

# Quantum Standard Terms and Conditions of Sale

*Effective 9/6/17*

## **GENERAL**

Quotations are offered for acceptance for a period of sixty (60) days following the date of the Quotation unless a longer time is specified on the face of the quotation, and if the Quotation is not accepted within the designated period, it shall be deemed withdrawn. Quantum shall have the right to withdraw a Quotation prior to the expiration of the sixty (60) -day period by giving Customer written notice. These terms and conditions, together with Quantum's quotation, govern the sale of the Quantum product(s) to Customer specified in the related sales Quotation (the "**Product**"). Any purchase order or other document issued by Customer shall be confirmation only of Customer's acceptance of Quantum's quotation and these terms and conditions. Any terms and conditions proposed by Customer, which have not been expressly accepted in writing by Quantum, whether in or attached to Customer's purchase order, acceptance of Quantum's Quotation, or any other document issued by Customer to Quantum, are expressly rejected by Quantum and shall not be binding on Quantum.

## **PRICE**

All prices are in US dollars, unless otherwise specified in Quantum's quotation. The price specified in Quantum's quotation is valid for that shipment of Product only. All prices are FOB Quantum's plant (place of shipment).

## **PAYMENT TERMS**

All VP orders require a 50% down payment with the order, and the remaining 50% due prior to shipment of the VP trailer. Engineering Services require a 50% deposit to commence work. Components and parts sales require payment prior to shipment, unless terms are granted. Whenever credit terms are extended, it is with the expressed agreement that a one and one-half percent (1 ½%) per month service charge will apply to all accounts past due. On any test program or order requiring more than thirty (30) days to complete, invoices will be submitted for services performed on a monthly basis and are due within thirty (30) days of presentation. All accounts outside the contiguous United States of America will be required to pay the full invoice amount prior to performance of services or shipment of Product. Payment of Quantum's invoices by Customer shall not be delayed for any reason or contingent upon Customer's receipt of any payment from or action by any other party. Customer agrees to pay all costs associated with collection of any overdue amount including reasonable attorney's fees. In addition to other remedies provided by law, where conditions warrant, Quantum reserves the right to withdraw test data, reports, and test samples until payment of all amounts due is received. In the event Customer shall become insolvent; or makes a general assignment for the benefit of creditors; or files or has filed against it a petition of bankruptcy or for reorganization; or pursues any other remedy under law relating to the relief of debtors; or in the event a receiver be appointed of Customer's property or business, Quantum may, at its sole discretion, immediately and without notice terminate its performance under the contract and treat the Customer as in default. Customer hereby grants Quantum a purchase money security interest in the Products until Quantum has been paid in full. Customer will be charged a \$30.00 fee for any checks returned by the customer's bank. Quantum, at its discretion, may place any account with a delinquent balance on a cash in advance, limited credit, or cancel all charge privileges if the account is not paid when due. If you are both a customer and a vendor of Quantum and are greater than thirty (30) days past due, we will offset our payable with your receivable.

## **DELIVERY DATES**

Delivery dates specified in Quantum's quotation are estimates only. If Quantum will be unable to deliver Product within sixty (60) days of the delivery date specified in Quantum's quotation, then Quantum will provide written notice to Customer of the revised delivery date. Customer may, together with any remedy provided for in the Summary of Terms, cancel the unfilled portion of the order by giving written notice of cancellation to Quantum within three (3) days of receipt of such written notice. Customer's sole and exclusive remedy for any failure by Quantum to meet any delivery date shall be as provided in this Section, and Quantum's liability for any failure to meet any delivery date shall be limited to such remedy. Cancellation under this Section shall not relieve Customer of its obligation to pay for any Product previously delivered prior to the date of the notice set forth in this Section.

## **TAXES AND DUTIES**

The price for Product excludes all taxes, duties, and fees (including without limitation any goods and services tax, sales tax, excise tax, import duty, and customs brokerage fees), whether levied against Quantum or Customer. All such taxes, duties, and fees are for Customer's account. If any such taxes, duties, or fees are paid by Quantum, they shall be charged to Customer and specified separately in Quantum's invoice.

## **CANCELLATION CHARGES**

Except as provided in "Delivery Dates" above, if Customer cancels the order prior to delivery, Customer shall pay all costs incurred up to the point of cancellation.

## **SHIPMENTS**

All Products both originating and delivered in the United States are shipped F.O.B., Quantum's plant. All Products originating in the United States but delivered outside of the United States are shipped Ex Works, Quantum's plant (as published by the International Chamber of Commerce 2010). Risk of loss and title shall transfer to the Customer upon tender of the Products to Customer, Customer's representative, or common carrier regardless of whether Quantum assists with arranging any shipping or transportation. In the event Quantum does arrange for shipping of any Products on behalf of Customer, (i) it is Customer's responsibility to specifically request insurance coverage (both type and amount) if desired, and (ii) Customer must immediately inspect and report to the shipper any visible damage to containers upon delivery (i.e. on the bill of lading). The cost of any special packing or special handling caused by Customer's requirements or requests shall be added to the amount of the order. If Customer causes or requests a shipment delay, or if Quantum ships or delivers the Products erroneously as a result of inaccurate, incomplete, or misleading information supplied by Customer or its agents or employees, storage and all other additional costs and risks shall be borne solely by Customer. Claims for Products damaged or lost in transit should be made by Customer to the carrier, as Quantum's responsibility ceases upon tender of goods to Customer, Customer's representative, or common carrier.

## **INSPECTION**

Customer shall promptly inspect the Product after arrival at destination. Claims for shortage must be reported to Quantum in writing within two (2) days of delivery to Customer. Customer shall have seven (7) days following delivery to inspect the Product for damage (not from shipping), defect or nonconformance. After such seven (7) - day period, Customer shall be deemed to have irrevocably accepted the Products. Customer shall supply such reasonable documentation as Quantum may request. For any damaged or nonconforming goods, and provided that the damage or non-conformity was not caused by Customer or due to misuse or handling after Quantum delivered the Product to Customer, Customer's sole and exclusive remedy is to return the Product for, at Quantum's option, repair or replacement. All returns must be done in accordance with Quantum's Return Material Authorization ("RMA") process. Returned Products will not be accepted by Quantum without a RMA number.

## **FORCE MAJEURE**

For the purposes of these terms and conditions, force majeure means any event beyond the control of Quantum, including but not limited to: (i) lightning, storms, earthquakes, floods, and other Acts of God; (ii) fires, explosions, breakdowns of machinery or equipment, and other accidents and disturbances; (iii) vandalism, riots, and other civil disturbances; (iv) war (declared or undeclared), terrorism, sabotage, and other acts of the public enemy; (v) sanctions, embargos, export controls, or any other governmental restriction; (vi) acts or omissions of any government or governmental body or agency; (vii) strikes, lockouts, work stoppages, and other labor disturbances; (viii) any default or delay by a supplier, shipper, carrier, or other third party; and (ix) any other event beyond the control of Quantum. Quantum will not be liable for failure to perform due to a force majeure. If performance by Quantum will be delayed due to force majeure for more than 120 days, then either party may, upon giving written notice to the other party, cancel the order, without liability of either party.

## **INTELLECTUAL PROPERTY RIGHTS**

Customer agrees that all patents, trade secrets, trademarks, copyrights and other intellectual property rights ("IP Rights") relating to the Product are and at all time shall remain the sole and exclusive property of Quantum. Sale of

the Products does not include the sale or transfer of any of Quantum's IP Rights.

#### **CONFIDENTIALITY**

Quantum's Quotation (including the price of the Product) shall be kept strictly confidential by Customer.

#### **NEWS RELEASE**

Quantum may issue a news release concerning the sale of Product to Customer.

#### **GOVERNING LAW**

This Agreement and the performance hereunder shall be governed by and construed in accordance with the laws of the State of California, notwithstanding the fact that either party is or may hereafter be domiciled in a different state. Customer and Quantum irrevocably submit to the exclusive jurisdiction and venue of the state and federal courts sitting in Los Angeles County, California. In addition to other remedies, the prevailing party shall be entitled to recover such amount as the court may adjudge reasonable as attorney's fees and expenses in the enforcement action or any appeal. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement.

#### **DELAY IN TAKING**

Quantum will provide written notice to Customer of the scheduled delivery date(s). If Customer fails to take delivery of the Virtual Pipeline Trailer Product within thirty (30) days of the scheduled delivery date, then Customer will pay a stocking charge of US: \$10,000 / unit / day for each day after such period of thirty (30) days, to a maximum of 110% of the unit price; or for all other Products US \$100 / unit / day for each day after such a period of thirty (30) days, to a maximum of 110% of the unit price for other products and components. The re-stocking charge will be separately identified in the final invoice. Payment of the re-stocking fee shall not relieve Customer of its obligation to take delivery of and pay for the Product.

#### **EMPLOYEES**

For Engineering Services agreements, Customer agrees not to solicit and / or hire any quantum employees for a period of one (1) year from the date of an accepted purchase order.

#### **INDEMNIFICATION**

Customer agrees to defend, indemnify, and hold harmless Quantum and its affiliates, and their respective officers, directors, employees, shareholders, agents, successors, or assigns from all liabilities, claims, and expenses, including attorney's fees, that arise from (i) Customer's breach of this Agreement; (ii) the negligent or more culpable act or omission of Customer or its employees, contractors or agents; (iii) Customer's or its carrier's entry onto Quantum's premises for pick-up of Products, and (iv) any failure by Customer to comply with any applicable laws.

#### **DISCLAIMER**

Unless otherwise provided, Quantum disclaims all warranties, express or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose.

#### **LIMITATIONS OF DAMAGE**

Customer agrees that regardless of the claim or the form in which any legal or equitable action may be brought by the Customer or any related third party against Quantum, Quantum shall not be liable for any damages or expenses, direct or indirect, special, consequential, exemplary, or compensatory, including but not limited to loss of profits except to the extent otherwise herein provided. Quantum's total liability to Customer for damage or loss arising out of, or in any way related to, the sale of Products, whether based on contract, tort (including negligence and/or gross negligence), strict liability, breach of warranty or any other cause shall in no event exceed the purchase price of the Product to which such claim relates. Quantum shall not be liable for any damages arising from delay in the performance of services, if such delay is due to a cause beyond reasonable control of Quantum. The occurrence of any contingency beyond Quantum's reasonable control shall not constitute cause for cancellation of the Purchase Order, but shall extend Quantum's time to perform the required service for a period

equal to the duration of such contingency. All services furnished by Quantum, and all tests performed utilizing Quantum's equipment and facilities, whether conducted by Quantum or Customer's personnel, shall be at the risk of the Customer, and Quantum shall not be liable for injury to person or damage or loss to, property furnished by Customer while such person or property is on Quantum's premises.

In addition, Quantum will have no liability for any claim or damages to the extent caused by: (a) access to or use of the Products or services other than as specified under these terms and conditions and any limited warranty provided by Quantum; (b) combination or use of the Products with non-Quantum products or services (whether or not provided to Customer by Quantum); (c) any hardware, equipment, devices, software, repair, maintenance, or other resources or services not provided by Quantum; (d) failure or refusal by Customer to install, implement, or use any updates or corrections provided by Quantum; (e) modification or alteration of the Products by anyone other than Quantum without Quantum's prior written consent; or (f) Customer's goods or services.

Furthermore, Quantum has no obligation to provide resolutions for problems that arise from: (a) altered, damaged, or modified Products or Customer's use of Products not in accordance with this Agreement or the instruction manuals and materials provided by Quantum (the "Product Documentation"); or (ii) problems caused by Customer's negligence, abuse, misapplication, or use of Products other than as specified in the Product Documentation.

#### **SEVERABILITY**

These terms and conditions of sale shall not be construed against the party preparing them, but shall be construed as if all parties jointly prepared these terms and conditions of sale, and any uncertainty or ambiguity shall not be interpreted against any one party. If any provision hereof is held to be illegal, invalid, or unenforceable under any present or future laws, such provision shall be fully severable, and the terms and conditions herein shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never been made a part hereof. The remaining provisions herein shall remain in full force and effect and shall not be affected by such illegal, invalid, or unenforceable provisions or by their severance herefrom.

#### **NON-WAIVER**

Quantum's failure to insist upon the strict performance of any term or condition herein shall not be deemed a waiver of any of Quantum's rights or remedies hereunder, nor of its right to insist upon the strict performance of the same or any other term herein in the future. No waiver of any term or condition hereunder shall be valid unless in writing and signed by Quantum's Program Manager.

#### **ENTIRE AGREEMENT**

This document constitutes the entire, complete, and exclusive agreement between the parties with respect to the subject matter hereof and contains all the agreements and conditions of sale; no course of dealing or usage of the trade shall be applicable unless expressly incorporated herein. The terms and conditions contained herein may not be added to, modified, superseded, or otherwise altered except by a written modification signed by Quantum's Program Manager. All transactions shall be governed solely by the terms and conditions contained herein.