

Vibro-Meter Inc

Purchase order terms and conditions

1 **Definitions** – As used throughout this purchase order, the following terms shall have the meaning set forth below: “Buyer” means Vibro-Meter Inc, a Meggitt group company, with offices at 144 Harvey Road, Londonderry, NH 03053. “Purchase order” means the contractual instrument in which these terms and conditions are incorporated together with any amendments, supplements, extensions, and all other documents incorporated by reference. “Work” or “Services” means all work to be performed under this purchase order including any studies covering fundamental, theoretical, or experimental investigations; and extension of the investigative findings and theories of a scientific or technical nature into a practical application; any tangible items (hereinafter referred to as “supplies”) furnished to Buyer, and any reports, data, computations, plans, drawings, and specifications with respect to any of the foregoing. Such work shall be considered to be confidential in nature and handled accordingly. “CFR” means “Code of Federal Regulations” and all references to provisions thereof shall be to those provisions as in effect on the date of this purchase order. “Seller” means an independent individual or company who accepts a purchase order from the Buyer to provide goods and/or services in accordance with the requirements stated in the purchase order. “Status of seller as independent contractor” means an independent contractor in all its operations and activities hereunder; and that the employees furnished by the Seller to perform work under this purchase order shall be Seller’s employees exclusively without any relation to Buyer as employees, agents, or as independent contractors; that such employees shall be paid by the Seller for all services in this connection; that Seller shall carry worker’s compensation insurance and that Seller shall be responsible for all obligations and reports covering social security, unemployment insurance, worker’s compensation, income tax, and other reports and deductions required by local, state, and/or federal law.

2 **Indemnification** – In the event Seller, its employees, agents, subcontractors and/or lower tier subcontractors enter premises occupied by or under control of the Buyer in performance of this purchase order, Seller shall defend, indemnify, and hold harmless Buyer, its officers, employees and agents from any claim, suit, loss, cost, damage, expense (including attorney’s fees) or liability by reason of property damage or personal injury (including death) to any person (including Seller’s employees). Seller shall maintain public liability and property damage insurance in reasonable limits covering the obligations set forth above and shall furnish Buyer upon request a certificate of insurance showing coverage set forth above.

3 **Acceptance** – Acceptance of this purchase order and its terms and conditions by Seller shall be evidenced by the earliest of (A) written acknowledgement by Seller, (B) commencement of performance by Seller, or (C) Seller’s acceptance of any payment, progress, partial, or full, from the Buyer under this purchase order. Acceptance is expressly limited to the terms and conditions of this purchase order. Buyer hereby objects to any different or additional terms in Seller’s acceptance of this purchase order.

4 **Packaging, shipments, and deliveries** – Packaging, shipments, and deliveries shall be made in suitable containers without charge for packaging, invoicing, crating, or storage, unless otherwise provided for. Materials shall be suitably packaged to ensure the lowest transportation costs and to conform with the requirements of common carriers and with any applicable specifications to assure the avoidance of damage to the materials being transported. Commercial bill of lading shall accompany each shipment and invoice. Purchase order number and symbols must be plainly marked on all invoices, packages, bills of lading, and shipping orders. The containers or packages must be marked with necessary lifting, loading, and shipping information and accompanied by a packing list. All shipments of materials, documents, drawings, reports, and data shall be made to:

Vibro-Meter Inc
Receiving Department
144 Harvey Road
Londonderry, NH 03053

5 **Deliveries** – In the event Seller encounters or anticipates difficulty meeting performance requirements, or when Seller anticipates difficulty in complying with the Buyer’s delivery schedule or date, Seller shall immediately notify Buyer giving pertinent details including but not limited to a recovery schedule and explanation of the missed commitment. This provision shall not be construed as a waiver by Buyer of any delivery schedule or of any remedies or rights provided by law or by the purchase order. Buyer may elect to direct Seller to expedite the shipment. The Seller shall pay any difference in the shipping costs. If Seller fails to meet delivery schedule, Buyer may, in addition to any other remedies provided herein, cancel this order in part or in full under the clause entitled “Default”.

Seller shall not make material commitments or production arrangements in excess of the amount or in advance of the Buyer’s delivery schedule. Unless otherwise specified herein, no deliveries shall be made in advance of Buyer’s delivery schedule. Seller is instructed to ship only the quantities specified in this purchase order.

This clause shall not limit any rights of the Buyer under this purchase order because of latent defects, fraud, or such gross mistakes as amount to fraud or unjust enrichment.

All shipments to be made in one (1) day by one route must be consolidated. Unless otherwise specified, all shipments of material shall be sold “FOB destination” and Seller assumes all freight and handling costs to Buyer’s delivery location.

6 **Title** – Unless otherwise provided in this purchase order, title from Seller shall pass to Buyer at “FOB destination point” being Buyer’s dock. Risk of loss or damage shall remain with the Seller. Risk of loss or damage to supplies that do not conform to the requirements of this purchase order shall remain with the Seller until corrected and/or until Buyer’s final acceptance.

7 **Inspection/right of entry** – Buyer shall have the right to inspect the goods supplied under this purchase order at any time during the manufacture or fabrication thereof at Seller’s facility or elsewhere. Such inspection shall include, without limitation, raw materials, components, work in progress, and completed products as well as drawings, specifications, and related data. Final inspection and acceptance shall be after delivery at the delivery point designated by the Buyer.

If the Buyer deems it necessary to inspect or test product at the Seller’s facilities, the Seller shall provide reasonable facilities and assistance. In addition, the Seller must make the Seller’s facility open to FAA and/or NTSB or other regulatory body auditors for products, which are under the control of the regulatory body. Buyer may reject all goods supplied under this purchase order, which are found to be defective. Goods so rejected may be returned to Seller at Seller’s expense. At Buyer’s request, Seller shall repair or replace defective goods at Seller’s expense. Failure to inspect goods, failure to discover defects in goods, or payment for goods shall not constitute acceptance or limit any Buyer’s rights, including without limitation those under the “Warranty” provision of this purchase order.

8 **Quality control system** – Seller shall provide and maintain a quality control system acceptable to Buyer for services/supplies/materials covered by this purchase order. Seller shall similarly require its suppliers to provide and maintain a quality control system acceptable to Buyer where applicable.

Supplier non-conformance will be handled through the Buyer’s quality system, which may include the need to show evidence of real Supplier corrective action to resolve a non-conformance.

9 **Payment, invoicing, and set-offs** – Seller shall be paid for performance hereunder, upon submission of proper invoices or vouchers, the price stipulated on this purchase order for supplies delivered and accepted, less applicable deductions, if any. Unless otherwise specified, payment will be made upon delivery of any portion of the work delivered or rendered for which a price is separately stated in the purchase order.

Invoices shall be rendered in duplicate, cover not more than one purchase order, be rendered with purchase order number thereon. Invoices, shipping notices, and bills of lading are to be shipped within a reasonable time. It is understood that the cash discount period shall be computed from date of receipt by Buyer of acceptable invoice, or the supplies, whichever is later. On all prepaid shipments chargeable to Buyer, attach transportation receipt to invoice. On invoices returned for correction, the cash discount period will begin from the day of receipt of the correct invoice. Any indebtedness of Seller to Buyer may, at Buyer’s option, be set-off and credited against Buyer’s indebtedness to Seller.

All invoices shall be forwarded to:

Vibro-Meter Inc
Accounts Payable
144 Harvey Road
Londonderry, NH 03053

10 **Taxes** – The Seller will bill as separate items, when applicable, federal sales, manufacturer’s and retailer’s excise, and state or municipal sale and use taxes. Seller assumes responsibility for all other taxes of every kind and nature imposed upon or in connection with this purchase order.

11 **Warranty** – For a period of thirty-six (36) months, Seller warrants to Buyer and its customers that all material and work covered under this purchase order will conform to the specifications, drawings, samples, symbols, or other description specified by Buyer and will be new, merchantable, and free from defect in materials and workmanship and that all material and work covered by this purchase order which is in accordance with the Seller’s design, drawings, or specifications will be fit and suitable for the purpose intended. These warranties are in addition to all other warranties specified herein or implied by law and shall survive acceptance and payment.

In addition to any other remedies available to Buyer, Buyer may return any non-conforming material to Seller for correction or replacement, all transportation charges for return and re-delivery to be borne by Seller. If the Seller fails to accept the return of non-conforming materials or fails to correct or replace same promptly, the Seller shall pay the cost incurred by the Buyer for these products in addition to any charges over the quoted costs from the supplier in procuring such supplies or parts from another source and/or accomplishing the repair.

12 **Price warranty** – Seller warrants that the prices charged under this purchase order do not exceed those charged by Seller to any other customer, including preferred customers of the U.S. Government, for purchase of the same items in like or similar quantities.

13 **Default** – Buyer may, by written notice of default to the Seller cancel in whole or any part of this purchase order if (A) the Seller fails to make delivery of the material or to perform the work or services within the time or according to the schedule in this purchase order, or (B) the Seller fails to perform any other provision of this purchase order or breaches any of the terms hereof, or (C) the Seller fails to make progress as to endanger performance of this purchase order in accordance with its terms and does not cure such failure within ten (10) working days after receipt of notice from the Buyer specifying such failure, or (D) the Buyer shall also have the right to terminate this purchase order for default or any part thereof in the event of the happening of any of the following:

- Insolvency of Seller
- Seller's filing of a voluntary petition in bankruptcy
- Filing of an involuntary petition in bankruptcy
- The appointment of a trustee or receiver for the Seller
- The execution by Seller of an assignment for the benefit of creditors

If Buyer cancels this purchase order in whole or part, Buyer may procure material, work and/or services similar to that canceled, and Seller shall pay Buyer upon demand all excess procurement costs (including administrative costs), that Buyer may incur for such procurement.

Seller shall continue performance of the non-canceled portion of this purchase order as directed by Buyer.

14 **Buyer owned property** – Unless otherwise provided herein, tools, equipment, dies, jigs, fixtures, patterns, and facilities used in the manufacturing of required material under this purchase order shall be furnished by and at the expense of the Seller, shall be kept in good condition and when necessary, shall be replaced by Seller without expense to Buyer. If the Seller requests reimbursement for the cost of any property mentioned above, Buyer may agree to this request, authorize reimbursement of such cost and become the owner and entitled to possession of same.

If the price stated on the face of this purchase order includes the reimbursement of the cost of special tooling fabricated or acquired by the Seller in support of this purchase order, such special tooling and any drawing specification, data, process sheets related to the special tooling shall become the property of the Buyer and shall be identified by the Seller as such. Unless otherwise specified herein, Buyer shall make payment only upon acceptance of the first article fabricated with this special tooling. Seller shall at its own expense maintain such special tooling in proper working condition and shall be responsible for the loss or damage of the special tooling while in its possession. (This should include maintaining calibration schedules etc.) Seller shall use special tooling for the production of material for the Buyer, only, unless otherwise authorized in writing. Seller shall follow its normal industrial practice in maintaining property control records for such special tooling and when this order has been completed, such special tooling shall be disposed of as directed by Buyer.

Seller will provide at the Buyer's request, an inventory and condition of the Buyer owned tooling.

15 **Buyer furnished material** – If any Buyer owned material is furnished to Seller in connection with this purchase order, title thereto shall remain with the Buyer and the Buyer shall have access thereto at all reasonable times. Seller shall return such material in the condition it was received except for reasonable wear and tear, and except to the extent that such material has been incorporated into articles delivered under this purchase order or has been consumed in normal performance of this purchase order. Seller agrees to pay Buyer's replacement cost for all such material unaccounted for, spoiled, or rendered unusable in the performance of this purchase order.

16 **Compliance with applicable laws** – Seller warrants that, in the performance of this purchase order, it will comply with all applicable laws, statutes, rules, regulations, or orders of the United States government or of any states, and same shall be deemed incorporated by reference herein. The Seller represents that with respect to the production of material and/or performance of the services specified by this purchase order, it has fully complied with all provisions of the Fair Labor Standards Act of 1938 as amended.

17 **Hazardous materials** – Seller shall conform with all applicable federal, state, and local laws and regulations in the procurement, manufacturing, packaging, labeling, and shipping of all hazardous materials including, but not limited to:

OSHA 29 CFR 1910.1200; all aspects of the Toxic Substance Control Act (TSCA), 40 CFR 700 ET SEQ.; DOT 49 CFR 100 ET SEQ.; regulations governing the reduction and elimination of ozone depleting chemicals (ODC) and proper labeling of articles containing or produced with ODC.

Notwithstanding the above, the Seller shall also mark each container of hazardous substance with the appropriate precautionary label in accordance with Article 112, General Industry Safety Orders, or the Manufacturing Chemists Association Manual L-1.

18 **Patent, trademark, or copyright indemnity** – The Seller agrees to defend, indemnify, and hold Buyer harmless against any claim or liabilities including costs for or by reason of an asserted patent, trademark, or copyright infringement

arising out of the use or sales of any supplies or parts thereof furnished to Buyer hereunder or by the incorporation of any such items in Buyer's equipment, except insofar as the items supplied are made to a specific design furnished by Buyer, and provided that the Buyer gives prompt notice to the Seller of such claims of infringement.

19 **Confidential information and advertising** – The Seller shall maintain as confidential and shall not disclose to any person outside of its employ, nor use for purposes other than performance of this purchase order, any information provided by the Buyer hereunder including, but not limited to, designs, drawings, blue prints, samples, materials, descriptions, formulae, specifications, software programs, proprietary information, processes, electronic and other data unless requested explicitly to do so in writing by the Buyer. Upon expiration of the purchase order period or earlier termination, the Seller agrees to return to Buyer all such material and printed matter and all copies thereof upon request by Buyer.

20 **Purchase order administration** – Notwithstanding any other provisions of this purchase order or any other document referenced herein, Buyer's cognizant purchasing agent is the only individual authorized to make changes in or redirect work required by this purchase order. Where Buyer's approval is required under the terms of this purchase order, it shall be construed to mean the approval of the cognizant purchasing agent. In the event the Seller effects any changes at the direction of any other person, the change will not be considered as having been made with authority and an adjustment will not be made in the purchase order price or delivery schedule as a result thereof. No agreement or understanding will be binding unless made in writing and signed by the cognizant purchasing agent.

21 **Stop work order** – The Buyer reserves the right to stop work under this purchase order for a reasonable time without incurring any additional liability.

22 **Assignment of claims** – No part of this purchase order may be assigned. Neither manufacture nor performance may be delegated without Buyer's consent. Assigned accounts shall be subject to set-off, recoupment, or other claims of Buyer against Seller.

23 **Gratuities** – Buyer may at any time, by written notice to Seller, terminate for default the right of Seller to proceed under this purchase order if Buyer has reasonable cause to believe that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by Seller, to any officer or employee of Buyer with the view of securing this purchase order or securing favorable treatment with respect to the award of amendment of this purchase order or the making of any determination with respect to the performance of this purchase order.

24 **Force majeure** – If any verifiable force majeure causes or conditions cause delays in the Seller's performance of its obligations, the date on which Seller's obligations are to be fulfilled shall be extended without penalty for a period equal to the time lost by reason of such force majeure cause or conditions; a similar time extension shall apply to any Buyer obligation which the parties agree can be mutually delayed.

25 **Order of precedence** – The following terms and conditions form a part of this purchase order and combined with the other documents referenced herein shall be adhered to in the below defined order of precedence:

- This purchase order
- Flowdown terms and conditions (if applicable)
- This purchase order terms and conditions
- Statement of work (if applicable)
- Specifications (if applicable)
- Drawings (if applicable)
- Other pertinent documents (if applicable)

26 **Supplier export compliance** – Supplier shall comply with all applicable US export control laws and regulations including the International Traffic in Arms Regulations and US Export Administration Regulations, as well as export and destination restrictions issued by US government agencies. Without limiting the aforesaid, Supplier explicitly agrees that by entering into a contract with Vibro-Meter Inc to comply with such restrictions and not to export, re-export, transfer or otherwise ship to, or use suppliers, or subcontractors in countries or persons prohibited under the export control laws. Supplier agrees to apply for export licenses as appropriate and will not ship without the authority of an export license, or applicable license exception. Supplier shall provide written notification to Vibro-Meter Inc within five (5) business days if any deliverable under a purchase order is restricted by export controls, laws, or regulations. Supplier shall provide immediate written notification to Vibro-Meter Inc if it or any sub supplier contractor, or third party is listed in any denied persons list, entities list, or Foreign Assets Controls sanctions list, or if its export privileges are otherwise suspended or revoked in whole or in part by any US government agency.

27 Supplier shall provide in writing the country of origin, ECCN or USML category, and HTS code of purchased goods to the buyer at time of shipment. Suppliers working on ITAR/USML category projects must supply proof of US Department of State registration prior to acceptance of purchase order.