

VUZIX CORPORATION
TERMS AND CONDITIONS AND PURCHASE

1. **APPLICATION.** These Terms and Conditions of Purchase (these “**Terms**”) apply to the purchase of products (“**Products**”) and/or services (“**Services**”) by Vuzix Corporation (“**Vuzix**”) from the supplier in the transaction to which these Terms relate (“**Supplier**”). 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 quote, order confirmation, invoice or other document issued by Supplier shall be of no force or effect, are expressly excluded, and in no way modify these Terms or bind Vuzix. Delivery of Products to or performance of Services for Vuzix shall be deemed to be acceptance by Supplier of these Terms.

2. **PURCHASE ORDERS.** Vuzix will not be deemed to have accepted any Products supplied or Services performed unless the same have been duly ordered on Vuzix’s standard form of purchase order. Whenever reasonably practical, the correct purchase order number and applicable item number must appear on all shipping labels, packing lists, bills of lading, freight bills, other shipping documents, invoices and other correspondence. For purposes of clarity, requests for proposals are only solicitations for offers and not offers which may be accepted by Supplier.

3. **DELIVERY AND PERFORMANCE.**

(a) Supplier shall deliver the Products and/or perform or make available the Services in strict accordance with any requirements and specifications described or referenced in the applicable purchase order and as otherwise set forth in any requests for proposals issued by Vuzix. Any quantity of Products supplied in excess of the quantity ordered may be returned at Supplier’s expense. Time is of the essence with respect to any delivery dates or schedules identified or referenced in a purchase order, and Vuzix may cancel any purchase order immediately upon notice without liability to Supplier if such delivery dates or schedules are not met, or if there is any significant interruption in the availability of the Services. Any change or variation to a purchase order must be authorized in writing by Vuzix or it shall be of no effect.

(b) Delivery terms shall be as stated in a purchase order, or where none are specified, Delivery Duty Paid (DDP) to the address specified on the purchase order (Incoterms 2010). Title and risk of loss passes to Vuzix upon delivery at the address specified on the purchase order. A packing list must be completed for each shipment and attached to the outside of the shipping container, and all freight bills must reference the shipments to which they apply. Supplier shall be responsible for clearing all international shipments through customs, including ensuring that all international trade and import/export laws, regulations and requirements are adhered to and satisfied. Further, Supplier shall comply with all applicable transportation and logistics requirements of Vuzix, as well as all product specifications and restricted materials declaration requirements.

4. **PRICE AND PAYMENT.**

(a) The price of the Products and Services is the price stated in the applicable purchase order, or, if none, the lower of the price last quoted to Vuzix (which shall be fixed unless otherwise specified) or the last price published by Supplier for similar products or services. Unless specifically identified on the applicable purchase order, such prices include all indirect charges and fees, such as packaging, transportation, insurance, taxes, duties (other than VAT) or other similar charges.

(b) Payment terms are Net 60 days from the date of invoice, unless otherwise stated on the applicable purchase order. Payment may be withheld in whole or in part in the event the Products or Services are not in accordance with the applicable purchase order or any of these Terms are not complied with. Vuzix reserves the right at any time to set off any amount claimed against or owed by Supplier against any amount owed to Supplier, and any payments made by Vuzix are without prejudice.

5. **INVOICES.** Supplier shall issue invoices on or after delivery of Products or completion of Services. Invoices shall include the correct purchase order number (and line number, if applicable) for each invoiced item. Invoices not issued in accordance with the requirements set forth in these Terms may be rejected by Vuzix, or may result in delayed processing and an extension of the payment due date.

6. **CHANGE ORDERS.** Vuzix may, at any time, request changes to the Products or Services ordered by written instructions and/or drawings issued to Supplier (each, a “**Change Order**”). Within one 1 week of receipt of a Change Order, Supplier shall submit to Vuzix a firm cost and/or performance deadline adjustment proposal for the Change Order. If Vuzix accepts such proposal or Supplier fails to timely provide such proposal, Supplier’s continued performance hereunder shall be deemed acceptance of the Change Order. Any proposed change or variation submitted by Supplier shall be of no effect unless it is agreed in writing by Vuzix.

7. **COMPLIANCE WITH LAWS, REGULATIONS, STANDARDS AND POLICIES.**

(a) Supplier 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 Supplier. Supplier shall obtain and maintain in effect all necessary licenses, permits, authorizations or regulatory consents required to conduct its business and perform its obligations hereunder, and Supplier shall be responsible for any fines, penalties, storage costs or other expenses incurred as a result of its failure to comply with such obligations, including in connection with any shipment failing to comply with any labelling requirements.

(b) Supplier shall notify Vuzix and provide full details if at any time it obtains information that any Products or Services provided may constitute a health or safety risk. Supplier shall cooperate with Vuzix in relation to any product recalls or other measures which Vuzix may in its reasonable discretion take to minimize such risks, and shall reimburse Vuzix for the cost thereof.

8. WARRANTY.

(a) Supplier warrants that all Products supplied hereunder shall: (i) be free from defects in workmanship, material and design, (ii) conform to specifications, drawings, samples and other requirements provided or specified by Vuzix, (iii) be fit for their intended purposes and operate as intended, (iv) be merchantable, (v) be free and clear of all liens, security interests or other encumbrances, (vi) not infringe or misappropriate any third party's patent or other intellectual property rights, and (vii) not include any software or data which is subject to the terms of an open source license (as defined at <http://www.opensource.org/osd.html>), except to the extent disclosed in writing to Vuzix in advance. Supplier further warrants that all Services shall be performed: (w) using adequate resources to timely meet its obligations hereunder, (x) using personnel of the required skill, experience and qualifications, (y) in a professional and workmanlike manner, and (z) in accordance with generally recognized industry standards. These warranties shall survive notwithstanding any delivery, inspection, acceptance or payment for Products or Services by Vuzix.

(b) In addition to any other rights or remedies, Vuzix may, at its option: (i) either return for a full refund for, or require repair or replacement of, defective or non-conforming Products, or (ii) require a full refund for, or re-performance of, any Services not satisfactorily performed. If any repair, replacement or re-performance hereunder is not accomplished within a reasonable timeframe, Vuzix may secure a substitute from a third party and charge Supplier the cost thereof. Any returns, repairs, replacement or re-performance of defective or non-conforming Products or Services shall be made at Supplier's sole expense. Vuzix may also, at its option and without prejudice: (x) accept defective or non-conforming Products or Services at a reduced price, or (ii) cancel the applicable purchase order or portion thereof. The exercise of any of the foregoing rights or remedies relating to part of a purchase order shall not invalidate the remainder of that purchase order or release Supplier from any of its obligations to provide the remainder of the Products or Services under any purchase order.

9. RECORD KEEPING; INSPECTION. Supplier shall maintain accurate and complete records relating: (i) to the design, manufacture and testing of the Products, (ii) provision of the Services, and (iii) its performance under and compliance with these Terms. Vuzix shall be entitled, at all reasonable times, to inspect and test all Products and materials for incorporation therein (whether still in the course of manufacture or finished), all Services (whether still being provided or already completed), and all processes related thereto. Supplier shall, after reasonable advance notice, grant Vuzix access to all facilities, records, quality procedures, regulatory submissions, employees, representatives and subcontractors reasonably required to perform such inspection and assess Supplier's performance and compliance with these Terms.

10. INDEMNIFICATION. Supplier 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) the Products or Services provided hereunder, including any claims of infringement or misappropriation of any third party's intellectual property rights, (ii) Supplier's breach of any of these Terms, or (iii) any other negligent or willful misconduct by Supplier 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 Supplier. Supplier shall not enter into any settlement related to an indemnification claim hereunder without Vuzix's prior written consent.

11. LIMITATION OF LIABILITY. IN NO EVENT SHALL VUZIX BE LIABLE TO SUPPLIER 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 TO SUPPLIER.

12. INSURANCE. Supplier shall maintain in force insurance policies sufficient to protect and indemnify Vuzix and its agents and affiliates, including but not limited to workers' compensation, commercial general liability and errors and omissions policies, or policies similar or comparable to any of the foregoing, in each case with reputable insurer in good standing and adequate policy limits based on industry standards. Upon written request, Vuzix shall be listed as additional insured under each such policy, the insurer shall have waived all rights of subrogation with regard to Vuzix, and such policies shall require 30 days advance notice to Vuzix prior to termination, expiration or any material change.

13. 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 Supplier 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 Supplier unless authorized in advance by Vuzix in writing. Upon Vuzix's request, Supplier 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 Supplier at the time of disclosure; (iii) rightfully obtained by Supplier 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 Supplier 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 Supplier in connection with these Terms or any purchase 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 purchase order. Vuzix shall have no legal obligation to Supplier regarding use and/or disclosure of such information, except as may arise under patent laws.

14. INTELLECTUAL PROPERTY. Each party retains ownership of its prior intellectual property. Vuzix is the sole and exclusive owner of any work product, prototypes, samples or other product deliveries, and all discoveries, improvements, enhancements or other modifications relating

to the Products or Services, and any other deliverables or other output related to the Services, developed in connection with or arising or resulting from performance under these Terms. All such work product and deliverables of Supplier shall be deemed “work made for hire” and all copyrightable works will be owned exclusively by Vuzix. Supplier shall, upon request, take all further actions as is reasonably necessary perfect and protect Vuzix's rights hereunder.

15. **TERMINATION.** In addition to any remedies that may be provided under these Terms, Vuzix may terminate these Terms and any purchase order with immediate effect upon written notice to the Supplier at any time, either before or after the delivery or acceptance of the Products or performance of the Services, if Supplier is in breach or has not complied with any of these Terms, in whole or in part, or if Supplier becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors. If Vuzix terminates these Terms or any purchase order for any reason, Supplier's sole and exclusive remedy is payment for the Products received and Services accepted prior to the termination.

16. **FORCE MAJEURE.** Neither party shall be held 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 the reasonable control of the affected party and which by its nature could not have been foreseen or avoided (a “Force Majeure Event”). Supplier's economic hardship or changes in market conditions are specifically not considered Force Majeure Events. In the case of a Force Majeure Event, the affected party shall use all their diligent efforts to end and/or minimize the effect of the failure or delay of its performance. If a Force Majeure Event prevents Supplier from carrying out its obligations under these Terms or any purchase order for a continuous period of more than 15 days, Vuzix may terminate these Terms and any purchase order immediately by giving written notice to Supplier.

17. **MISCELLANEOUS.**

(a) Any formal notices sent to Vuzix under these Terms or any purchase order shall be sent to the address specified on the applicable purchase order or other Vuzix documentation, to the attention of Supplier's primary contact, with a 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 purchase order will survive any such termination or expiration.

(d) No waiver by Vuzix of any of the provisions of these Terms or under any purchase 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 purchase 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 purchase order, 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) Supplier shall not assign, transfer, delegate or subcontract any of its rights or obligations under these Terms or any purchase 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 Supplier 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 Supplier's prior written consent.

(g) The relationship between the parties is that of independent contractors. Nothing contained in these Terms or any purchase order 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. Supplier shall at all times be solely responsible for its employees, personnel, staff, agents and other representatives.

(h) 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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