

TERMS AND CONDITIONS OF PURCHASE & WARRANTY

1. Placement of Orders.

- A. The terms of these Terms and Conditions of Purchase (“**Terms**”) govern the Customer’s purchase of the Products specified on the Purchase Order from Quantex Technology (“**Quantex**”). Company’s initial purchase and all future purchases of Products made by Company shall be made by binding, written purchase order specifying the number and model of the Products desired to be purchased, requested delivery schedule (which, absent agreement between the parties, shall be a date that is no less than 3 days after the date of the purchase order), and that Company’s purchase of the Products is subject to all of the terms and conditions contained in these Terms. Any additional printed terms and conditions in Company’s purchase order conflicting with, varying or adding to the terms and conditions of these Terms, shall be of no force and effect, unless the parties hereto agree in writing, in advance, to accept such terms and conditions.
- B. Acceptance of Purchase Orders. All purchase orders and modifications to purchase orders are subject to acceptance or rejection by Quantex in its sole discretion. No purchase order shall be binding upon Quantex unless and until so accepted in writing by Quantex. Quantex agrees to use commercially reasonable efforts to notify Company of its acceptance or rejection of Company's order within ten (10) business days after receipt thereof. Any purchase order accepted by Quantex is referred to in these Terms as, an “Accepted Order.” Accepted Orders are non-cancelable, non-returnable and nonrefundable.
- C. Refusal of Purchase Orders. Quantex may withhold shipments to Company if Company has not provided for prepayment, is in violation of its payment obligations or otherwise is in material breach of these Terms.

2. Delivery

- A. Shipping Costs; Terms. All shipping, unless otherwise agreed to by the Parties in writing, shall be Ex-works Factory. Company shall be responsible for all costs of shipping, transportation, insurance, warehousing, and other charges and costs associated with shipment of the Products to Company. All shipping dates are approximate and are based upon prompt receipt of all necessary information from Company. In no event shall Quantex be liable for any costs related to delay in delivery of the Products. Company's sole remedy for any material delay in delivery of the Products shall be cancellation of the order.
- B. Transfer of Title. Delivery of the Products to Company shall be completed upon delivery of the Products to Company's freight forwarder. Risk of loss and damage to the Products shall pass to Company upon the delivery of such Products to such freight forwarder. Quantex shall use commercially reasonable efforts to deliver Products ordered by Company on the scheduled delivery date. All claims for non-conforming shipments must be made in writing to Quantex within twenty (20) days of the passing of risk of loss and damage, as described above. Any claims not made within such period shall be deemed waived and released.

- C. Substitutions. Quantex shall have the right to make substitutions and modifications to Products and in the specifications of Products to be delivered under the terms of any applicable purchase order, provided that such substitutions or modifications will not materially affect overall Products form, fit, function or safety specifications.

3. Invoicing and Payment

- A. Invoicing. Unless otherwise agreed in writing by the Parties, Quantex shall issue an invoice to Company on Proforma Invoice in an electronic form, provided that, Quantex may condition its acceptance of a purchase order on such prepayment terms as Quantex in its reasonable discretion, determines appropriate due to, among other things, Company's prior payment history and/or the size of the order. In the case of any change to the applicable prepayment terms, no purchase order or acceptance thereof will be effective unless and until Quantex has consented in writing thereto. If Company causes a delay in delivery, Quantex may issue its invoice at any time on or after the scheduled delivery date.
- B. Payment Terms. Quantex will invoice Company at time of shipment of the Products, subject to the payment terms set in the Proforma Invoice.
- C. No Right of Set-Off; No Right of Return. Invoiced amounts are not subject to reduction by set-off or otherwise without the express written permission of Quantex. All sales are final and Company shall have no right of return, provided, that, Quantex shall comply with its obligations under the Warranty (as defined below).
- D. Taxes, Duties, Etc. All amounts due to Quantex under these Terms and/or any applicable purchase order are net of any duties, any sales, use, excise, value-added, withholding, or similar tax of any kind and any and all other fees and charges of any nature (collectively, "**Taxes**") imposed by the United States or any foreign, state or local governmental entity or instrumentality thereof on the purchase, shipment, use or sale of the Products by or to Company, other than taxes measured by Quantex 's income, corporate franchise, or personal property ownership. Where applicable, Quantex shall bill Company for the full amount of such taxes and shall include such amount as a separate line item on the invoice(s) sent to the Company; provided that, Quantex's failure to so bill the Company shall not relieve Company from the obligation to pay any Tax described in this Section 3.D.
- E. Payment in Dollars. All amount payable under these Terms shall be paid in United States dollars. If Company is located outside of the United States, Company agrees to take all necessary actions required, including registration of these Terms and application for permission to make payments to Quantex hereunder, with the appropriate government authorities in the Company's jurisdiction, or such other institution or official, and to take such other measures as may be necessary to comply with any government currency controls in effect in Company's jurisdiction, as soon as reasonably practicable after execution of these Terms. Company shall remit payment to Quantex, at Company's option (i) via wire or ACH transfer to an account designated by Quantex in writing from time to time.
- F. Provisions Relating to Shipments in Lots. If these terms require or authorize delivery of goods in separate lots, shipments or milestones to be separately accepted by Company, Company may only refuse such portion of a lot, shipment or milestone that fails to comply with the requirements of these terms. Company may not refuse to receive any lot or portion thereof

for failure of any other lot or portion or a lot to be delivered or to comply with these terms, unless such right of refusal is expressly provided for on the face hereof. Company shall pay for each lot in accordance with the terms hereof. Products held for Company are at Company's sole risk and expense.

- G. Prices do not include Freight, Etc. Except to the extent expressly stated in these terms, Quantex's prices do not include any freight, storage, insurance, taxes, excises, fees, duties or other government charges related to the goods, and Company shall pay such amounts or reimburse Quantex for any amounts Quantex pays. If applicable, Company claims a tax or other exemption or direct payment permit, it shall provide Quantex with a valid exemption certificate or permit and indemnify, defend and hold Quantex harmless from any taxes, costs and penalties arising out of same. Quantex's prices include the costs of its standard domestic packing, only. Any deviation from this standard packing (domestic or export), including U.S. Government sealed packing, shall result in extra charges. To determine such extra charges, Company should consult with Quantex's sales offices. Any and all increases, changes, adjustments or surcharges (including, without limitation, fuel surcharges) which may be in connection with the freight charges, rates or classification included as part of these terms, shall be for Company's account.
- H. Disputes. In the event Company disputes any portion or all of an invoice, it shall notify Quantex in writing of the amount in dispute and the reason for its disagreement within seven (7) days of receipt of the invoice. The undisputed portion shall be paid when due, and finance charges on any unpaid portion shall accrue, from the date due until the date of payment, to the extent that such amounts are finally determined to be payable to Quantex.
- I. Remedies upon Payment Default. Upon Company's default of these terms, Quantex may, in addition to any other rights or remedies it may have at law or otherwise, subject to any cure rights of Company, declare the entire balance of

Company's account immediately due and payable or foreclose any security interest in the goods delivered. If any unpaid balance is referred for collection, Company agrees to pay Quantex, to the extent permitted by law, reasonable attorneys' fees in addition to all damages otherwise available, whether or not litigation is commenced or prosecuted to final judgment, pay any court costs or expenses incurred by Quantex, and any finance charges accrued on any unpaid balance owed by Company.

- J. Suspended Shipments. Quantex reserves the right to suspend further shipments of goods if Company is over seven (7) days late in payment of an undisputed invoice. Quantex reserves the right to terminate the order if Company is over thirty (30) days late in payment of an undisputed invoice. Storage and processing expenses may also be charged at Quantex's discretion.

4. Warranties/Limitation of Liability

- A. Warranty. The Products are covered by the terms of Quantex's standard parts only product Warranty (the "Warranty"), which will expire based on the terms of the project warranty. All applicable warranties with respect to the Products are set forth in the Warranty and are hereby incorporated by reference into these Terms.

- B. Post-Warranty Maintenance. Company acknowledges and agrees that in order to obtain warranty and/or other maintenance services for the Products after expiration of the Warranty, Company must purchase extended warranties and/or maintenance agreements directly from Quantex if available.
- C. Disclaimer of Warranties. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 4, QUANTEX MAKES NO WARRANTY WITH RESPECT TO THE PERFORMANCE OF THE PRODUCTS, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE. QUANTEX EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT OF THIRD PARTY RIGHTS BY THE PRODUCTS, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. QUANTEX DOES NOT WARRANT UNINTERRUPTED OR ERROR FREE OPERATION OF PRODUCTS.
- D. Limitation of Liability.
 - i. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THESE TERMS, EXCEPT FOR A PARTY'S INDEMNIFICATION OBLIGATIONS HEREUNDER, IN NO EVENT SHALL QUANTEX BE LIABLE TO COMPANY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING OUT OF THESE TERMS OR THE TRANSACTIONS CONTEMPLATED HEREUNDER, WHETHER FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, AND WHETHER OR NOT SUCH PARTY OR ITS AGENTS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
 - ii. COMPANY'S SOLE REMEDY FOR ANY BREACH BY QUANTEX OF ITS OBLIGATIONS OR WARRANTIES UNDER THESE TERMS SHALL BE LIMITED TO, AT QUANTEX'S OPTION, REPAIR OR REPLACEMENT OF THOSE PRODUCTS TO WHICH SUCH BREACH IS APPLICABLE OR REFUND BY QUANTEX OF ALL OR A PART OF THE PURCHASE PRICE OF THE NON-CONFORMING PRODUCTS.
- E. Warranty Exclusions. The Warranty set forth in these Terms is subject to certain exclusions as more fully set forth in the Warranty. COMPANY HAS BEEN INFORMED AND UNDERSTANDS THAT, IN THE EVENT ANY SUCH EXCLUSION BECOMES APPLICABLE, ALL REPRESENTATIONS AND WARRANTIES CONTAINED IN THESE TERMS SHALL IMMEDIATELY BECOME NULL AND VOID.
- F. Exclusive Remedies. THE REMEDIES CONTAINED IN SECTION 4 ARE COMPANY'S SOLE AND EXCLUSIVE REMEDIES AND ARE IN LIEU OF ANY OTHER RIGHTS OR REMEDIES COMPANY MAY HAVE AGAINST QUANTEX WITH RESPECT TO NONCONFORMANCE OF THE PRODUCTS.

5. Intellectual Property

- A. Restrictions on Use Company shall not: (i) create derivative works based on the PRODUCTS, (ii) copy, frame or mirror any part or content of the Products, (iii) reverse engineer any Products, or (iv) access the Products for any improper purpose whatsoever,

including, without limitation, in order to (A) build a competitive product or service, or (B) copy any features, functions, interface, graphics or “look and feel” of the Products.

- B. Ownership of Intellectual Property All right, title and interest in and to any intellectual property related in any way to the Products is, and shall remain, the exclusive property of Quantex. For these purposes, the term "intellectual property" shall mean, all of a party's patents, patent applications, patent rights, copyrights, moral rights, algorithms, devices, application programming interfaces, databases, data collections, diagrams, inventions, methods and processes (whether or not patentable), know-how, trade secrets, trademarks, service marks and other brand identifiers, network configurations and architectures, proprietary information, protocols, schematics, specifications, software (in any form, including source code and executable code), techniques, interfaces, URLs, web sites, works of authorship, and all other forms of technology, in each case whether or not registered with a governmental entity or embodied in any tangible form and all rights and forms of protection of similar nature to any of the foregoing or having equivalent effect anywhere in the world in any way arising prior to or during the term of these Terms.

6. General

- A. Attorneys' Fees. If any action at law or in equity is necessary to enforce the terms of these Terms, the prevailing party shall be entitled to reasonable attorneys' fees, costs and expenses in addition to any other relief to which the prevailing party is otherwise entitled.
- B. Force Majeure. Neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder on account strikes, shortages, riots, insurrection, fires, flood, storm, explosion, acts of God, war, governmental action, labor conditions, earthquakes, or any other cause which is beyond the reasonable control of such party.
- C. Waiver. The failure of either party to require performance by the other party of any provision hereof shall not affect such party's full right to require such performance at any time thereafter, nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself.
- D. Severability. In the event that any provision of these Terms shall be unenforceable or invalid under any applicable law or be so held by applicable court decision, such unenforceability or invalidity shall not render these Terms unenforceable or invalid as a whole, and, in such event, such provision shall be changed and interpreted as to best accomplish the objectives of such provisions within the limits of applicable law or applicable court decisions.
- E. Assignment. The rights and liabilities of the parties hereto shall bind and inure to the benefit of their successors, executors or administrators, provided, however, that the Company may not assign or delegate these Terms or any of its licenses, rights or duties under these Terms, whether by operation of law or otherwise, without the prior written consent of Quantex according to its discretion; Any attempted assignment by Quantex in violation of this provision shall be void. Quantex shall be entitled to assign these Terms to an affiliate or to its successor in interest by way of merger, acquisition of substantially all of the assets of assignor or any similar event;

- F. Notices. Any notice, request, demand or other communication by the terms hereof required or permitted to be given by one part to the other shall be given in writing by email with confirmation of receipt, certified or registered mail, return receipt requested, fax or courier addressed to such other party or delivered to the address for each party set forth below their respective signatures, or at such other fax, email address or office address as may be given from time to time by either of the parties.
- G. Controlling Law. These Terms shall be governed in all respects by the laws of the State of Virginia, USA exclusive of conflicts of law principles.
- H. Venue. The courts located in Fairfax County shall have exclusive jurisdiction and venue over any dispute arising out of or relating to these Terms. Each of the Parties submits to the jurisdiction and venue of these courts.
- I. Entire Agreement. These Terms and the attachments hereto constitute the entire agreement between the parties regarding its subject matter. It supersedes, and its terms govern, all prior proposals, agreements, or other communications between the parties, oral or written, regarding such subject matter. These Terms shall not be modified unless done so in a writing signed by an authorized representative of each party.

LIMITED WARRANTY

- 1.1. COMPANY warrants that each of the Products delivered hereunder shall conform upon delivery to its specific specifications to be provided by COMPANY and free of any defects. The warranty period applicable to the Products is as set based on product type and should be reflected in the agreement and/or PI.
- 1.2. CUSTOMER will have 14 days from receipt of the Products to inspect if the Product does not conform upon delivery to its specific specifications and CUSTOMER shall provide COMPANY with a written notice of any defects within 14 days as of the receipt of such alleged non-conforming Products. COMPANY will advise Distributer whether to return or destroy the defective Products.
- 1.3. The CUSTOMER acknowledges that there will be No Refunds on Products, only replacements. It is however, at the discretion of COMPANY to provide a refund if COMPANY is not able to replace the Product or provide a credit note. CUSTOMER cannot come after one year of stock piling returns and request a replacement or credit, the defective product must be presented, no later than 3 months of the CUSTOMER noticing the defect.
- 1.4. This Limited Warranty does not cover any problem that is caused by: Conditions, malfunctions or damage not resulting from defects in material or workmanship.
- 1.5. The Customer agrees that a replacement of the Product shall assume the remaining warranty of the original Product from the date of the replacement or repair.
- 1.6. In case of defects in Products which could not be revealed by CUSTOMER in a reasonable inspection within 14 days as of the receipt of such alleged non-conforming Products, the CUSTOMER will have 30 days from receipt of the Products to provide COMPANY with a written notice of such hidden defect discovered. COMPANY will advise CUSTOMER whether to return or destroy the defective Products.

- 1.7. If the COMPANY finds that the Product was used improperly, it can void the warranty on that item at its discretion.
- 1.8. To the extent COMPANY will resolve that the Products are indeed non-conforming, the Customer is required to pay for shipping the Products back to the Company either in the U.S.A or to China based on the discretion of COMPANY. COMPANY will pay for the shipping back to the Customer.
- 1.9. COMPANY shall not be liable to CUSTOMER for the warranty provisions set forth herein if the Product is not properly stored, tested, maintained or otherwise subject to misuse or abuse.
- 1.10. CUSTOMER's rights under this Section 1 shall be non-transferable and non-assignable, and shall apply only to CUSTOMER and shall not extend, expressly or by implication, to any other person or entity.
- 1.11. A replacement Physical Good or part assumes the remaining warranty of the original Physical Good from the date of the replacement or repair.
- 1.12. EXCEPT AS EXPRESSLY SET FORTH HEREIN, CUSTOMER ACKNOWLEDGES THAT TOPGUM MAKES NO EXPRESS OR IMPLIED WARRANTIES OF ANY KIND WITH RESPECT TO THE PRODUCTS, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR INFRINGEMENT OF THIRD PARTY RIGHTS, AND ALL SUCH WARRANTIES ARE EXPRESSLY DISCLAIMED TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS.
- 1.13. THE WARRANTY SET FORTH IN THIS SECTION 1 IS AND SHALL REMAIN THE SOLE AND EXCLUSIVE WARRANTY PROVIDED BY TOPGUM TOWARDS CUSTOMER AND IN LIEU OF AND SPECIFICALLY EXCLUDING ALL OTHER WARRANTIES, EITHER WRITTEN, ORAL OR IMPLIED, WHICH ARE HEREBY SPECIFICALLY DISCLAIMED AND EXCLUDED BY COMPANY.

2. LIMITATION OF LIABILITY

- 2.1. THE REPLACEMENT OR REFUND OF THE PRODUCTS IN THE MANNER PROVIDED UNDER SECTION 1 ABOVE WILL CONSTITUTE FULL AND FINAL FULFILLMENT OF ALL OF COMPANY'S OBLIGATIONS WITH RESPECT THERETO.
- 2.2. EXCEPT TO THE EXTENT THAT LIABILITY MAY NOT BE LAWFULLY EXCLUDED, IN NO EVENT SHALL COMPANY BE LIABLE, WHETHER IN CONTRACT, TORT OR OTHERWISE, TO CUSTOMER OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, BUSINESS, INCOME, GOODWILL OR OTHER COMMERCIAL LOSS, ARISING OUT OF OR RELATED TO THE PRODUCTS AND THIS AGREEMENT OR THE PERFORMANCE OR BREACH THEREOF, INCLUDING THE SALE OF THE PRODUCTS, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY THEREOF.
- 2.3. EXCEPT TO THE EXTENT THAT LIABILITY MAY NOT BE LAWFULLY EXCLUDED, IN NO EVENT SHALL COMPANY'S CUMULATIVE LIABILITY, IF ANY, TO DISTRIBUTER HEREUNDER EXCEED THE TOTAL AMOUNTS THAT HAVE BEEN PAID BY CUSTOMER TO THE COMPANY HEREUNDER.