

GENERAL TERMS AND CONDITIONS OF SALE

QEMI INTERNATIONAL, INC.

1. GENERAL

These General Terms and Conditions of Sale ("G.T.C.S.") are applicable to all sales of Products to any Buyer of Qemi International, Inc. ("Seller"). All orders for Products placed with Seller are subject to these G.T.C.S. by the Buyer, notwithstanding any other Seller documents such as brochures or catalogs that may be distributed by Seller solely for guidance purposes. Unless otherwise stated by special provision or amendment to these G.T.C.S. agreed to with the Buyer or stipulated to in other contractual commitments, all orders for Products placed with Seller are subject to the terms of these G.T.C.S. No special terms or conditions shall override any of these G.T.C.S. unless formally agreed to and accepted in writing by Seller. Any other terms and conditions set out in order forms received by Seller will not under any circumstances supercede or replace these G.T.C.S. unless formally accepted by Seller in writing. Any waiver or substitution of any specific provision of these G.T.C.S. shall not affect the validity of the other provisions contained in these G.T.C.S. These G.T.C.S. and any invoice covering the sale of any Products by Seller to Buyer shall together constitute the complete terms and conditions of any sale.

2. ORDER CONFIRMATION

All orders placed by a Buyer are considered to be offers until formally accepted in writing by Seller. All orders must be properly completed. Any order for products must contain the correct Product information including the Product specifications, current price, labeling instructions, shipping instructions, including any required documentation such as Certificates of Origin, or any other required documents applicable to the transaction, as well as the final place of delivery or of the Product. If invoicing is to be directed to another party or business entity, separate invoicing instructions must also be included. Any requested changes to an initial order will not be binding upon Seller unless accepted in writing by Seller. All orders are to be placed directly with Seller at its Head Office (in Kingwood, Texas) or through any authorized intermediary or representatives of Seller. All Buyer orders received by Seller and/or any representatives of Seller are only binding upon Seller if accepted and confirmed in accordance with the conditions set forth below. Acceptance of an order occurs when the Buyer receives a written acknowledgment of the order by Seller. Acknowledge and acceptance of any order received by Seller shall be subject to prices for Products in effect on the date of acknowledgement and acceptance of the order. Invoices issued for payment by Seller shall be based upon the prices quoted in the acknowledgment and acceptance of the order.

3. CANCELLATION

Seller will, under no circumstances, accept any cancellation of an order from a Buyer that has been acknowledged and accepted. Buyer must take delivery thereof in accordance with the terms and conditions of the order. All orders that have been accepted by Seller must be paid in full by the agreed payment dates set out in the invoice. In the event Seller agrees to accept the cancellation of an order from a Buyer, any payments on account made by the Buyer for such order will not be refunded. Any such payment shall be credited against costs for repackaging, storage and replacement of Products into inventory. In the event no advance payment has been received such costs for repackaging, storage or replacement into inventory shall be charged to the Buyer. Buyer shall also be responsible for any freight or transportation cost incurred by Seller in the event the Products have already been shipped and/or are in transit. All costs for the return of any Products shall also be for Buyer's account.

4. PRICES

All prices quoted are net and exclusive of any sales or excise tax. All prices are subject to immediate change at the sole option of Seller.

5. GOODS MADE ESPECIALLY FOR BUYER

With respect to Products that are specifically produced and manufactured for the Buyer, the Buyer warrants that there are no patents or copyrights covering such Products or that the Buyer has the right to produce or manufacture such Products either directly or under a valid license or other form of permission in writing. Seller shall not be liable to Buyer for any claims for any patent or copyright infringement for the manufacture, sale or use by other than Seller, of any Products specially produced or manufactured for a Buyer hereunder. Buyer in such case agrees to indemnify, defend and hold Seller harmless for any claims, suits or causes of action arising out of any patent or copyright infringement which may be brought against Seller or its officers, directors or employees as a result of the failure of the Buyer to have obtained the necessary permission or authority to produce or manufacture the Products provided to Buyer by Seller. In the event of any such suit being brought against Seller, Seller agrees to provide Buyer with prompt written notice of any such suit. Buyer agrees to defend such suit on behalf of Seller and at Buyer's sole cost and expense. Seller will make its employees and pertinent records available to Buyer and provide information for the defense of any such claim.

6. GOODS SPECIALLY LABELED AT BUYER'S REQUEST

Buyer is solely responsible for the use of any design, trademark, trade name, copyright or part thereof appearing on any Product produced or manufactured by Seller at buyer's request. Buyer shall indemnify, defend and hold Seller harmless from and against any and all such claims for any violation of any trademark, trade name or copyright infringement asserted against Seller resulting from or arising out of any compliance by Seller at Buyer's request to use any specific trademarks, trade name or copyright.

7. SHIPMENT

Orders of Products with indefinite delivery dates are accepted upon the understanding that Seller shall have the right to fill such order as it sees fit to coincide with Seller's manufacturing schedules. Seller agrees to hold the Products for Buyer's account at an agreed location at Buyer's expense and risk of loss pending receipt of a definite delivery date or instructions from Buyer. Any individual order or release against an order for Product(s), which may vary up to ten percent over or under the quantity specified in the individual release, Buyer agrees to accept delivery and pay for such revised quantity and shall consider such shipment to be complete.

8. CONTINGENCIES

Neither Seller nor the Buyer shall be liable to each other for any failure or delay in performance or shipment hereunder, except for the payment sums of money that may be payable to Seller by Buyer, to the extent that such failure or delay is caused by force majeure, which shall include, but not be limited to, acts of God, fire, flood, explosion, sabotage, riots, acts of military or civil authorities, war, whether declared or undeclared, epidemic, transportation, including railcar or truck shortages, accident, labor dispute or shortage, equipment breakdown, governmental laws, ordinances, rules, regulations or rulings (whether valid or invalid), inability to obtain equipment, components, manufacturing facilities, labor materials, or fuel, or any other similar or different contingency beyond such party's reasonable control, or if caused by partial or complete suspension of operations at any of such party's facilities. In the event of delay or default in delivery of the goods caused by a contingency beyond Seller's reasonable control, Seller shall have the right to allocate in a fair and reasonable manner among its customers and its own requirements the available supply of Products Seller has available in inventory at the time of such contingency.

9. TITLE AND RISK OF LOSS

Title and risk of loss shall be determined in accordance with the INCOTERMS currently in effect and as referenced in Seller's invoice to Buyer.

10. INSURANCE

The Buyer shall provide and maintain insurance equal to the unpaid invoice balance of all Products sold to Buyer by Seller against loss or damages by fire, or any other causes during the time between delivery and final payment of the outstanding invoice. To the extent permitted, Buyer shall name Seller as an additional insured under any such policies requiring any loss to be payable to both the insured and Seller.

11. INDEMNIFICATION

BUYER AGREES TO INDEMNIFY, DEFEND AND HOLD SELLER HARMLESS AGAINST ALL CLAIMS, LOSSES, CAUSES OF ACTION, SUITS, JUDGMENTS, AWARDS, OR DAMAGES OF ANY NATURE, LIABILITY AND EXPENSE (INCLUDING BUT NOT LIMITED TO ATTORNEY'S FEES AND OTHER LEGAL EXPENSES) AS A RESULT OF ANY DAMAGE TO PROPERTY OR INJURY OR DEATH OF PERSONS (INCLUDING BUT NOT LIMITED TO BUYER'S EMPLOYEES, AGENTS, SERVANTS OR CUSTOMERS) ARISING OUT OF BUYER'S UNLOADING, STORAGE, HANDLING, USE OR DISPOSAL OF ANY PRODUCTS SOLD TO BUYER BY SELLER, CAUSED BY BUYER'S NEGLIGENT ACTS OR OMISSIONS, STRICT LIABILITY, PRODUCTS LIABILITY, IN CONTRACT OR TORT OR ADMIRALTY OR MARITIME CAUSE OF ACTION. IN THE EVENT SUCH LOSS OR DAMAGE IS THE RESULT OF THE JOINT NEGLIGENCE OF THE PARTIES ANY SUCH LOSS OR DAMAGE SHALL BE PRORATED BETWEEN BUYER AND SELLER TO THE EXTENT OF EACH PARTY'S NEGLIGENCE. THIS INDEMNITY OBLIGATION OF BUYER WILL SURVIVE THE EXPIRATION, TERMINATION OR CANCELLATION OF THESE G.T.C.S.

12. LIMITATION OF LIABILITY

THE BUYER'S EXCLUSIVE REMEDY AND SELLER'S TOTAL LIABILITY TO BUYER FOR CLAIMS FOR LOSS, DAMAGE, DEFECT OR CONTAMINATION OF ANY PRODUCT IS EXPRESSLY LIMITED AS FOLLOWS: REPLACEMENT OF PRODUCT OR REFUND OF THE PURCHASE PRICE PAID FOR THE PRODUCT SUPPLIED PURSUANT TO THESE G.T.C.S. SUCH REMEDY FOR DAMAGES SHALL BE AT THE SOLE OPTION OF SELLER. THE BUYER HEREBY WAIVES ALL OTHER CLAIMS BY BUYER AGAINST SELLER AND UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE TO BUYER FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES. Notification of any claim for loss, damage, defect or continuation of any Product against Seller must be received by Seller from Buyer within sixty days from the date of delivery of goods covered by any sales invoice. Such notification must be in writing and shall specify the nature of the claim. In case of loss, damage, defect or contamination that occurs in transit, Buyer shall also provide written notification to Seller describing the breakage or loss on carrier's proof of delivery document signed by a representative of the carrier. Any such notification shall also be in compliance with any required cargo insurance notification of loss procedures that may be applicable. In any event, Buyer's failure to notify Seller in writing within the time constraints described herein shall constitute a waiver of any such claims with respect to the Products. Seller will, under no circumstances, reimburse Buyer for loss, damage, defect or contamination of any product unless the Product is in its original container as shipped.

Claims include any cause of action or suit asserting any legal, equitable, and/or admiralty or maritime causes of action (including but not limited to negligence; strict liability; tort; express or implied warranty, indemnity or contract; contribution; or subrogation) related to or arising out of the performance or nonperformance of these G.T.C.S. or the sale of any Products purchased hereunder.

13. WARRANTY AND DISCLAIMER

Seller warrants that the goods sold under these G.T.C.S. shall conform to Seller's sales specification, or if no specific specifications are set forth, the goods shall meet Seller's standard specifications. Seller otherwise hereby EXPRESSLY WAIVES ANY WARRANTY OR GUARANTY, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR THE SUITABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE.

14. PAYMENT

All invoices issued pursuant to sales under these G.T.C.S. are payable to Seller at its Office (in Kingwood, Texas), without rebate, prior to the expiration of the terms of payment stated in the invoice. At Seller's sole option, Seller may agree to permit a sale to Buyer on credit for a predetermined period to accommodate Buyer's situation and/or subordinate the fulfillment of and order in accordance with the provisions of any guarantee or prior payment for the Products. Any dispute between Seller and Buyer under these G.T.C.S. shall not relieve Buyer of its obligation to make payment to Seller for any Products sold. In the event of the sale, transfer, hypothecation or capital contribution of the Buyer's business or equipment, any amounts due shall become payable immediately. In the event of partial delivery, invoices are payable under the terms and conditions stated in the invoice as deliveries are made and not until such time as the full order has been delivered. The risk of currency fluctuation is to be borne by the Buyer. In the event Buyer fails to pay any invoice by its due date, even if partial payment has been received, Seller will charge interest on such outstanding past due unpaid balance at the rate of eighteen percent (18%) per annum. Such interest charge shall be imposed without any prior notice to Buyer and shall continue to be accrued until the past due balance has been paid in full.

15. CHOICE OF LAW

The validity and interpretation of these G.T.C.S. and the legal relation of the parties hereto shall be governed by the laws of the State of Texas (without regard to principles of conflicts of law).

16. ATTORNEY'S FEES

If it becomes necessary for Seller to file suit to recover any amount due under these G.T.C.S., on the account of any breach of, or to enforce or interpret any of the covenants, terms or conditions of these G.T.C.S., Seller shall be entitled to recover from the Buyer as part of its cost, all costs of collection including but not limited to all attorney's fees, collection agency fees, court costs and disbursements.