

Qpac Ltd – Terms & Conditions of Sale

These terms & conditions (as amended under clause 7.8) (“**Conditions**”) govern the sale of goods by Qpac Ltd, registered in England & Wales with no. 16199893 (“**QPAC**”) to the person/firm to who buys such goods (“**Buyer**”).

These Conditions apply to the exclusion of any other terms that Buyer seeks to impose, or which are implied by trade, custom, practice or course of dealing.

1 INTERPRETATION

In these Conditions: (i) **person** includes a natural person/corporate/unincorporated body; (ii) a reference to QPAC/Buyer includes its personal representatives/successors/permitted assigns; (iii) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted & includes any subordinate legislation; (iv) any phrase introduced by the terms **including/include/in particular** (or similar) shall be illustrative & shall not limit the sense of the preceding words; & (v) a reference to **writing/written** includes faxes & emails; (iii) the following definitions apply:

“**Applicable Law**”: the laws of England & Wales, the EU & any other laws/regulations/regulatory policies/guidelines/industry codes which apply to the manufacture/supply of the Goods.

“**Business Day**”: Monday to Friday, excluding any public holidays in England & Wales.

“**Contract**”: each contract between QPAC & Buyer for the supply of Goods under these Conditions.

“**Buyer Default**”: any ac/omission of Buyer or failure by Buyer to perform any relevant obligation under a Contract. “**Buyer’s Specification**”: if applicable, Buyer’s specification for the bespoking of Goods (i.e. variation from the standard specification for the same) to the specific requirements of Buyer, as contained in the Order.

“**Credit Terms**”: payment within 30 days of the date of invoice, or if different, as specified in the Order (in full & in cleared funds) to QPAC’s bank account.

“**Delivery Location**”: the delivery location in the Order, or such other location as the parties may agree.

“**Delivery Tolerance**”: 10% more/less than the quantity of Goods ordered.

“**Due Date**”: the date on which payment is due pursuant to the terms on account or where specified in the Order.

“**End Destination**”: where QPAC arranges transport of Goods for Buyer, the destination to which such Goods are to be delivered under the Order, or such other destination as the parties may agree.

“**Force Majeure Event**”: an event beyond the reasonable control of QPAC.

“**Goods**”: the goods set out in the Order (or any part of them).

“**Goods Spec**”: the specification for the Goods, including any relevant plans or drawings, set out in QPAC’s catalogues/booklets/website & other literature, together with the bespoke requirements contained in the Buyer’s Specification.

“**Insolvency Event**”: (a) Buyer suspends/threatens to suspend payment of its debts/s is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts under section 123 of the Insolvency Act 1986 or is deemed either unable to pay its debts or as having no reasonable prospect of so doing within the meaning of section 268 of the Insolvency Act 1986 or (if a partnership) has any partner to whom any of the above applies; (b) Buyer starts negotiations with all/any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for/enters into any arrangement with its creditors; (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for/nr in connection with the winding up of Buyer; (d) Buyer is the subject of a bankruptcy petition/order; (e) a creditor/enfranchiser of Buyer attaches or takes possession of, or a distress, execution, sequestration or other process is levied or enforced on or sued against, the whole/part of its assets which is not discharged within 14 days; (f) an application is made to court, or an order is made to appoint an administrator, or notice of intention to appoint an administrator is given or an administrator is appointed over Buyer; (g) a floating charge holder over the assets of Buyer becomes entitled to appoint/has appointed an administrative receiver; (h) a person becomes entitled to appoint a receiver over the assets of Buyer or a receiver is appointed over the assets of Buyer; (i) any event analogous to those mentioned in (a)-(h) above in another jurisdiction.

“**Intellectual Property Rights**”: all patents, rights to inventions, utility models, copyright & related rights, trademarks, service marks, trade, business & domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how & trade secrets) & any other intellectual property rights, in each case whether registered or unregistered & including all applications for & renewals or extensions of such rights, & all similar or equivalent rights or forms of protection in any part of the world.

“**Order**”: Buyer’s written acceptance of QPAC’s quotation relating to an initial query for Goods from Buyer.

“**Sourcing Issue**”: an inability of QPAC to source a particular materials/obtain appropriate resources (e.g. personnel) on terms similar or identical to those available at the Start Date (including exchange rate fluctuations/increases in taxes/duties).

2 BASIS OF CONTRACT

2.1 Each Order constitutes an offer by Buyer to purchase Goods which shall only be deemed accepted when QPAC issues written acceptance, on which date a Contract shall come into existence (“**Start Date**”). Following such acceptance: (i) Buyer may not cancel the Contract other than under clause 6.1, unless agreed in writing with QPAC; & (ii) QPAC may only cancel a Contract under clause 6.

2.2 A quotation given by QPAC is not an offer & is only valid for 5 Business Days from its date of issue.

3 GOODS

3.1 QPAC shall supply the Goods to Buyer pursuant to each Contract. QPAC warrants that on delivery the Goods shall: (i) conform in all material respects with the Goods Spec (however QPAC reserves the right to amend the same where such change is required by any Applicable Law or as a result of a Sourcing Issue); (ii) be free from material defects in design, material & workmanship; (iii) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); (iv) be fit for any purpose described within the Goods Spec; & (v) comply with Applicable Law in England, N. Ireland, Scotland, Rep. Ireland and Wales. However, QPAC’s sole liability to Buyer under this warranty is set out in this clause 3.

3.2 In respect of a breach of clause 3.1, QPAC shall (at its option) repair, replace or refund in full the price of the defective Goods provided: (i) Buyer gives notice in writing within a reasonable time of delivery that some or all of the Goods do not comply with the warranty in clause 3.1; (ii) QPAC is given a reasonable opportunity of examining such Goods (which may include accessing Buyer’s premises); & (iii) Buyer (if QPAC requests) returns such Goods to QPAC’s place of business at Buyer’s cost. These Conditions shall apply to any repaired or replacement Goods supplied under this clause.

3.3 QPAC is not liable for the Goods’ failure to comply with the warranty in clause 3.1 if: (i) Buyer makes further use of such Goods after giving notice under clause 3.2 (unless approved in advance in writing by QPAC); (ii) the defect arises because Buyer failed to follow QPAC’s oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; (iii) the defect arises as a result of QPAC following Buyer’s Specification; (iv) Buyer alters/repairs such Goods without the written consent of QPAC; (v) the defect arises as a result of fair wear & tear, willful damage, negligence, or abnormal working conditions; (vi) the Goods differ from the Goods Spec as a result of changes made to ensure they comply with Applicable Law.

3.4 Delivery dates are approximate only & time of delivery is not of the essence. Delivery shall be completed on the Goods’ arrival at the Delivery Location. Buyer is responsible for unloading. Buyer shall provide QPAC with adequate delivery instructions and any other instructions that are relevant to the supply of the Goods. If QPAC requires Buyer to return any packaging material, QPAC shall state the same on the delivery note. Buyer shall make such packaging materials available for collection at such times as QPAC requests. Return of packaging materials is at QPAC’s expense.

3.5 QPAC shall deliver the Goods to the Delivery Location at any time after QPAC notifies Buyer that the Goods are ready. Where agreed by QPAC, QPAC shall arrange for transportation from the Delivery Location to the End Destination on behalf of Buyer. Where the Delivery Location is at the premises of QPAC, Buyer shall collect the Goods from the Delivery Location within 5 Business Days of QPAC notifying Buyer that the Goods are ready. Delivery of the Goods is completed on the completion of loading of the Goods at the Delivery Location.

3.6 If Buyer fails to accept/take delivery of the Goods (including failing to provide appropriate delivery instructions to QPAC within 2 Business Days of QPAC notifying Buyer that the Goods are ready): (i) delivery of the Goods is deemed to be complete at 9.00am on the 2nd Business Day following attempted delivery/notification that the Goods are ready; & (ii) QPAC shall store the Goods until delivery takes place, & charge Buyer for all related costs & expenses (including insurance). If 7 Business Days after QPAC notified Buyer that the Goods were ready for delivery Buyer has not accepted or taken delivery of them, QPAC may resell or otherwise dispose of all/part of the Goods &, after deducting reasonable storage & selling costs: (i) account to Buyer for any excess; or (ii) charge Buyer for any shortfall below, the price of the Goods.

3.7 QPAC may deliver in instalments, each constituting a separate Contract, which shall be invoiced & paid for separately. Any delay in delivery or defect in an instalment shall not entitle Buyer to cancel any other instalment. Buyer shall not be entitled to reject the Goods if QPAC delivers within the Delivery Tolerance, where a delivery of this nature occurs the ensuing invoice shall be pro-rata adjusted to match the quantity of Goods delivered.

3.8 Risk in the Goods shall pass to Buyer on completion of delivery at the Delivery Location. Where QPAC arranges transport from the Delivery Location to the End Destination on behalf of Buyer, such Goods are at Buyer’s risk.

3.9 Title to the Goods shall not pass to Buyer until QPAC has received payment in full (in cleared funds) for the Goods (& any other goods/services that QPAC has supplied to Buyer/any part of its group for which payment is due). From delivery until title has passed to Buyer, Buyer shall: (i) hold the Goods on a fiduciary basis as QPAC’s bailee; (ii) store the Goods separately from all other goods and ensure they are readily identifiable as QPAC’s property; (iii) not remove/deface/obscure any identifying mark or packaging on or relating to the Goods; (iv) maintain the Goods in satisfactory condition & keep them insured on QPAC’s behalf against all risks for their full price; (v) give QPAC such information relating to the Goods as QPAC requires, but Buyer may resell/use the Goods in its ordinary course of business.

3.10 If an Insolvency Event occurs (or QPAC believes that the same is about to occur) before title to the Goods passes to Buyer, if the Goods have not been resold/irrevocably incorporated into another product/service, (without limiting any other right or remedy QPAC may have) QPAC may demand Buyer deliver up the Goods &, if Buyer fails to do so promptly, enter any premises of Buyer (or a third party) where the Goods are stored to recover them.

4 CHARGES & PAYMENT

4.1 The price for Goods is the price set out in the Order. Prices are in GBP, EUR or USD.

4.2 QPAC reserves the right to: (i) increase the price of the Goods, giving notice to Buyer at any time before delivery, to reflect any increase in the cost of the Goods to QPAC that is due to: (a) a Sourcing Issue or a change in Applicable Law; (b) any request by Buyer to change the delivery date(s)/quantities or types of Goods ordered/the Goods Spec; or (c) any delay caused by any instructions of Buyer in respect of the Goods or failure of Buyer to give QPAC adequate or accurate information or instructions in respect of the Goods.

4.3 QPAC shall invoice Buyer for Goods on/any time after dispatch. Prices include all packaging/insurance/transport costs but are exclusive of value added tax, which shall be added to the applicable invoices. Buyer shall pay each invoice in full (without any deduction/withholding) as per the Due Date, in the invoice currency and to QPAC’s relevant currency bank account (details as provided). Should QPAC believe that the credit worthiness of Buyer has changed, QPAC may vary the terms on account on written notice to Buyer. The Late Payment of Commercial Debts (Interest) Act 1998 shall apply to all payments due under each Contract.

4.4 QPAC may, without limiting its other rights or remedies, set off any amount owing to it by Buyer against any amount payable by QPAC to Buyer.

5 INDEMNITIES/LIMITATION OF LIABILITY

5.1 Buyer shall indemnify QPAC from & against any & all liabilities, costs, expenses, damages & losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation & all interest, penalties & legal & other reasonable professional costs & expenses) suffered or incurred by QPAC in connection with: (i) any claim made against QPAC for actual or alleged infringement of a third party’s Intellectual Property Rights arising out of or in connection with QPAC’s use of Buyer’s Specification; (ii) any failure of Buyer to obtain appropriate licences &/or consents under clause 7.2, or any subsequent revocation or non-renewal of any such licence &/or permit; (iv) any failure of Buyer to ensure compliance with Applicable Law under clause 7.2; (v) any use of the Goods by Buyer other than as envisaged under the Contract; & (vi) any Buyer Default.

5.2 Nothing in these Conditions shall limit/exclude QPAC’s liability for: (i) death/personal injury caused by its negligence; (ii) fraud/fraudulent misrepresentation; or (iii) any other liability which cannot be excluded by law.

5.3 Subject to clause 5.2, QPAC’s liability (whether in contract or otherwise) is limited as follows: (i) QPAC shall not be liable for: (a) any delay in delivery of the Goods; or (b) any failure to deliver the Goods that is caused by a Force Majeure Event or Buyer’s Default; (ii) if QPAC fails to deliver the Goods, its liability is limited to the costs/expenses incurred by Buyer in obtaining replacement goods of similar description & quality in the cheapest market available, less the price of the Goods; (iii) QPAC’s total liability to Buyer in respect of a breach of warranty relating to Goods is limited repair, replacement or refund as described in clause 3.2; (v) QPAC acquires specialised raw materials and proprietary components from third party suppliers and, whilst it uses reasonable endeavours to ensure the quality of such materials and components, it relies on the test certificates and quality control undertaken by the relevant suppliers and so QPAC’s liability in respect of any non-conformance/failure of the same is limited to the sums QPAC is able to recover from the applicable supplier as a result of such non-conformance/failure (vi) QPAC shall not be liable to Buyer for any loss of profit, or any indirect or consequential loss arising under/in connection with a Contract; & (vii) QPAC’s total liability to Buyer in respect of all other losses arising under/in connection with a Contract shall in no circumstances exceed the value of the Contract.

5.4 Except as set out in these Conditions, all warranties, conditions & other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract. This clause 5 shall survive termination.

6 TERMINATION

6.1 Without limiting its other rights or remedies, Buyer may terminate a Contract with immediate effect giving written notice to QPAC if QPAC commits a material breach of such Contract & (if such breach is remediable) fails to remedy that breach within 21 days after receipt of notice in writing of the breach from Buyer.

6.2 Without limiting its other rights or remedies, QPAC may terminate one or more Contracts (or suspend the supply of Goods): (i) by giving Buyer 1 month’s written notice; or (ii) with immediate effect giving written notice to Buyer where: (a) necessary as a result of Applicable Law; (b) a Sourcing Issue has occurred which affects such Goods; (c) a Force Majeure Event prevents QPAC from providing Goods for more than 6 weeks (c) Buyer commits a material breach of its obligations under a Contract & (if such breach is remediable) fails to remedy that breach within 7 days after receipt of notice in writing of the breach from QPAC; (d) an Insolvency Event has occurred; (e) Buyer fails to pay any amount due under this Contract on the Due Date. Buyer shall notify QPAC immediately if it becomes (or believes it may in the future become) subject to an Insolvency Event.

6.3 On termination of the Contract for any reason, the accrued rights/remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of any Contract which existed at/before the date of termination/expiry. Without limiting any other right: (i) Buyer shall immediately pay to QPAC all of QPAC’s outstanding unpaid invoices & interest; (ii) in respect of Goods supplied but for which no invoice has yet been submitted, QPAC shall submit an invoice, which is payable by Buyer immediately on receipt; (iii) if Buyer fails to pay in accordance with (i) &/or (ii) above, at QPAC’s request, Buyer shall return any & all Goods which have not been fully paid for. If Buyer fails to return Goods, QPAC may enter any premises of Buyer or of any third party where the same are stored in order to recover them.

6.4 Conditions which expressly or by implication have effect after termination shall continue in full force & effect.

7 GENERAL

7.1 Intellectual Property Rights: All Intellectual Property Rights in or arising out of or in connection with the Goods (other than the Buyer’s Specification) is owned by QPAC (or its licensors).

7.2 Import Licences/Consents: Buyer is solely responsible for obtaining, at its own cost, such import licences & other consents in relation to the Goods as are required from time to time &, if required by QPAC, Buyer shall make those licences & consents available to QPAC prior to the relevant shipment. Buyer is responsible for ensuring the Goods comply with Applicable Law outside of England, Ireland, Scotland and Wales & shall undertake any & all testing necessary to ensure such compliance at its own cost.

7.3 Confidentiality: A party (“**Receiving Party**”) shall keep in strict confidence all technical or commercial knowhow, specifications, inventions, processes or initiatives which are of a confidential nature & have been disclosed to Receiving Party by the other party (“**Disclosing Party**”), its employees, agents or subcontractors, & any other confidential information concerning Disclosing Party’s business or its products or its services which Receiving Party may obtain. Receiving Party shall restrict disclosure of such information to such of its employees, agents or subcontractors as need to know to it to discharge Receiving Party’s obligations under the Contract, & shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind Receiving Party. This clause 7.3 shall survive termination.

7.4 Entire Agreement: Each Contract constitutes the entire agreement between the parties relating to the particular Order, superseding all previous arrangements between the parties relating to its subject matter. Any samples/drawings/descriptive matter/illustrations/advertising issued by QPAC or contained in QPAC’s websites, catalogues or brochures are issued/published for the sole purpose of giving an approximate idea of the Goods. They shall not form part of the Contract or have any contractual force. Buyer confirms it has not relied on any statement/promise/representation made or given by or on behalf of QPAC which is not set out in the applicable Contract. No party shall have any claim for innocent or negligent misrepresentation based upon any statement in the applicable Contract.

7.5 Force majeure: QPAC shall not be liable to Buyer as a result of any delay/failure to perform its obligations under this Contract as a result of a Force Majeure Event.

7.6 Assignment & subcontracting: QPAC may at any time assign/transfer/charge/subcontract/deal in any other manner with all or any of its rights under the Contract. Buyer shall not, without the prior written consent of QPAC, assign/transfer/charge/subcontract/deal in any other manner with all or any of its rights or obligations under the Contract.

7.7 Notices: Any notice required to be given under or in connection with this Contract shall be in writing, addressed to the contact name/title detailed in the Order & shall be delivered to the other party: (i) personally or sent by first-class post/recorded delivery/commercial courier, to its registered office/principal place of business; (ii) sent by email to the other party’s email address as set out in the Order. Any notice is deemed received if: (i) delivered personally, when left at such address; (ii) if sent by first-class post or recorded delivery, at 9.00am on the 2nd Business Day after posting; (iii) if delivered by commercial courier, at the date/time that the courier’s delivery receipt is signed; (iv) if sent by email, as per the timestamp on the email, provided no failure message has been received. If actual delivery takes place outside of working hours on a Business Day, date/time of deemed delivery shall be 9.00am on the next Business Day. This clause 7.7 shall not apply to the service of any proceedings or other documents in any legal action.

7.8 Variation/Waiver: Except as set out in these Conditions, any variation, including the introduction of any additional terms & conditions, to the Contract shall only be binding when agreed in writing & signed by QPAC. A waiver of any right is only effective if it is in writing & shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy. Unless specifically provided otherwise, rights arising under the Contract are cumulative & do not exclude rights provided by law.

7.9 Severance: If a court or any other competent authority finds that any provision (or part of a provision) of the Contract is invalid/illegal/unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, & the validity & enforceability of the other provisions of the Contract shall not be affected. If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable & legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid & enforceable.

7.10 No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership/joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

7.11 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.

7.12 Buyer’s Compliance with Applicable Law: Buyer shall at all times comply (& shall ensure that relevant third parties comply) with Applicable Law, including the Bribery Act 2010.

7.13 Governing law & jurisdiction: This Contract, & any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, & construed in accordance with, English law & the parties irrevocably submit to the exclusive jurisdiction of the courts of England & Wales. However, such restriction shall not prevent QPAC enforcing a judgment in any other jurisdiction.