

## **Q. Edition Business LLC (DBA High Temperature Concept™): Terms & Conditions of Sale**

### **1. General, Applicability**

These Terms & Conditions are provided by Q. Edition Business LLC (herein also referred to as “Seller”) and shall apply to the sale by Seller of all its products (including but not limited to racks or parts thereof including posts, grids, trays, plates, stripes, centerings, layer pads; hereinafter also referred to as the “Products”) to the purchasing party (herein also referred to as the “Buyer”). No other terms or orders or any modification to these Terms & Conditions by the Buyer shall be binding upon the Seller and the sales transaction, unless specifically agreed to by the Buyer and the Seller. Buyer is deemed to have accepted these Terms & Conditions by entering into the sales transaction with Seller, and Buyer further agrees that any general terms of purchase it may refer to or submit to Seller shall not be binding on the parties and the sales transaction.

### **2. Order Acceptance**

All orders received by Seller are subject to written acceptance by an authorized representative of Seller (the “Order”). The Order details including these Terms & Conditions shall represent the binding details of the sales transaction. Terms of the Order shall prevail over the terms of these Terms & Conditions.

### **3. Pricing and Payment**

All prices of Seller are in U.S. Dollars unless otherwise indicated in the Order.

Prices include the following shipping terms: F.O.B. point of origin as designated by Seller unless otherwise specifically indicated.

Prices do not include any packaging or handling charges, sales or other taxes, customs duty or export or import tax or any other duty levied by any government.

Payment shall be made by Buyer within 30 days of receipt of Seller’s invoice. Payments of clients which whom we have not yet cooperated pay in advance of Seller’s invoice. In the event of late payment, Seller may charge interest at the rate of 12% per annum on any outstanding amount.

Buyer may only set off own claims against Seller’s claims if those claims have been recognized by Seller in writing or if they are evidenced by a final enforceable court or similar decision.

Seller may request in writing a reasonable change in the applicable prices if Buyer is notified thereof at least 90 days in advance. If the parties cannot agree on new prices, Buyer may cancel the applicable Order or any portion thereof within 30 days of receipt of Seller’s request for a price change. Absent such timely cancellation by Buyer, the prices proposed by Seller shall become the agreed upon prices for the applicable Order.

### **4. Delivery, Title, Risk of Loss**

Title and risk of loss to goods shall pass to Buyer upon delivery F.O.B. point of origin. Unless otherwise stated in writing by Buyer (i) Seller may select packing, shipment, routing and carrier (ii) goods will be packaged according to industry standards and special packaging will be subject to additional charges (iii) lots or installment deliveries shall be deemed covered by a separate contract and any rejection or revocation of acceptance of one lot or installment shall affect only such lot or installment and shall not impair the value of the balance of the Purchase Order (iv) 5 days of grace shall be allowed on each delivery and (v) quantities which do not vary by more than 5% shall be deemed to comply with the Order.

## **5. Packaging.**

Packaging materials used by Seller that are specifically designated as “leased” either in the invoice or the freight papers, shall be returned by Buyer, at Buyer’s costs, to Seller no later than two (2) months after the agreed upon delivery. Failure to return such materials in a condition that they can be reused by Seller or in a timely manner shall entitle Seller to claim from Buyer the costs for replacing such packaging materials. Other packaging materials provided by Seller may only be reused by Buyer once any trademarks, logos, etc. of Seller have been removed.

## **6. Force Majeure.**

Seller shall not be responsible for any delays or non-performance caused in whole or in part, directly or indirectly, by strikes, accidents, embargoes, fire, floods, inability to obtain materials, labor or services, conditions arising from government orders or regulations, war or national emergency, Acts of God, and any other cause, similar events to the foregoing which are deemed beyond Seller's reasonable control. Buyer may not refuse delivery on grounds of an event of Force Majeure.

## **7. Security Interest.**

Seller reserves a purchase money security interest in goods sold hereunder equal to the price. Said interest shall be released on receipt of payment in full. Upon request, Buyer agrees to sign and give UCC forms to Seller for filing. Buyer's refusal to deliver a duly signed UCC authorizes Seller to sign and record this document and a UCC form as attorney-in-fact for Buyer to perfect said security interest of Seller.

## **8. Termination**

Buyer may not cancel any Order without Seller’s written consent. If consented to by Seller, Buyer shall be liable to Seller for all losses relating to the termination, including but not limited to any direct costs incurred by Seller including lost profits.

## **9. Limited Warranty**

EXCEPT AS OTHERWISE PROVIDED IN A SEPARATE WRITTEN AGREEMENT BETWEEN SELLER AND BUYER, SELLER WARRANTS ITS PRODUCTS WILL CONFORM TO THE AGREED UPON PURCHASE SPECIFICATIONS AND BE FREE FROM DEFECTS AND DEFICIENCIES IN WORKMANSHIP AND MATERIALS FOR A TERM OF TWELVE (12) MONTHS FROM THE DATE OF SALE OF SUCH PRODUCTS TO THE BUYER AS SPECIFIED IN SHIPMENT DOCUMENTS FOR EACH PRODUCT.

IN THE EVENT OF A VALID WARRANTY CLAIM, SELLER MAY REPAIR OR REPLACE THE RETURNED PRODUCT AT ITS SOLE DISCRETION. WARRANTY CLAIMS MUST BE IN WRITING ACCORDING TO SELLER’S PROCEDURES EXISTING AT THE TIME OF THE CLAIM AND MADE WITHIN FOURTEEN (14) DAYS OF DISCOVERY OF THE DEFECT.

ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARE EXPRESSLY DISCLAIMED INCLUDING BUT NOT LIMITED TO WARRANTIES OF FITNESS OR MERCHANTABILITY. EXCEPT AS MAY BE OTHERWISE PROVIDED IN A SEPARATE WRITTEN AGREEMENT WITH BUYER, SELLER LIMITS ALL CLAIMS OF ALL PERSONS FOR LOSSES OR DAMAGES, TO THE FULLEST EXTENT PERMITTED BY LAW, SUFFERED BY ANY OF THE FOREGOING, TO THE VALUE OF THE COST OF REPAIR OR REPLACEMENT OF ANY DEFECTIVE PRODUCTS AND NO ACTUAL DAMAGES SUCH AS FOR LOST

PROFIT, LOSS OF PRODUCTION, PROPERTY DAMAGE, SPECIAL DAMAGES, CLAIMS OF CONSEQUENTIAL OR INCIDENTAL DAMAGES, EXEMPLARY OR PUNITIVE DAMAGES CLAIMED BY OR THROUGH SUCH INJURED PARTY ASSERTING SUCH CLAIMS ARE COMPENSABLE FOR BREACH OF THIS WARRANTY.

#### **10. Limitation of Liability**

In the event of non-warranty claims, Seller shall not be liable to Buyer for any indirect or special damages, including but not limited to punitive damages or lost profits. Except in cases involving willful misconduct or gross negligence, any such claims of Buyer shall be limited to the value of the underlying Order or contemplated transaction.

#### **11. Patents and Other Intellectual Property Rights.**

In the event Buyer supplies designs, specifications or instructions which are incorporated into the goods sold hereunder, or modifies any goods or combines them with other products, Buyer warrants that such goods will not infringe any patent, trademark, copyright or other intellectual property of another party, and Buyer further agrees to indemnify, hold harmless and defend Seller, its affiliates, successors, assigns, customers and users from and against any and all such losses, damages, liabilities, claims and demands (including attorney's fees) and lawsuits at law or equity for infringement of any patents, trademarks, copyrights or other intellectual property rights pertaining to the goods arising from Buyer's designs, specifications or instructions.

#### **12. Dispute Resolution, Arbitration.**

The parties agree to submit disputes to an arbitrator in Tampa, Florida applying the American Arbitration Association Rules. The proceeding shall be in English and enforceable in any court of competent jurisdiction according to applicable law and the United Nations Convention for the Enforcement and Recognition of Arbitral Awards unless the nature of the dispute is suitable to injunctive relief thereby affording a party the right to pursue redress in court without proceeding to arbitration.

#### **13. Jurisdiction, Law, Waiver of Right to Jury Trial.**

If a matter cannot be arbitrated, the parties submit to personal and subject matter jurisdiction of the courts of Tampa, Florida.

These Terms & Conditions and any transaction concluded hereunder shall be governed by the laws of the State of Florida, exclusive of its conflict of law provisions. The parties expressly exclude the United Nations Convention on the International Sale of Goods.

In the event of a dispute, neither party shall be entitled to claim consequential or incidental damages such as lost profits, special damages, exemplary or punitive damages. In the event of court proceedings, the parties waive their right to a trial by jury.

#### **14. Default and Remedies.**

If Buyer commits or suffers an act of bankruptcy, reorganization, merger, change in control, dissolution or bulk transfer, or violates the terms of an agreement with Seller, in addition to other remedies Seller may declare itself insecure and suspend performance of the Order until receiving adequate assurance of performance or treat such event as a default. The parties are entitled to exercise all remedies available at law or in equity which are cumulative and may be exercised at

any time and in any combination allowed by law. If Seller reasonably believes the financial condition of Buyer does not justify shipment on the within terms, Seller may make a written demand for full or partial payment in advance, suspend its performance until such payment is received or cancel the Order.

December 2019