



Terms and Conditions of Sale

I. General

These terms and conditions apply to purchases from QED, Inc. ("Seller") on all orders for products and/or services by Buyer.

- a. Buyer purchase orders are not binding until confirmed by written acceptance by Seller. Oral orders are not accepted
- b. Seller reserves the right, without prior notice, to:
 - i. Change and/or revoke any price
 - ii. Change and/or revoke any provisions contained herein
- c. Seller reserves the right to resolve any inconsistencies, conflicts or ambiguities
- d. Orders for non-stock items are subject to Seller requirements such as, but not limited to, minimum quantities and extended delivery times. Additionally, Seller reserves the right to over ship 10% or under ship 5% of the purchase order quantity and invoice accordingly.
- e. Submittal of a Purchase Order by Buyer constitutes acceptance of these Terms and Conditions unless otherwise agreed upon in writing by both parties.

II. Payment Terms & Sales Tax

- a. Net 30 days from shipment date, unless otherwise agreed upon in writing by Buyer and Seller
- b. If credit is not established, payment plus estimated (by Seller) freight charges shall accompany purchase order.
- c. Cash or anticipation discounts are not permitted.
- d. Seller reserves the right to revoke any credit extended to Buyer if Buyer fails to pay for any shipments when due. If, in Seller's opinion, there is any adverse change in Buyer's financial condition, Seller shall have the right to suspend further shipments until receipt of adequate assurance of Buyer's ability to pay therefore.
- e. Payment terms are specified on the invoice. Any invoice not paid when due is subject to a late payment charge of 1.5% per month, or if such rate is greater than the maximum rate permitted by applicable law, then at the highest rate allowed by applicable law. In the event the Buyer fails to make full payment when due and Seller employs an attorney or collection agency to assist in collection of the account, Buyer agrees to pay all of Seller's reasonable cost of collection, including collection agency fees and court costs.
- f. Unless otherwise stated, prices do not include sales, use, excise, and similar taxes applicable to either the products or the materials used in the manufacture of products or provision of services. All such taxes and charges shall be shown separately on Seller's invoices.

III. TRANSPORTATION

- a. All shipments are Ex Works, (Incoterms 2010), Seller's loading dock, except as expressly provided below.
- b. Each shipment is deemed accepted in good condition by the common carrier and title and all risk of loss or damage pass to Buyer upon that acceptance by the carrier. Buyer is responsible for inspecting the merchandise upon receipt. Buyer shall insist that visible damage be noted on its copy of the freight bill. If the product has been lost or damaged in transit, Buyer must file the claim with the carrier, as Seller bears no responsibility for any such loss or damage.
- c. Freight, handling and insurance charges:
 - i. Prepaid Shipments: All freight, handling and insurance charges shall be invoiced to Buyer.
 - ii. Collect Shipments via UPS or FedEx: All freight and handling charges shall be billed to the collect account number provided. Collect shipments are NOT insured. Buyer must request coverage if required and the insurance cost will be added to the freight charge. All uninsured shipments are the responsibility of Buyer. Seller assumes no responsibility for any such loss or damage.
 - iii. Truck Shipments: All freight, handling and insurance charges shall be billed to the account number provided. Truck shipments are NOT insured. Buyer must request insurance coverage, if required, and the insurance cost will be added to the freight charge. All uninsured shipments are the responsibility of the Buyer. Seller assumes no responsibility for any such loss or damage.
- d. All shipments are made by carriers of Seller's choice. Any special arrangements requested by Buyer shall be at Buyer's additional expense.
- e. Buyer shall report any quantity shortages, incorrect items, or billing errors in writing to the Seller within fifteen (15) days of delivery. Sales order and invoice numbers are to be furnished on all claims.



- f. Seller reserves the right to make delivery in installments. All such installments shall be separately invoiced and paid for when due, without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve Buyer of Buyer's obligation to accept remaining deliveries.
- g. Seller shall not be liable for failure to deliver or delay in delivery occasioned by causes beyond Seller's control, including without limitation, strikes, lockouts, fires, embargoes, terrorist attacks, war or other breakouts of hostilities, acts of God, inability to obtain shipping, space, machinery breakdowns, delays of carriers or suppliers, and domestic or foreign governmental acts or regulations. In the event of any delay in delivery due to such causes, unless otherwise agreed, the time for delivery shall be deemed extended for a period of sixty (60) days, and Buyer shall extend the letter of credit if payment is to be made by letter of credit. If delivery is not made within such extended sixty (60) day period, the contract may be deemed cancelled without liability to either party. In no event shall Buyer be entitled to incidental or consequential damages for late performance or a failure to perform.

IV. RETURNS

- a. No return shall be accepted without a Seller-furnished Return Merchandise Authorization number (RMA#). To request an RMA please call (714) 546-6010 or contact your account manager.
- b. Proof of purchase (Original Invoice/Packing Slip number) is required prior to all RMA issuance.
- c. Upon notification from Buyer of a return of Product for a valid reason (listed below), Seller will promptly issue an RMA#
 - i. Potential Manufacturer Defect(s)
 - ii. Customer Requested Modification
 - iii. Customer Requested Overhaul/Repair
- d. If a failure analysis is required it must be requested when the RMA is issued and detailed information must be provided about the application including the type of media and operating conditions.
- e. Product must be received by Seller within thirty (30) Days of RMA issuance.
- f. The RMA number must be clearly visible on the outside of the package to improve processing time. A packing slip should be included referencing the RMA number, quantity, product description and reason for return. If these items do not accompany the return, the product will not be inspected and the RMA will not be processed.
- g. Return shipping costs will be at Buyer's expense.
- h. If Product is confirmed to be covered under warranty, Buyer may provide Seller with an invoice accompanied by supporting documentation for the transportation cost of the returned merchandise. A Credit Memo may then be issued by Seller to Buyer for the transportation costs.
- i. Upon receipt of Product, Seller will evaluate the Product(s) and provide feedback in writing to Buyer as to the findings of the evaluation. As part of the evaluation, the product may be disassembled and not re-assembled to the condition in which it was sent to Seller, rendering the product unusable.
- j. In the event a Product is returned and that Product is no longer under a valid Seller warranty or the evaluation finds that any damage was a result of User misuse or mishandling of the Product, or for Customer Requested modification or overhaul, Seller promptly will provide Buyer with a cost and time frame for the recommended activity. At Buyers discretion, Product may be returned, repaired, or discarded (provided it is consistent with Seller's recommendation). Seller requires receipt of a purchase order from Buyer, at the agreed upon pricing, prior to any further work on returned Product. At the time of shipment, the Return Invoice will be due within the agreed upon credit terms. Items will be shipped to Buyer Ex Works (Incoterms 2010).
- k. If the Product is determined to be under warranty, Seller will, at Seller's option, repair, replace, or issue a Credit Memo for the Product(s). The warranted unit(s) will be shipped to Buyer at Seller's cost.
- l. Seller reserves the right to charge a testing and evaluation fee if any Buyer returns Product(s) found to be without defect.

V. Limited Warranties

- a. Seller warrants that at the time of shipment to Buyer all products shall conform to the applicable specifications, and for a period of one (1) year from date of shipment will be free from defects in material and workmanship except as noted below. All claims under this warranty must be made in writing immediately upon discovery and except as noted below, within one (1) year from invoice date. Any product which is determined by Seller to be covered under warranty shall be, as Buyer's sole and exclusive remedy, repaired, replaced or credited, at Seller's



option. **All Products repaired or replaced are warranted only for the unexpired portion of the original warranty period.**

- b. Buyer may only be entitled to a remedy if Buyer returns product to Seller and Seller confirms defective status
- c. Seller warrants all Accelerometer (G-Meter) overhauls to be free from defects in accordance with the schedule listed below based upon degree of service/overhaul:
 - i. **Clean and Recertification:** For a period of three (3) months from the date of shipment (but in no event longer than six (6) months after date of notification of readiness for shipment)
 - ii. **Standard Overhaul:** For a period of six (6) months from the date of shipment (but in no event longer than twelve (12) months after date of notification of readiness for shipment)
 - iii. **Complete Overhaul:** For a period of twelve (12) months from the date of shipment (but in no event longer than eighteen (18) months after date of notification of readiness for shipment)
- d. THE FOREGOING LIMITED WARRANTIES ARE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF TITLE, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND OF ALL OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF SELLER, AND SELLER NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT, ANY OTHER LIABILITY IN CONNECTION WITH THE SALE HEREUNDER. SELLER DISCLAIMS ANY LIABILITY FOR PRODUCT DEFECTS THAT ARE DUE TO PRODUCT MISUSE, IMPROPER USE, DAMAGE, IMPROPER PRODUCT SELECTION OR MISAPPLICATION.

VI. INTELLECTUAL PROPERTY LIABILITY

- a. Seller reserves all rights in all Seller intellectual property, including without limitation offer documents, in particular illustrations, drawings, calculations, brochures, catalogs, models, samples, and tools. Such documents must not be made available to third parties without written consent from Seller. Buyer, upon Seller's request, will return all offer documents that are no longer necessary in the ordinary course of business. For orders according to Buyer specifications, Buyer is liable for third-party rights or property rights and indemnifies Seller against such claims.

VII. LIMITATION OF LIABILITY

- a. UNLESS APPLICABLE LAW OTHERWISE REQUIRES, SELLER'S AND ANY OF IT'S VENDOR'S TOTAL LIABILITY TO BUYER, BUYER'S CUSTOMERS OR TO ANY OTHER PERSON, RELATING TO ANY PURCHASES GOVERNED BY THESE TERMS & CONDITIONS, FROM THE USE OF THE PRODUCTS FURNISHED OR SERVICES RENDERED OR FROM ANY ADVICE, INFORMATION OR ASSISTANCE PROVIDED BY SELLER (BY ANY METHOD, INCLUDING A WEBSITE), IS LIMITED TO THE PRICE OF THE PRODUCTS OR SERVICES GIVING RISE TO THE CLAIM, WHICH AMOUNT SHALL BE FIXED AS LIQUIDATED DAMAGES AND NOT AS A PENALTY, AND SHALL BE THE COMPLETE AND EXCLUSIVE REMEDY AGAINST THE SELLER. BUYER'S FAILURE TO TIMELY SUBMIT A CLAIM HEREUNDER SHALL WAIVE ALL CLAIMS FOR DAMAGES OR OTHER RELIEF INCLUDING BUT NOT LIMITED TO CLAIMS BASED ON LATENT DEFECTS. NEITHER SELLER NOR ITS VENDORS SHALL BE LIABLE FOR ANY SPECIAL, INCIDENTAL, DIRECT, CONSEQUENTIAL OR PENAL DAMAGES (INCLUDING, BUT NOT LIMITED TO BACK-CHARGES, LABOR COSTS, COSTS OF REMOVAL, REPLACEMENT, TESTING OR INSTALLATION, LOSS OF EFFICIENCY, LOSS OF PROFITS OR REVENUES, LOSS OF USE OF THE PRODUCTS OR ANY ASSOCIATED PRODUCTS, DAMAGE TO ASSOCIATED PRODUCTS, LATENESS OR DELAYS IN DELIVERY, UNAVAILABILITY OF PRODUCTS, COST OF CAPITAL, COST OF SUBSTITUTE PRODUCTS, FACILITIES OR SERVICES, DOWNTIME, OR CLAIMS FROM BUYER'S CUSTOMERS OR OTHER PARTIES). IF SELLER FURNISHES BUYER WITH ADVICE OR OTHER ASSISTANCE WHICH CONCERNS ANY PRODUCTS SUPPLIED HEREUNDER, OR ANY SYSTEM OR EQUIPMENT IN WHICH ANY SUCH PRODUCTS MAY BE INSTALLED, THE FURNISHING OF SUCH ADVICE OR ASSISTANCE IS GRATUITIOUS AND WILL NOT SUBJECT SELLER TO ANY LIABILITY, WHETHER BASED ON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE) OR OTHER GROUNDS.

VIII. CANCELLATION CHARGES

- a. Seller may impose cancellation charges equal to the cost of raw materials purchased by Seller and labor and materials costs incurred (and not otherwise mitigated), dedicated to manufacturing Products prior to the date of Buyer's cancellation notice. A minimum of 25% cancellation fee will be assessed if engineering activities are completed prior to the date of Buyer's cancellation notice.

IX. ARBITRATION; CONTROLLING LAW; JURISDICTION AND VENUE

- a. Except for actions to protect intellectual property rights and to enforce an arbitrator's decision hereunder, all disputes, controversies, or claims arising out of or relating to this Agreement or a breach thereof shall be



submitted to and finally resolved by arbitration under the rules of the American Arbitration Association ("AAA") then in effect. There shall be one arbitrator, and such arbitrator shall be chosen by mutual agreement of the parties in accordance with AAA rules. The arbitration shall take place in Santa Ana, California, USA. The arbitrator shall apply the laws of the State of California, to all issues in dispute. The controversy or claim shall be arbitrated on an individual basis, and shall not be consolidated in any arbitration with any claim or controversy of any other party. The findings of the arbitrator shall be final and binding on the parties, and may be entered in any court of competent jurisdiction for enforcement. Enforcements of any award or judgment shall be governed by the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

- b. This Agreement shall be governed, controlled, interpreted and defined by and under the laws of the State of California without regard to conflicts of law provisions thereof.
- c. The parties agree that the courts of Orange County in the State of California, and the U.S. District Court for the Central District of California, Southern Division shall be the exclusive jurisdiction and venue for all legal proceedings that are not arbitrated under these Terms and Conditions.

X. ASSIGNMENT

- a. An order shall not be assigned by either party without the express written consent of the other. Consent will not be required, however, for internal transfers and assignments as between either party and its affiliates under common ownership, and nothing herein shall limit either party's right to factor or sell receivables.

XI. TERMINATION

- a. Either party may terminate the whole or any part of the other party's performance under a purchase order if there is a material breach of these Terms & Conditions. In the event of any such breach, the non-breaching party will provide the breaching party with written notice of the nature of the breach and the non-breaching party's intention to terminate for default. In the event the breaching party does not cure such failure within ten (10) days of such notice, the non-breaching party may, by written notice, terminate the order; provided, that the breaching party shall continue its performance to the extent not terminated.

XII. EXPORT COMPLIANCE

- a. Buyer acknowledges that the Product is subject to U.S. export control laws, rules and regulations including, but not limited to: The Export Administration Act of 1979 (50 U.S.C. § 2401 et seq., as extended by Executive Order 13222); The Arms Export Control Act of 1976 (22 U.S.C. § 2751 et seq.); The Export Administration Regulations (15 C.F.R. § 730 et seq.); and The International Traffic in Arms Regulations (22 C.F.R. § 120 et seq.). Buyer shall comply with all applicable export control and trade embargo laws, rules and regulations and shall not resell, export, re-export, distribute, transfer or dispose of the Product, directly or indirectly, without first obtaining all necessary written consents, permits and authorizations and completing such formalities as may be required by any such laws, rules and regulations. Buyer acknowledges that any diversion of these commodities contrary to the afore-mentioned laws, rules and regulations is prohibited. Failure by Buyer to comply with all applicable export control and trade embargo laws, rules and regulations shall constitute a material breach of these Terms and Conditions of Sale. Seller assumes no responsibility or liability for Buyer's failure to obtain required authorizations. Buyer agrees to impose this same compliance requirement in its contracts with third parties pertaining to the Product.

XIII. MISCELLANEOUS

- a. These Terms and Conditions constitute the entire understanding of the parties with respect to the subject matter of this agreement and merges all prior communications, understandings, and agreements. These Terms and Conditions may be modified only by a written agreement signed by the parties. Seller objects to and rejects any terms between Buyer and any other party, and no such terms, including but not limited to any government regulations or "flow-down" terms, shall be a part of or incorporated into any order from Buyer to Seller, unless agreed to in writing by an authorized representative of Seller.
- b. The failure of either party to enforce at any time any of the provisions hereof shall not be a waiver of such provision, or any other provision, or of the right of such party thereafter to enforce any provision hereof. If any provision of These Terms and Conditions are declared invalid or unenforceable, such provision shall be deemed modified to the extent necessary and possible to render it valid and enforceable. In any event, the unenforceability or invalidity of any provision shall not affect any other provision of these Terms and Conditions, and these terms shall continue in full force and effect, and be construed and enforced, as if such provision had not been included, or had been modified as above provided, as the case may be.



- c. WARNING: Seller's Products may contain chemicals known to the State of California to cause cancer and/or reproductive harm.