

AQUIS Systems AG

General Terms and Conditions of Sale, Supply and Warranty

1. SCOPE

1.1. These General Terms and Conditions of Sale, Supply and Warranty ("Terms & Conditions") shall apply to all sales and supplies of products made and services provided by the AQUIS Systems group of companies ("AQUIS")¹ to its customers ("CUSTOMER") as well as to AQUIS' liability under the warranty terms for such products and services (collectively "Products"). AQUIS and CUSTOMER shall hereinafter also be referred to individually as "Party" and collectively as "Parties".

1.2. These Terms and Conditions shall be deemed included by reference to and made an integral part of all quotations ("Quotation"), order confirmations ("Order Confirmation"), deliveries ("Delivery") and invoices ("Invoice") issued by AQUIS. CUSTOMER acknowledges and agrees that these Terms & Conditions supersede any and all of its own or third parties' terms and conditions that may be included with the requests for a Quotation ("RFQ") or a purchase order ("Order") or any other correspondence, unless there is a prior express agreement in writing to the contrary by AQUIS.

1.3. No legally binding sales agreement shall be deemed to be in force and effect and no Order deemed legally binding upon the Parties unless and until AQUIS has confirmed its acceptance thereof in writing by way of Order Confirmation.

1.4. AQUIS' obligation to supply the Products shall be subject to the terms and conditions set forth in AQUIS' Quotation and/or Order Confirmation. In particular, the coming into force of the legally binding sales agreement between the Parties ("Coming into Force") shall be subject to the conditions precedent set out in the Quotation or Order Confirmation such as, without limitation, AQUIS' receipt of the prepayment or advance payment of the Price, the opening of a letter of credit, the receipt of the export authorization from the relevant export agencies and such other conditions set out in the Quotation and/or Order Confirmation.

¹ These Terms & Conditions apply to each of the following AQUIS Systems group companies:

AQUIS Systems AG, Balgacherstrasse 17, CH-9445 Rebstein, Switzerland
AQUIS Systems GmbH, Eugen Müller Strasse 14, A-5020 Salzburg, Austria
Wittronik GmbH, Eugen Müller Strasse 14, A-5020 Salzburg, Austria
AQUIS Systems S.R.L., Str. Calea Moșilor 19, 305400 Jimbolia, Romania
Wittronic S.R.L., Str. Calea Moșilor 19, 305400 Jimbolia, Romania

2. PRODUCTS AND PRICE, RETENTION OF TITLE

2.1. AQUIS shall sell the Products at the prices set forth in its Quotation and/or Order Confirmation ("Price"). AQUIS shall have the right to change the Prices, if its material, labor, operating costs and/or foreign exchange rates change by no less than plus or minus five percent (+/- 5.0%) of the total cost of manufacture of any of the Products, such change of costs to be reasonably evidenced by AQUIS.

2.2. Unless otherwise agreed in writing, all Prices for Products shall be net of any deduction, "FCA" AQUIS' premises in Switzerland, Austria or Romania (INCOTERMS 2010), as the case may be, depending on the AQUIS group company set out in the Quotation. Price shall be exclusive of, freight, insurance, discounts and rebates. CUSTOMER shall bear all charges, such as, but not limited to, cost of packaging, freight and insurance; costs for export, transit, import, and other permits and certificates, any and all taxes including any value added or sales taxes (but excluding AQUIS' taxes on its income), as well as any and all fees, duties, dues, and customs charges. Prices for repairs and alterations shall be deemed "FCA" AQUIS' service workshop (INCOTERMS 2010) at the location indicated to CUSTOMER in AQUIS' sole judgment.

2.3. Prices for products are based on components and materials purchased from vendors at standard lead-times. Any premiums associated with accelerated deliveries requested by CUSTOMER shall be payable by CUSTOMER.

2.4. The Parties acknowledge and agree that pricing information provided by either Party to the other shall deemed confidential information.

2.5. AQUIS shall be entitled at its sole option but at CUSTOMER's cost and expense to require from CUSTOMER a right of retention of title to the Products and/or a security interest in such Products, as the case may be, according to CUSTOMER's local law. Should CUSTOMER refuse to cooperate with AQUIS to perfect such retention of title and/or security interest, AQUIS shall be free to withhold the delivery of such Products until such time when such retention of title and/or security interest has been perfected or the payment of the Price to AQUIS has been made in full.

3. TERMS OF DELIVERY, INVOICING AND PAYMENT

3.1. All Products to be delivered to CUSTOMER by AQUIS shall be delivered FCA, named place of delivery (as defined in INCOTERMS 2010), unless otherwise specified and accepted in writing by AQUIS.

3.2. AQUIS shall make commercially reasonable efforts to meet the delivery dates set out in the Order Confirmation. AQUIS shall at all times promptly inform CUSTOMER of any delay in delivery and shall undertake all commercially reasonable measures to minimize such delay. Any claim for loss and damage under any title by CUSTOMER as a consequence of such delay is hereby expressly excluded.

3.3. For any manufacturing set-up and/or test equipment ordered by CUSTOMER, 100% of the agreed price shall be invoiced and payable upon receipt of the Order. Payment for plastic injection tools and other tooling costs shall be according to the schedule agreed in writing.

3.4. Payment terms shall be net thirty (30) days from the date printed on AQUIS' invoice. The foregoing credit terms are subject to review by AQUIS based on CUSTOMER's credit rating, on the macroeconomic conditions at CUSTOMER's place of business and/or on-time payment record. AQUIS reserves the right to change the foregoing credit terms and/or stop shipments due to late payment by CUSTOMER without it being considered a failure to perform. Invoice balances remaining unpaid thirty (30) days after the original due date become subject to an interest charge of one (1.0) percent per full calendar month.

4. ORDERING AND PLANNING PROCEDURE

4.1. Only written or electronically-dispatched Orders issued by CUSTOMER shall be valid and changes to the prevailing conditions shall be legally binding between the Parties if they have been confirmed in writing by fax or electronic means by CUSTOMER and accepted by AQUIS in writing. AQUIS shall confirm forecasted Orders within five (5) working days and unforecasted Orders within a reasonable time.

4.2. CUSTOMER shall issue a monthly, rolling, twelve (12) month forecast ("Forecast") for each of the Products per piece/SKU/month, to be updated and re-issued in writing before the 15th of every month. CUSTOMER expressly authorizes AQUIS to purchase components that have a longer than twelve (12) week lead time in order to secure the supply of such long lead-time components according to CUSTOMER orders and forecast. CUSTOMER shall be responsible and liable for all Material inclusive of standard minimum Order quantities (MOQs), partial reels open boxes and the like.

4.3. The first twelve (12) weeks (referred to as the "Firm Product Period") of the Forecast shall constitute firm and binding Orders from CUSTOMER. AQUIS is expressly authorized by CUSTOMER to complete the manufacture to the finished goods level. CUSTOMER shall not change the Order quantity and/or cancel and/or reschedule Orders within the Firm Product Period. In the event that CUSTOMER requests increases in delivery quantities and/or pulling in of delivery dates, AQUIS shall notify the CUSTOMER within ten (10) working days whether the request can be fulfilled and notify any price premiums associated with such a request. In order to avoid production capacity bottlenecks and/or shutdowns of the assembly lines, AQUIS plans the monthly demand for production capacity for 9 months beyond the Firm Product Period based on one twelfth (1/12) of the cumulated 12-month forecast quantity. A deviation of +/- 10% in these quantities is considered in the planning to smoothen production.

4.4. If for any reason, including obsolescence or discontinuation of Products, cancellation or reduction of an Order, all or only a portion of the material purchased by AQUIS for the purpose of fulfilling CUSTOMER's Order becomes dormant (whereby "dormant" means material in stock and/or material that has already been ordered from suppliers and can no longer be cancelled, and that has not been used in the last twelve (12) weeks), AQUIS shall have the right to charge CUSTOMER an amount equal to two (2.0%) percent per month (referred to as the "Dormant Material Charge") of the dormant material cost. Once such dormant material has remained dormant for three (3) months, such dormant material must be purchased in its entirety by CUSTOMER at AQUIS' cost plus eight (8.0%) percent handling charge ("Burdened Cost"). In the event that CUSTOMER requests reductions in delivery quantities and/or pushing out of delivery dates for more than 50% compared to the forecast, AQUIS reserves the right to invoice costs of resulting manufacturing disruptions to CUSTOMER.

4.5. In the event that CUSTOMER requires AQUIS to purchase Material from it, the purchase price will be at AQUIS' standard price as provided in writing to CUSTOMER. AQUIS will purchase only quantities needed to support production of the Products covered by CUSTOMER's Orders.

4.6. Where CUSTOMER consigns (free issues) material to AQUIS, such material shall be sufficient to cover normal manufacturing yield loss of one percent (1.0%). Higher yield losses on consigned materials may still be claimed by AQUIS from CUSTOMER in the event that they are due to causes which are not the fault of AQUIS, e.g., relating to design or component quality. Material supplied by CUSTOMER shall be delivered DDP to AQUIS' designated manufacturing location (INCOTERMS 2010) and CUSTOMER shall bear the responsibility for the quality and timely delivery of such material.

5. QUALITY ASSURANCE

5.1. General workmanship shall be in accordance with AQUIS' standards.

5.2. CUSTOMER shall inspect each shipment within five(5) working days as of date of delivery and notify AQUIS whether the shipment is accepted or rejected. Details of any non-conformance shall be communicated to AQUIS in written form. Upon instructions of AQUIS, rejected samples may be returned by express courier to AQUIS at CUSTOMER's cost.

6. PRODUCT WARRANTY

6.1. Express Warranty:

6.1.1. AQUIS hereby warrants that the Products are free of workmanship defects under normal use, for a period of twenty four (24) months after date of invoice to CUSTOMER. Defects and/or non-conformances which are related to material and design issues are expressly excluded from AQUIS' warranty.

6.1.2. AQUIS' obligation under this express warranty shall be, at AQUIS' sole option and expense, to replace or repair the Product or part thereof. AQUIS warrants the repaired or replaced Products or part thereof for a period of ninety (90) days from the date of shipment to CUSTOMER or through the end of the original warranty period, whichever period is longer. All Products or parts replaced become automatically property of AQUIS.

6.1.3. Subject to the exclusions of warranty set out in the Clause 6.3, the terms "defect" or "defective" shall mean only defects of workmanship on the part of AQUIS which result in a Product that does not fulfil AQUIS' quality standards and/or the technical specifications attached to the Order, and for which CUSTOMER has not granted an exemption.

6.2. Obtaining Warranty Service: CUSTOMER must contact AQUIS within the applicable warranty period to obtain a return material authorization ("RMA"). AQUIS will not accept Products or parts thereof received without a RMA and will return them to CUSTOMER at CUSTOMER cost and expense. Any Product returned to AQUIS must be in its original packaging or the equivalent. CUSTOMER must ship the defective Products at its own cost and expense to AQUIS while repaired or replacement Products will be shipped to CUSTOMER at AQUIS' cost and expense.

6.3. Warranty Exclusive: CUSTOMER sole remedy for breach of the warranty shall be the express warranty set out in Clause 6.1. The express warranty is exclusive and in lieu of all other warranties, terms or conditions express or implied, either in fact or by operation of law, statutory or otherwise, including warranties, terms or conditions of merchantability, fitness for a particular purpose, satisfactory quality and non-infringement, all of which are expressly disclaimed. AQUIS shall not be liable if the alleged defect or malfunction was caused by any cause beyond the range of the Products' intended use or is not due or attributable to AQUIS. This warranty does not cover physical damage to the Product or malfunctions resulting from the use of the Product in conjunction with any sort of ancillary or peripheral equipment if AQUIS determines that there is no fault with the Product itself. According to the express warranty set out in Clause 6.1 AQUIS warrants that the Products are free of workmanship defects under normal use. AQUIS shall not be liable for defects or failures caused by normal wear and tear, freezing, corrosion, cracking, overheating, warping, flooding, moisture intrusion or any other condition caused by or related to weather and climate conditions; caused by misuse, modification, failure to properly install, inappropriate mishandling, operate, maintain or clean the Products; or caused by use of electrical appliances on an incorrect voltage. No claims will be allowed for wear parts and drained batteries, cost of installation or in case of damage, improper installation or other incidental costs.

6.4. In the event of a defect due to deficient material, AQUIS obligations shall be limited to working with CUSTOMER on a commercially reasonable efforts basis to mitigate costs and expenses associated with such defect and to negotiate with the relevant material supplier. In this context, AQUIS shall transfer and assign all product warranties received from its suppliers to CUSTOMER.

7. LIMITATION OF LIABILITY, PRODUCT LIABILITY

TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, AQUIS' LIABILITY SHALL BE LIMITED TO THE RESPONSIBILITIES CONTAINED IN CLAUSE 6 (PRODUCT WARRANTY). NOTWITHSTANDING THE FOREGOING AND ANYTHING TO THE CONTRARY IN THIS AGREEMENT, AQUIS EXCLUDES ANY AND ALL LIABILITY, WHETHER BASED IN CONTRACT, STRICT LIABILITY, WARRANTY OR TORT (INCLUDING NEGLIGENCE), OR ANY OTHER BASIS WHATSOEVER, FOR DIRECT, INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL, OR PUNITIVE DAMAGES OF ANY KIND, OR THIRD-PARTY CLAIMS AND OTHER INCIDENTAL OR SPECIAL LOSSES, WHICH MAY ARISE FROM NON-FULFILLMENT OF CONTRACTUAL OBLIGATIONS BY AQUIS AND/OR FROM THE OPERATION OR INTERRUPTION OF THE OPERATION OF THE PRODUCTS SUPPLIED BY AQUIS, OR ANY COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS BY CUSTOMER, OR FOR THE LOSS OF REVENUE OR PROFITS, LOSS OF BUSINESS, LOSS OF INFORMATION OR DATA, OR FINANCIAL LOSS ARISING OUT OF OR IN RELATION WITH THE SALE, INSTALLATION, MAINTENANCE, USE, PERFORMANCE, FAILURE, OR INTERRUPTION OF THE PRODUCT, EVEN IF AQUIS HAS BEEN ADVISED OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES. WITHOUT LIMITING THE FOREGOING AND NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, AQUIS LIMITS ITS LIABILITY, AT ITS SOLE OPTION, TO REPLACEMENT OR REPAIR OF THE PRODUCT PURSUANT TO THE PROVISIONS UNDER CLAUSE 6. THIS LIMITATION OF LIABILITY FOR DAMAGES WILL NOT BE AFFECTED IF ANY REMEDY PROVIDED HEREIN SHALL FAIL OF ITS ESSENTIAL PURPOSE.

7.1. In the event that AQUIS is found liable in a specific incident under the applicable product liability law, AQUIS' LIABILITY TO THIRD-PARTY PRODUCT LIABILITY CLAIMS RAISED DIRECTLY OR BY WAY OF RECOURSE AGAINST AQUIS SHALL BE LIMITED TO THE SUM ACTUALLY RECOVERED FROM AQUIS' PRODUCT LIABILITY INSURANCE. Liability and responsibility to pay any claim in excess of such sum recovered from AQUIS' product liability insurance shall be borne entirely by CUSTOMER. The sum insured by AQUIS shall be in aggregate at least CHF 1,000,000 (one million Swiss Francs) per year and incident. CUSTOMER shall hold AQUIS harmless and indemnified for all costs and expenses reasonably incurred by AQUIS (including reasonable attorneys' and other legal costs) in case of a product liability claim being raised in a specific incident directly or by way of recourse against AQUIS and CUSTOMER is found to be liable under the applicable product liability law.

8. TOOLING & TEST EQUIPMENT

8.1. Tooling & Test Equipment paid by CUSTOMER shall remain exclusive property of CUSTOMER and AQUIS shall keep it in good serviceable condition. If major repair or replacement is required, AQUIS shall provide a quotation to CUSTOMER for such refurbishment or replacement. AQUIS shall not be responsible of any interruption of supply. Past the warranty period of Tooling & Test Equipment, AQUIS will charge CUSTOMER the cost of any special maintenance as may be required to maintain quality and yield.

9. TERM & TERMINATION OF THE ORDER

9.1. The Order shall become effective upon Order Confirmation by AQUIS and shall remain in force and effect for the duration of the Order execution by AQUIS.

9.2. Either Party may terminate the Order by written notice to the other Party at any time in the event that either Party:

9.2.1. files a petition of bankruptcy, or is adjudicated bankrupt, or makes a general assignment for the benefit of the creditors, or becomes insolvent or otherwise unable to meet its financial or business obligations in a reasonable manner after they become due and has failed to provide securities in a form satisfactory in the sole judgment of the terminating Party, or

9.2.2. fails to perform any of its material obligations under the Order and these Terms & Conditions and such failure is not remedied within thirty (30) calendar days after a notification of default by the non-defaulting Party.

10. FORCE MAJEURE

Neither Party shall be liable for delays in or failures of performance beyond such Party's reasonable control, including, without limitation, natural disasters, epidemics, a shortage of energy or raw materials or electronic components, times of war or civil unrest, terrorist attacks, fire, extensive damage to or long-term suspension of the operations of the Parties, official acts or omissions, embargoes, disruption of the means of transport, industrial action and so forth. The performance of the affected Party shall be deemed suspended so long as and to the extent that any such force majeure continues, provided however, that after ninety (90) consecutive or cumulative calendar days of such suspension, the other Party may terminate the Order without liability.

11. ENTIRE AGREEMENT

These Terms & Conditions are included by reference to and made an integral part of all Orders and appendices thereto, constitute the entire agreement between the Parties and supersede any previous agreement or representation regarding the subject matter of the Order.

12. GOVERNING LAW, ARBITRATION

These Terms & Conditions and all conditions herein SHALL BE SUBJECT TO AND CONSTRUED IN ACCORDANCE WITH SWISS LAW under exclusion of its conflict of law provisions and the United Nations Convention on Contract for the International Sale of Goods of 11 April 1980 (the "Vienna Convention"). All disputes arising out of or in connection with these Terms & Conditions shall be finally settled under the RULES OF ARBITRATION OF THE INTERNATIONAL CHAMBER OF COMMERCE (ICC) by one or more arbitrators appointed in accordance with said rules. PLACE OF ARBITRATION SHALL BE ZURICH, Switzerland. The arbitration procedure shall be held in the English or German language.

13. SEVERABILITY

If any provision of this Agreement shall be illegal, invalid or unenforceable in any respect under applicable law, the legality, validity and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired. The Parties shall negotiate, in good-faith, to replace the provisions that are invalid by new provisions, which correspond as far as possible to the economic intent of the Parties of the provisions to be replaced.

14. MODIFICATIONS AND WAIVER

No supplement, modification or waiver of these Terms & Conditions and/or a contract of which these Terms & Conditions are part shall be binding unless executed in writing by both Parties. No waiver of any of the provisions of this Agreement shall constitute, or shall be deemed constituting, a waiver of any other provisions hereof (whether or not similar), nor shall any such waiver constitute a continuing waiver unless otherwise expressly provided.