



## **Sales Terms and Conditions**

### **1. Applicability**

THESE STANDARD TERMS AND CONDITIONS OF SALE (THIS "AGREEMENT") IS A FUNDAMENTAL PART OF, IS INCORPORATED BY THIS REFERENCE INTO, AND IS SUBJECT ONLY TO THE EXPRESS PROVISIONS OF, ANY ORDER CONFIRMATION PROVIDED BY QUINSTAR TECHNOLOGY, INC. ("SELLER"). ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS SHALL BE DEEMED A MATERIAL ALTERATION OF, AND BE INAPPLICABLE TO, THIS TRANSACTION UNLESS SPECIFICALLY AGREED TO IN WRITING BY AN AUTHORIZED EMPLOYEE OF SELLER. SUBJECT TO THE FOREGOING, THIS AGREEMENT EXCLUSIVELY GOVERNS ALL QUOTATIONS AND SALES ENTERED INTO BY SELLER. ACCEPTANCE OF A BUYER'S ORDER AND SELLER'S AGREEMENT TO FURNISH PRODUCTS OR SERVICES ARE EXPRESSLY CONDITIONED ON BUYER'S ASSENT TO THIS AGREEMENT.

The buyer is the entity with whom Seller has or anticipates having a contractual relationship to provide products or services ("Buyer"). Buyers' issuance of a purchase order for the products or services shall constitute Buyer's acknowledgement and agreement that this Agreement is intended to be the parties' final expression and exclusive statement of the terms of their agreement and supersede all terms and conditions otherwise discussed or proposed by Buyer or Seller, except as otherwise provided above.

### **2. Terms of Payment**

Terms are payment in advance, except where satisfactory open account credit is established, in which case terms are net thirty (30) days from the date of invoice. The amount of credit or terms of payment may be changed or credit withdrawn by Seller at any time for any reason. Seller reserves the right at any time to revoke any credit extended to Buyer for any risk deemed sufficient by Seller. Seller will issue invoices on delivery in the case of all products; if deliveries are made in installments, each shipment shall be invoiced and payable when due without regard to other scheduled deliveries. Overdue payments shall be subject to finance charges computed at a periodic rate of 1.5% per month (18% per year) or, if less, the maximum rate permitted by law. All amounts owed by Buyer with respect to which there is no dispute shall be paid without set-off of any amount that Buyer may claim is owed by Seller and regardless of any other controversies that may exist. In the event of default by Buyer, Seller shall be entitled to recover from Buyer costs, fees, and expenses incurred by Seller in collecting amounts owed by Buyer, including, reasonable attorneys' fees, court costs and other costs of collection.



### **3. Delivery**

All deliveries are FOB Torrance, CA unless otherwise stated. Title and risk of loss with respect to the products shall pass to Buyer upon shipment from Seller's Factory. Any loss or damage after delivery shall not relieve Buyer from any obligations hereunder. Seller reserves the right to make deliveries in installments. All products will be scheduled for shipment in accordance with Seller's applicable shipment sequence and Seller will confirm in writing, and amend as appropriate, the shipment schedule. If Buyer fails to make each payment when it is due, Seller reserves the right to withdraw credit and thereby suspend or cancel performance under any or all purchase orders or agreements in which Seller has extended credit to Buyer. Seller's suspension of performance may result in a rescheduling delay contingent on current product availability. Under no circumstances shall Seller be liable to Buyer for any delay either in shipment or in delivery. If a delay or a force majeure event occurs, Seller may, at its option, (a) extend the delivery date for a time equal to the period of the delay and/or (b) allocate its available supply among its customers when it is unable to supply its total demands and/or commitments. In no event shall Seller be obligated to compensate Buyer for the re-procurement of products, services or other items from others.

### **4. Cancellation**

Buyer shall have no right to cancel the delivery of custom/non-standard products once production has begun. In the event the Buyer attempts to cancel such orders, compensation shall be determined at that time.

### **5. Returns**

Buyer shall not return any products for any reason without the prior authorization of Seller and the issuance by Seller of a Return Material Authorization (RMA). Returns must be shipped using Seller's preferred carrier. The RMA shall specify the RMA number, the terms and conditions upon which returns may be made, and Seller's preferred carrier. The RMA number must be marked on the outer shipping carton packing list, commercial invoice and carrier airway bill when products are returned. Returns made without obtaining prior authorization or without the RMA number properly marked on the outer shipping carton will be returned to sender at Buyer's expense.

### **6. No Modification or Reverse Engineering**

Buyer agrees that it will not modify, adapt, alter, translate, or create derivative works from any of the products purchased from Seller or derive, attempt to derive or direct others to derive the source code of any software product or the physical structure or technical



properties of any other product purchased from Seller by reverse engineering, disassembly, decompilation, or any other means.

## **7. Assignment**

Neither this Agreement nor any purchase order issued and accepted under this Agreement is assignable by Buyer without the prior written consent of Seller and any attempt to assign any rights, duties or obligations arising hereunder shall be void.

## **8. Force Majeure**

Seller shall not be liable for any loss or damage resulting from any delay in delivery or failure to give notice of delay when such delay is due to any cause or event beyond Seller's control, including, without limitation, acts of nature, acts of terrorism, unavailability of supplies or sources of energy, riots, wars, fires, strikes, labor difficulties, delays in transportation, delays in delivery or defaults by Seller's vendor, or acts or omissions of Buyer. In the event of delay due to any such cause, time for delivery shall be extended for a period of time equal to the duration of such delay and Buyer shall not be entitled to refuse delivery or otherwise be relieved of any obligations as a result of the delay. If, as a result of any such cause, any scheduled delivery is delayed for period in excess of one-hundred-twenty (120) days, Seller or Buyer shall have the right by written notice to the other to cancel the order for the products subject to the delayed delivery without further liability of any kind.

## **9. Limitation of Liability**

UNLESS OTHERWISE EXPRESSLY AGREED IN WRITING BY SELLER, SELLER SHALL NOT BE LIABLE TO BUYER, BUYER'S CUSTOMERS OR ANY OTHER THIRD PARTY, IN CONTRACT, TORT, INDEMNITY OR OTHERWISE, FOR ANY LIABILITY, LOSS, DAMAGE, COST, OR EXPENSE ARISING OUT OF ANY CLAIM FOR PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE RELATED TO THE PRODUCTS SOLD HEREUNDER. IN NO EVENT SHALL SELLER BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST OPPORTUNITIES, OR INTERRUPTION OF BUSINESS) OR PUNITIVE DAMAGES DUE TO ANY CAUSE WHATSOEVER, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, EVEN IF WARNED OF THE POSSIBILITY OF ANY SUCH LOSS OR DAMAGE AND EVEN IF ANY OF THE LIMITED REMEDIES IN THIS CONTRACT FAIL THEIR ESSENTIAL PURPOSE. NO SUIT OR ACTION SHALL BE BROUGHT AGAINST SELLER MORE THAN ONE YEAR AFTER THE RELATED CAUSE OF ACTION HAS ACCRUED.



IN NO EVENT SHALL THE ACCRUED TOTAL LIABILITY OF SELLER TO BUYER OR ANY THIRD PARTY FOR ALL LOSSES OR TYPES OF DAMAGES, WHETHER FROM ANY LAWSUIT, CLAIM, WARRANTY, OR OTHER DISPUTED MATTER EXCEED THE AGGREGATE SUM PAID TO SELLER BY BUYER UNDER THE ORDER THAT GIVES RISE TO SUCH LOSS OR DAMAGE.

### **10. Use in Safety and Life Support Applications**

PRODUCTS SOLD BY SELLER TO BUYER HEREUNDER ARE NOT DESIGNED OR INTENDED FOR USE IN APPLICATIONS WHERE FAILURE CAN REASONABLY BE EXPECTED TO RESULT IN PERSONAL INJURY OR DEATH (INCLUDING, WITHOUT LIMITATION, FOR, NUCLEAR OR SAFETY EQUIPMENT, FOR SURGICAL IMPLANT, FOR RESCUE OF PERSONS OR TO SUPPORT, PROTECT OR SUSTAIN LIFE). BUYER USES, MARKETS, AND SELLS THE PRODUCTS FOR SUCH APPLICATIONS AT ITS SOLE RISK AND EXPENSE, AGREES TO INDEMNIFY AND HOLD SELLER HARMLESS FROM ANY AND ALL DAMAGES, COSTS OR EXPENSES ARISING FROM ANY CLAIM OR ACTION OF ANY THIRD PARTY BASED ON THE ACTUAL OR ALLEGED FAILURE OF A PRODUCT TO PERFORM SUCH APPLICATIONS AND AGREES THAT SELLER'S WARRANTY IN THIS AGREEMENT DOES NOT EXTEND TO ANY SUCH APPLICATIONS.

### **11. Waivers**

All rights and remedies of Seller hereunder shall be cumulative and may be exercised singularly or concurrently. In the event that either party shall on any occasion fail to perform any term herein and the other party shall not enforce that term, failure to enforce on that occasion shall not prevent enforcement on any other occasion.

### **12. Entire Agreement and Amendments**

This Agreement constitutes the entire agreement between the parties and supersedes all previous communications, whether oral or written. Seller reserves the right to make changes to this Agreement at any time, without notice to the Buyer, with such changes to be effective for all products shipped after the date of such change.

### **13. Governing Law**

This Agreement is made in, governed by and shall be construed in accordance with the laws of the State of California without regard to conflicts of laws principles. Any suit or action arising out of or in connection with this agreement, any purchase order issued hereunder or any breach hereof, may be brought and maintained in the federal or state courts in Los Angeles, CA. The parties hereby irrevocably submit to the jurisdiction of such courts for the



purpose of such suit or action and hereby expressly and irrevocably waive, to the fullest extent permitted by law, any objection it may now or hereafter have to the venue of any such suit or action in any such court.

#### **14. Alternative Dispute Resolution**

If there is a dispute between Seller and Buyer arising from this Agreement (a "Dispute"), and the parties cannot promptly resolve it through negotiation, then either party may submit the Dispute to binding arbitration by one arbitrator in California in accordance with the rules of the American Arbitration Association and judgment upon the arbitral award may be entered in any court having jurisdiction over Buyer or Seller or their respective assets. Buyer and Seller shall select a mutually acceptable arbitrator. If, within twenty (20) days of the notice of intent to arbitrate from one party, Buyer and Seller have failed to select an arbitrator, then the arbitrator shall be selected by the American Arbitration Association. Buyer and Seller shall be allowed reasonable depositions and discovery with the advance leave granted by the Arbitrator. Either party may, without inconsistency with this agreement to arbitrate, seek from a court any provisional remedy that may be necessary to protect either party's rights under this Agreement pending the establishment of the arbitral tribunal or its determination of the merits of the Dispute.

#### **15. Notice**

All notices and other communications required or permitted under this Agreement shall be in writing and shall be deemed as received, if sent by air courier, upon receipt or five (5) days after posting, or if sent by electronic mail (email), twenty-four (24) hours after dispatch.