

TERMS AND CONDITIONS OF SALE

1. Except as otherwise agreed in a writing signed by Buyer and Quality Tube Holdings Inc., a Delaware corporation (“Seller”) the applicable Seller sales order acknowledgement, together with these terms and conditions constitute the entire agreement between Seller and Buyer relating to the sale of such goods by Seller. Terms or conditions contained in any document issued by Buyer that in any manner purport to alter, modify, change, suspend, or add to any term or condition contained herein shall be deemed excluded from such Buyer document and waived by Buyer. Seller and Buyer expressly agree that Seller may modify these terms and conditions from time to time, and such modifications shall be binding upon Buyer.
2. This quotation is subject to change without notice. Acceptance of this quotation shall not impose any duties on Seller until approved by Seller in writing. Approval by Seller is expressly made conditional upon assent by Buyer to all the Terms and Conditions herein. Buyer’s assent to these terms and Conditions shall be conclusively presumed from Buyer’s receipt of Seller’s acknowledgement of Buyer’s order without prompt written objection thereto or from acceptance by Buyer of all or any part of the material order.
3. The purchase price of the goods shall be as stated on the face of the applicable Seller sales order acknowledgement; provided, however, that if Seller announces a general price increase, the purchase price shall be revised to include such price increase. Seller may in its sole discretion add a surcharge to the price of goods predicated upon increases in the cost of raw materials or energy. Such surcharge may be adjusted by Seller periodically to reflect a change in such costs.
4. Buyer cannot modify, cancel, or otherwise alter orders without Seller’s written consent. Any such cancellation, modification, or alteration shall be subject to conditions as negotiated at such time, which shall include protection of Seller against loss.
5. All deliveries are EXW (Incoterms 2010) loaded Seller shipping facility, freight prepaid or freight collect to destination. If shipped freight collect, the charge for freight will be added to the invoice. All delivered prices or prices with freight allowed are based upon prevailing freight rates and transportation charges, and if these are increased or decreased, such process on all unshipped tonnage shall be increased or decreased accordingly. Neither freight charges nor tax is subject to any discount. Title to material and risk of loss of the goods shall pass to Buyer when loaded for shipment at Seller’s facility. Risk of loss or damage in transit shall be borne by Buyer, and claims shall be made directly with carrier. Buyer may pick up the goods at Seller’s shipping facility provided Buyer does so within 10 days after the date Buyer is notified of the availability of goods. Seller reserves the right to ship without further notification at any time after the 10-day period. Buyer shall indemnify, defend (if elected by Seller), reimburse, and hold harmless Seller from and against any claims, damages, costs, expenses or other liabilities suffered by Seller resulting from any acts or omissions of any carrier, broker, or other transportation provider and its/their personnel engaged by Buyer or its agents.
6. Delivery dates are approximate. In the event that Seller’s performance is delayed, interfered with, or prevented by war, fire, strike, flood, acts of God, shortages of material, fuel, or power, delay in transportation, equipment breakdowns, riot, theft, differences with workmen or employees, or accident, or by any law, order, regulation, or requisition of any governmental agency or body, or any other cause beyond the control of Seller, Seller shall, as respects any portion of Seller’s performance unperformed by reason of such occurrence, at its option, be relieved from further responsibility, where or not such cause is operative at the time of Seller’s approval of Buyer’s order. In the event Seller elects to complete its performance, the time of Seller’s performance shall be extended for such period as may be necessary to enable Seller to make delivery after such cause has been removed, and Seller shall have the right to apportion its production among its customers (including Seller’s regular customers not then under contract) and Seller’s own departments and divisions in any manner Seller deems equitable.
7. SUBJECT TO STANDARD MANUFACTURING VARIATIONS, SELLER WARRANTS THAT THE GOODS FURNISHED HEREUNDER SHALL MEET SPECIFICATIONS SET FORTH ON THE FACE OF THE APPLICABLE SELLER SALES ORDER ACKNOWLEDGEMENT. SELLER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, AND SPECIFICALLY EXCLUDES ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ALL WARRANTIES WHICH MIGHT OTHERWISE ARISE FROM COURSE OF DEALING OR USAGE OF TRADE, ARE HEREBY SPECIFICALLY EXCLUDED.
8. Material purchased on the basis of weight is subject to customary quantity variations recognized by trade practice.

9. LIMITED WARRANTY: Seller agrees to replace or allow credit, at Seller's option, for material found to be defective but will not be liable for any labor, expense, or damage resulting from the use of such material or in connection therewith. Notwithstanding the foregoing, should material have to be reinstalled or replaced because it is found to have a manufacturing defect after it is installed, Seller will assume the reasonable costs of reinstalment, including reasonable labor expenses, so long as the defect(s) were not discoverable prior to installation. No claim will be recognized unless presented to Seller in writing within a reasonable time, but in no event more than one year after receipt of material by Buyer, unless approved by Seller, and allowed an opportunity to inspect them or otherwise provided evidence of the claim in accordance with Seller's then-current claims policy. Goods for which damages are claimed shall not be returned, repaired, or discarded without Seller's written consent. In the event Seller consents to a return of any goods, Buyer shall follow Seller's then-current return policy. In the event of any conflict between these terms and conditions, and the terms and conditions of Seller's claims policy and/or return policy, these terms and conditions shall govern. BUYER'S EXCLUSIVE REMEDY AGAINST SELLER, AND SELLER'S SOLE OBLIGATION, FOR ANY AND ALL CLAIMS, WHETHER FOR BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, SHALL BE LIMITED TO SELLER REPLACING GOODS THAT DO NOT CONFORM TO SPECIFICATIONS OR, AT SELLER'S OPTION, REFUNDING THE PURCHASE PRICE. IN NO EVENT SHALL SELLER HAVE ANY LIABILITY FOR DAMAGES IN AN AMOUNT EXCEEDING THE PURCHASE PRICE OF THE GOODS IN QUESTION, NOR SHALL SELLER HAVE ANY LIABILITY FOR SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES.

10. BUYER REPRESENTS AND WARRANTS TO SELLER THAT THE MATERIAL IS BEING PURCHASED FOR RESALE OR FOR COMMERCIAL USE AND THAT ANY WARRANTIES GIVEN HEREUNDER ARE NOT SUBJECT TO THE REQUIREMENTS OF THE MAGNUSON-MOSS WARRANTY-FEDERAL TRADE COMMISSION IMPROVEMENT ACT, 15 U.S.C. SECTION 2301 et seq. ANY WARRANTIES HEREUNDER, WHETHER EXPRESS OR IMPLIED, ARE MADE TO BUYER ONLY, AND TERMINATE UPON TRANSFER OF THE MATERIAL TO ANY OTHER PERSON FOR ANY PURPOSE WHATSOEVER.

11. Seller may, at its sole discretion, assign any Seller credit manager to Buyer's account. All credit information supplied to Seller will be available for use throughout Seller by any Seller affiliate and or subsidiary for the purpose of determining creditworthiness. If, in Seller's opinion, Buyer's credit becomes impaired, Seller may suspend performance until such time as Seller has received full payment for any goods already delivered or in process and is satisfied (in its sole discretion) as to Buyer's credit for future deliveries. If Seller suspends performance and later proceeds with such order, Seller shall be entitled to such extension of time for performance as is necessitated by the suspension.

12. All taxes, duties, tariffs or any other charges of any kind levied by any federal, state, municipal or other governmental authority that are required to be collected or paid with respect to the production, sale, purchase, delivery, storage, processing, use, consumption, transportation or shipment of goods sold to Buyer shall be the responsibility of Buyer. Buyer agrees to pay all such taxes, duties, tariffs or other charges and further agrees to reimburse Seller for any such payments made by Seller. Seller shall not be responsible for spotting, switching, or drayage charges at destination.

13. Checks or payments, whether full or partial, received from or for the account of Buyer, regardless of writings, legends, or notations upon such checks or payments, or regardless of other writings, statements, or documents, shall be applied by Seller against any amount owing by Buyer with full reservation of all of Seller's rights, without an accord and satisfaction of Buyer's liability.

14. In the event Buyer fails to make payment to Seller, or any affiliate of Seller, of any amounts due and owing to Seller or such affiliate (including any applicable surcharge or freight charge), Seller shall have the right to terminate any Buyer order or any unfulfilled portion thereof, and Seller or any affiliate thereof may terminate any other agreement between Seller or such affiliate and Buyer. Seller may charge interest on the outstanding balance at an annual rate of 12% or the highest rate allowed by law (whichever is less). Seller shall have the right to employ an attorney to collect the balance due, and Buyer agrees to pay all collection costs incurred by Seller, including its attorneys' fees and court costs.

15. This agreement shall be governed by the laws of the state in which Seller's shipping facility is located. Buyer, acting for itself and its successors and assigns, hereby expressly and irrevocably consents to the exclusive jurisdiction of the state and federal courts of that state for any litigation which may arise out of or be related to this agreement. Buyer waives any objection based on *forum non conveniens* or any objection to venue of any such action.



16. APPLICABLE ONLY FOR SALES OR REALES INTO THE STATE OF CALIFORNIA: Proposition 65 warnings are required by California law. Buyer acknowledges that Seller's goods may result in an exposure to chemicals, including lead and lead compounds, which are alleged by the State of California to cause cancer, birth defects and/or other reproductive harm. Buyer is responsible for complying with California law regarding providing Proposition 65 notices to any customers in the State of California, and shall indemnify, defend (if elected by Seller), reimburse, and hold harmless Seller from and against any claims, damages, costs, expenses or other liabilities suffered by Seller as a result of Buyer's failure to comply with Proposition 65. For more information, please go to www.P65Warnings.ca.gov.

17. Seller reserves the right to enforce these terms and conditions at any time and none shall be deemed waived unless such waiver is in writing signed by a duly authorized officer of Seller. All rights and remedies granted herein are in addition to all remedies available at law or in equity.

18. These Terms and Conditions contain the entire agreement of the parties and are made without any oral warranties, conditions or agreements.

19. THE UNDERSIGNED HEREBY MAKES APPLICATION FOR CREDIT AND AGREES THAT THE EXTENSION OF CREDIT AND/OR SALE OF PRODUCTS BY SELLER TO BUYER OR ANY OF ITS SUBSIDIARIES ARE EXPRESSLY CONDITIONED UPON BUYER'S ASSENT TO THESE TERMS AND CONDITIONS FOR ALL PURCHASES FROM SELLER. BUYER SHALL CAUSE ITS SUBSIDIARIES TO HONOR THESE TERMS AND CONDITIONS AS IF SIGNATORIES HERETO. BUYER ACCEPTS THESE TERMS AND CONDITIONS, WHICH MAY ONLY BE MODIFIED AS PROVIDED THEREIN, AND AUTHORIZES SELLER TO INVESTIGATE BUYER'S CREDITWORTHINESS, INCLUDING A REQUEST FOR A CREDIT REPORT, TO WHICH BUYER SPECIFICALLY CONSENTS.

BUYER COMPANY NAME:

AUTHORIZED SIGNATURE:

PRINT NAME & TITLE:

DATE: