

Quorum Systems –

**Terms and Conditions of
Sale**

Effective 1st November 2019



1. Supply.

Quorum Systems (ABN 51 105 823 238) agrees to supply goods ("Products") and/or services ("Services") to you ("the Customer") subject to these standard terms and conditions ("Terms").

2. Purchase orders.

Purchase orders for Products or Services will constitute an offer by the Customer and may only be accepted by Quorum Systems in writing. Any amendments to purchase orders for Products or Services must be approved by Quorum Systems in writing to be effective. Only these Terms (not other terms and conditions which may be attached to or incorporated in a purchase order) form part of the agreement between the parties. Acceptance of a purchase order will not be acceptance of any such other terms or conditions.

3. Payment.

Payment terms are strictly 14 days from the date of invoice. Products will be invoiced on delivery. Services will be invoiced at the end of each month and on completion or as otherwise prescribed in the documents describing the Services.

4. Interest.

Any amount not paid on the due date for payment will incur interest from that date until payment is made in full. Interest will be calculated daily at the rate of 10% per annum on the total outstanding balance. The Customer acknowledges and agrees that this interest rate is to cover the actual cost and loss that would be suffered by Quorum Systems in cases of delay in payment.

5. Delivery

Quorum Systems will use its reasonable endeavours to deliver all Products or Services to the Customer by the date agreed but will not be liable for any delays in delivery caused by matters beyond its control. Freight charges incurred by Quorum Systems in delivering Products to the Customer will be invoiced to the Customer.

6. Risk and Insurance.

Risk of loss, theft, damage, deterioration or destruction of Products passes to the Customer upon the earlier of:

- (a) delivery to the Customer;
- (b) the taking of possession by the Customer; or
- (c) the delivery to any carrier contracted to the Customer for delivery to the Customer.

7. Title.

Until the Products have been paid for in full the Customer will be a bailee of the Products and the Products shall remain the property of Quorum Systems. If the Customer fails to pay any moneys to Quorum Systems when due, Quorum Systems may immediately without notice or demand enter upon the Customer's premises and take possession of the Products. This right is without prejudice to any other rights that Quorum Systems may have.

8. Privacy

8.1 The Customer warrants that:

- (a) it complies with and will continue to comply with the *Privacy Act 1988 (Cth)* and all other applicable privacy laws;
- (b) any use by Quorum Systems of data and material provided by the Customer (Customer Data) in connection with the provision of the Services will not:
 - (i) infringe any third-party Intellectual Property Rights; or
 - (ii) breach the *Privacy Act 1988 (Cth)* or any other applicable privacy laws.
- (c) it has:
 - (i) made all necessary notifications required by Australian Privacy Principle 5 (which deals with the notification of collection of personal information), on behalf of itself and Quorum Systems to; and
 - (ii) obtained all necessary consents required by Australian Privacy Principle 6 (which deals with the use or disclosure of personal information) from,

the individuals whose Personal Information (as defined in the *Privacy Act 1988 (Cth)*) it is disclosing to Quorum Systems in the course of these Terms to enable Quorum Systems to lawfully use the Personal Information and perform its obligations in accordance with these Terms.

8.2 The Customer:

- (a) acknowledges that Quorum Systems is reliant on the Customer for direction as to the extent to which Quorum Systems is entitled to use Personal Information disclosed to it in the course of and for the purpose of these Terms; and
- (b) indemnifies Quorum Systems and its Related Bodies Corporate (as defined in the *Corporations Act 2001 (Cth)*), and their directors, officers, employees, contractors and agents, for any claim brought by any third party in connection with any act or omission by Quorum Systems in relation to a third party's Personal Information to the extent that such act or omission resulted directly from the Customer's instructions or the Customer's breach of these Terms.

9. IT Security

9.1 The Customer acknowledges that:

- (a) Quorum Systems assumes no responsibility for the Customer's IT Security other than to the extent that Quorum Systems has expressly agreed in writing to provide Services to the Customer in relation to its IT Security;
- (b) the Customer otherwise remains wholly responsible for its IT Security; and
- (c) the use of IT Security software and the performance of IT Security assessments, monitoring and management will not remove all risks of an IT Security breach.

9.2 The Customer agrees that, to the maximum extent permitted by law, Quorum Systems has no liability in respect of any claim or any losses arising directly or indirectly out of any breach of the Customer's IT Security, except to the extent that the losses or claims arise from:

- (a) Quorum Systems having expressly agreed in writing to provide Services to the Customer in relation to its IT Security; and
- (b) the negligence, fraud or wilful misconduct of Quorum Systems in relation to the provision of those IT Security Services.

9.3 The Customer agrees to indemnify and keep indemnified Quorum Systems and its Related Bodies Corporate (as defined in the Corporations Act 2001 (Cth)), and their directors, officers, employees, contractors and agents (together, Indemnified Persons), against any losses incurred or suffered by an Indemnified Person, or claims brought against an Indemnified Person, arising directly or indirectly from any breach of the Customer's IT Security, provided that the Customer will not be liable under this clause 12.3 to the extent that the losses or claims arise from:

- (a) Quorum Systems having expressly agreed in writing to provide Services to the Customer in relation to its IT Security; and
- (b) the negligence, fraud or wilful misconduct of the Indemnified Persons in relation to the provision of those IT Security Services.

9.4 For the purpose of this clause, the term "IT Security" is defined to mean systems and measures to prevent unauthorised or unlawful use, access to or interference with ICT infrastructure, including but not limited to hacking and network intrusions, ransomware, malware and end-user attacks.

10. Confidentiality.

Quorum Systems and the Customer agree that they will keep at all times as strictly confidential any confidential information that is disclosed or provided by one party to the other. In this clause, "confidential information" means information in any form but does not include information that is already in the public domain at the time that it is disclosed or becomes part of the public domain excluding any information that became public knowledge as a result of an unauthorised disclosure by Quorum Systems or the Customer.

11. Intellectual Property.

The Customer acknowledges that, unless otherwise agreed in writing, all intellectual property rights attaching to the Products or arising out of the provision of Services are and will remain the property of Quorum Systems (or its supplier, where such rights are owned by that supplier). Software will be licensed to the Customer on the terms of the relevant licence agreement provided with the Product or as otherwise agreed between Quorum Systems and the Customer in writing. Any rights to be conferred on the Customer will only commence on payment of all charges payable in connection with those rights.

12. Assistance with Product Refunds.

12.1 Quorum Systems will assist the Customer to obtain a refund from the Product manufacturer for any faulty or defective Products subject to this clause 12.

12.2 Quorum will only assist the Customer to obtain a refund from the Product manufacturer if:

- (a) the Customer requests Quorum Systems assistance by sending an email accounts@quorumsystems.com.au and Quorum Systems confirms to the Customer in writing that it will provide that assistance;
- (b) the Products are in the same condition as delivered by Quorum Systems; and
- (c) the Products are received by Quorum Systems within 14 days from the date of delivery.

12.3 To the maximum extent permitted by law, Quorum Systems reserves the right to charge the Customer for any costs or losses incurred by Quorum Systems if the Customer makes a request for assistance and:

- (a) Products which are not faulty are returned or returned without authorisation;
- (b) Products are received by Quorum Systems later than 14 days after the date delivery; or
- (c) Products are in a condition different to the condition the Products were in when the Products were delivered by Quorum Systems.

Quorum Systems will use its best endeavours to minimise such costs and losses.

12.4 For the sake of certainty, Quorum Systems' agreement to assist with obtaining a refund from the Product manufacturer for any faulty or defective Products under this clause 12 is not a warranty to repair or replace the Products or to compensate the Customer for faulty or defective Products.

13. Termination.

13.1 Where the Customer:

- (a) defaults in any payment or breaches any of these Terms;
- (b) becomes unable to pay its debts as and when they fall due; or
- (c) commits an act of bankruptcy or, being a company, enters into liquidation or provisional liquidation whether compulsory or voluntary or compounds with its creditors generally or has a receiver or receiver manager or administrator appointed over all or part of its assets or passes a resolution for winding-up or a petition is presented for its winding-up,

Quorum Systems may without prejudice to any of its rights or remedies under these Terms or otherwise by notice to the Customer:

- (d) suspend further supply and require payment in advance for future supply;
- (e) recover possession of any Product for which payment has not been made in accordance with clause 3;
- (f) terminate all or any purchase orders for Products or Services which have been accepted by Quorum Systems;
- (g) claim immediate payment of all moneys due by the Customer in respect of all Products and/or Services which will then be immediately due and payable notwithstanding the due date or dates for payment or any terms agreed by Quorum Systems; and/or
- (h) continue to enforce its rights and recover from the Customer such payments and any other amounts owing as and when they fall due.

14. No Representations.

The Customer acknowledges that Quorum Systems has not made any warranty or representation, express or implied, in relation to the Products or the Services, including whether they are suitable for a particular purpose (whether such purpose was made known to Quorum Systems or not), unless provided in writing.

15. No Implied Terms.

15.1 To the fullest extent permitted by law, the parties agree to exclude any terms which would otherwise be implied into these Terms by any statute.

16. Australian Consumer Law (ACL).

16.1 Nothing in these Terms is intended to have the effect of contracting out, restricting or modifying any consumer guarantee, right or remedy conferred on the Customer by the ACL except to the extent permitted by law, and these Terms are to be modified to the extent necessary to give effect to that intention.

17. Limitation of Liability.

17.1 Where a consumer guarantee, right or remedy has been conferred on the Customer by the ACL and:

- (a) the Products or Services are not of a kind ordinarily acquired for personal, domestic or household use or consumption and have a price of less than \$40,000; and
- (b) it is reasonably fair for Quorum Systems to do so,

the liability of Quorum Systems for a breach of the consumer guarantee, right or in relation to the remedy is limited to (at Quorum System's option):

- (c) replacing or repairing the Products, supplying equivalent Products or paying the cost of having the Products replaced or repaired, or having equivalent Products supplied; and
- (d) resupplying the Services or paying the cost of having the Services resupplied.

- 17.2 Other than to the extent a consumer guarantee, right or remedy applies, and to the maximum extent permitted by law, Quorum Systems:
- (a) expressly excludes all conditions and warranties, rights or remedies, liabilities and other terms that may be implied by custom, statute or common law to the maximum extent permitted by law;
 - (b) shall not be liable for any claim for defects or deficiencies in Products or Services which are caused by:
 - (i) external causes including natural disaster, fire, accident, vandalism, water, lightning, power surge or spike;
 - (ii) fault of the Customer (including but not limited to negligence and misuse);
 - (iii) the use of a Product for other than its intended purpose;
 - (iv) the use with or connection of a Product to items not approved by Quorum Systems;
 - (v) the performance of maintenance or attempted repair by persons other than Quorum Systems or as authorised by Quorum Systems;
 - (vi) changes made to the deliverables created by performance of the Services or to the operating environment;
 - (vii) the relocation of Products by the Customer; or
 - (viii) any configuration or reconfiguration by the Customer of the Products or other equipment with which the Products interface.

17.3 To the maximum extent permitted by law, Quorum Systems will not be liable to the Customer for any indirect or consequential damages including loss of profits, revenue, data or use arising out of or in relation to the supply of Products and/or Services, whether damages are claimed in contract, tort (including negligence) or statute, except to the extent the loss or damage is a reasonably foreseeable result of Quorum Systems' failure to meet an applicable consumer guarantee relating to the supply of good or services provided by the ACL.

17.4 To the maximum extent permitted by Law and to the extent that the limitation in clause 18.1(a) does not apply, Quorum System's maximum liability under this agreement for all cumulative loss incurred by the Customer will be limited to and not exceed the aggregate amount of fees paid by the Customer during the period of one year preceding the act or omission causing the loss, except to the extent Quorum Systems caused or contributed to such loss.

18. Variation.

Any variation to these Terms must be agreed in writing. Variations to any of the Services agreed to be supplied will be charged by Quorum Systems at its then current rates for those additional services, unless otherwise agreed in writing.

19. Third Party Payments

The Customer acknowledges and agrees that Quorum System may pay a fee or commission, or confer a benefit, to third parties (whether as a lump sum or on a continuing basis) in respect of the referral or introduction of the Customer to Quorum System in relation to the provision of Services or Products.

20. General.

20.1 All notices must be in writing and sent by mail, hand delivery or transmitted by email to the address of the receiving party and shall be deemed delivered, in the case of:

- (a) hand delivery, on delivery;
- (b) posting, three days after dispatch; and
- (c) email, at the time the email was sent unless the sender receives an automated message that the email has not been delivered.

20.2 No leniency, indulgence or extension of time granted by Quorum Systems to the Customer will prejudice any of Quorum Systems' rights in any way or constitute a waiver of any of Quorum Systems' rights.

20.3 If any of the clauses in these Terms are for any reason declared to be or become unenforceable, invalid or illegal, the remaining Terms will remain in full force and effect.

20.4 These Terms are governed by the laws of New South Wales, Australia and the parties agree to submit to the nonexclusive jurisdiction of the courts of New South Wales.

21. Taxes And GST.

The amount payable to Quorum Systems is exclusive of existing taxes, duties and government charges imposed or levied in Australia in connection with the supply of the Products and Services. The Customer shall be liable for any new or varied taxes, duties or charges imposed subsequent to Quorum Systems' quotation or proposal or to this agreement in respect of the supply of the Products and Services. Quorum Systems will issue a valid tax invoice where GST is to be recovered.

22. Entire Agreement.

These Terms constitute the entire agreement between the parties in relation to the supply and purchase of the Products and/or Services. All prior discussions, undertakings, agreements, representations, warranties and indemnities in relation to that subject matter are replaced by these Terms and have no further effect.

23. Expiration.

All pre-paid agreements (excluding Managed Service Agreements) will expire 12 months from invoice date. Any unused funds will be forfeited and the Customer shall have no right of recourse or refund.

Quorum Systems Contact Details

Company name: Quorum Systems Pty Limited
Business address: Level 8, 8 West Street, North Sydney, NSW, 2060
Telephone number: 02 8966 1400
Email address: accounts @ quorumsystems.com.au



QUORUM SYSTEMS PTD LTD
A Level 8, 8 West Street,
North Sydney NSW 2060
P +61 (0)2 8908 2900
E info@quorumsystems.com.au
W quorumsystems.com.au