

## **TERMS AND CONDITIONS OF SALE OF QUBESTOR LIMITED**

### **1. INTERPRETATION**

1.1 In these conditions:

**BUYER** means the person, firm or company entering into the Contract to purchase the Goods and/or Services from the Seller;

**CONDITIONS** means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in Writing between the Buyer and the Seller;

**CONTRACT** means the contract for the purchase and sale of the Goods and/or Services;

**DELIVERY DATE** means the earlier of the time of actual delivery of the Goods or performance of the Services or, if the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, the date that the Seller notifies the Buyer that the Goods are ready for collection or, as the case may be, the Seller tenders delivery of the Goods or, if the Buyer wrongfully fails to allow performance of the Services, the date that the Seller notifies the Buyer that it is in a position to perform the Services;

**GOODS** means the racking, shelving or other goods (including any instalment of the Goods or any parts for them) which the Seller is to supply in accordance with these Conditions;

**SELLER** means Qubestor Limited (Company Number 03090398);

**SERVICES** means the installation or other services which the Seller is to supply in accordance with these Conditions;

**WRITING** includes telex, cable, facsimile transmission, electronic mail and comparable means of communication.

1.2 Any reference in these conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

### **2. BASIS OF THE CONTRACT**

2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with any written quotation of the Seller which is accepted by the Buyer or any written order of the Buyer and which is accepted by the Seller, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any quotation is accepted or purported to be accepted, or any such order is made or purported to be made by the Buyer.

2.2 The Seller's employees or agents are not authorized to make any representations concerning the Goods and/or Services unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of any such representations which are not so confirmed.

2.3 Any advice or recommendation(s) given by the Seller or its employees or agents to the

Buyer or its employees or agents as to the storage installation application or use of the Goods which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

- 2.4 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

### **3. ORDERS AND SPECIFICATIONS**

- 3.1 No order submitted by the Buyer shall be accepted or deemed to be accepted by the Seller unless and until confirmed in Writing by the Seller's authorised representative.
- 3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) and for giving the Seller any necessary information relating to the Contract within a sufficient time to enable the Seller to perform the Contract. Where the Goods are to be supplied to the Buyer's specification, the Buyer warrants that the Goods are capable of production.
- 3.3 The quantity, quality and description of any specification for the Goods and/or the description of the Services shall be those set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller).
- 3.4 If the Goods are to be manufactured or any process is to be applied to the Goods, the Seller reserves the right to subcontract any of the manufacturing or other processes to a third party and shall not be liable for any increase in the costs of labour materials or other costs of manufacture, any change of delivery dates quantities or specifications caused by such subcontracting.
- 3.5 The Seller reserves the right to make any changes in the specification of the Goods or Services which are required to conform with any applicable safety or other statutory or EU requirements or where the Goods and/or Services are required to meet the relevant British Standards or the standards of some foreign country or otherwise or, where the Goods and/or Services are to be supplied to the Seller's specification, which do not materially affect their quality or performance.
- 3.6 No Contract may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs, damages, charges and expenses, which may be deducted by way of set-off from any deposit of the price paid pursuant to condition 5.1.
- 3.7 The Buyer shall indemnify and keep indemnified the Seller against any claim or liability in respect of any infringement of intellectual or industrial property rights resulting from compliance with the Buyer's instructions express or implied.
- 3.8 Drawings, illustrations and specifications prepared by or on behalf of the Seller in connection with the Contract shall remain the property of the Seller and shall not be communicated to third parties without the Seller's prior written consent.
- 3.9 The Seller reserves the right to undertake credit references and may suspend delivery of Goods or performance of the Contract or any other contract with the Buyer if such references are unsatisfactory.
- 3.10 Each performance or delivery schedule submitted by the Buyer shall constitute an order

capable of acceptance by the Seller. If the Seller agrees that any such schedule shall not constitute an order in circumstances where it is reasonably necessary for the Seller to act in reliance upon such schedule so as to enable the Seller to perform the schedule in accordance with its terms if such schedule becomes an order accepted by the Seller, the Buyer shall indemnify and keep the Seller indemnified against all costs, damages, charges and expenses arising from such reliance by the Seller if such schedule does not become an order capable of acceptance by the Seller.

#### **4. PRICE**

- 4.1 The price shall be the Seller's quoted price, or where no price has been quoted or a quoted price is no longer valid, a reasonable price. All prices quoted are valid for 30 days or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice.
- 4.2 The Seller reserves the right to increase the price to reflect any increase in the cost to the Seller which is due to any factor beyond the Seller's control, any change in delivery or performance dates, quantities or specifications which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.
- 4.3 Unless otherwise agreed in Writing by the Seller, all prices include delivery, transport, packaging, insurance and installation.
- 4.4 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.

#### **5. TERMS OF PAYMENT**

- 5.1 Subject to delivery by the Seller of an invoice therefore and unless otherwise stated in Writing by the Seller or otherwise specified in these Conditions, the Buyer shall pay the price without any deduction or set-off in the following instalments:-
  - 5.1.1 one third (constituting a deposit of the price of the Goods and Services) immediately upon receipt and acceptance by the Seller of the Buyer's order;
  - 5.1.2 one third immediately upon delivery of the Goods to the Buyer's premises; and
  - 5.1.3 one third within 30 days of completion of the installation of the Goods at the Buyer's premises.
- 5.2 The Seller shall be entitled to recover the price, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer and/or the Services have not been performed. The time of payment of the price shall be of the essence of the Contract.
- 5.3 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy the Seller shall be entitled to:
  - 5.3.1 suspend all or any further deliveries to the Buyer or the provision of all or any services made under that or any other contract with the Buyer and in such event the Buyer shall not be released from its obligations to the Seller under that or any other contract or cancel the Contract or any other contract with the Buyer and to claim damages from the Buyer for breach of contract;

5.3.2 appropriate any payment made by the Buyer to such part of the Contract or the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and

5.3.3 charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 8 per cent per annum above Barclays Bank Plc base rate from time to time accruing daily, until payment in full is made.

5.4 The Seller may without notice deduct by way of set-off any sums from time to time owed to the Buyer in or towards the satisfaction of all and any liabilities of the Buyer to the Seller whether or not under this Contract.

5.5 The Seller shall have a general lien over all goods and property of the Buyer (whether worked on or not) in the possession of the Seller for all unpaid debts due from the Buyer and the Seller reserves the right upon the expiration of fourteen days written notice to dispose of such goods or property and to apply the proceeds of sale (net of costs of sale) towards the payment of such debts.

## **6. DELIVERY AND PERFORMANCE**

6.1 Delivery of the Goods shall be made by the Seller delivering the Goods to the Buyer's premises. The Buyer shall be responsible for the unloading of Goods and where the Seller or its employees or agents carry out or assists the Buyer, its employees or agents in such unloading, the Buyer shall indemnify and keep indemnified the Seller against all liabilities including without limitation all loss, costs, damages, charges and expenses arising from such unloading.

6.2 Any dates quoted for delivery of the Goods or performance of the Services are approximate only and the Seller shall not be liable for any delay howsoever caused. Time for delivery and/or performance shall not be of the essence. The Goods may be delivered and/or Services may be performed by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.

6.3 Where the Goods are to be delivered or Services performed in instalments, each delivery or performance shall constitute a separate contract and failure by the Seller to deliver or perform any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

6.4 If the Seller fails to deliver the Goods (or any instalment) or perform any Services (or any instalment) for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess, if any, of the reasonable cost to the Buyer (in the cheapest available market) of similar goods and/or services to replace those not delivered or performed over the price of the Goods and/or Services.

6.5 If the Buyer fails to take delivery of the Goods or to allow performance of the Services or fails to give the Seller adequate delivery or performance instructions at the time stated for delivery or performance (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available, the Seller may :-

6.5.1 store the Goods until actual delivery and charge the Buyer for the reasonable cost of storage, including insurance;

6.5.2 after the expiration of 3 months from the Delivery Date dispose of the Goods in such manner as the Seller may determine; and

6.5.3 suspend any further performance of the Services or services under the Contract or any other contract.

6.6 The Services shall be performed at the Buyer's premises.

## **7. RISK AND PROPERTY**

7.1 Risk of damage to or loss of the Goods shall pass to the Buyer on the Delivery Date.

7.2 Notwithstanding the passing of the risk in the Goods or any other provision of these Conditions the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other goods sold or agreed to be sold by the Seller to the Buyer under any other contract.

7.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's agent or bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property. Until such time as the property in the Goods passes to the Buyer, the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall have a fiduciary duty to the Seller to account for the proceeds of sale or otherwise of the Goods.

7.4 Until such time as the property in the Goods passes to the Buyer, the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods and for that purpose the Buyer hereby authorises and licences the Seller, its officers, employees and agents to enter upon any land or building upon which the Goods are situated to recover those Goods.

7.5 The Buyer shall not be entitled to or in any way charge by way of security for any indebtedness, any of the Goods which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall without prejudice to any other right or remedy of the Seller forthwith become due and payable.

## **8. WARRANTIES AND LIABILITIES**

### **THE BUYER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF THIS CLAUSE 8.**

8.1 Subject to clause 8.2, the Seller warrants that the Goods will be free from defects in material and workmanship for a period of 12 months from the Delivery Date and that the Services will be performed with reasonable care and skill.

8.2 The above warranties are given by the Seller subject to the following conditions:

8.2.1 the Seller shall be under no liability in respect of any defect in the Goods or arising there from where the Goods are second-hand or used, in which case such Goods are sold as seen and the Buyer accepts that the price of such Goods reflects this;

8.2.2 the Seller shall be under no liability in respect of any failure or defect arising from any drawing, design or specification supplied by the Buyer;

- 8.2.3 the Seller shall be under no liability in respect of any defect or failure arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing including, without limitation, with regard to storage), misuse or alteration or repair of the Goods without the Seller's approval;
- 8.2.4 if the total price has not been paid by the due date, the Seller shall be under no liability until the total price has been paid;
- 8.2.5 the above warranties do not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller;
- 8.2.6 the Seller shall be under no liability in respect of any failure or defect if such failure or defect is within reasonable commercial tolerances.
- 8.3 Subject as expressly provided in these Conditions, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 8.4 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or any failure to exercise reasonable care and skill shall, whether or not delivery is refused by the Buyer, be notified to the Seller within 3 days from the Delivery Date or, where the defect or failure was not apparent on reasonable inspection, within a reasonable time after discovery of the defect or failure and in any event within 7 days of discovery. If delivery is not refused, and the Buyer does not so notify the Seller, the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Contract had been performed in accordance with its terms.
- 8.5 Where any valid claim in respect of any of the Goods, which is based on any defect in the quality or condition of the Goods or any failure to exercise reasonable care and skill, is notified to the Seller in accordance with these Conditions, the Seller shall be entitled to replace the Goods (or the part in question) or to re-perform the Services free of charge or, at the Seller's sole discretion, refund to the Buyer the price (or a proportionate part of the price) but the Seller shall have no further liability to the Buyer.
- 8.6 The Seller shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any consequential loss or damage (whether for loss of profit, product recall or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods and/or the Services and the entire liability of the Seller under or in connection with the Contract shall not exceed the price under the Contract, except as expressly provided in these Conditions.
- 8.7 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations if the delay or failure was due to any cause beyond the Seller's reasonable control.
- 8.8 Nothing in these Conditions shall exclude or limit the Seller's liability for death or personal injury caused by the Seller's negligence.

## **9. INDEMNITY**

**THE BUYER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF THIS CLAUSE 9.**

- 9.1 The Buyer shall take or procure the taking of all such steps as may be necessary to ensure the safety of the Seller's employees, agents and contractors on any premises at which the Services are to be provided including, without limitation, notifying such representatives of any relevant hazards.
- 9.2 The Buyer shall indemnify and keep indemnified the Seller, its employees, agents and sub-contractors against any loss or damage to any property or injury or death of any person caused by any negligent act or omission or willful misconduct of the Buyer, its employees, agents or sub-contractors, including all and any costs and expenses relating thereto.

**10. INSOLVENCY OF BUYER**

- 10.1 This clause applies if:
  - 10.1.1 the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order (or being an individual or firm) becomes bankrupt or (being a company) goes into liquidation, otherwise than for the purpose of amalgamation or reconstruction; or
  - 10.1.2 an encumbrancer takes possession, or a receiver is appointed, of the Buyer's undertaking or any of its property or assets; or
  - 10.1.3 the Buyer ceases, or threatens to cease, to carry on business; or
  - 10.1.4 the Seller reasonably apprehends that any of the events mentioned above are about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 10.2 If this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend performance and/or any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered and/or Services performed, but not paid for, the price shall become immediately due and payable.

**11. EXPORT TERMS**

- 11.1 Where the Goods are supplied for export from the United Kingdom, the provisions of this clause 11 shall apply notwithstanding any other provisions of these Conditions.
- 11.2 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon.
- 11.3 Unless otherwise agreed in Writing between the Buyer and the Seller, the Goods shall be delivered FOB the air or sea port of shipment and the Seller shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.
- 11.4 The Buyer shall be responsible for arranging for testing and inspection of the Goods at the Seller's premises before shipment. The Seller shall have no liability for any claim in respect of any defect which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.
- 11.5 Payment of all amounts due to the Seller shall be made by irrevocable letter of credit opened

by the Buyer in favour of the Seller and confirmed by the Seller's Bank in the United Kingdom, or, if the Seller has agreed in Writing on or before acceptance of the Buyer's order to waive this requirement, by acceptance by the Buyer and delivery to the Seller of a bill of exchange drawn on the Buyer payable 30 days after sight to the order of the Seller at such branch of Barclays Bank in England as may be specified on the bill of exchange.

### **13. GENERAL**

- 13.1 Neither the Buyer nor the Seller shall be entitled to assign the whole or any part of the Contract without the prior written consent of the other provided that the Seller shall be entitled to subcontract the whole or any part of its obligations.
- 13.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby unless such provision goes to the root of the Contract.
- 13.4 The Conditions shall constitute the entire agreement in relation to the subject matter and no modification or waiver thereof shall be valid unless made in Writing expressly for the purpose and signed by an authorised officer of the Seller and of the Buyer provided that nothing in these Conditions shall exclude or limit liability for fraud.
- 13.5 Unless expressly provided in these Conditions, no term of the Contract is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.
- 13.6 The Contract shall be governed by the laws of England and the Buyer agrees to submit to the non-exclusive jurisdiction of the English Courts.