

TERMS AND CONDITIONS

SALE OF GOODS

1 Interpretation

1.1 Definitions:

Business Day	a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
Business Partner	the person or firm who purchases the Goods from Aqipa.
Collection Date	as set out in clause 5.4.
Collection Location	as set out in clause 5.4.
Conditions	the terms and conditions set out in this document as amended from time to time in accordance with clause 12.4.
Contract	the contract between Aqipa and the Business Partner for the sale and purchase of the Goods in accordance with these Conditions.
Delivery Date	as set out in clause 5.4
Delivery Location	as set out in clause 5.3.
Force Majeure Event	<p>an event or circumstance beyond a party's reasonable control including, without limitation:</p> <ul style="list-style-type: none">(a) acts of God, flood, drought, earthquake or other natural disaster;(b) epidemic or pandemic;(c) terrorist attack, civil war, civil commotion or riots, war, threat or preparation for war, armed conflict, imposition of sanctions, embargo or breaking off of diplomatic relations;(d) nuclear, chemical or biological contamination or sonic boom;(e) any law or action taken by a government or public authority without limitation imposing an export or import restriction, quota or prohibition;(f) collapse of buildings, fire, explosion or accident;(g) any labour or trade dispute, strikes, industrial action or lockouts;

	(h) non-performance by suppliers or subcontractors; and
	(i) interruption or failure of utility service.
Goods	the goods (or any part of them) set out in the Order.
Order	the Business Partner's order for the Goods, as set out in the Business Partner's purchase order form or the Business Partner's written acceptance of Aqipa's quotation, as the case may be.
Order Confirmation	Aqipa's written confirmation of the Order to the Business Partner either before or on the Business Partner's receipt of the Goods, whichever is the earliest.
Payment Date	as set out in clause 8.5.
Warranty Period	as set out in clause 6.1.

1.2 Interpretation:

- 1.2.1 a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- 1.2.2 any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.2.3 a reference to **writing** or **written** includes emails.

2 Basis of contract

- 2.1 These Conditions apply to the Contract and all dealings with the Business Partner to the exclusion of any other terms, save for terms expressly agreed by Aqipa in writing, that the Business Partner seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Business Partner to purchase the Goods in accordance with these Conditions. The Business Partner is responsible for ensuring that the terms of the Order submitted by the Business Partner are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when Aqipa issues an Order Confirmation or delivery of the Goods is made by Aqipa, at which point the Contract shall come into existence.
- 2.4 On receipt of an Order Confirmation, the Business Partner has seven calendar days to inform Aqipa of any inaccuracies in respect of the Order Confirmation. In the absence of receipt by Aqipa of notification of inaccuracies in accordance with this clause, Aqipa shall process the Order in accordance with the original Order Confirmation.
- 2.5 Aqipa reserves the right to make acceptance of an Order subject to a minimum order value or charge a minimum quantity surcharge.

- 2.6 The Business Partner waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Business Partner that is inconsistent with these Conditions.
- 2.7 Any samples, drawings, descriptive matter or advertising produced by Aqipa and any descriptions or illustrations (including but not limited to dimensions and weights) contained in Aqipa catalogues, brochures or any other Aqipa documents or specifications cited on the Aqipa website, are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.
- 2.8 A quotation for the Goods given by Aqipa shall not constitute an offer. A quotation shall only be valid for a period of 10 Business Days from its date of issue.

3 Goods

- 3.1 Subject to clause 2.7, the Goods are described in Aqipa's catalogue as modified by any changes to the specification in accordance with clause 3.2.
- 3.2 Aqipa reserves the right to amend, without prior notification, the specification if required by any applicable statutory or regulatory requirements or technological advancements.

4 Intellectual Property

- 4.1 The Business Partner undertakes:
- 4.1.1 to sell the Goods exclusively under the brand name specified by Aqipa;
 - 4.1.2 not to replicate, in part or in whole, any goods sold by Aqipa and/or make imitations available to third parties in identical or modified form;
 - 4.1.3 not to modify the Goods; and
 - 4.1.4 not to reproduce or make available to a third party any texts, sketches, drawings, pictures, photographs or any other Aqipa property other than property intended for general distribution.

5 Delivery/Collection

- 5.1 Aqipa shall ensure that:
- 5.1.1 the Goods are accompanied by a delivery note that shows the date of the Order, relevant reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable) and special storage instructions (if any); and
 - 5.1.2 if Aqipa requires the Business Partner to return any packaging materials to Aqipa, that fact is clearly stated on the delivery note. The Business Partner shall make any such packaging materials available for collection at such times as Aqipa shall reasonably request. Returns of packaging materials shall be at Aqipa's expense.
- 5.2 Unless otherwise expressly agreed, the Goods are deemed to be sold "ex-works" (EXW).
- 5.3 In the event that the Goods are to be delivered by prior agreement, Aqipa shall deliver the Goods to the location set out in the Order or such other location as the parties may

agree (**Delivery Location**), by any method and route of delivery determined by Aqipa (unless otherwise expressly agreed), at any time after Aqipa notifies the Business Partner that the Goods are ready (**Delivery Date**).

- 5.4 In the event that the Goods are to be collected by the Business Partner by prior agreement, the Business Partner shall collect the Goods from Aqipa Address or such other location as may be advised by Aqipa prior to collection (**Collection Location**) within three Business Days of Aqipa notifying the Business Partner that the Goods are ready (**Collection Date**).
- 5.5 Delivery is completed on either the completion of unloading of the Goods at the Delivery Location or the loading of the Goods at the Collection Location.
- 5.6 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence.
- 5.7 Aqipa shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Business Partner's failure to provide Aqipa with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 5.8 If Aqipa fails to deliver the Goods or make the Goods available for collection, its liability shall be limited to the costs and expenses incurred by the Business Partner in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Aqipa shall have no liability for any failure to deliver the Goods or make the Goods available for collection to the extent that such failure is caused by a Force Majeure Event or the Business Partner's failure to provide Aqipa with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 5.9 If the Business Partner fails to collect the Goods on the Collection Date or take delivery of the Goods on the Delivery Date, then, except where such failure or delay is caused by a Force Majeure Event or Aqipa's failure to comply with its obligations under the Contract:
 - 5.9.1 delivery or collection of the Goods shall be deemed to have been completed at 9.00 am on the Collection Date or Delivery Date; and
 - 5.9.2 Aqipa shall store the Goods until delivery or collection takes place, and charge the Business Partner for all related costs and expenses (including insurance).
- 5.10 If ten Business Days after the Collection Date or Delivery Date the Business Partner has not taken delivery of them, Aqipa may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, charge the Business Partner for any shortfall below the price of the Goods.
- 5.11 Aqipa may deliver or make ready for collection the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Business Partner to cancel any other instalment.
- 5.12 The Business Partner shall be liable for all costs associated with delivery or collection. Any bespoke packaging and/or branding shall be invoiced separately.
- 5.13 The delivery of Goods outside the European Union is by prior written agreement only.

6 **Quality**

- 6.1 Aqipa warrants that on delivery, and for a period of 12 months from the date of delivery (**Warranty Period**), the Goods shall:

- 6.1.1 conform in all material respects with their description and any applicable specification;
 - 6.1.2 be free from material defects in design, material and workmanship;
 - 6.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
 - 6.1.4 be fit for any purpose held out by Aqipa.
- 6.2 Subject to clause 6.3, if:
- 6.2.1 the Business Partner gives notice in writing to Aqipa during the Warranty Period immediately on discovery that some or all of the Goods do not comply with the warranty set out in clause 6.1;
 - 6.2.2 Aqipa is given a reasonable opportunity of examining such Goods; and
 - 6.2.3 the Business Partner (if asked to do so by Aqipa) returns such Goods to Aqipa's place of business at Aqipa's cost or securely stores the Goods at the Business Partner's premises,
- Aqipa shall, at its option provided that payment has been made in cleared funds in full, repair or replace the defective Goods, or, unless the defect is minor (in the reasonable opinion of Aqipa), refund the price of the defective Goods in full.
- 6.3 Aqipa shall not be liable for the Goods' failure to comply with the warranty set out in clause 6.1 in any of the following events:
- 6.3.1 the Business Partner makes any further use of such Goods after discovering that some or all of the Goods do not comply with the warranty set out in clause 6.1;
 - 6.3.2 the defect arises because the Business Partner failed to follow Aqipa's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
 - 6.3.3 the Business Partner does not inspect the Goods immediately on receipt of the Goods;
 - 6.3.4 the Business Partner alters or repairs such Goods without the written consent of Aqipa;
 - 6.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
 - 6.3.6 the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 6.4 Except as provided in this clause 6, Aqipa shall have no liability to the Business Partner in respect of the Goods' failure to comply with the warranty set out in clause 6.1.
- 6.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 6.6 These Conditions shall apply to any repaired or replacement Goods supplied by Aqipa.
- 6.7 Aqipa shall not be liable for compliance with technical specifications required by law in the Goods' country of destination.

7 Title and risk

- 7.1 The risk in the Goods shall pass to the Business Partner:
 - 7.1.1 if the Goods are to be collected by the Business Partner at the Collection Location, on the Collection Date; or
 - 7.1.2 if the Goods are to be delivered to the Delivery Location, at the time the Goods are transferred to an individual from the chosen delivery company, irrespective of which party is paying for the cost of delivery
- 7.2 Notwithstanding clause 7.1.2, in the event that the Business Partner request a delay of delivery, the risk in the Goods shall pass to the Business Partner at the time the Goods are ready for delivery or collection.
- 7.3 The Business Partner shall not resell the Goods until one of the following:
 - 7.3.1 Aqipa receives payment in full and title to the Goods has passed in accordance with clause 7.4; or
 - 7.3.2 in accordance with Aqipa's written approval.
- 7.4 Title to the Goods shall not pass to the Business Partner until the earlier of:
 - 7.4.1 Aqipa receives payment in full (in cash or cleared funds) for the Goods and any other goods that Aqipa has supplied to the Business Partner, in which case title to the Goods shall pass at the time of payment of all such sums; and
 - 7.4.2 the Business Partner resells the Goods, in which case title to the Goods shall pass to the Business Partner at the time specified in clause 7.6.
- 7.5 Until title to the Goods has passed to the Business Partner, the Business Partner shall:
 - 7.5.1 hold the Goods on trust for Aqipa;
 - 7.5.2 store the Goods separately from all other goods held by the Business Partner so that they remain readily identifiable as Aqipa's property;
 - 7.5.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 7.5.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - 7.5.5 notify Aqipa immediately if it becomes subject to any of the events listed in clause 9.1; and
 - 7.5.6 give Aqipa such information relating to the Goods as Aqipa may require from time to time.
- 7.6 In the event the Business Partner resells the Goods before Aqipa receives payment for the Goods:
 - 7.6.1 it does so as principal and not as Aqipa's agent; and
 - 7.6.2 title to the Goods shall pass from Aqipa to the Business Partner immediately before the time at which resale by the Business Partner occurs.
- 7.7 In the event that the Business Partner resells the Goods in breach of clause 7.3.2, the following conditions apply:

- 7.7.1 the Business Partner assigns to Aqipa all the rights and benefits in association with the resale;
 - 7.7.2 the Business Partner must record the assignment in the Business Partner's accounts;
 - 7.7.3 the Business Partner must give notice of the resale and provide all related documents to Aqipa within seven calendar days; and
 - 7.7.4 Aqipa shall be entitled to inform any third-party debtors of the assignment.
- 7.8 If before title to the Goods passes to the Business Partner the Business Partner becomes subject to any of the events listed in clause 9.1, then, without limiting any other right or remedy Aqipa may have:
- 7.8.1 the Business Partner's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
 - 7.8.2 Aqipa may at any time:
 - 7.8.2.1 require the Business Partner to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and
 - 7.8.2.2 if the Business Partner fails to do so promptly, enter any premises of the Business Partner or of any third party where the Goods are stored in order to recover them.

8 Price and payment

- 8.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in Aqipa's published price list in force as at the date of delivery.
- 8.2 Aqipa may, by giving notice to the Business Partner at any time so long as the Collection Date or Delivery Date is not less than three months away, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
 - 8.2.1 any factor beyond Aqipa's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - 8.2.2 any request by the Business Partner to change the delivery date(s), quantities or types of Goods ordered; or
 - 8.2.3 any delay caused by any instructions of the Business Partner or failure of the Business Partner to give Aqipa adequate or accurate information or instructions.
- 8.3 The price of the Goods:
 - 8.3.1 excludes amounts in respect of value added tax (**VAT**), which the Business Partner shall additionally be liable to pay to Aqipa at the prevailing rate, subject to the receipt of a valid VAT invoice; and
 - 8.3.2 excludes the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Business Partner.
- 8.4 Aqipa may invoice the Business Partner for the Goods on or at any time after completion of delivery.

- 8.5 The Business Partner shall pay the invoice in full and in cleared funds within 10 calendar days of the date of the invoice (**Payment Date**). Payment shall be made to the bank account nominated in writing by Aqipa. Time for payment is of the essence.
- 8.6 Notwithstanding clause 8.5, Aqipa reserves the right to demand payment prior to delivery or collection of the Goods.
- 8.7 If the Business Partner fails to make any payment due to Aqipa under the Contract by the Payment Date, then Aqipa shall be entitled to:
- 8.7.1 invoice Business Partner £ 10 with the second reminder sent setting out the unpaid invoice(s);
 - 8.7.2 invoice all additional costs for debt recovery measures taken by a third party;
 - 8.7.3 charge interest on the overdue amount at the rate of 4% per annum above Barclays Bank's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Business Partner shall pay the interest together with the overdue amount;
 - 8.7.4 delay the Collection Date or the Delivery Date;
 - 8.7.5 withhold further deliveries;
 - 8.7.6 demand immediate payment of any outstanding payments if payments being made by instalments; or
 - 8.7.7 to terminate the agreement and claim damages.
- 8.8 The Business Partner shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). Aqipa may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Business Partner against any amount payable by Aqipa to the Business Partner.

9 Termination

- 9.1 Without limiting its other rights or remedies, Aqipa may terminate this Contract with immediate effect by giving written notice to the Business Partner if:
- 9.1.1 the Business Partner commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 20 days of that party being notified in writing to do so;
 - 9.1.2 the Business Partner takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - 9.1.3 the Business Partner suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or

- 9.1.4 the Business Partner's financial position deteriorates to such an extent that in Aqipa's opinion the Business Partner's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 9.2 Without limiting its other rights or remedies, Aqipa may suspend provision of the Goods under the Contract or any other contract between the Business Partner and Aqipa if the Business Partner becomes subject to any of the events listed in clause 9.1.1 to clause 9.1.4, or Aqipa reasonably believes that the Business Partner is about to become subject to any of them, or if the Business Partner fails to pay any amount due under this Contract on the due date for payment.
- 9.3 Without limiting its other rights or remedies, Aqipa may terminate the Contract with immediate effect by giving written notice to the Business Partner if the Business Partner fails to pay any amount due under the Contract on the due date for payment.
- 9.4 On termination of the Contract for any reason the Business Partner shall immediately pay to Aqipa all of Aqipa's outstanding unpaid invoices and interest.
- 9.5 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.
- 9.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

10 Limitation of liability

- 10.1 Nothing in these Conditions shall limit or exclude Aqipa's liability for:
- 10.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - 10.1.2 fraud or fraudulent misrepresentation;
 - 10.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979;
 - 10.1.4 defective products under the Consumer Protection Act 1987; or
 - 10.1.5 any matter in respect of which it would be unlawful for Aqipa to exclude or restrict liability.
- 10.2 Subject to clause 10.1:
- 10.2.1 Aqipa shall under no circumstances whatsoever be liable to the Business Partner, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
 - 10.2.2 Aqipa's total liability to the Business Partner in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 100% of the price of the Goods.

11 Force majeure

Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from a Force Majeure Event. If the period of delay or non-performance continues for 3 months, the party not affected may terminate this Contract by giving 21 days written notice to the affected party.

12 General

12.1 Assignment and other dealings.

12.1.1 Aqipa may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

12.1.2 The Business Partner may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of Aqipa.

12.2 Confidentiality.

12.2.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 12.2.2.

12.2.2 Each party may disclose the other party's confidential information:

12.2.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 12.2; and

12.2.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

12.2.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.

12.3 Entire agreement.

12.3.1 This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

12.3.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

12.4 **Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

12.5 **Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

12.6 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant

provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

12.7 Notices.

12.7.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, or email.

12.7.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.7.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission.

12.7.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

12.8 Third party rights. No one other than a party to this Contract and their permitted assignees shall have any right to enforce any of its terms.

12.9 Governing law

12.9.1 The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales for customers of AQIPA United Kingdom Limited.

12.9.2 The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of Austria for customers of AQIPA GmbH registered in Austria.

12.10 Jurisdiction

12.10.1 With regard to 12.9.1 each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.

12.10.2 With regard to 12.9.1 each party irrevocably agrees that the courts of Austria shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.