

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

(Mark One)

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended September 30, 2019

or

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____

Commission File Number: 001-38029



AKOUSTIS TECHNOLOGIES, INC.
(Exact name of registrant as specified in its charter)

Delaware

33-1229046

(State or other jurisdiction of
incorporation or organization)

(IRS Employer
Identification No.)

9805 Northcross Center Court, Suite A
Huntersville, NC

28078

(Address of principal executive offices)

(Postal Code)

Registrant's telephone number, including area code: 1-704-997-5735

Securities registered under Section 12(b) of the Act:

Title of Each Class:

Trading Symbol

Name of each exchange on which registered:

Common Stock, \$0.001 par value

AKTS

The Nasdaq Stock Market LLC
(Nasdaq Capital Market)

Securities registered under Section 12(g) of the Act:

None

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act) Yes No

As of November 01, 2019, there were 30,435,451 shares of the registrant's common stock, \$0.001 par value per share, issued and outstanding.

AKOUSTIS TECHNOLOGIES, INC.
FORM 10-Q
FOR THE QUARTERLY PERIOD ENDED SEPTEMBER 30, 2019

TABLE OF CONTENTS

	<u>Page No.</u>
<u>PART I — FINANCIAL INFORMATION</u>	
<u>ITEM 1. FINANCIAL STATEMENTS</u>	
<u>Condensed Consolidated Balance Sheets as of September 30, 2019 and June 30, 2019 (unaudited)</u>	1
<u>Condensed Consolidated Statements of Operations for the three months ended September 30, 2019 and 2018 (unaudited)</u>	2
<u>Condensed Consolidated Statements of Changes in Stockholders' Equity for the three months ended September 30, 2019 and 2018 (unaudited)</u>	3
<u>Condensed Consolidated Statements of Cash Flows for the three months ended September 30, 2019 and 2018 (unaudited)</u>	4
<u>Notes to the Condensed Consolidated Financial Statements (unaudited)</u>	5
<u>ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS</u>	17
<u>ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK</u>	22
<u>ITEM 4. CONTROLS AND PROCEDURES</u>	22
<u>PART II — OTHER INFORMATION</u>	
<u>ITEM 1. LEGAL PROCEEDINGS</u>	23
<u>ITEM 1A. RISK FACTORS</u>	23
<u>ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS</u>	23
<u>ITEM 3. DEFAULTS UPON SENIOR SECURITIES</u>	23
<u>ITEM 4. MINE SAFETY DISCLOSURES</u>	23
<u>ITEM 5. OTHER INFORMATION</u>	23
<u>ITEM 6. EXHIBITS</u>	23
<u>EXHIBIT INDEX</u>	24
<u>SIGNATURES</u>	25

PART I - FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS.

Akoustis Technologies, Inc.
Condensed Consolidated Balance Sheets
(In thousands, except share data)
(Unaudited)

	September 30, 2019	June 30, 2019
Assets		
Assets:		
Cash and cash equivalents	\$ 22,611	\$ 30,054
Accounts receivable	583	285
Inventory	107	94
Other current assets	1,146	1,288
Total current assets	24,447	31,721
Property and equipment, net	16,045	15,178
Intangibles, net	422	388
Assets held for sale, net	349	300
Operating lease right-of-use asset	636	—
Restricted cash	100	100
Other assets	324	262
Total Assets	\$ 42,323	\$ 47,949
Liabilities and Stockholders' Equity		
Current Liabilities:		
Accounts payable and accrued expenses	\$ 2,592	\$ 3,211
Deferred revenue	13	5
Operating lease liability-current	108	—
Total current liabilities	2,713	3,216
Long-term Liabilities:		
Contingent real estate liability	464	445
Convertible notes payable, net	19,270	18,215
Operating lease liability - non current	530	—
Other long-term liabilities	117	118
Total long-term liabilities	20,381	18,778
Total Liabilities	23,094	21,994
Stockholders' Equity		
Preferred Stock, par value \$0.001; 5,000,000 shares authorized; none issued and outstanding	—	—
Common stock, \$0.001 par value; 45,000,000 shares authorized; 30,467,986 and 30,140,955 shares issued and outstanding at September 30, 2019 and June 30, 2019, respectively	30	30
Additional paid in capital	95,649	93,399
Accumulated deficit	(76,450)	(67,474)
Total Stockholders' Equity	19,229	25,955
Total Liabilities and Stockholders' Equity	\$ 42,323	\$ 47,949

See accompanying notes to the condensed consolidated financial statements

Akoustis Technologies, Inc.
Condensed Consolidated Statements of Operations
(In thousands, except per share data)
(unaudited)

	For the Three Months Ended September 30, 2019	For the Three Months Ended September 30, 2018
Revenue		
Revenue with customers	\$ 543	\$ 204
Grant revenue	—	109
Total revenue	<u>543</u>	<u>313</u>
Cost of revenue	<u>336</u>	<u>144</u>
Gross profit	<u>207</u>	<u>169</u>
Operating expenses		
Research and development	5,079	4,361
General and administrative expenses	2,801	2,505
Total operating expenses	<u>7,880</u>	<u>6,866</u>
Loss from operations	<u>(7,673)</u>	<u>(6,697)</u>
Other (expense) income		
Interest (expense) income	(994)	(482)
Rental income	55	69
Other income	(1)	—
Change in fair value of contingent real estate liability	(18)	(47)
Change in fair value of derivative liabilities	(344)	(151)
Total other (expense) income	<u>(1,302)</u>	<u>(611)</u>
Net loss	<u>\$ (8,975)</u>	<u>\$ (7,308)</u>
Net loss per common share - basic and diluted	<u>\$ (0.30)</u>	<u>\$ (0.33)</u>
Weighted average common shares outstanding - basic and diluted	<u>30,325,185</u>	<u>22,240,748</u>

See accompanying notes to the condensed consolidated financial statements

Akoustis Technologies, Inc.
Condensed Consolidated Statements of Changes in Stockholders' Equity
(unaudited)
(In thousands)

	<u>Common Stock</u>		<u>Additional Paid In Capital</u>	<u>Accumulated Deficit</u>	<u>Stockholders' Equity</u>
	<u>Shares</u>	<u>Par Value</u>			
Balance, June 30, 2019	30,141	\$ 30	\$ 93,399	\$ (67,474)	\$ 25,955
Common stock issued for services	283	—	1,703	—	1,703
Common stock issued for exercise of warrants	6	—	—	—	—
Vesting of restricted shares	—	—	303	—	303
Common stock issued in payment of note interest	38	—	244	—	244
Net loss	—	—	—	(8,975)	(8,975)
Balance, September 30, 2019	<u>30,468</u>	<u>\$ 30</u>	<u>\$ 95,649</u>	<u>\$ (76,450)</u>	<u>\$ 19,229</u>
	<u>Common Stock</u>		<u>Additional Paid In Capital</u>	<u>Accumulated Deficit</u>	<u>Stockholders' Equity</u>
	<u>Shares</u>	<u>Par Value</u>			
Balance, June 30, 2018	22,203	\$ 22	\$ 52,074	\$ (38,246)	\$ 13,850
Cumulative-effect adjustment from adoption of ASC 606	—	—	—	20	20
Common stock issued for cash, net of issuance costs	—	—	(81)	—	(81)
Common stock issued for services	112	—	1,947	—	1,947
Common stock issued for exercise of warrants	19	—	71	—	71
Vesting of restricted shares	—	—	351	—	351
Common stock issued in payment of note interest	40	—	290	—	290
Net loss	—	—	—	(7,308)	(7,308)
Balance, September 30, 2018	<u>22,374</u>	<u>\$ 22</u>	<u>\$ 54,652</u>	<u>\$ (45,534)</u>	<u>\$ 9,140</u>

See accompanying notes to the condensed consolidated financial statements.

Akoustis Technologies, Inc.
Condensed Consolidated Statements of Cash Flows
(In thousands, except per share data)
(unaudited)

	Three Months Ended September 30, 2019	Three Months Ended September 30, 2018
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net loss	\$ (8,975)	\$ (7,308)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	695	573
Common stock issued for services	1,703	2,098
Amortization of debt discount	711	251
Amortization of operating lease right of use asset	27	—
Change in fair value of derivative liabilities	344	151
Change in fair value of contingent real estate liability	18	47
Changes in operating assets and liabilities:		
Accounts receivable	(299)	(104)
Inventory	(12)	11
Other current assets	143	(365)
Other assets	(63)	(63)
Accounts payable and accrued expenses	(73)	(71)
Lease liabilities	(25)	—
Change in other long-term liabilities	—	6
Deferred revenue	8	26
Net Cash Used in Operating Activities	(5,798)	(4,748)
CASH FLOWS FROM INVESTING ACTIVITIES:		
Cash paid for machinery and equipment	(1,581)	(1,050)
Cash received from sale of assets held for sale	—	31
Cash paid for intangibles	(64)	(46)
Net Cash Used in Investing Activities	(1,645)	(1,065)
CASH FLOWS FROM FINANCING ACTIVITIES:		
Proceeds from exercise of warrants	—	71
Net Cash Provided by Financing Activities	—	71
Net Increase (Decrease) in Cash, Cash Equivalents and Restricted Cash	(7,443)	(5,742)
Cash, Cash Equivalents and Restricted Cash - Beginning of Period	30,154	14,817
Cash, Cash Equivalents and Restricted Cash - End of Period	\$ 22,711	\$ 9,075
SUPPLEMENTARY CASH FLOW INFORMATION:		
Cash Paid During the Period for:		
Interest	163	—
SUPPLEMENTARY DISCLOSURE OF NON-CASH INVESTING AND FINANCING ACTIVITIES:		
Accrued interest paid in common shares	\$ 244	\$ 290
Stock compensation payable	\$ 303	\$ 200
Stock issuance costs in accounts payable and accrued expenses	—	\$ 81
ASC 606 transition adjustment	—	\$ 20
Derivative liability of convertible notes	\$ 1,299	\$ 1,256

See accompanying notes to the condensed consolidated financial statements

AKOUSTIS TECHNOLOGIES, INC.
Notes to the Condensed Consolidated Financial Statements
(Unaudited)

Note 1. Organization

Akoustis Technologies, Inc. (“the Company”) was incorporated under the laws of the State of Nevada on April 10, 2013. Effective December 15, 2016, the Company changed its state of incorporation from the State of Nevada to the State of Delaware. Through its subsidiary, Akoustis, Inc. (a Delaware corporation), the Company, headquartered in Huntersville, North Carolina, is focused on developing, designing, and manufacturing innovative radio frequency (“RF”) filter products for the wireless industry, including for products such as smartphones and tablets, cellular infrastructure equipment, and WiFi Customer Premise Equipment (“CPE”), and, military and defense communication applications. Located between the device’s antenna and its digital backend, the RF front-end (“RFFE”) is the circuitry that performs the analog signal processing and contains components such as amplifiers, filters and switches. To construct the resonator devices that are the building blocks for its RF filters, the Company has developed a family of novel, high purity acoustic piezoelectric materials as well as a unique MEMS wafer process, collectively referred to as XBAW™ technology. The Company leverages its integrated device manufacturing (IDM) business model to develop and sell high performance RF filters using its XBAW™ technology. Filters are critical in selecting and rejecting signals, and their performance enables differentiation in the modules defining the RFFE.

Note 2. Going Concern and Management Plans

The accompanying condensed consolidated financial statements have been prepared on a going concern basis, which contemplates the realization of assets and the satisfaction of liabilities in the normal course of business. As of September 30, 2019, the Company had working capital of \$21.7 million and an accumulated deficit of \$76.5 million. Since inception, the Company has recorded approximately \$1.1 million and \$2.4 million of revenue from contract research and government grants, and microelectromechanical systems (“MEMS”) foundry and engineering review services, respectively. As of November 01, 2019, the Company had cash and cash equivalents of \$21.1 million. The Company estimates that cash on hand is not sufficient to fund its operations for the next 12 months. Therefore, the Company will need to obtain additional capital to fund operations past that date. The Company is actively managing and controlling cash outflows to mitigate this risk. However, this matter raises substantial doubt about the Company’s ability to continue as a going concern within one year from the date of this filing. These condensed consolidated financial statements do not include any adjustments relating to the recoverability and classification of asset amounts or the classification of liabilities that might be necessary should the Company be unable to continue as a going concern.

There is no assurance that the Company’s projections and estimates are accurate. The Company’s primary sources of funds for operations since inception have been contract research and government grants, MEMS Foundry and Engineering services revenue, sales of our equity securities, and issuance of debt. The Company needs to obtain additional capital to accomplish its business plan objectives and will continue its efforts to secure additional funds. However, the amount of funds raised, if any, may not be sufficient to enable the Company to attain profitable operations. To the extent that the Company is unsuccessful in obtaining additional financing, the Company may need to curtail or cease its operations and implement a plan to extend payables or reduce overhead until sufficient additional capital is raised to support further operations. There can be no assurance that such a plan will be successful.

Note 3. Summary of Significant Accounting Policies

Basis of Presentation

The Company’s unaudited condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America (“U.S. GAAP”) and the rules and regulations of the Securities and Exchange Commission (“SEC”) for interim financial information and the instructions to Form 10-Q. Accordingly, they do not include all of the information and footnotes required by U.S. GAAP. In the opinion of management, all adjustments (consisting of normal accruals) considered necessary for a fair presentation have been included. The Company has evaluated subsequent events through the filing of this Form 10-Q. Operating results for the quarter ended September 30, 2019 are not necessarily indicative of the results that may be expected for the year ending June 30, 2020 or any future interim period. The accompanying unaudited condensed consolidated financial statements should be read in conjunction with the Company’s audited consolidated financial statements and notes thereto included in the Company’s Form 10-K filed with the SEC on September 13, 2019 (the “2019 Annual Report”).

Principles of Consolidation

The accompanying unaudited condensed consolidated financial statements include the accounts of the Company and its wholly owned subsidiary, Akoustis, Inc. On February 22, 2018, Akoustis Manufacturing New York, Inc. was merged into Akoustis, Inc., with Akoustis, Inc. as the surviving entity. All significant intercompany accounts and transactions have been eliminated in consolidation.

Significant Accounting Policies and Estimates

The Company's significant accounting policies are disclosed in Note 3-Summary of Significant Accounting Policies in the 2019 Annual Report. Since the date of the 2019 Annual Report, other than adopting ASC 842 "Leases" discussed in the footnote below, there have been no material changes to the Company's significant accounting policies. The preparation of the unaudited condensed consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the amounts reported in the unaudited condensed consolidated financial statements and the accompanying notes thereto. The policies, estimates and assumptions include valuing equity securities and derivative financial instruments issued in financing transactions, deferred taxes and related valuation allowances, revenue recognition, contingent real estate liability and the fair values of long-lived assets. Actual results could differ from the estimates.

Shares Outstanding

Shares outstanding include shares of restricted stock with respect to which restrictions have not lapsed. Restricted stock included in reportable shares outstanding was the following as of September 30, 2019 and 2018. Shares of restricted stock are included in the calculation of weighted average shares outstanding.

	September 30, 2019	September 30, 2018
Restricted stock included in reportable shares outstanding	181,000	513,425

Reclassification

Certain prior period amounts have been reclassified to conform to current period presentation. The reclassifications did not have an impact on net loss as previously reported

Restricted Cash

Restricted cash at September 30, 2019 and June 30, 2019 represents a retained balance obligation included in a deposit account control agreement required by the Company's May 2018 6.5% Convertible Senior Secured Notes due 2023. The restriction on the cash will lapse in conjunction with the extinguishment of the debt.

Recently Issued Accounting Pronouncements

Accounting Pronouncements Recently Adopted

In February 2016, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") 2016-02, "Leases (Topic 842)," with multiple amendments subsequently issued. The new guidance requires that lease arrangements be presented on the lessee's balance sheet by recording a right-of-use asset and a lease liability equal to the present value of the related future minimum lease payments. The Company adopted the standard in the first quarter of fiscal 2020, using the modified retrospective approach which permits lessees to recognize a cumulative-effect adjustment to the opening balance of accumulated deficit in the period of adoption. Upon adoption, the Company recorded a right-of-use asset of \$0.7 million and a lease liability of \$0.7 million.

The Company elected the transition package of practical expedients, under which the Company does not have to reassess (1) whether any expired or existing contracts are leases, or contain leases, (2) the lease classification for any expired or existing leases, and (3) initial direct costs for any existing leases. Further, the Company elected the practical expedient not to separate lease and non-lease components for substantially all of its classes of leases and to account for the combined lease and non-lease components as a single lease component. In addition, the Company made an accounting policy election to exclude leases with an initial term of 12 months or less from the balance sheet. This standard did not have a material impact on the Condensed Consolidated Statement of Operations or Condensed Consolidated Statement of Cash Flows. See Note 12 for further disclosures resulting from the adoption of this new standard.

In June 2018, the FASB issued ASU No. 2018-07, *Compensation – Stock Compensation (Topic 718): Improvements to Nonemployee Share-Based Payment Accounting*. Under the new standard, companies will no longer be required to value non-employee awards differently from employee awards. Companies will value all equity classified awards at their grant-date under ASC 718 and forgo revaluing the award after the grant date. ASU 2018-07 is effective for annual reporting periods beginning after December 15, 2018, including interim reporting periods within that reporting period. The Company adopted during the first quarter 2020 and there was no material impact on its condensed consolidated financial statements. Approximately \$0.3 million of accrued expenses associated with share-based compensation were reclassified to equity.

In May 2017, the FASB issued ASU 2017-09, *Compensation—Stock Compensation (Topic 718): Scope of Modification Accounting*, which provides guidance about which changes to the terms or conditions of a stock-based payment award require an entity to apply modification accounting in Topic 718. The Company adopted during the first interim reporting period of fiscal year 2020 and there was no material impact on its condensed consolidated financial statements.

Management does not believe that any other recently issued, but not yet effective accounting pronouncements, when adopted, will have a material effect on the accompanying condensed consolidated financial statements.

Note 4. Revenue Recognition from Contracts with Customers

Disaggregation of Revenue

The Company's primary revenue streams include foundry fabrication services and product sales.

Foundry Fabrication Services

Foundry fabrication services revenue includes microelectromechanical systems ("MEMS") foundry services and Non-Recurring Engineering ("NRE"). Under these contracts, products are delivered to the customer at the completion of the service which represents satisfaction of the performance obligation as well as transfer of title. Depending on language with regards to enforceable right to payment for performance completed to date, related revenue will either be recognized over time or at a point in time.

Product Sales

Product sales revenue consists of sales of RF filters and amps which are sold with contract terms stating that title passes, and the customer takes control at the time of shipment. Revenue is then recognized when the devices are shipped, and the performance obligation has been satisfied. If devices are sold under contract terms that specify that the customer does not take ownership until the goods are received, revenue is recognized when the customer receives the goods.

The following table summarizes the revenues of the Company's reportable segments for the three months ended September 30, 2019 (in thousands):

	Foundry Fabrication Services Revenue	Product Sales Revenue	Total Revenue with Customers
MEMS	\$ 245	\$ —	\$ 245
NRE - RF Filters	116	—	116
Filters/Amps	—	182	182
Total	<u>\$ 361</u>	<u>\$ 182</u>	<u>\$ 543</u>

The following table summarizes the revenues of the Company's reportable segments for the three months ended September 30, 2018 (in thousands):

	Foundry Fabrication Services Revenue	Product Sales Revenue	Total Revenue with Customers
MEMS	\$ 118	-	118
NRE - RF Filters	30	-	30
Filters/Amps	-	56	56
Total	<u>\$ 148</u>	<u>\$ 56</u>	<u>204</u>

Performance Obligations

The Company has determined that contracts for product sales revenue and foundry fabrication services revenue involve one performance obligation, which is delivery of the final product.

Contract Balances

The Company records a receivable when the title for goods has transferred. Generally, all sales are contract sales (with either an underlying contract or purchase order), resulting in all receivables being contract receivables. When invoicing occurs prior to revenue recognition a contract liability is recorded (as deferred revenue on the Condensed Consolidated Balance Sheet).

The following table summarizes the changes in the opening and closing balances of the Company's contract asset and liability for the first quarter of 2019 and 2018 (in thousands):

	Contract Assets	Contract Liability
Balance, June 30, 2019	\$ 140	\$ 5
Closing, September 30, 2019	139	13
Increase/(Decrease)	(1)	8
Balance, June 30, 2018	\$ -	\$ 53
Closing, September 30, 2018	6	96
Increase/(Decrease)	6	43

The Company records a receivable when the title for goods has transferred. Generally, all sales are contract sales (with either an underlying contract or purchase order), resulting in all receivables being contract receivables. When invoicing occurs prior to revenue recognition a contract liability is recorded (as deferred revenue on the Condensed Consolidated Balance Sheets). The amount of revenue recognized in the three months ended September 30, 2019 and 2018 that was included in the opening contract liability balance was \$5 thousand which related to filter sales and \$25 thousand which related to MEMS business, respectively.

Contract assets are recorded when revenue recognized exceeds the amount invoiced. The difference between the opening and closing balances of the Company's contract assets and contract liabilities primarily results from the timing difference between the Company's performance and the customer's payment. The amount of contract assets invoiced in the three months ended September 30, 2019 that was included in the opening contract asset balance was \$94 thousand which primarily related to MEMS business.

Backlog of Remaining Customer Performance Obligations

Revenue expected to be recognized and recorded as sales during this fiscal year from the backlog of performance obligations that are unsatisfied (or partially unsatisfied) was \$0.2 million at September 30, 2019.

Grant Revenue

From time to time the Company applies for grants from various government bodies (state & federal), such as the National Science Foundation ("NSF"), to support research and development. In addition, the Company is eligible for "matching awards" from state boards to provide additional funds to the Company to supplement the funds awarded under the federal grant program. The Company records grant revenue as a part of revenue from operations due to the fact that grant revenue is viewed as an ongoing function of its intended operations. The revenue from grants is not viewed as "incidental" or "peripheral" which would result in the presentation of grant revenue as "Other income". The Company recognizes nonrefundable grant revenue when the performance obligations have been met, application has been submitted and approval is reasonably assured.

Note 5. Common Stock Equivalents

The Company had the following common stock equivalents at September 30, 2019 and 2018. These are excluded from the loss per share calculation as they are considered anti-dilutive.

	September 30, 2019	September 30, 2018
Convertible Notes	4,960,800	2,290,077
Options	2,137,665	1,364,859
Warrants	626,343	728,493
Total	<u>7,724,808</u>	<u>4,383,429</u>

Note 6. Property and Equipment, net

Property and equipment, net consisted of the following as of September 30, 2019 and June 30, 2019 (in thousands):

	<u>Estimated Useful Life</u>	<u>September 30, 2019</u>	<u>June 30, 2019</u>
Land	n/a	\$ 1,000	\$ 1,000
Building	11 years	3,000	3,000
Equipment	2-10 years	15,102	13,611
Leasehold Improvements	*	949	949
Software	3 years	161	161
Furniture & Fixtures	5 years	11	11
Computer Equipment	3 years	203	203
Total		20,426	18,935
Less: Accumulated depreciation		(4,381)	(3,757)
Total		<u>\$ 16,045</u>	<u>\$ 15,178</u>

(*) Leasehold improvements are amortized on a straight-line basis over the term of the lease or the estimated useful lives, whichever is shorter.

The Company recorded depreciation expense of \$0.7 million and \$0.6 million for the three months ended September 30, 2019 and 2018, respectively.

Note 7. Accounts Payable and Accrued Expenses

Accounts payable and accrued expenses consisted of the following at September 30, 2019 and June 30, 2019 (in thousands):

	<u>September 30, 2019</u>	<u>June 30, 2019</u>
Accounts payable	\$ 218	\$ 245
Accrued salaries and benefits	1,010	1,552
Accrued professional fees	260	315
Accrued utilities	255	193
Accrued interest	135	135
Accrued goods received not invoiced	77	69
Other accrued expenses	637	702
Totals	<u>\$ 2,592</u>	<u>\$ 3,211</u>

Note 8. Derivative Liabilities

The table below provides a summary of the changes in fair value, including net transfers in and/or out, of all financial assets and liabilities measured at fair value on a recurring basis using significant unobservable inputs (Level 3) during the three months ended September 30, 2019 (in thousands):

	Fair Value Measurement Using Level 3 Inputs Total
Balance, June 30, 2019	\$ 955
Change in fair value of derivative liabilities	344
Balance, September 30, 2019 (see footnote 9)	<u>\$ 1,299</u>

The fair value of the derivative features of the convertible note at the balance sheet dates were calculated using the with-and-without method, a form of the income approach, valued with the following weighted average assumptions:

	September 30, 2019	June 30, 2019
Remaining term (years)	3.67-4.17	3.92
Expected volatility	50%	49%
Risk free interest rate	1.55%-1.56%	1.73%
Dividend yield	0.00%	0.00%

Risk-free interest rate: The Company uses the risk-free interest rate of a U.S. Treasury Bill with a similar term on the date of the issuance.

Dividend yield: The Company uses a 0% expected dividend yield as the Company has not paid dividends to date and does not anticipate declaring dividends in the near future.

Volatility: The Company estimated the expected volatility of the stock price based on the corresponding volatility of the Company's peer group stock price for a period consistent with the convertible notes' expected term.

Remaining term: The Company's remaining term is based on the remaining contractual term of the convertible notes.

Note 9. Convertible Notes

The following table summarizes convertible debt as of September 30, 2019 (in thousands):

	<u>Maturity Date</u>	<u>Stated Interest Rate</u>	<u>Conversion Price</u>	<u>Face Value</u>	<u>Remaining Debt (Discount)</u>	<u>Fair Value of Embedded Conversion Option</u>	<u>Carrying Value</u>
Long Term convertible notes payable							
6.5% convertible senior secured notes	5/31/2023	6.50%	\$ 5.00	\$ 15,000	\$ (6,200)	\$ 1,185	\$ 9,985
6.5% convertible senior notes	11/30/2023	6.50%	\$ 5.10	<u>\$ 10,000</u>	<u>\$ (829)</u>	<u>\$ 114</u>	<u>\$ 9,285</u>
Ending Balance as of September 30, 2019				<u>\$ 25,000</u>	<u>\$ (7,029)</u>	<u>\$ 1,299</u>	<u>\$ 19,270</u>

The following table summarizes convertible debt as of June 30, 2019 (in thousands):

	<u>Maturity Date</u>	<u>Stated Interest Rate</u>	<u>Conversion Price</u>	<u>Face Value</u>	<u>Remaining Debt (Discount)</u>	<u>Fair Value of Embedded Conversion Option</u>	<u>Carrying Value</u>
Long Term convertible notes payable							
6.5% convertible senior secured notes	5/31/2023	6.50%	\$ 5.00	\$ 15,000	\$ (6,825)	\$ 955	\$ 9,130
6.5% convertible senior notes	11/30/2023	6.50%	\$ 5.10	<u>\$ 10,000</u>	<u>\$ (915)</u>	<u>\$ —</u>	<u>\$ 9,085</u>
Ending Balance as of June 30, 2019				<u>\$ 25,000</u>	<u>\$ (7,740)</u>	<u>\$ 955</u>	<u>\$ 18,215</u>

Note 10. Concentrations

Vendors

Vendor concentration as a percentage of purchases for the three months ended September 30, 2019 and 2018 are as follows:

	Three Months 09/30/2019	Three Months 09/30/2018
Vendor 1	15%	—
Vendor 2	—	27%

Customers

Customer concentration as a percentage of non-grant related revenue for the three months ended September 30, 2019 and 2018 are as follows:

	Three Months 09/30/2019	Three Months 09/30/2018
Customer 1	45%	40%
Customer 2	20%	—
Customer 3	20%	—
Customer 4	—	17%
Customer 5	—	15%
Customer 6	—	14%

Note 11. Stockholders' Equity

Equity Incentive Plans

During the three months ended September 30, 2019, the Company granted employees and directors options to purchase an aggregate of 57,000 shares of common stock with a weighted average grant date fair value of \$4.23. The fair values of the Company's options were estimated at the dates of grant using a Black-Scholes option pricing model with the following weighted average assumptions:

	Three Months Ended September 30, 2019
Exercise price	\$ 7.55
Expected term (years)	4.75 – 5.00
Risk-free interest rate	1.68 – 1.70%
Volatility	67%
Dividend yield	0%
Weighted Average Grant Date Fair Value of Options granted during the period	\$ 4.23

Expected term: The Company's expected term is based on the period the options are expected to remain outstanding. The Company estimated this amount utilizing the "Simplified Method" in that the Company does not have sufficient historical experience to provide a reasonable basis to estimate an expected term.

Risk-free interest rate: The Company uses the risk-free interest rate of a U.S. Treasury Note with a similar term on the date of the grant.

Volatility: The Company calculates the expected volatility of the stock price using the historical volatilities of the Company's common stock traded on the Nasdaq Capital Market.

Dividend yield: The Company uses a 0% expected dividend yield as the Company has not paid dividends to date and does not anticipate declaring dividends in the near future.

During the three months ended September 30, 2019 the Company awarded certain employees and contractors grants of an aggregate of 213,600 restricted stock units ("RSUs") with a weighted average grant date fair value of \$6.79. The RSUs will be expensed over the requisite service period. The terms of the RSUs include vesting provisions based solely on continued service. If the service criteria are satisfied, the RSUs will generally vest over 4 – 5 years.

Compensation expense related to our stock-based awards described above was as follows (in thousands):

	Three Months Ended September 30,	
	2019	2018
Research and Development	\$ 956	\$ 915
General and Administrative	747	1,183
Total	\$ 1,703	\$ 2,098

Unrecognized stock-based compensation expense and weighted-average years to be recognized are as follows (in thousands):

	As of September 30, 2019	
	Unrecognized stock- based compensation	Weighted- average years to be recognized
Options	\$ 2,358	2.02
Restricted stock awards/units	\$ 4,647	2.03

Note 12. Commitments and Contingencies

Leases

The Company leases office space and office equipment in Huntersville, NC as well as equipment in Canandaigua, NY. Our leases have remaining lease terms of up to five years, some of which include options to extend the leases for up to twenty-four months. Following adoption of ASC 842, lease expense excludes capital area maintenance and property taxes.

The components of lease expense were as follows:

	Three Months Ended September 30, 2019	Three Months Ended September 30, 2018
Operating Lease Expense	\$ 43	57

Supplemental balance sheet information related to leases was as follows (in thousands):

	Classification on the Condensed Consolidated Balance Sheet	September 30, 2019
Assets		
Operating lease assets	Other non-current assets	\$ 636
Liabilities		
Other current liabilities	Current liabilities	108
Operating lease liabilities	Other non-current liabilities	530

Weighted Average Remaining Lease Term:

Operating leases	4.6 Years
------------------	-----------

Weighted Average Discount Rate:

Operating leases	10.97%
------------------	--------

The following table outlines the minimum future lease payments for the next five years and thereafter, (in thousands):

For the year ending June 30,		
2020		\$ 128
2021		174
2022		178
2023		182
2024		149
Thereafter		—
Total lease payments (Undiscounted cash flows)		811
Less imputed interest		(173)
Total		\$ 638

Ontario County Industrial Development Authority Agreement

On February 27, 2018, the Company entered into a Lease and Project Agreement (the “Lease and Project Agreement”) and a Company Lease Agreement (the “Company Lease Agreement”) and together with the Lease and Project Agreement, the “Agreements”), each dated as of February 1, 2018, with the Ontario County Industrial Development Agency, a public benefit corporation of the State of New York (the “OCIDA”). Pursuant to the Agreements, the Company will lease for \$1.00 annually to the OCIDA an approximately 9.995 acre parcel of land in Canandaigua, New York, together with the improvements thereon (including the Company’s New York fabrication facility), and transfer title to certain related equipment and personal property to the OCIDA (collectively, the “Facility”). The OCIDA will lease the Facility back to the Company for annual rent payments specified in the Lease and Project Agreement for the Company’s primary use as research and development, manufacturing, warehouse and professional office space in its business, and to be subleased, in part, by the Company to various existing tenants. The Company estimates substantial tax savings during the term of the Agreements, which expire on December 31, 2028. In addition, subject to the terms of the Lease and Project Agreement, certain purchases and leases of eligible items will be exempt from the imposition of sales and use taxes. Subject to the terms of the Lease and Project Agreement, the OCIDA has also granted to the Company an exemption from certain mortgage recording taxes for one or more mortgages securing an aggregate principal amount not to exceed \$12.0 million, or such greater amount as approved by the OCIDA in its sole and absolute discretion. The benefits provided to the Company pursuant to the terms of the Lease and Project Agreement are subject to claw back over the life of the Agreements upon certain recapture events, including certain events of default.

Real Estate Contingent Liability

On March 23, 2017, we entered into an Asset Purchase Agreement and a Real Property Purchase Agreement (collectively, the “STC-MEMS Agreements”) with The Research Foundation for the State University of New York (“RF-SUNY”) and Fuller Road Management Corporation (“FRMC”), an affiliate of RF-SUNY (collectively, “Sellers”), respectively, to acquire certain specified assets, including STC-MEMS, a semiconductor wafer-manufacturing and microelectromechanical systems (“MEMS”) operation with associated wafer-manufacturing tools, and the associated real estate and improvements located in Canandaigua, NY used in the operation of STC-MEMS (the assets and real estate and improvements referred to together herein as the “STC-MEMS Business”).

In connection with the acquisition of the STC-MEMS Business, the Company agreed to pay to FRMC a penalty, as set forth below, if the Company sells the property subject to the related Definitive Real Property Purchase Agreement within three (3) years after the date of such agreement for an amount in excess of \$1.75 million, subject to certain enumerated exceptions. The penalty imposed shall be equivalent to the amount that the sales price of the property exceeds \$1.75 million up to the maximum penalty (“Maximum Penalty”) defined below, (in thousands):

	Maximum Penalty
Year 3, ending March 23, 2020	\$ 464

The fair value of the contingent liability was calculated by an independent third-party appraisal firm, utilizing a present value calculation based on the probability the Company sells the property triggering the contingent penalty and a discount rate of 14.8%. The 14.8% discount rate was derived from a weighted average cost of capital, modified to include the effects of the bargain purchase price. As of September 30, 2019, and June 30, 2019, the fair value of the contingent liability was \$0.4 million and \$1.2 million, respectively. During the three months ended September 30, 2019 and 2018, the Company marked the contingent liability to fair value and recorded a loss of \$0.02 million and \$0.5 million, respectively, relating to the change in fair value.

Litigation, Claims and Assessments

From time to time, the Company may become involved in lawsuits, investigations and claims that arise in the ordinary course of business. The Company believes it has meritorious defenses against all pending claims and intends to vigorously pursue them. While it is not possible to predict or determine the outcomes of any pending actions, the Company believes the amount of liability, if any, with respect to such actions, would not materially affect its financial position, results of operations or cash flows.

Effective November 5, 2018, the employment by the Company of its former principal financial officer, John T. Kurtzweil (the “Former CFO”), ended, after which the Former CFO filed for an arbitration hearing pursuant to the terms of his employment agreement and filed a complaint under the whistleblower provisions of the Sarbanes-Oxley Act of 2002 with the Occupational Safety and Health Administration of the U.S. Department of Labor. On October 28, 2019, the Company and the Former CFO entered into a Settlement Agreement that resolved all pending disputes between the parties with no admission of liability by either party. Pursuant to the Settlement Agreement, following dismissal of the arbitration demand and the complaint filed with the U.S. Department of Labor, the Company will pay to the Former CFO an undisclosed sum. Additionally, under the Settlement Agreement, all stock options and equity awards issued to the Former CFO that had not vested as of the end of his employment were acknowledged as forfeited as of such date.

Tax Credit Contingency

The Company accrues a liability for indirect tax contingencies when it believes that it is both probable that a liability has been incurred and that it can reasonably estimate the amount of the loss. The Company reviews these accruals and adjusts them to reflect ongoing negotiations, settlements, rulings, advice of legal counsel and other relevant information. To the extent new information is obtained and the Company’s views on the probable outcomes of claims, suits, assessments, investigations or legal proceedings change, changes in the Company’s accrued liabilities would be recorded in the period in which such determination is made.

The Company's gross unrecognized indirect tax credits totaled \$0.1 million as of September 30, 2019 and \$0.1 million as of June 30, 2019 and is recorded on the Consolidated Balance Sheet as a long-term liability.

Note 13. Related Party Transactions

Consulting Services

Total stock-based compensation expense related to stock-based awards granted in prior years for consulting services provided by a firm owned by one of the Co-Chairmen of the Company's board of directors was \$15 thousand and \$16 thousand for the three months ended September 30, 2019 and 2018, respectively.

Note 14. Segment Information

Operating segments are defined as components of an enterprise about which separate financial information is available and evaluated regularly by the chief operating decision maker, or decision-making group, in deciding how to allocate resources and in assessing performance. The Company's chief operating decision maker is its Chief Executive Officer. The Company operates in two segments, Foundry Fabrication Services which consists of engineering review services and STC-MEMS foundry services, and RF Product which consists of amplifier and filter product sales, and grant revenue. The Company records all general and administrative costs in the RF Product segment.

The Company evaluates performance of its operating segments based on revenue and operating profit (loss). Segment information for the three months ended September 30, 2019 and 2018 are as follows (in thousands):

	<u>Foundry/ Fabrication Services</u>	<u>RF Product</u>	<u>Total</u>
Three months ended September 30, 2019			
Revenue	\$ 361	\$ 182	\$ 543
Grant revenue	—	—	—
Total Revenue	361	182	543
Cost of revenue	138	198	336
Gross margin	223	(16)	207
Research and development	—	5,079	5,079
General and administrative	—	2,801	2,801
Income (Loss) from Operations	\$ 223	(7,896)	(7,673)
Three months ended September 30, 2018			
Revenue	\$ 148	\$ 56	\$ 204
Grant revenue	—	109	109
Total Revenue	148	165	313
Cost of revenue	133	11	144
Gross margin	15	154	169
Research and development	—	4,361	4,361
General and administrative	—	2,505	2,505
Income (Loss) from Operations	\$ 15	(6,712)	(6,697)
As of September 30, 2019			
Accounts receivable	\$ 411	\$ 172	\$ 583
Property and equipment, net	—	\$ 16,045	\$ 16,045
As of June 30, 2019			
Accounts receivable	\$ 150	\$ 135	\$ 285
Property and equipment, net	\$ 54	\$ 15,124	\$ 15,178

Note 15. Subsequent Events

On November 4, 2019, the Company amended its Certificate of Incorporation to increase the number of authorized shares of its common stock to 100,000,000, as approved by the Company's stockholders at the 2019 annual meeting.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

References in this report to "Akoustis," the "Company," "we," "us," and "our" refer to Akoustis Technologies, Inc. and its consolidated subsidiary, Akoustis, Inc. each of which are Delaware corporations.

Cautionary Note Regarding Forward-Looking Statements

This quarterly report on Form 10-Q contains forward-looking statements that relate to our plans, objectives, estimates, and goals. Any and all statements contained in this report that are not statements of historical fact may be deemed to be forward-looking statements. Terms such as "may," "might," "would," "should," "could," "project," "estimate," "predict," "potential," "strategy," "anticipate," "attempt," "develop," "plan," "help," "believe," "continue," "intend," "expect," "future," and terms of similar import (including the negative of any of the foregoing) may be intended to identify forward-looking statements. However, not all forward-looking statements may contain one or more of these identifying terms. Forward-looking statements in this report may include, without limitation, statements regarding (i) the plans and objectives of management for future operations, including plans or objectives relating to the development of commercially viable radio frequency ("RF") filters, (ii) projections of income (including income/loss), earnings (including earnings/loss) per share, capital expenditures, dividends, capital structure or other financial items, (iii) our future financial performance, including any such statement contained in this management's discussion and analysis of financial condition or in the results of operations included pursuant to the rules and regulations of the Securities and Exchange Commission (the "SEC"), (iv) our ability to efficiently utilize cash and cash equivalents to support our operations for a given period of time, (v) our ability to engage customers while maintaining ownership of our intellectual property, and (vi) the assumptions underlying or relating to any statement described in (i), (ii) or (iii) above.

The forward-looking statements are not meant to predict or guarantee actual results, performance, events or circumstances and may not be realized because they are based upon our current projections, plans, objectives, beliefs, expectations, estimates, and assumptions and are subject to a number of risks and uncertainties and other influences, many of which are beyond our control. Actual results and the timing of certain events and circumstances may differ materially from those described by the forward-looking statements as a result of these risks and uncertainties. Factors that may influence or contribute to the inaccuracy of the forward-looking statements or cause actual results to differ materially from expected or desired results may include, without limitation, our ability to continue as a going concern; our inability to obtain adequate financing; our limited operating history; our inability to generate revenues or achieve profitability; the results of our research and development ("R&D") activities; our inability to achieve acceptance of our products in the market; general economic conditions, including upturns and downturns in the industry; our limited number of patents; failure to obtain, maintain, and enforce our intellectual property rights; our inability to attract and retain qualified personnel; our reliance on third parties to complete certain processes in connection with the manufacture of our products; product quality and defects; existing or increased competition; our ability to market and sell our products; our inability to successfully scale our New York wafer fabrication facility and related operations while maintaining quality control and assurance and avoiding delays in output; our failure to innovate or adapt to new or emerging technologies; our failure to comply with regulatory requirements; results of any arbitration or litigation that may arise; stock volatility and illiquidity; our failure to implement our business plans or strategies; our failure to remediate the material weaknesses in our internal control over financial reporting; and our failure to maintain the Trusted Foundry accreditation of our New York wafer fabrication facility.

These and other risks and uncertainties, which are described in more detail in our Annual Report on Form 10-K, filed with the SEC on September 13, 2019 (the "2019 Annual Report"), could cause our actual results to differ materially from those expressed or implied by the forward-looking statements in this report. Readers are cautioned not to place undue reliance on forward-looking statements because of the risks and uncertainties related to them. Except as may be required by law, we do not undertake any obligation to update the forward-looking statements contained in this report to reflect any new information or future events or circumstances or otherwise.

Overview

Akoustis® is an emerging commercial company focused on developing, designing, and manufacturing innovative RF filter products for the wireless industry, including for products such as smartphones and tablets, network infrastructure equipment, WiFi Customer Premise Equipment (“CPE”) and defense applications. Filters are critical in selecting and rejecting signals, and their performance enables differentiation in the modules defining the RF front-end (“RFFE”). Located between the device’s antenna and its digital backend, the RF front-end (“RFFE”) is the circuitry that performs the analog signal processing and contains components such as amplifiers, filters and switches. We have developed a new and proprietary microelectromechanical systems (“MEMS”) based bulk acoustic wave (“BAW”) technology and a unique manufacturing flow for our filters produced for use in RFFE modules, called “XBAW”. Our XBAW™ process incorporates optimized high purity piezoelectric materials for high power, high frequency and wide bandwidth applications.

We believe owning the core resonator device technology manufacturing facility and intellectual property (“IP”) to produce our designs is the most direct and efficient means of delivering our solutions to the market. Furthermore, our technology is based upon bulk-mode acoustic resonance, which we believe is superior to surface-mode resonance for high-band applications that include 4G/LTE, 5G, WiFi, and defense applications. Although some of our target customers utilize or make the RFFE module, they may lack access to critical ultra-high-band (UHB) filter technology needed to compete in high frequency applications. We seek to design, manufacture, and market our RF filter products to mobile phone original equipment manufacturers (“OEMs”), defense OEMs, network infrastructure OEMs, and WiFi CPE OEM’s to enable broader competition among the front-end module manufacturers. We operate as a “pure-play” RF filter supplier and align with the front-end module manufacturers who seek to acquire high performance filters to expand their module business.

We currently build high performance RF filter circuits, using our first generation XBAW™ wafer process, in our 120,000-square foot wafer-manufacturing facility located in Canandaigua, New York, which we acquired in June 2017. As of November 01, 2019, our intellectual property (IP) portfolio included 26 patents, including a blocking patent that we have licensed from Cornell University. Additionally, we have 52 pending patent applications. These patents cover our XBAW™ RF filter technology from the substrate level through the system application layer. Where possible, we leverage both federal and state level R&D grants to support development and commercialization of our technology.

We are developing RF filters for 4G/LTE, 5G, WiFi and defense bands using our proprietary resonator device models and product design kits (PDKs). As we qualify our first RF filter products, we are engaging with target customers to evaluate our filter solutions. Our initial designs target UHB, sub 7 GHz 4G/LTE, 5G, WiFi and defense bands. Since Akoustis owns its core technology and controls access to its intellectual property, we expect to offer several ways to engage with potential customers. First, we intend to engage with multiple wireless markets, providing standardized filters that we design and offer as standard catalog components. Second, we expect to deliver unique filters to customer-supplied specifications, which we will design and fabricate on a customized basis. Finally, we may offer our models and design kits for our customers to design their own filters utilizing our proprietary technology.

We have earned minimal revenue from operations since inception, and we have funded our operations primarily with development contracts, RF filter and production orders, government grants, MEMS foundry and engineering services, and sales of debt and equity securities. We have incurred losses totaling approximately \$76.5 million from inception through September 30, 2019. These losses are primarily the result of material and processing costs associated with developing and commercializing our technology, as well as personnel costs, professional fees (primarily accounting and legal), and other general and administrative (“G&A”) expenses. We expect to continue to incur substantial costs for commercialization of our technology on a continuous basis because our business model involves materials and solid-state device technology development and engineering of catalog and custom filter design solutions.

Plan of Operation

We plan to commercialize our technology by designing and manufacturing single-band and multi-band BAW RF filter solutions in our New York wafer fabrication facility. We expect our filter solutions will address problems (such as loss, bandwidth, power handling, and isolation) created by the growing number of frequency bands in the RFFE of mobile devices, infrastructure and premise equipment to support 4G/LTE, 5G, and WiFi. We have prototyped our first single-band low-loss BAW filter designs for 4G/LTE frequency bands, which are dominated by competitive BAW solutions and historically cannot be addressed with low-band, lower power handling surface acoustic wave (“SAW”) technology.

To succeed, we must convince mobile phone OEMs, RFFE module manufacturers, cellular infrastructure OEMs, WiFi CPE OEMs and military customers to use our XBAW™ filter technology in their systems and modules. However, since there are two dominant BAW filter suppliers in the industry that have high-band technology, and both utilize such technology as a competitive advantage at the module level, we expect customers that lack access to high-band filter technology will be open to engage with our pure-play filter company.

We plan to pursue RF filter design and R&D development agreements and potentially joint ventures with target customers and other strategic partners, although we cannot guarantee we will be successful in these efforts. These types of arrangements may subsidize technology development costs and qualification, filter design costs, and offer complementary technology and market intelligence and other avenues to revenue. However, we intend to retain ownership of our core technology, intellectual property, designs, and related improvements. We expect to pursue development of catalog designs for multiple customers and to offer such catalog products in multiple sales channels.

As of November 01, 2019, the Company had \$21.1 million of cash and cash equivalents to fund our operations, including capital expenditures, R&D, commercialization of our technology, development of our patent strategy and expansion of our patent portfolio, as well as to provide working capital and funds for other general corporate purposes. Our anticipated expenses include employee salaries and benefits, compensation paid to consultants, capital costs for research and other equipment, costs associated with development activities (including travel and administration), costs associated with the integration and operation of our New York wafer fabrication facility and related operations, legal expenses, sales and marketing costs, G&A expenses, and other costs associated with an early stage, public technology company. We anticipate increasing the number of employees; however, this is highly dependent on the nature of our development efforts, and our success in commercialization. We anticipate adding employees for R&D in both our New York and North Carolina facilities, as well as G&A functions, to support our efforts. We expect capital expenditures to be between \$10 million and \$12 million for the purchase of equipment and software during the next 12 months.

The amounts we actually spend for any specific purpose may vary significantly and will depend on a number of factors, including, but not limited to, the pace of progress of our commercialization and development efforts, actual needs with respect to product testing, R&D, market conditions and changes in or revisions to our marketing strategies.

Commercial development of new technology, by its nature, is unpredictable. Although we will undertake development efforts with commercially reasonable diligence, there can be no assurance that our current cash position will be sufficient to enable us to commercialize our technology to the extent needed to create future sales to sustain operations. If our current cash is insufficient for these purposes, we are unable to source additional funds on terms acceptable to the Company (or at all), or we experience costs in excess of estimates to continue our R&D plan, it is possible that we would not have sufficient resources to continue as a going concern and we may be required to curtail or suspend our operations. Even if we are able to source sufficient funds to continue as a going concern, our technology may not be accepted, we may never earn revenues sufficient to support our operations, and we may never be profitable.

Recent Developments

On July 16, 2019, the Company announced a new purchase order from a strategic Defense customer for five new filter solutions in the 2-4 GHz frequency spectrum. In late July, Akoustis announced its design lock and pre-production of its 5.6GHz WiFi BAW filter solution which complements the Company's existing 5.2GHz WiFi filter product.

On August 13, 2019, Akoustis announced a follow-on order from a tier-1 wireless telecommunications customer to develop two additional 5G Mobile filter solutions. In early September 2019, The Company announced a first shipment of its pre-production 5.6GHz XBAW filter product to tier-1 WiFi OEM.

On September 19, Akoustis announced its new n79 RF filter along with shipment of first samples to a new global tier-1 OEM. By the end of September, Akoustis shipped its first tandem 5.2 GHz/5.6 GHz WiFi BAW filters to an existing tier-1 SoC customer.

Critical Accounting Policies

There have been no material changes to our critical accounting policies and estimates from the information provided in Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations," included in our 2019 Annual Report.

Results of Operations

Three Months Ended September 30, 2019 and 2018

Revenue

The Company recorded revenue of \$0.5 million during the three months ended September 30, 2019 as compared to \$0.3 million for the three months ended September 30, 2018. Revenue recorded during the three months ended September 30, 2019 included \$0.2 million of RF filter and amplifier sales, \$0.2 million of foundry services, and \$0.1 million of revenue for non-recurring engineering services. The revenue for the three months ended September 30, 2018 consisted of \$0.1 million of revenue for foundry services, \$0.1 million of grant revenue and \$0.1 million of RF filter and amplifier sales.

Cost of Revenue

The Company recorded cost of revenue of \$0.3 million in the three months ended September 30, 2019 and \$0.1 million in the three months ended September 30, 2018, which included direct labor, direct materials and facility costs.

Research and Development Expenses

R&D expenses were \$5.1 million for the three months ended September 30, 2019 and were \$0.7 million, or 17%, higher than the prior year amount for the same period of \$4.4 million. The period-over-period increase was primarily in the areas of R&D personnel costs, R&D materials and R&D equipment depreciation. Personnel costs, including stock-based compensation, were \$3.2 million compared to \$2.8 million in the prior year period, an increase of \$0.4 million or 14%. The higher personnel cost was due to additional R&D headcount at both the Huntersville, NC location and the NY Facility. Material costs of \$0.8 million primarily associated with the NY Facility were \$0.3 million higher than the comparative period due to increased R&D activity.

General and Administrative Expense

General and administrative ("G&A") expenses include salaries and wages for executive and administrative staff, stock-based compensation, professional fees, insurance costs and other general costs associated with the administration of our business. G&A expenses for the three months ended September 30, 2019 were \$2.8 million, which is an increase of \$0.3 million compared to the three months ended September 30, 2018. Year over year changes within G&A expenses include an increase in employee compensation of \$0.4 million as well as an increase in professional fees of \$0.3 million. Offsetting these increases was a decrease of \$0.4 million, or 37%, in stock-based compensation.

Other (Expense)/Income

Other expenses for the three months ended September 30, 2019 were \$1.3 million, which included debt discount amortization of \$0.7 million, interest expense of \$0.4 million, and a change in fair value of our derivative liability of \$0.3 million. These expenses were partially offset by interest income of \$0.1 million. Other expenses for the three months ended September 30, 2018 were \$0.6 million, consisting of a \$0.2 million change in the fair value of our derivative liability, \$0.2 million of debt discount amortization and interest expense of \$0.2 million.

Net Loss

The Company recorded a net loss of \$9.0 million for the three months ended September 30, 2019, compared to a net loss of \$7.3 million for the three months ended September 30, 2018. The period-over-period incremental loss of \$1.7 million, or 23%, was primarily driven by an increase in other expenses of \$0.7 million, increases in R&D related materials of \$0.3 million and increases in general expenses, including professional fees of \$0.3 million and compensation increase of \$0.4 million.

Liquidity and Capital Resources

Financing Activities

The Company had \$22.7 million of cash on hand as of September 30, 2019, which reflects a decrease of \$7.4 million compared to \$30.2 million as of June 30, 2019. The \$7.4 million decrease is primarily due to \$5.8 million in net cash used in operating activities and \$1.6 million in capital expenditures for the three months ended September 30, 2019. The Company estimates that cash on hand will fund its operations, including current capital expense commitments into the first quarter of fiscal year 2021. As a result, we will need to obtain additional capital through the sale of additional equity securities, debt and additional grants, or otherwise, to fund operations past that date. There is no assurance that the Company's projections and estimates are accurate. Although the Company is actively managing and controlling the Company's cash outflows to mitigate these risks, these matters raise substantial doubt about the Company's ability to continue as a going concern within one year from the date of this filing.

Balance Sheet and Working Capital

September 30, 2019 compared to June 30, 2019

As of September 30, 2019, the Company had current assets of \$24.4 million made up primarily of cash on hand of \$22.6 million. As of June 30, 2019, current assets were \$31.7 million comprised primarily of cash on hand of \$30.1 million.

Property, Plant and Equipment was \$16.0 million as of September 30, 2019 as compared to a balance of \$15.2 million as of June 30, 2019. The approximate \$0.9 million increase is primarily due to the purchase of R&D and manufacturing equipment of \$1.5 million, offset by depreciation of \$0.7 million.

Total assets as of September 30, 2019 and June 30, 2019 were \$42.3 million and \$47.9 million, respectively.

Current liabilities as of September 30, 2019 and June 30, 2019 were \$2.7 million and \$3.2 million, respectively.

Long-term liabilities totaled \$20.4 million as of September 30, 2019, compared to \$18.8 million as of June 30, 2019. The increase of \$1.6 million was due to the increase in convertible notes, net of debt discount and issuance costs as well as the establishment of a right of use liability upon adoption of ASC 842 which totaled \$0.6 million.

Stockholders' equity was \$19.2 million as of September 30, 2019, compared to \$26.0 million as of June 30, 2019, a decrease of \$6.7 million, or 26%. This decrease was primarily due to the net loss for the three months ended September 30, 2019 of \$9.0 million which was partially offset by an increase in additional paid-in-capital ("APIC"). APIC was \$95.6 million as of September 30, 2019 and increased by \$2.2 million from June 30, 2019. The increase was due to stock-based compensation of \$1.7 million, vesting of restricted shares of \$0.3 million and common stock issued in payment of convertible note interest of \$0.2 million.

Cash Flow Analysis

Operating activities used cash of \$5.8 million during the three months ended September 30, 2019 and \$4.7 million during the 2018 comparative period. The \$1.1 million period-over-period increase in cash used was attributable to higher operating expenses associated with the ramp up of development and commercialization activities (primarily R&D personnel and material costs).

Investing activities used cash of \$1.6 million for the three months ended September 30, 2019 compared to \$1.1 million for the comparative period ended September 30, 2018. The \$0.6 million period-over-period increase was primarily due to increased spend on R&D equipment.

Financing activities decreased by \$0.1 million during the three months ended September 30, 2019 compared to the same period in 2018 due to a reduction in warrants exercised.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK.

Not applicable to smaller reporting companies.

ITEM 4. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

Our management is responsible for establishing and maintaining a system of disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) that is designed to ensure that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by an issuer in the reports that it files or submits under the Exchange Act is accumulated and communicated to the issuer's management, including its principal executive officer and principal financial officer, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

We conducted an evaluation under the supervision and with the participation of our Chief Executive Officer and our Interim Chief Financial Officer (our principal executive officer and principal financial officer) of the effectiveness of the design and operation of our disclosure controls and procedures as of June 30, 2019. Based on that evaluation, our Chief Executive Officer and Interim Chief Financial Officer concluded that our disclosure controls and procedures were not effective as of such date due to the material weaknesses described below with respect to our internal control over financial reporting.

A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of our annual or interim financial statements will not be prevented or detected on a timely basis. We identified the following material weaknesses as of June 30, 2019:

1. The Company did not design and implement effective Information Technology General Controls ("ITGC") for certain information systems that are relevant to the preparation of the Company's financial statements. Specifically, applications supporting the processes of payroll, cash management, fixed assets and financial close included deficiencies related to user access controls, change management, information technology operations and third-party service providers. These ITGC deficiencies, combined with inadequate compensating review controls, create a reasonable possibility that a material misstatement to the consolidated financial statements will not be prevented or detected on a timely basis.
2. Management review controls designed to address risks associated with complex accounting matters that arise from significant routine and non-routine transactions – related to revenue, share-based compensation, research and development expense, and debt – to ensure that those transactions are properly accounted for in accordance with U.S. GAAP did not operate effectively.

Remediation Plan

IT General Controls: During the first quarter of fiscal year 2020, key mitigating controls were designed and implemented to mitigate risks in the absence of full year coverage of SSAE-18 (SOC1) reports. These controls will be tested for design and operating effectiveness during FY20.

Non-Routine Transaction Review: During the first quarter of fiscal year 2020, controls were designed and implemented to mitigate risks related to review of all non-routing, material transactions specifically around revenue, share-based compensation, research and development expense and debt. These controls will be tested for design and operating effectiveness during FY20.

Changes in Internal Control over Financial Reporting

Other than the mitigating controls referenced above, there have been no changes in our internal control over financial reporting that occurred during the quarterly period covered by this report that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II - OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS.

From time to time, we may become involved in various lawsuits and legal proceedings that arise in the ordinary course of business. Litigation is subject to inherent uncertainties, and an adverse result in these or other matters may arise from time to time that may have an adverse effect on our business, financial condition or results of operations and prospects.

Except as noted below, we are currently not aware of any material pending legal proceedings to which we are a party or of which any of our property is the subject, nor are we aware of any such proceedings that are contemplated by any governmental authority.

Effective November 5, 2018, the employment by the Company of its former principal financial officer, John T. Kurtzweil (the "Former CFO"), ended, after which the Former CFO filed for an arbitration hearing pursuant to the terms of his employment agreement and filed a complaint under the whistleblower provisions of the Sarbanes-Oxley Act of 2002 with the Occupational Safety and Health Administration of the U.S. Department of Labor. On October 28, 2019, the Company and the Former CFO entered into a Settlement Agreement that resolved all pending disputes between the parties with no admission of liability by either party. Pursuant to the Settlement Agreement, following dismissal of the arbitration demand and the complaint filed with the U.S. Department of Labor, the Company will pay to the Former CFO an undisclosed sum. Additionally, under the Settlement Agreement, all stock options and equity awards issued to the Former CFO that had not vested as of the end of his employment were acknowledged as forfeited as of such date.

ITEM 1A. RISK FACTORS.

In addition to the other information set forth in this report, you should carefully consider the factors discussed under Part I, Item 1A, "Risk Factors" in our Annual Report on Form 10-K for the fiscal year ended June 30, 2019. These factors could materially adversely affect our business, financial condition, liquidity, results of operations and capital position, and could cause our actual results to differ materially from our historical results or the results contemplated by the forward-looking statements contained in this report. There have been no material changes to the risk factors described in Part I, Item 1A, "*Risk Factors*," included in our 2019 Annual Report.

ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS.

Unregistered Sales of Equity Securities

Other than any sales previously reported in the Company's Current Reports on Form 8-K, the Company did not sell any unregistered securities during the period covered by this report.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES.

None.

ITEM 4. MINE SAFETY DISCLOSURES.

Not applicable.

ITEM 5. OTHER INFORMATION.

None.

ITEM 6. EXHIBITS.

The exhibits in the Exhibit Index below are filed or furnished, as applicable, as part of this report.

EXHIBIT INDEX

Exhibit Number	Description
3.1	Articles of Conversion of the Company, as filed with the Nevada Secretary of State on December 15, 2016 (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed with the SEC on December 16, 2016)
3.2	Certificate of Conversion of the Company, as filed with the Delaware Secretary of State on December 15, 2016 (incorporated by reference to Exhibit 3.2 to the Company's Current Report on Form 8-K filed with the SEC on December 16, 2016)
3.3	Certificate of Incorporation, as filed with the Delaware Secretary of State on December 15, 2016 (incorporated by reference to Exhibit 3.3 to the Company's Current Report on Form 8-K filed with the SEC on December 16, 2016)
3.4	Bylaws of the Company (incorporated by reference to Exhibit 3.4 to the Company's Current Report on Form 8-K filed with the SEC on December 16, 2016)
10.1†*	Agreement of Sale, dated October 25, 2019, by and between the Company and EV Group, Inc.
31.1*	Rule 13(a)-14(a)/15(d)-14(a) Certification of Principal Executive Officer
31.2*	Rule 13(a)-14(a)/15(d)-14(a) Certification of Principal Financial Officer
32.1*	Section 1350 Certification of Principal Executive Officer
32.2*	Section 1350 Certification of Principal Financial Officer
101*	Interactive Data Files of Financial Statements and Notes
101.INS*	Instant Document
101.SCH*	XBRL Taxonomy Schema Document
101.CAL*	XBRL Taxonomy Calculation Linkbase Document
101.DEF*	XBRL Taxonomy Definition Linkbase Document
101.LAB*	XBRL Taxonomy Label Linkbase Document
101.PRE*	XBRL Taxonomy Presentation Linkbase Document

* Filed herewith

† Confidential portions of this exhibit have been omitted

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Dated: November 07, 2019

Akoustis Technologies, Inc.

By: /s/ Kenneth E. Boller

Kenneth E. Boller

Interim Chief Financial Officer

(Principal Financial and Accounting Officer)

CERTAIN CONFIDENTIAL PORTIONS HAVE BEEN REDACTED FROM THIS EXHIBIT BECAUSE THEY ARE BOTH (i) NOT MATERIAL AND (ii) WOULD BE COMPETITIVELY HARMFUL IF PUBLICLY DISCLOSED. INFORMATION THAT HAS BEEN OMITTED HAS BEEN IDENTIFIED IN THIS DOCUMENT WITH A PLACEHOLDER IDENTIFIED BY THE MARK “[***]”.

AGREEMENT OF SALE

FOR

[***] Automated Production Bonding System [***]

concluded by and between

Akoustis, Inc.
with business address at 5450 Campus Drive, Canandaigua, NY 14424

hereinafter referred to as “**Buyer**”

and

EV Group Inc.
with business address at 7700 South River Parkway, Tempe, AZ 85284, USA

hereinafter referred to as “**Seller**”

WHEREAS, Buyer wishes to acquire the Product as defined herein for the purposes as chosen and determined by Buyer,

AND WHEREAS, Seller is willing and able to sell, deliver, install and commission the Product,

NOW THEREFORE, Buyer and Seller (hereinafter referred to as “**Parties**”) enter into this agreement of sale (hereinafter referred to as “**Agreement**”) and upon order confirmation by Seller or signing of this Agreement by both Parties, as the case may be (hereinafter referred to as “**Entering into Force of this Agreement**”) mutually agree as follows:

1. SUBJECT MATTER OF THIS AGREEMENT AND DEFINITIONS

1.1. Subject to the terms and conditions of this Agreement Seller sells to Buyer and Buyer acquires from Seller the Product in accordance with the following key terms:

Product: [***] Automated Production Bonding System [***] as described in more detail by the Scope of Delivery.

Scope of Delivery: The scope of deliveries and services to be provided by Seller to Buyer with respect to the Product as set out in Clause 2. and Annex 1 to this Agreement.

Contract Price: in total US \$[***] (exclusive of VAT, if any) for [***] Automated Production Bonding System [***].

Payment Terms: The Contract Price shall be due and payable by Buyer prompt and net in the following instalments:

- (a) thirty percent (30%) upon order confirmation by Seller or signing of this Agreement by both Parties, as the case may be;
- (b) sixty percent (60%) upon Source Inspection Test at the production site in Austria or prior to delivery of the Product; and
- (c) ten percent (10%) upon Final Acceptance of the Product (or within 90 days unless delays are the responsibility of EVG)

Availability for Delivery: The Product shall be made ready for delivery by Seller at the production site in Austria within a period of 7 months from the date of order confirmation by Seller or signing of this Agreement by both Parties, as the case may be.

Delivery Terms: DDP Akoustis Technologies, Inc, Canandaigua, NY according to Incoterms 2010.

Buyer's Installation Site: Buyer's site located in Canandaigua, NY, where the Product is to be installed.

1.2. Defined terms shall have the meaning as set forth in this Agreement, in particular in Clause 1.1., above.

2. SCOPE OF DELIVERY OF SELLER FOR THE PRODUCT

- 2.1. The Scope of Delivery of Seller under this Agreement shall consist of the following deliveries and services to be provided by Seller to Buyer with respect to the Product as described in more detail in Annex 1 to this Agreement:
- (a) Hardware of the Product according to Annex 1 to this Agreement;
 - (b) Layout and foundation drawings for the Product and site preparation data for the Product at Buyer's Installation Site, to be supplied within a period of six (6) weeks upon Entering into Force of this Agreement;
 - (c) Packing and delivery of the Product in accordance with the Delivery Terms;
 - (d) Performance of the Source Inspection Test of the Product at the production site in Austria according to Clause 6. of this Agreement;
 - (e) Transport and insurance of the Product from the point of delivery in accordance with the Delivery Terms to Buyer's Installation Site;
 - (f) Installation and commissioning of the Product and performance of the Acceptance Test for the Product at Buyer's Installation Site according to Clauses 8. and 9. of this Agreement, provided, however, that any and all additional deliveries and services provided by Seller due to a prolongation or complication of the installation, commissioning and/or Acceptance Test process which are due to reasons attributable to Buyer shall be chargeable separately to Buyer at the then applicable prices of Seller;
 - (g) One set of operating and maintenance manual for the Product in English on CD-ROM (in PDF-format); and
 - (h) Training as specified in Clause 11. of this Agreement.
- 2.2. Any and all additional deliveries and services which Seller provides to Buyer and which go beyond the Scope of Delivery of Seller under this Agreement shall be chargeable separately to Buyer at the then applicable prices of Seller.

3. DELIVERIES AND SERVICES TO BE PROVIDED BY BUYER

- 3.1. In connection with the delivery, installation and commissioning of the Product by Seller, Buyer shall make available the following facilities, equipment, installations and materials and Buyer shall provide the following services:
- (a) Any and all civil works and services at Buyer's Installation Site, including, but not limited to, any and all foundations, buildings, pits, cable ducts, according to the specifications and layout and foundation drawings supplied by Seller, as well as fulfilment of any and all premises requirements, including, but not limited to, clean room facilities and installations or similar installations;

- (b) Electricity supply at Buyer's Installation Site up to the main switch of the Product;
 - (c) Exhaust pipes and the connection and supply lines at Buyer's Installation Site to the connecting points of the Product for any and all utilities, including, but not limited to, cooling water, compressed air, process gases, in each case according to the specifications and layout and foundation drawings for the Product supplied by Seller;
 - (d) Unloading, handling and moving of the Product from Buyer's receiving area to the specific place of installation of the Product at Buyer's Installation Site;
 - (e) Substrates and any other materials required for commissioning of the Product and for the performance of the Source Inspection Test at the production site in Austria as well as any substrates, materials and all other operating expenses for the installation and commissioning of the Product and for the performance of the Acceptance Test at Buyer's Installation Site;
 - (f) Lifting devices, including, but not limited to, necessary operators for such lifting devices at Buyer's Installation Site;
 - (g) Any other facilities, equipment, installations, materials and services which Seller may reasonably require from Buyer in order for Seller to duly and timely fulfil its obligations hereunder.
- 3.2. Buyer shall make available its deliveries and provide its services pursuant to Clause 3.1. of this Agreement in such a way and in such a timely manner, as this may be reasonably required by Seller and/or which enables Seller to duly and timely fulfil its obligations under this Agreement. Should Buyer not or not timely perform its obligations hereunder, any performance time of Seller shall be extended accordingly and any and all additional deliveries and services provided by Seller in this respect shall be chargeable separately to Buyer at the then applicable prices of Seller.
- 3.3. In order to enable Seller to perform the Source Inspection Test and the Acceptance Test for the Product, Buyer shall supply to Seller in minimum five (5) wafers for each substrate type at the latest within two (2) weeks upon Entering into Force of this Agreement, unless this is provided for differently in the Acceptance Test Protocol in Annex 3 to this Agreement.
- 4. CONTRACT PRICE FOR THE PRODUCT AND PAYMENT**
- 4.1. With the Contract Price the deliveries and services of Seller for the Product as expressly covered by the Scope of Delivery shall be compensated. Any and all additional deliveries and services provided by Seller shall be chargeable separately to Buyer at the then applicable prices of Seller.

- 4.2. The Contract Price shall be due and payable by Buyer to Seller in accordance with the Payment Terms.
- 4.3. Payment of the Contract Price as well as payment of any other amounts due and payable by Buyer to Seller under this Agreement shall be exclusively effected in US \$ net of any costs and charges by immediately available funds or by wire or similar bank transfer into the account of Seller designated on the respective invoice issued by Seller.
- 4.4. Buyer shall refund to Seller any value added tax (VAT), sales tax or other tax arising out of or related to the sale of the Product that Seller is by law required to collect from Buyer or to pay on Buyer's behalf. Any, duties, stamp duties, customs duties, transfer taxes, dues, fees or other charges in connection with the execution and/or performance of this Agreement, in particular those imposed by authorities in the country of Buyer's Installation Site, shall be borne by Seller.
- 4.5. Buyer shall have no right to retain or set-off any part of the Contract Price or any other payment due under this Agreement with claims Buyer may have against Seller.

5. AVAILABILITY FOR DELIVERY OF THE PRODUCT AND FORCE MAJEURE

- 5.1. The Product shall be made ready for delivery by Seller at the production site in Austria at the date or within the time frame of the agreed upon Availability for Delivery and thereupon shall be delivered to Buyer in accordance with the Delivery Terms.
- 5.2. Seller shall not be responsible for any delays arising from reasons not attributable to Seller including, but not limited to, any failure by Buyer to provide the facilities, equipment, installations materials or services set out in Clause 3. of this Agreement in time or to make Buyer's Installation Site complete and ready before the start of installation of the Product, nor for any delays arising from Force Majeure.
- 5.3. Neither Buyer nor Seller shall be liable for partial or complete non-fulfilment of their obligations under this Agreement, if they are prevented from fulfilling their obligations due to events of force majeure, which shall be any circumstance beyond the reasonable control of the respective Party, including, but not limited to, acts of God, insurrection, strike, riot and civil unrest, war (whether declared or not), failures by vendors, work stoppages, embargoes, acts of terror, sabotage, fire, flood, earthquake, other unusually severe weather conditions or natural catastrophe, acts of government, and other unforeseeable circumstances beyond the respective Party's reasonable control (herein referred to as "*Force Majeure*").

- 5.4. Buyer shall not be entitled to claim Force Majeure in respect of acts of Government if Buyer itself is an organ of that government or is directly or indirectly owned or controlled by or related to that government. In case of an event of Force Majeure, performance of this Agreement, as well as the relevant obligations of Buyer and Seller under this Agreement, shall be suspended for the period during which such event of Force Majeure lasts. The Party claiming an event of Force Majeure shall notify the other Party in writing of the beginning and expected duration of such Force Majeure event immediately. A certificate issued by a relevant official source or any other documents which reasonably provide evidence on the occurrence of the Force Majeure event will constitute a sufficient proof of the existence and duration of the respective event of Force Majeure. In case an event of Force Majeure should last for more than six (6) months, the Parties will endeavour to terminate this Agreement on a fair and amicable basis.

6. SOURCE INSPECTION TEST OF THE PRODUCT AT PRODUCTION SITE

- 6.1. The Product will be fully assembled and commissioned at the production site in Austria, and will be subject to a source inspection test to be performed by Seller or an affiliate of Seller at such production site prior to delivery of the Product in accordance with the mutually agreed Source Inspection Test Protocol in Annex 2 to this Agreement (herein referred to as "*Source Inspection Test*"). The purpose of the Source Inspection Test is to demonstrate that the Product fulfils its machine functions (e.g. substrate handling) without any chemicals or other machine contaminants as set forth in the Source Inspection Test Protocol in Annex 2 to this Agreement and is ready for delivery to Buyer. Substrates and any other materials needed for performance of the Source Inspection Test shall be duly and timely supplied by Buyer at its own costs.
- 6.2. Seller shall inform Buyer not less than three (3) weeks before the date, when Seller intends to perform the Source Inspection Test, and thereby shall invite Buyer to attend and observe the Source Inspection Test for the Product by its respective technical or project personnel. Seller, and, in case a representative of the respective technical or project personnel of Buyer attends the Source Inspection Test, also a representative of the technical or project personnel of Buyer shall sign the Source Inspection Test Protocol in Annex 2 to this Agreement in order to record that the Product has provisionally fulfilled the Acceptance Conditions as outlined in the Acceptance Test Protocol in Annex 3 to this Agreement and is ready for delivery. Should Buyer fail to attend the Source Inspection Test notwithstanding due notification by Seller, the Source Inspection Test Protocol in Annex 2 to this Agreement shall be signed by Seller only, and Buyer shall not be entitled to dispute due performance of the Source Inspection Test thereafter.

7. DELIVERY OF THE PRODUCT AND ACCEPTANCE OF DELIVERY OF THE PRODUCT BY BUYER

- 7.1. Upon successful performance of the Source Inspection Test as set out in Clause 6.2. of this Agreement, Seller shall notify Buyer on the date when the Product is ready for delivery and shall thereupon deliver the Product to Buyer in accordance with the Delivery Terms. Buyer shall accept delivery of the Product in accordance with the Delivery Terms on the date when Seller has notified Buyer that the Product is ready for delivery, provided, however, that this date is no earlier than three (3) weeks before the agreed upon date of Availability for Delivery.
- 7.2. Should Buyer refuse to accept delivery of the Product within a maximum period of three (3) weeks from the notification of Seller to Buyer that the Product is ready for delivery, Seller in its sole discretion shall be entitled to (i) charge Buyer for any and all costs for such delay, including, but not limited to, reasonable costs for further storing the Product at the production site in Austria and default interest for the thereby delayed payment of the remaining instalments of the Contract Price and/or (ii) deem this Agreement cancelled pursuant to Clause 12.10. of this Agreement, sell the Product to any other customer, utilize the Product for any other purpose, and/or rebuild the Product at the earliest possible time.
- 7.3. Transfer of risk in the Product from Seller to Buyer shall occur in accordance with the Delivery Terms. Transfer of title to and ownership of the Product from Seller to Buyer shall be subject to full and final payment as set out in the retention of title clause under Clause 12.6. of this Agreement.

8. INSTALLATION AND COMMISSIONING OF THE PRODUCT AT BUYER'S INSTALLATION SITE

- 8.1. After delivery of the Product at Buyer's Installation Site Seller shall, within four (4) weeks, start the execution of the installation and commissioning of the Product together with the respective technical or project personnel of Buyer. Installation and commissioning of the Product will only start once Buyer has advised Seller that Buyer's Installation Site has been duly and timely prepared as follows:
- (a) Weather-tight building with all foundations and civil works and services has been completed, with ambient room temperature between a range of +18°C to +27°C;

- (b) All supply connections for the Product according to Seller's specifications are available and fully operating;
 - (c) A mobile hoist or fork-lift device has been made available by Buyer; and
 - (d) Any other specifications and requirements which Seller may have reasonably required from Buyer have been duly fulfilled.
- 8.2. In addition to the deliveries and services mentioned in Clause 3 of this Agreement, Buyer shall provide and make available at no charge to Seller
- (a) one (1) electrician, and
 - (b) two (2) system operators

who are technically competent, and appropriately licensed where required. Such personnel of Buyer shall be immediately available to assist Seller's personnel during the installation and commissioning of the Product as well as during the performance of the Acceptance Test for the Product.

9. ACCEPTANCE TEST FOR THE PRODUCT AT BUYER'S INSTALLATION SITE

- 9.1. After the Product has been installed and commissioned at Buyer's Installation Site, Seller shall perform an acceptance test for the Product in accordance with the Acceptance Test Protocol in Annex 3 to this Agreement (herein referred to as "*Acceptance Test*"). The purpose of the Acceptance Test is to demonstrate that the Product fulfils the Acceptance Conditions as set forth in the Acceptance Test Protocol in Annex 3 to this Agreement. Substrates and any other materials needed for performance of the Acceptance Test shall be duly and timely supplied by Buyer at its cost.
- 9.2. Seller shall inform Buyer not less than two (2) days before the date, when Seller intends to perform the Acceptance Test, and thereby shall invite Buyer to attend and participate in the Acceptance Test for the Product by its respective technical or project personnel. Upon such notification Buyer shall be obliged to participate in the performance of the Acceptance Test by its respective technical or project personnel and Buyer's personnel shall actively cooperate with Seller's personnel in all due respects in order to enable Seller to duly perform and successfully complete the Acceptance Test for the Product. Upon completion of the performance of the Acceptance Test for the Product a member of the technical or project personnel of Seller and a member of the technical or project personnel of Buyer shall sign the Acceptance Test Protocol in Annex 3 to this Agreement in order to record that the Product has fulfilled the Acceptance Conditions as set forth in the Acceptance Test Protocol in Annex 3 to this Agreement and consequently the Acceptance Test has been successfully completed. Any defects of the Product which may have occurred during the performance of the Acceptance Test shall be duly listed by Seller in the Acceptance Test Protocol or in a separate open items list, as Seller may choose to be appropriate.

- 9.3. For the purposes of this Agreement successful completion of the Acceptance Test for the Product shall be deemed to have occurred (herein referred to as "***Final Acceptance of the Product***") either (i) if the Acceptance Test Protocol in Annex 3 to this Agreement has been duly signed by members of the technical or project personnel of the Parties pursuant to Clause 9.2. of this Agreement, or (ii) if upon completion of the performance of the Acceptance Test Buyer's technical or project personnel refuses to sign the Acceptance Test Protocol and Seller may reasonably demonstrate that the Product in fact has fulfilled the Acceptance Conditions as set forth in the Acceptance Test Protocol in Annex 3 to this Agreement, or (iii) if the Acceptance Conditions as set forth in the Acceptance Test Protocol in Annex 3 to this Agreement have not been fulfilled during the performance of the Acceptance Test and such nonfulfilment is due to actions taken or omitted by Buyer, including, without limitation, if Buyer does not duly participate in the performance of the Acceptance Test by its respective technical or project personnel, if Buyer's personnel does not actively cooperate with Seller's personnel in order to enable Seller to duly perform and successfully complete the Acceptance Test, or if Buyer does not provide testing conditions or testing materials which comply with the specifications as duly and timely required by Seller.
- 9.4. Upon Final Acceptance of the Product, Seller shall be deemed to have discharged all its obligations under this Agreement, except for warranty, service and indemnity obligations if applicable. Further, at this point of time the final instalment of the Contract Price shall be due and payable by Buyer to Seller.
- 9.5. Buyer understands that the Acceptance Test has the purpose of demonstrating to Buyer that the Product fulfils the Acceptance Conditions as set forth in the Acceptance Test Protocol in Annex 3 to this Agreement and operates in accordance with such specifications. For this purpose, Seller may be required to modify or revise the Product and/or any Software to satisfy such specifications, and will require access to the Product for such purposes should modifications or revisions be necessary. Therefore, until Final Acceptance of the Product, Buyer shall grant to Seller access to the Product at all times during normal business hours for such purposes and Buyer shall use the Product only for testing and training purposes as authorized by Seller in order to accomplish Final Acceptance of the Product. Until Final Acceptance of the Product, Buyer shall not be entitled to use the Product for any other purposes, including, but not limited to, production and other commercial purposes and Buyer shall not be entitled to run processes on the Product other than processes needed to accomplish Final Acceptance of the Product.

- 9.6. Any software installed on the Product, contained in the Product, sold as part of the Product and/or otherwise supplied with or for the Product (herein referred to as "**Software**") is proprietary and Seller retains sole and exclusive ownership of all rights, title and interest in and to such Software. Seller herewith grants to Buyer a limited, non-exclusive, non-assignable, non-transferable personal license to use the Software on the specific Product with which or for which it was supplied. Until and during the time of performing the Acceptance Test for the Product the standard Software of Seller installed on the Product may be adapted to meet Buyer's specifications and needs. Until Final Acceptance of the Product, only temporary Software shall be installed on the Product and Buyer's above mentioned license for the Software in addition shall be limited to use such temporary Software and the Product only for testing and training purposes as authorized by Seller. Until Final Acceptance of the Product, Buyer shall not be entitled to use the Software and/or the Product for any other purposes, including, but not limited to, production and other commercial purposes and Buyer shall not be entitled to run processes on the Product other than processes needed to accomplish Final Acceptance of the Product. Buyer acknowledges and agrees that the temporary Software installed on the Product may have a built-in time locking feature that will cause the Product to "lock up" or become non-operational.

10. WARRANTY

- 10.1. Seller warrants to Buyer that (a) the Product shall conform to its documentation and other specifications and shall be free from defects in design, material and workmanship except for ordinary wear and tear and corrosion; (b) when used in conjunction with the Product and any updates or errors corrections supplied by Seller, Software will conform to the provisions of this Agreement, and any documentation or technical specifications provided or published by Seller; and (c) services provided under this Agreement shall be provided and/or performed in a professional and workmanlike manner by qualified personnel and in accordance with the terms of this Agreement, including any service levels and response times set forth therein.
- 10.2. The warranty period is twenty-four (24) months starting from the date of delivery of the Product at Buyer's Installation Site. Any warranty claims shall be proven by Buyer.
- 10.3. The warranty of Seller under this Agreement shall be limited to repair, replacement or re-performance of the defective part of the Product Software or service, or to take the Product back, the choice of remedy being at Seller's sole discretion. Seller and Buyer may also mutually agree to refund an equitable portion of the Contract Price instead of the remedies as stated above. Seller shall be notified of any defect without any delay. Buyer shall grant Seller reasonable time and opportunity to make repairs or supply replacements. Where such time and opportunity are not granted, refused or delayed, Seller shall not be liable for the remedy of the defects concerned. Any on-site warranty support services of Seller will only be provided Monday through Thursday, for the period between 08:00 and 17:00, and Friday, for the period between 08:00 and 16:00, excluding local public holidays.

a) Standard support during the warranty period:

Seller warrants that its' technical support hot-line is available during normal business hours with a response time of four (4) hours for production line Products and with a response time of twenty-four (24) hours for engineering line Products. In case of a Product down event Seller's local field service organization will dispatch a qualified engineer to be on-site within three (3) working days upon Buyer's request for production line Products and within ten (10) working days upon Buyer's request for engineering line Products. The type of Product (production line or engineering line) is applicable as offered in the respective Quotation. All spare parts, excluding parts designated to be configuration specific, are held on stock on a non-exclusive basis. Parts on stock will be dispatched as fast as possible but latest the following working day for production line Products and within ten (10) working days for engineering line Products.

b) Standard support after the warranty period:

Seller warrants that its' technical support hot-line is available during normal business hours with an average response time of four (4) hours for production line Products and with an average response time of twenty-four (24) hours for engineering line Products. The type of Product (production line or engineering line) is applicable as offered in the respective Quotation. In case of a Product down event Seller's local field service organization will strive to dispatch a qualified engineer to be on-site within three (3) working days upon receipt of Buyer's valid purchase order for production line Products and within ten (10) working days upon receipt of Buyer's valid purchase order for engineering line Products. Response times are not guaranteed and depend on resource utilization.

Regular turning spare parts, excluding parts designated to be configuration specific, are held on stock on a non-exclusive basis. Parts on stock will be dispatched according to Buyer's requirements and Buyer's valid purchase order.

- 10.4. The warranty of Seller shall not apply in cases where defects arise from natural wear and tear, improper use or maintenance of the Product, including, but not limited to, the operation and maintenance of the Product not in compliance with the operating and maintenance manual and any further instructions as provided by Seller, Product failures due to the use of parts not purchased from (or recommended/approved by) Seller, alteration of the Product by Buyer or third parties, accident, external force, chemical or electrolytic action, or any other forces or influences not attributable to Seller. Any work carried out by Seller to correct any defects in such circumstances shall be chargeable separately to Buyer at the then applicable prices of Seller. Excluded from the warranty of Seller are seals and gaskets, O-rings, lamps, bulbs, mirrors, lubricants and fluids, expendable or wearing parts and all other consumables. Any defective part shall not be used by Buyer if its continued operation, its working or its use is likely to be the cause of further damage.

- 10.5. Upon Buyer's notification of a defect to Seller, Buyer shall request Seller to issue a return material authorization number (herein referred to as "**RMA Number**") for the defective part of the Product concerned. Within a maximum period of ten (10) days upon receipt of the RMA Number, Buyer shall duly return the defective part of the Product to Seller in order to enable Seller to assess the alleged defect and to choose the appropriate remedy of the defect. Seller shall inform Buyer on its assessment of the defect and the remedy of defect chosen by Seller without unnecessary delay. Any repairs or replacements shall be exclusively performed by Seller and shall be carried out within a reasonable period of time upon receipt of the respective defective part of the Product by Seller. Replacements may be supplied by Seller by delivering the respective replacement parts for the Product directly to Buyer. Any replaced parts shall become Seller's property. Shipment and freight of defective parts of the Product from Buyer to Seller and of repaired or replaced parts for the Product from Seller to Buyer shall be made at Buyer's sole risk and costs and shall always duly state the RMA Number for the defective part of the Product concerned. In case Buyer should not duly and timely comply with its obligations hereunder, Seller shall not be liable for the remedy of the defects concerned and any repaired or replaced parts of the Product as well as any services provided by Seller shall be invoiced to Buyer at the then applicable prices of Seller.
- 10.6. Updates for the Software installed on the Product, which Seller in its sole discretion deems to be only improvements of the Product reliability, will be provided by Seller to Buyer during the warranty period at no charge. Furthermore updates for the Software for bug-fixes will be provided by Seller free of charge for up to ten (10) years upon the first delivery of the Product. Any on-site visit for the installation of bug-fixes will be chargeable separately to Buyer after the warranty period. Any other updates
- (a) for the Software which may be released by Seller and which Seller in its sole discretion deems to be revisions of, upgrades and/or enhancements to the Software installed on the Product; or
 - (b) for the Software of an used and/or refurbished Product, if available, will not be provided under the forgoing warranty and shall be chargeable separately to Buyer at the then applicable prices of Seller.

Any and all Software is merely provided on an "AS IS" basis, subject to clause 10.1. (b).

- 10.7. Seller warrants spare parts availability, bug-fixes, field service and technical support by qualified engineers for up to ten (10) years upon delivery of the Product. Seller does not warrant one to one replacement parts availability. In case of parts obsolescence Seller will notify Buyer, create safety stocks as feasible and source alternative parts or retrofits if required. Seller will not compensate for any additional costs compared to one to one replacement parts. Beyond that ten (10) year period Seller will continue to provide support on best effort basis only.

Upgrades for additional functionalities and features are chargeable separately and independent from the warranty state to Buyer and are based on feasibility which will be checked on a case by case basis. The foregoing shall not apply for used and/or refurbished Products and used and/or refurbished spare parts.

- 10.8. THE FOREGOING WARRANTY IS IN LIEU OF ANY AND ALL OTHER WARRANTY, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ANY OTHER OR EXCEEDING CLAIMS OF BUYER AGAINST SELLER FOR WARRANTY AND/OR FOR DEFECTS DUE TO WHATEVER CAUSE, INCLUDING, BUT NOT LIMITED TO, ANY CLAIMS OF DAMAGES SHALL BE EXPRESSLY EXCLUDED. SELLER SHALL NOT BE LIABLE FOR ANY INDIRECT DAMAGES, INCLUDING, BUT NOT LIMITED TO, SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL LOSS OR DAMAGES, LOSS OF PROFIT, LOSS OF BUSINESS OPPORTUNITIES, LOSS OF PRODUCTION, OR LOSS OF DATA TO THE UTMOST EXTENT LEGALLY PERMISSIBLE. THIS EXCLUSION APPLIES REGARDLESS OF THE CAUSE OF SUCH DAMAGES, AND REGARDLESS OF WHETHER CLAIMED UNDER CONTRACT OR TORT. BUYER EXPRESSLY WAIVES ANY AND ALL OF ITS RIGHTS OF RESCISSION OF THIS AGREEMENT UNDER APPLICABLE LAW, INCLUDING, BUT NOT LIMITED TO, THE RIGHT OF RESCISSION FOR REASON OF MISTAKE, REDUCTION OF VALUE BY HALF, CHANGE OF CIRCUMSTANCES OR FRUSTRATION OF CONTRACT.

11. TRAINING

- 11.1. Seller shall provide basic operator and maintenance training for the Product at Buyer's Installation Site immediately after Buyer's personnel has signed the Acceptance Test Protocol in Annex 3 to this Agreement. The period of training is determined in the Scope of Delivery. Training will be performed during regular working hours.
- 11.2. Buyer's personnel, in general, shall be competent for the job assignment. In addition, maintenance training will require a thorough understanding of the English language and a good working knowledge of electronics, mechanics, robotics, and PLC (programmable logic controller) based products.

12. ADDITIONAL AND MISCELLANEOUS TERMS

- 12.1. **Entire Agreement and Modifications:** This Agreement is based on Seller's standard agreement as of August 2018. This Agreement including its Annexes constitutes the entire agreement between the Parties relating to the subject matter hereof and supersedes and replaces any and all previous agreements, negotiations and correspondence, if any, relating to the subject matter hereof. No oral side-agreements exist to this Agreement. Any other terms, including, but not limited to, general terms and conditions of Buyer and/or remarks of Buyer made on purchase orders, order confirmations or otherwise as well as any other documents established by Buyer shall not become part of this Agreement and shall be invalid, unless explicitly accepted by Seller in writing. Amendments to and/or modifications of this Agreement shall only be valid if made in writing and signed by both Parties. Any waiver of this form requirement must be explicitly made in writing. For written confirmations to be obtained from Buyer's personnel under this Agreement, Seller may use an electronic device (*e.g.* pads). Buyer agrees that it will not object to Seller relying on a printed copy of such evidence merely on the grounds that the confirmation concerned and/or the signature of Buyer's personnel thereon has been obtained and stored by Seller in electronic form. The only authentic language of this Agreement is the English language and the English-language version shall take precedence over any translations.
- 12.2. **Severability:** Should any provision of this Agreement be or become wholly or partly invalid or unenforceable this will not affect the validity or enforceability of the remaining provisions. The invalid or unenforceable provision shall be substituted by a valid or enforceable provision which in its essential purpose comes as close as possible to the invalid or unenforceable provision. The same applies in analogy to any gaps in this Agreement.
- 12.3. **No Third Party Beneficiaries:** This Agreement shall inure to the benefit of, and be binding upon, each of the Parties and their respective universal legal successors, subject to the provisions of this Agreement, but shall not inure to the benefit of any third party. Notwithstanding the foregoing, neither this entire Agreement nor any of the rights and obligations under this Agreement may be assigned or transferred without the prior written consent of the other Party. In this connection Buyer is aware of and explicitly agrees that the Product is independently designed, produced and manufactured by an affiliate of Seller.
- 12.4. **Independent Agreement:** In case the Product acquired by Buyer under this Agreement should consist of more than one product, system or equipment, any such part of the Product shall be deemed to be independent from the other part or parts of the Product for purposes of this Agreement, including, but not limited, for purposes of performance of the Acceptance Test, begin of the warranty period and payment of the respective part of the Contract Price. Any delay or non-performance with respect to one part of the Product shall not grant Buyer the right to delay or refuse delivery or acceptance of any other part of the Product and/or to off-set or to retain any payment due under this Agreement for any other part of the Product.

- 12.5. **Consequential and other Losses:** IT IS EXPRESSLY AGREED THAT NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL LOSS OR DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFIT, LOSS OF BUSINESS OPPORTUNITIES, LOSS OF PRODUCTION, OR LOSS OF DATA TO THE UTMOST EXTENT LEGALLY PERMISSIBLE. THIS EXCLUSION APPLIES REGARDLESS OF THE CAUSE OF SUCH DAMAGES, AND REGARDLESS OF WHETHER CLAIMED UNDER CONTRACT OR TORT.
- 12.6. **Retention of Title and Ownership:** Delivery of the Product to Buyer and/or Final Acceptance of the Product do not effect a transfer of title to and ownership of the Product to Buyer. Seller retains title to and ownership of the Product until full and final payment of the Contract Price and receipt of any other payment due to Seller under this Agreement. Until such full and final payment, Buyer shall be obliged to and responsible for exercising due care toward the Product, and Buyer shall not be entitled to sell, lease, pledge or otherwise enter into agreements on the Product or any parts thereof, or to use the Product including the Software for production and other commercial purposes. If Buyer should sell or transfer the Product or any parts thereof prior to full and final payment to Seller, the transfer shall be subject to any security interest for the benefit of Seller which may be available under applicable law and which may be validly granted by Buyer to Seller under applicable law.
- 12.7. **IP- Rights of Third Parties**

Seller shall grant a worldwide, non-exclusive, perpetual and irrevocable license, which is required for the operation of the Product and as expressly stated in the applicable quotation. However, the sale of the Product to Buyer does not convey rights or license, expressed or implied, to practice and/or run processes or to manufacture products which may be covered by copyrights, trademarks, patents, utility models, industrial designs, know-how or any other intellectual property rights owned and/or licensable by third parties. If required, Buyer shall obtain any such licenses directly from the respective licensor, at its own expense and costs.

Subject to the general terms and conditions of this Agreement, Seller shall at its own expense indemnify and hold harmless Buyer from and against any such claims which result from the fact that Seller knew, or should have known that the supplied Product as designed and produced on behalf of Seller violates or infringes upon any trademarks, patents, utility models or industrial designs of third parties. In the event of a suit for infringement whereby the operation of the Product is enjoined due to such misrepresentation of Seller, Seller shall at its own expense either procure for Buyer the right for continued operation, or replace the Product with substantially equal but non-infringing parts.

- 12.8. **Documentation and Software:** Seller reserves any and all rights in the operating and maintenance manual as well as any other technical or other documentation and any Software supplied with or for the Product. Subject to any further restriction contained in this Agreement, Buyer may use any such Software and documentation only for the operation and maintenance of the specific Product supplied by Seller, and shall not disclose them to any third party. Buyer agrees not to copy, modify, duplicate, de-compile, disassemble, translate or reverse engineer the Product, any parts thereof and/or the Software or permit others to do so.
- 12.9. **Standards:** The Product is designed and constructed on behalf of Seller in accordance with the norms and standards as set out in the Scope of Delivery. Prior to Entering into Force of this Agreement, Buyer has advised Seller in writing of any and all other applicable safety and operating standards and regulations in force at Buyer's Installation Site, if any. Buyer shall bear the costs of any alterations of and/or modifications to and/or additions to the Product which may be required in order for the Product to comply with any standards or regulations, which have not been advised to Seller in writing prior to Entering into Force of this Agreement.
- 12.10. **Cancellations and Returns:** If this Agreement should be cancelled by Buyer for any reason whatsoever, Buyer shall pay to Seller within ten (10) days after written demand, the following cancellation charges as liquidated damages, which are not subject to any fault and/or to a right of mitigation: (i) If Buyer cancels this Agreement less than thirty (30) days before the agreed upon date of Availability for Delivery, Buyer shall pay to Seller a cancellation charge of fifty percent (50 %) of the Contract Price. (ii) If Buyer cancels this Agreement in the period between thirty (30) to sixty (60) days before the agreed upon date of Availability for Delivery, Buyer shall pay to Seller a cancellation charge of forty percent (40 %) of the Contract Price. (iii) If Buyer cancels this Agreement more than sixty (60) days before the agreed upon date of Availability for Delivery, Buyer shall pay to Seller a cancellation charge of thirty percent (30 %) of the Contract Price. Buyer agrees that the above cancellation charges are a reasonable estimate of Seller's usual costs, expenses and damages in the event an order is cancelled. Buyer shall compensate Seller for any costs, expenses and damages incurred by Seller which exceed the above cancellation charges, if this is due to the specific circumstances of the order (*e.g.* if time is of essence, in case of customized equipment, etc).

- 12.11. **Choice of Law:** This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona excluding its conflict of law rules and excluding the application of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 12.12. **Disputes:** All disputes arising out of or related to this Agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (ICC) by one or three arbitrators appointed in accordance with these Rules. The place of arbitration shall be Phoenix, USA. The present arbitration clause shall be governed by the laws of Arizona. The language of arbitration shall be the English language. The proceedings shall be governed by the Rules of Arbitration of the International Chamber of Commerce (ICC). Notwithstanding this arbitration clause Seller shall be entitled at its sole discretion to forward any claims Seller may have against Buyer with the competent courts at the corporate seat of Seller or alternatively with the competent courts at the corporate seat of Buyer, as Seller may select at its sole discretion.
- 12.13. **Enticing Away of Employees:** Each Party acknowledges that the other Party's employees, including, but not limited to, customer service representatives are particularly valuable to the other Party both because the other Party has invested time and effort in their training and because they have knowledge of know-how and other trade secrets owned by or belonging to the other Party. As a result, each Party agrees not to directly or indirectly entice away any of the other Party's employees for a period of one year from the Final Acceptance. Notwithstanding anything to the contrary, this Section will not prevent a Party from placing any general advertisement or similar notice in newspapers, trade publications or other media that is not targeted specifically at one or more employees of the other Party. Each Party undertakes to procure the due compliance of with this prohibition on enticing away employees of the other Party.
- 12.14. **Confidentiality:** Except as explicitly provided below in this Section, the content of this Agreement as well as any and all information, documentation and/or other data of a confidential nature disclosed in connection with the performance of this Agreement, including, but not limited to, business, commercial and technical information, and all record bearing media containing or disclosing such information and techniques (herein referred to as "**Confidential Information**") shall be treated with utmost confidentiality by each Party. Consequently, Confidential Information (i) shall not be distributed, disclosed, or disseminated in any way or form by each Party to anyone except its own or its affiliates' employees, who have a reasonable need to know said Confidential Information and who are bound to confidentiality by their employment agreements or otherwise, (ii) shall be treated by each Party with the same degree of care to avoid disclosure to any third party as is used with respect to such Party's own information of like importance which is to be kept confidential, and (iii) shall remain the property of the respective disclosing Party. The confidentiality obligations as set out herein shall not apply, however, to any information which (a) a Party can demonstrate, is already in the public domain or becomes available to the public through no breach by such Party of this Agreement, (b) was rightfully in a Party's possession without confidentiality obligation prior to receipt from the other Party as proven by its written records, (c) can be proven to have been rightfully received by a Party from a third party, that was authorized or entitled to do so, (d) is independently developed by a Party as proven by its written records, (e) is approved for release by written agreement by the respective other Party, or (f) is required to be disclosed by law or the rules of any governmental organization.

Notwithstanding the forgoing, Buyer may disclose the terms of this Agreement if such disclosure is required by law, rule, regulation, or an order from a court, regulatory agency or other governmental authority, or the rules of any stock exchange on which Buyer's shares are listed or quoted. In such event, Buyer will provide to Seller a copy of the agreement proposed to be disclosed so that Seller may consent to the disclosure of this agreement, including any redactions thereto proposed by Seller, such consent not to be unreasonably withheld. Buyer agrees to submit a request to the SEC or the applicable governing body that Seller's redactions receive confidential treatment under the laws, rules and regulations of the SEC or otherwise be held in confidence to the fullest extent permitted under the laws, rules or regulations of the applicable governing body.

- 12.15. **Annexes**: The following Annexes to this Agreement shall form an integral part of this Agreement as if fully set forth herein; in case of any discrepancy between an Annex to this Agreement and the text of this Agreement, the latter shall prevail:

Annex 1 Scope of Delivery (Seller's Quotation No. [***]);

Annex 2 Source Inspection Test Protocol (at production site in Austria);

Annex 3 Acceptance Test Protocol (at Buyer's Installation Site).

IN WITNESS WHEREOF, the Parties agree that this Agreement is executed by duly authorized personnel from each Party and that in case of signing of this Agreement the date of Entering into Force of this Agreement is the latest date shown.

Akoustis, Inc.
(Buyer)

EV Group Inc.
(Seller)

Canandaigua, NY

(Place)

Tempe, AZ

(Place)

10/25/19

(Date)

10/25/19

(Date)

/s/ Mary Winters

(Signature)

/s/ David Kirsch

(Signature)

Mary Winters, VP, Wafer Fab

(Name and Title)

David Kirsch, Vice President & General Manager North America

(Name and Title)

Confidential

**CERTIFICATION PURSUANT TO RULE 13a-14(a) OR 15d-14(a)
OF THE SECURITIES EXCHANGE ACT OF 1934**

I, Jeffrey B. Shealy, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Akoustis Technologies, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 07, 2019

/s/ Jeffrey B. Shealy

Jeffrey B. Shealy
President and Chief Executive Officer
(Principal Executive Officer)

**CERTIFICATION PURSUANT TO RULE 13a-14(a) OR 15d-14(a)
OF THE SECURITIES EXCHANGE ACT OF 1934**

I, Kenneth E. Boller, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Akoustis Technologies, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 07, 2019

/s/ Kenneth E. Boller

Kenneth E. Boller
Interim Chief Financial Officer
(Principal Financial and Accounting Officer)

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of Akoustis Technologies, Inc. (the "Company") on Form 10-Q for the quarterly period ended September 30, 2019, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Jeffrey B. Shealy, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 07, 2019

/s/ Jeffrey B. Shealy

Jeffrey B. Shealy
President and Chief Executive Officer
(Principal Executive Officer)

A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of Akoustis Technologies, Inc. (the "Company") on Form 10-Q for the quarterly period ended September 30, 2019, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Kenneth E. Boller, Interim Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 07, 2019

/s/ Kenneth E. Boller

Kenneth E. Boller
Interim Chief Financial Officer
(Principal Financial and Accounting Officer)

A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.