuzix for such access, or for approvals, authorizations or decisions necessary for Vuzix to perform the Services.

5. **ACCEPTANCE.** Customer shall be deemed to have accepted all Products and/or Services unless written notice of nonconformity is received within ten (10) calendar days following delivery or performance, which notice shall include reasonable detail and appropriate documentation of such nonconformity. If Customer gives timely notice of nonconformity and such nonconformity is validated by Vuzix, Vuzix will coordinate with Customer for the return of the Products, if applicable, and in its sole discretion: (i) replace the nonconforming Products or re-perform the nonconforming Services, or (ii) credit or refund the purchase price at the pro rata contract rate. These are Customer’s exclusive remedies for any nonconformity, and except as specifically provided under this Section or in connection with a warranty claim, Customer has no right to return any Products purchased under these Terms.

6. **PRICE AND PAYMENT.**

(a) Unless expressly stated otherwise, all prices quoted are exclusive of any applicable sales, use or excise taxes, and any other similar taxes, duties and charges of any kind imposed by any government or regulatory authority having valid jurisdiction, including VAT and any customs fees and expenses. When applicable, such charges shall appear as a separate line item on Vuzix’s invoice, and Customer shall pay all such charges.

(b) Unless otherwise agreed to in writing by Vuzix, Customer shall pay all invoiced amounts in full upon receipt of Vuzix’s invoice. Customer shall not withhold payment of, or deduct from, any amounts due by reason of set-off for any dispute or claim against Vuzix. Vuzix may require a deposit or payment in advance for certain Orders, and if Customer no longer satisfies the credit or financial requirements established by Vuzix or fails to meet payment schedules, Vuzix shall have the right to cancel any accepted Order, change the credit terms, or refuse or delay shipment. Accelerated payment terms or the withholding of shipment by Vuzix hereunder shall not be deemed a termination of the Order or breach of these Terms by Vuzix. Customer shall pay interest on all properly invoiced amounts that become overdue at the lesser of the rate of one and one-half percent (1-1/2%) per month or the maximum rate permissible under applicable law, calculated daily and compounded monthly, together with all reasonable costs actually incurred in collecting any late payments, including attorney’s fees.

7. **COMPLIANCE WITH LAWS, REGULATIONS, STANDARDS AND POLICIES.** Customer shall comply with all applicable laws, regulations, and standards in force from time to time, including but not limited to: (i) consumer protection laws relating to the Products or Services or otherwise; (ii) labor laws, including those pertaining to health and safety in the workplace, slavery or forced labor, child labor and human trafficking; (iii)

environmental protection laws, including waste management and disposal requirements; (iv) international trade and import/export laws and regulations and other customs requirements; (v) economic sanctions or trade embargoes, (vi) anti-bribery and corruption laws, including the U.S. Foreign Corrupt Practices Act of 1977 (the FCPA) and the U.K. Bribery Act of 2010 (the UK Bribery Act); (vii) data protection and privacy laws; and (viii) all policies of Vuzix applicable to Customer. Customer shall obtain and maintain in effect all necessary licenses, permits, authorizations or regulatory consents required to conduct its business and perform its obligations hereunder, including any local requirements relating to the use or resale of Products or Services provided under these Terms. Customer assumes all responsibility for shipments of Products requiring government import clearance, and Customer shall be responsible for any fines, penalties, storage costs or other expenses incurred as a result of its failure to comply with any of its obligations under this Section. Customer specifically agrees to comply with all applicable provisions of the United States Export Administration Regulations, and shall not sell, transfer, transmit, export or re-export any Products or technical information provided by Vuzix, or the direct output thereof, whether standalone or incorporated into other products, directly or through others, to any country or person appearing on a list of prohibited countries or prohibited parties issued by any United States government agency or other regulatory bodies enforcing applicable export laws, or to any country for which a United States government agency requires an export license or other governmental approval, without first obtaining the written consent to do so from the United States government agency.

8. LIMITED WARRANTY.

(a) Vuzix warrants that at the time of delivery or performance and for a period of twelve (12) months thereafter, except in the case of prototype or non-production Products which shall be only covered for a period of three (3) months: (i) the Products will be free from substantial defects in material and workmanship, and will materially conform to the applicable specifications issued by Vuzix, or, if appropriate, Customer's specifications accepted by Vuzix in writing upon confirmation of the Order, and (ii) the Services will be performed in a professional and workmanlike manner using qualified personnel. THIS WARRANTY EXTENDS TO THE CUSTOMER ONLY. ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ARE SPECIFICALLY DISCLAIMED AND EXCLUDED, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE, OR NON-INFRINGEMENT.

(b) Upon receipt of written notice thereof and validation by Vuzix, Vuzix shall coordinate with Customer for the return of the Products, if applicable, and in its sole discretion: (i) repair or replace the applicable Products, or re-perform the applicable Products or Services, or (ii) credit or refund the purchase price of such Products or Services at the pro rata contract rate. For purposes of clarity, this limited warranty shall not apply to any Products that have been subjected to mishandling, misuse, neglect, improper testing, unauthorized repair or alteration, or other causes of damage attributable to handling or operation outside of normal parameters established by Vuzix. THE REMEDIES SET FORTH IN THIS SECTION ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND CONSTITUTE VUZIX'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTIES SET FORTH HEREIN.

9. INDEMNIFICATION. Customer shall, at its cost and expense, unconditionally and fully defend, indemnify and hold harmless Vuzix, its affiliates, successors or assigns, and each of their respective directors, officers, shareholders, agents, employees and other representatives for any and all losses, claims, liabilities, penalties and other costs or expenses, including reasonable attorneys' fees and other costs of enforcement, arising out of, resulting from or relating to: (i) claims of infringement or misappropriation of any third party's intellectual property rights relating to Customer's designs, specifications or instructions, or modification or combination with other products of Products sold hereunder, (ii) Customer's use or re-sale of the Products or Services provided hereunder in any way other than their intended uses and permitted re-sales, (iii) Customer's breach of any of these Terms, or (iv) any other negligent or willful misconduct by Customer or any of its affiliates, or its or their employees, agents or subcontractors, regardless of whether such acts or omissions are outside the scope of employment or engagement with Customer. Customer shall not enter into any settlement related to an indemnification claim hereunder without Vuzix's prior written consent.

10. LIMITATION OF LIABILITY.

(a) CUSTOMER UNDERSTANDS THAT ANY PRODUCT USED NEAR THE HUMAN EYE MAY DISTRACT OR OBSTRUCT THE END USER'S VISION, AND THAT INTERACTIONS BETWEEN THE PRODUCT AND THE USER'S VISION MAY CAUSE OR CONTRIBUTE TO FATIGUE, STRAIN, ADVERSE MEDICAL EFFECTS OR OTHER DANGEROUS CONDITIONS. CUSTOMER ACCORDINGLY UNDERSTANDS THAT SUCH PRODUCTS SHOULD NOT BE USED UNDER CIRCUMSTANCES WHERE SUCH VISUAL DISTRACTIONS, OBSTRUCTIONS OR INTERACTIONS MAY CREATE A RISK OF HARM TO THE USER OR TO OTHERS IN THE VICINITY OF THE USER. IN THIS REGARD, THE OBLIGATIONS OF CUSTOMER AND ITS END USERS SHALL INCLUDE, BUT SHALL NOT BE LIMITED TO, PROVIDING PROPER INSTRUCTIONS AS TO SAFETY AND USE, AND ADEQUATE WARNINGS TO END-USERS AS TO THE RISKS OR DANGERS ASSOCIATED WITH THE USE OR MISUSE OF ANY SUCH PRODUCTS. VUZIX SHALL NOT BE RESPONSIBLE FOR ANY CLAIMS, LIABILITIES, DAMAGES, COSTS OR EXPENSES ARISING OUT OF ANY ACTUAL OR ALLEGED FAILURE TO PROVIDE ADEQUATE INSTRUCTIONS OR WARNINGS TO CUSTOMER'S END USERS, OR TO PLACE RESTRICTIONS OR LIMITATIONS ON THE USE OR DISTRIBUTION OF SUCH PRODUCTS.

(b) IN NO EVENT SHALL VUZIX BE LIABLE TO CUSTOMER OR ANY RELATED THIRD PARTY FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF USE, REVENUE OR PROFIT, OR LOSS OF DATA OR DIMINUTION IN VALUE, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHER LEGAL OR EQUITABLE THEORY, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER VUZIX HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL VUZIX'S AGGREGATE LIABILITY HEREUNDER BE EXCEED THE AMOUNTS PAID BY CUSTOMER.

11. CONFIDENTIAL INFORMATION.

(a) All confidential or proprietary information of Vuzix, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, software and firmware, business operations, customer lists, supplier lists, pricing, discounts or rebates, disclosed by Vuzix to Customer in connection with these Terms, whether orally, visually, or in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," shall be deemed to be confidential, shall be used solely for the purpose of performing under these Terms, and shall not be disclosed to any third-party or copied by Customer unless authorized in advance by Vuzix in writing. Upon Vuzix's request, Customer shall promptly return or destroy all documents and other materials received from Vuzix and all copies thereof. Vuzix shall be

entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (i) in the public domain; (ii) known to Customer at the time of disclosure; (iii) rightfully obtained by Customer on a non-confidential basis from a third party; or (iv) required to be disclosed by any applicable law or by order of any court or regulatory authority with competent jurisdiction, provided that Customer shall: (x) limit the extent of any such required disclosure, (y) use its best efforts to give Vuzix advance notice of the disclosure, and (z) assist Vuzix in seeking a protective order or contesting the disclosure of such information.

(b) Unless otherwise agreed to in a writing signed by Vuzix, any information disclosed to Vuzix by Customer in connection with these Terms or any Order, whether or not labelled to indicate that the contents are of a proprietary or confidential nature, shall be considered as having been disclosed to and received by Vuzix on a non-confidential basis as part of the consideration for any Order. Vuzix shall have no legal obligation to Customer regarding use and/or disclosure of such information, except as may arise under patent laws.

12. **INTELLECTUAL PROPERTY.** Each party retains ownership of its prior intellectual property. Vuzix is the sole and exclusive owner of any work product, discovery, improvement, enhancement or other modification relating to the Products or Services, and any deliverables, copyrightable works or other output related to the Services, developed in connection with or arising or resulting from performance under these Terms. In no case shall any work product be deemed "work made for hire". Customer shall, upon request, take all further actions as is reasonably necessary perfect and protect Vuzix's rights hereunder.

13. **TERMINATION.** In addition to any remedies that may be provided under these Terms, Vuzix may terminate any Order with immediate effect upon written notice to Customer if Customer fails to pay any amount when due, has not otherwise performed or complied with any of these Terms, in whole or in part, or becomes insolvent or subject to any bankruptcy proceedings or similar creditors actions.

14. **FORCE MAJEURE.** Vuzix shall not be responsible for failure or delay in performance under these Terms to the extent such failure or delay is caused by an event or circumstance that is beyond its reasonable control (a "Force Majeure Event"). In the case of a Force Majeure Event, Vuzix shall use reasonable efforts to end and/or minimize the effect of the failure or delay of its performance.

15. **MISCELLANEOUS.**

(a) Any formal notices sent to Vuzix under these Terms or any Order shall be sent to the address specified on the applicable quote, order confirmation or other Vuzix documentation, to the attention of Customer's primary sales contact, with copy to legal@vuzix.com.

(b) All matters arising out of or relating to these Terms shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to any choice of law provisions thereof. Any legal suit, action or proceeding arising out of or relating to these Terms shall be brought in the courts located in Monroe County, New York, and each party irrevocably submits to the exclusive jurisdiction of such courts. The application of the United Nations Convention for the International Sale of Products (CISG) is excluded.

(c) Rights and obligations under these Terms which by their express terms or nature and context are intended to apply beyond termination or expiration of these Terms or the applicable Order will survive any such termination or expiration.

(d) No waiver by Vuzix of any of the provisions of these Terms or rights with respect to any Order shall be effective unless explicitly set forth in writing and signed by Vuzix. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from these Terms or any Order operates, or may be construed, as a waiver thereof, and no single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise.

(e) If any term or provision of these Terms or any Order documentation, or any part thereof, is unenforceable in any jurisdiction, such unenforceability shall not affect any other term or provision, the remaining terms and provisions shall be valid and enforceable to the maximum extent possible, and such term or provision shall not be deemed unenforceable in any other jurisdiction.

(f) Customer shall not assign, transfer, delegate or subcontract any of its rights or obligations under these Terms or any Order without the prior written consent of Vuzix. Any purported assignment or delegation in violation of this Section shall be null and void. No permitted assignment or delegation shall relieve the Customer of any of its obligations hereunder. Vuzix may at any time assign or transfer any or all of its rights or obligations under these Terms without Customer's prior written consent.

(g) The relationship between the parties is that of independent contractors. Nothing contained in these Terms or any Order documentation shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever. Customer shall at all times be solely responsible for its employees, personnel, staff, agents and other representatives.

(h) To the extent that use of any Products and/or Services hereunder are governed by an end user license agreement (EULA) or other terms of use, Customer shall comply with such additional terms and ensure that its employees, representatives, customers and end user comply as well.

(i) No United States Government procurement regulations shall be included hereunder and such regulations shall not be binding on either party unless specifically agreed to in writing prior to incorporation herein.

(j) These Terms are for the sole benefit of the parties hereto and their respective successors and permitted assigns, and nothing herein, express or implied, shall confer upon any third party any benefit, right or remedy of any nature whatsoever.

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