



QUALITY QUANTIFIED

Version: 23.01.09

# General Terms and Conditions

## 1. APPLICABILITY

**1.1** These General Terms and Conditions shall apply to any and all sales and deliveries of goods and/or provision of services (the "Products") by QUPAQ A/S, Erhvervsparken 16, 9700 Brønderslev, Denmark ("QUPAQ"), to any Customer (the "Customer") unless explicitly agreed otherwise in writing.

## 2. OFFERING AND ORDERING

- 2.1** Offers by QUPAQ expire automatically after 30 days.
- 2.2** The right to intermediate sale is reserved.
- 2.3** There is no final agreement between the parties before QUPAQ has issued a written order confirmation. The same applies to changes and/or additions to orders.
- 2.4** The order confirmation by QUPAQ shall be the valid documentation for qualities and quantities ordered as well as for other terms agreed. It is the Customer's sole responsibility to address any discrepancies between the order confirmation and the Customer's order, and QUPAQ cannot be held liable for such discrepancies. Offers and confirmations hereof for works and services such as installation are subject to the circumstances at the premises and the facilities of the Customer.
- 2.6** Additional services and deliveries, which are not specified in QUPAQ's order confirmation, will be invoiced according to QUPAQ's current price lists.

## 3. PRICES

- 3.1** Prices are "ex works", exclusive of insurance, shipping, packaging, customs, duties, VAT, taxes, installation, assembly, and staff training which shall be for the account of the Customer.
- 3.2** QUPAQ may in its sole discretion adjust its prices. Such adjustment shall have effect on all non-confirmed orders.

## 4. USER MANUAL

**4.1** User manuals and technical documentation provided for the Products are in the Danish, English or German language. If the Customer wishes documentation in any other language QUPAQ may engage a third-party translator to perform the translation at the expense of the Customer.

## 5. INTELLECTUAL PROPERTY

**5.1** All and any intellectual property rights to Products, manuals and technical documentation hereunder but not limited to drawings, designs, and descriptions delivered by QUPAQ belongs to QUPAQ and shall remain the property of QUPAQ. The

Products and documentation may only be used for its purpose in connection with the Customer's installation and usage of the Product and may not be copied and/or submitted to competing companies of QUPAQ or brought into circulation in any way without QUPAQ's permission.

**5.2** Technical data contained provided by QUPAQ hereunder but not limited to weight, dimensions, capacity, and performance are approximate and binding only in so far as the agreement explicitly refers to them. QUPAQ is entitled to make changes to technical documentation hereunder but not limited to drawings, illustrations and designs that QUPAQ may find necessary. Such changes entitle the Customer to cancel the order only if the Customer can prove that the changes materially alter the prerequisites of the order. The Customer is in no event entitled to damages due to such changes.

**5.3** If the Customer provides drawings, designs, models or other illustrations which are protected by intellectual property rights of the Customer, to be used by QUPAQ for the production of the Products to the Customer, such shall remain the intellectual property of the Customer. The Customer assumes all and any liability for violation of third-party rights of any kind. The Customer shall indemnify and keep QUPAQ harmless for all and any claims by third parties claiming infringement of property rights. The Customer is obliged to participate in any proceedings instituted by a third party.

## 6. DELIVERY

- 6.1** Agreed Incoterms delivery clauses shall be interpreted in accordance with the Incoterms that were current at the conclusion of the agreement if not specified otherwise.
- 6.2** Delivery terms are EXW Incoterms 2020. As a consequence, among others the Customer is responsible for insuring the Products during transportation.
- 6.3** If no delivery date has been agreed, QUPAQ may determine a delivery date.
- 6.4** If a delivery date has been agreed such shall be considered as approximate and it is conditional upon the Customer in time fulfils its contractual obligations, such as prepayment, approval of drawings and calculations and in addition, upon request, timely clarifies all necessary details for the delivery.
- 6.5** If QUPAQ does not deliver within the agreed delivery time, the Customer may determine in writing a reasonable, final delivery deadline to QUPAQ of no less than 30 days. If delivery is not made within this

period, the Customer may terminate the agreement by written notice to QUPAQ.

- 6.7** If successive deliveries have been agreed, each delivery shall be considered as an independent delivery.
- 6.8** Costs of packaging shall be borne by the Customer. Packaging material may not be returned to QUPAQ.
- 6.9** The risk shall pass to the Customer at the time of delivery in accordance with the agreed delivery terms. If the Customer fails to take delivery the risk shall pass to the Customer at the agreed time of delivery.

## 7. PAYMENT TERMS

- 7.1** Payment shall be made in the currency stated on the invoice, and all payments shall be made free of bank charges and other costs. Payment shall be made to QUPAQ's nominated bank account as stated on the invoice.
- 7.2** If the Customer fails to pay the payment on time, QUPAQ is entitled to claim an interest rate surcharge of 1.5 percent per month pro rata, without prejudice to any other rights or remedies available to QUPAQ.
- 7.3** All costs and expenses incurred by QUPAQ in connection with the collection of any overdue payments, including but not limited to interest charges, internal costs, expenses to lawyers and debt collectors, court fees, etc., shall be indemnified by the Customer upon demand from QUPAQ.
- 7.4** All payments received by QUPAQ shall cover payable items in the following order: 1) interest as set out in clause 7.2; 2) costs as set out in clause 7.3; and 3) the principal amount.
- 7.5** Notwithstanding any agreement to the contrary, any and all amounts owed to QUPAQ will be due and payable immediately in case of bankruptcy, insolvency, moratorium, reorganization or other situations of the Customer which affect the QUPAQ's rights generally or which in the sole opinion of QUPAQ adversely affects the financial position of the Customer.
- 7.6** QUPAQ shall always be entitled to require the Customer to provide security for the proper performance of all its payment obligations to QUPAQ in such manner as shall be deemed sufficient by QUPAQ. Failure to provide such security within the deadline set by QUPAQ shall entitle QUPAQ, inter alia, to suspend further performance of any and all orders.

## 8. OWNERSHIP

**8.1** Title to the Products shall remain with QUPAQ until full payment by the Customer of the purchase price and all and any costs

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related to the transaction in question has been made.

## 9. WARRANTY

**9.1** For a period of 12 months (the Warranty Period) from delivery QUPAQ warrants that the Products are free of defects in material or workmanship causing malfunctioning and less productivity of the Product (the "Warranty").

**9.2** Warranty claims shall be received in writing by QUPAQ as soon as possible after the Customer becomes aware of the defect and within the Warranty Period. The notification of a claim shall include a comprehensive and detailed description of the defect or malfunctioning, the QUPAQ order number and VIN number of the Product.

**9.3** The Warranty does not cover defects fully or partly due to:

- a) normal wear and tear,
- b) defects in wear and tear parts and consumables,
- c) insufficient assembly, installation and connection, maintenance, cleaning and service, misuse, or non-compliance with written and oral instructions related to such,
- d) lack of compatibility with software, production lines and other equipment not supplied by QUPAQ for the purpose of integration with the Product,
- e) materials, designs, instructions, or the like provided or instructed by the Customer,
- f) circumstances which were not present at the time of delivery, and
- g) circumstances outside the reasonable control of QUPAQ or caused by third parties other than sub suppliers to QUPAQ,

**9.4** For Products produced according to specifications, drawings, descriptions, models, designs, regulations etc. provided by the Customer or its advisors, the Warranty shall apply only to defects caused by QUPAQ not delivering in accordance with such.

**9.5** The Warranty is conditional upon:

- a) the Product running an average of eight hours or less per day for five days in each week during the Warranty Period, and
- b) no alterations being made to the Product not approved in writing by QUPAQ.

**9.6** QUPAQ may in its sole discretion determine the measures needed to remedy a valid claim under the Warranty and whether repair work is performed at the site of the Product or shall be performed at the premises of QUPAQ. Such may include repairs, replacement of parts, or other measures.

**9.7** The obligation of QUPAQ under the Warranty is limited to QUPAQ repairing defective workmanship or in case of defective parts or materials the repair or supply of replacement parts. QUPAQ may choose at any time after receiving a claim under the Warranty to refund the net

purchase price of the Product which shall be considered full and final remedy of the claim.

In no event shall QUPAQ be liable for indirect or consequential losses nor related costs or expenses of any kind hereunder but not limited to works related to remedying the defect such as de-installation/installation of the Product and/or the parts. Such works carried out by QUPAQ, and reasonable costs related hereto may be invoiced to the Customer at the standard rates of QUPAQ. The Customer shall arrange and pay for shipping to the premises of QUPAQ. If the warranty claim is valid QUPAQ will reimburse the shipping costs.

**9.8** Any information provided by QUPAQ regarding the production and/or flow capacity of products are subject to a noninterrupted and constant feed (within +/- 10 percent) of the items loaded to the machines.

**9.9** The limited Warranty of this clause 9 is the only warranty provided by QUPAQ. As such all other warranties, whether expressed or implied hereunder but not limited to warranties of merchantability and fitness for a particular purpose are hereby disclaimed.

**9.10** Workmanship and materials provided by QUPAQ to remedy claims under the Warranty within the last three months of the Warranty Period shall be covered by the Warranty for a single additional 3 months period following the end of the Warranty Period.

**9.11** If QUPAQ is unable to remedy the claim after having had a reasonable number of attempts the Customer is entitled to claim a refund of the net purchase price against delivering the Product to QUPAQ at QUPAQ's premises. This shall be the sole remedy of the Customer in case of QUPAQ not being able to remedy a claim under the Warranty.

**9.12** Service and repair works carried out by QUPAQ which are not covered by the Warranty shall be invoiced by QUPAQ at its standard rates. Any and all costs related such as transport, travel, and spare parts are for account of the Customer. The same applies to works related to providing cost estimates and offers for service and repair works.

## 10 LIABILITY

**10.1** Any claims related to a Product, other than valid Warranty claims, shall be received in writing by QUPAQ as soon as possible after the Customer becomes aware of a potential claim and no later than within 3 months from delivery of the Product in question. The notification of a claim shall include a comprehensive and detailed description of the facts and the basis for the claim, the QUPAQ order number and VIN number of the Product if the claim is related to a physical product. Claims not received by QUPAQ in accordance with this clause shall

be deemed time barred and waived by the Customer.

**10.2** In no event shall the total liability of QUPAQ related to the provision of a Product exceed the invoiced net price of the Product in question. This applies irrespective of whether the liability arises out of the delivery of non-conforming Products, product liability, or acts or omissions of QUPAQ or its representatives, or other, and irrespective of degrees of negligence.

**10.3** QUPAQ shall in no event be liable for delays or any consequences hereof.

**10.4** QUPAQ shall in no event be liable for any type of consequential damages or indirect losses hereunder but not limited to any loss of production, loss of profit, loss of contracts, loss of business, wasted expenditures, loss of goodwill, increased costs, and expenses, laytime or demurrage.

**10.5** QUPAQ shall in no event be liable for consequences of force majeure events. Force majeure events shall include but no be limited to events beyond the reasonable control of QUPAQ, hereunder but not limited to components and or raw materials needed for the manufacture of the Products not being available to QUPAQ by reasonable means, strikes, IT break downs/hacking and cyberattacks, production facility break downs, fires and natural disasters, pandemics including COVID 19, and acts of God.

**10.6** The limitations and exclusions of liability in these General Terms and Conditions shall apply to any claims against QUPAQ or any of its members, directors, officers, employees, representatives, or subcontractors whether based on the contract, contract law, tort, or any other legal basis.

## 11 LAW AND ARBITRATION

**11.1** These Terms and Conditions and any relationship and matter related hereto shall be governed by Danish substantive law with no regard to choice of law rules. CISG does not apply.

**11.2** Any dispute between the Customer and QUPAQ including disputes regarding the validity or application of these Terms and Conditions shall be settled by arbitration administered by the Danish Institute of Arbitration in accordance with the rules of arbitration procedure adopted by the Danish Institute of Arbitration and in force at the time when such proceedings are initiated. The place of arbitration shall be Aalborg, Denmark. The language shall be English.