



# Quantum Design UK and Ireland Ltd

## CONDITIONS OF SALE

### 1. DEFINITIONS

In these Conditions ("the Conditions")

1.1 "QUANTUM DESIGN UK AND IRELAND LTD" means QUANTUM DESIGN UK AND IRELAND LTD and where the context so admits or requires its employees and authorised sub-contractors.

1.2 "the BUYER" means the person, firm or company ordering the System from QUANTUM DESIGN UK AND IRELAND LTD.

1.3 "the Contract" means the contract for sale and purchase of the System made between QUANTUM DESIGN UK AND IRELAND LTD and the BUYER to which the Conditions and the Special Conditions (if any) apply.

1.4 "Documentation" means all software, information and data (including the Software and any documentation for the Software) which is provided by QUANTUM DESIGN UK AND IRELAND LTD to the BUYER in written, graphic or machine-readable form.

1.5 "the Site" means the location at which the System is to be installed.

1.6 "the Software" means any computer program or suite of computer programs whether on tape, disk or other reproductive medium or device detailed overleaf, and any other computer program supplied by QUANTUM DESIGN UK AND IRELAND LTD for use in conjunction or connection with the System.

1.7 "Special Conditions" means any terms set out by QUANTUM DESIGN UK AND IRELAND LTD in any quotation or acceptance of order issued by QUANTUM DESIGN UK AND IRELAND LTD, and in the event of any inconsistency between the Conditions and the Special Conditions the Special Conditions shall prevail.

1.8 "the System" means all and any of the systems and equipment detailed overleaf but excluding any software whatsoever.

### 2. APPLICATION, QUOTATIONS AND ORDERS

#### 2.1 Application

The Conditions and Special Conditions (if any) shall prevail over any inconsistent terms or conditions referred to in the BUYER's order or in correspondence or elsewhere and any conditions or stipulations to the contrary are hereby excluded and extinguished. No variation or waiver of or addition to the Contract shall be binding unless expressly agreed or confirmed in writing and signed by an authorised officer or representative of QUANTUM DESIGN UK AND IRELAND LTD.

#### 2.2 General Application



The Conditions shall also apply to any subsequent agreement between QUANTUM DESIGN UK AND IRELAND LTD and the BUYER (except to the extent they are expressly overridden by subsequent agreement in writing by the parties' authorised representatives) for the sale and purchase of spare parts or upgrades or other equipment and to the licence of any Documentation.

### 2.3 Quotations and Orders

Quotations by QUANTUM DESIGN UK AND IRELAND LTD shall unless otherwise specified and unless previously withdrawn remain effective for sixty (60) days from their date of issue. No quotation issued by QUANTUM DESIGN UK AND IRELAND LTD shall constitute an offer to sell the equipment the subject of the quotation. Orders for the System (other than spare parts) shall be made in writing and an order placed by the BUYER (whether in response to a quotation on QUANTUM DESIGN UK AND IRELAND LTD) shall constitute an offer made to QUANTUM DESIGN UK AND IRELAND LTD subject to the Conditions and any Special Conditions. Acceptance of such order (which shall constitute the Contract) shall only be by written acceptance of order signed by an authorised officer or representative of QUANTUM DESIGN UK AND IRELAND LTD or in default of such written acceptance of order by delivery.

## 3. PRICES

**3.1 Price Payable** The price(s) payable for the System shall be QUANTUM DESIGN UK AND IRELAND LTD's prices ruling at the date of dispatch, so that QUANTUM DESIGN UK AND IRELAND LTD shall have the right at any time before dispatch by notice to the BUYER to revise upwards or downwards quoted prices or prices set out in any Special Condition to take account of increases in costs including (without limitation) costs of acquisition of the System or any part thereof or parts therefore, raw materials, carriage, labour or other overheads and the increase or imposition of any tax, duty or other levy. Unless otherwise agreed all prices are and shall be paid in pounds sterling and are exclusive of the costs of carriage, packing, insurance, VAT and any other applicable taxes or duties which may from time to time be introduced, which shall be paid by the BUYER.

**3.2 Effect of Regulations etc.** If by reason of any law, governmental order or regulation the price, any other costs and/or terms of payment under the Contract or any increase, change or variation in such payment or the right of QUANTUM DESIGN UK AND IRELAND LTD to require or

receive any such payment shall be altered, prohibited or hindered in any way QUANTUM DESIGN UK AND IRELAND LTD may terminate the Contract forthwith by notice to the BUYER and shall repay to the BUYER any monies already paid to it by the BUYER in respect of the System.

## 4. PAYMENT AND CANCELLATION

**4.1 Deposits** - Deposits are payable on submission of order. QUANTUM DESIGN UK AND IRELAND LTD shall return any deposit so paid to the BUYER if QUANTUM DESIGN UK AND



IRELAND LTD does not accept the BUYER's order, or if the BUYER cancels the order prior to the date of dispatch pursuant to Condition 4.3, subject to the right of QUANTUM DESIGN UK AND IRELAND LTD to apply the deposit monies towards payment of any cancellation charges arising thereunder.

4.2 Standard payment terms are thirty (30) days

from the date of QUANTUM DESIGN UK AND IRELAND LTD's invoice in respect thereof.

However, we reserve the right to request non-standard payment terms. This will be shown on the quotation as "to be agreed".

4.3 Cancellation Policy QUANTUM DESIGN UK AND IRELAND LTD may accept cancellation of the BUYER's order up to 30 days before the date of dispatch of the System upon payment of a cancellation charge of 15% of the total price of the System. Additional charges shall be made where the System is custom designed or is adapted or upgraded to meet the BUYER's special requirements.

Payment of cancellation charges shall be 30 days from the date of QUANTUM DESIGN UK AND IRELAND LTD's invoice.

4.4 Set-off The BUYER shall in no circumstances be entitled to make any deduction from the price payable for the System by way of set-off or otherwise in respect of any claim or counterclaim which it may have against QUANTUM DESIGN UK AND IRELAND LTD.

4.5 Interest If the BUYER shall default in payment of the price on the due date any QUANTUM DESIGN UK AND IRELAND LTD reserves the right to charge daily interest on outstanding amounts (as well before as after judgment), which prejudice to any other of QUANTUM DESIGN UK AND IRELAND LTD rights, at a rate equal to 3% above National Westminster Bank plc Base Rate.

4.6 Default If the BUYER shall at any time default in payment of the price on the due date or if the BUYER's credit standing is at any time in the opinion of QUANTUM DESIGN UK AND IRELAND LTD impaired for any other reason QUANTUM DESIGN UK AND IRELAND LTD shall in addition and without prejudice to any other of its rights, have the right - (a) to demand forthwith payment for so much of the System as has been delivered to the BUYER whether or not any such payment is due; and/or (b) to withhold all deliveries of the System or the Software, any other products to be supplied by it to the BUYER under any other contract between them and any spare parts until such payment is made in full; and/or (c) to supply the System on a cash-on-delivery or on a cash in- advance basis or to require the BUYER to open an irrevocable confirmed letter of credit in favour of QUANTUM DESIGN UK AND IRELAND LTD or to provide security for future payments satisfactory to QUANTUM DESIGN UK AND IRELAND LTD.

## 5. DELIVERY, RISK AND TITLE

5.1 Delivery - In any case where the price includes freight charges or other costs of carriage, QUANTUM DESIGN UK AND IRELAND LTD shall have the right at its own discretion to select the route and means of transport for delivery of the System and, subject to Condition 5.2



QUANTUM DESIGN UK AND IRELAND LTD shall deliver the System at the Site (if named in the Special Conditions) or otherwise at the BUYER's premises.

5.2 Incoterms - In any case where the Special Conditions provide that the System is sold Ex Works, CIF, FOB or FOB Airport or on the basis of any other relevant trade term the meaning of such term contained in ICC Incoterms (1980) shall apply as if expressly incorporated in the Conditions or the Special Conditions to the extent that it is not inconsistent with any of the Conditions or the Special Conditions.

5.3 Delivery etc. Dates and any dates for installation or for acceptance are approximate only and whilst it will use its best endeavours to adhere to any such dates QUANTUM DESIGN UK AND IRELAND LTD shall be under no liability for any loss, injury, damage or expense consequent upon any delay in adhering to such date from whatever cause including the negligence of QUANTUM DESIGN UK AND IRELAND LTD. Delay shall not entitle the BUYER to cancel any order or to refuse to accept delivery of all or any of the System or of all or any other equipment pursuant to any contract between QUANTUM DESIGN UK AND IRELAND LTD and the BUYER.

5.4 Delayed Delivery If the BUYER fails to accept delivery on the due date the BUYER shall in addition to the invoice price pay all costs and expenses of storage and any additional costs of carriage and any other costs or expenses incurred as a result of such failure on the part of the BUYER. The System shall for all purposes be deemed to have been delivered to the BUYER on the date of the first attempted delivery of the System and may be invoiced to the BUYER accordingly.

5.5 Force Majeure QUANTUM DESIGN UK AND IRELAND LTD shall not be liable to the BUYER for any loss or damage which may be suffered by the BUYER as a direct or indirect result of the supply of the System by QUANTUM DESIGN UK AND IRELAND LTD being directly or indirectly prevented, hindered or delayed by reason of any circumstances outside the control of QUANTUM DESIGN UK AND IRELAND LTD and affecting the provision of all or any part of the System by QUANTUM DESIGN UK AND IRELAND LTD's usual source of supply or the delivery of the System by QUANTUM DESIGN UK AND IRELAND LTD's normal route or means of delivery, or other circumstances whatsoever, including (without limitation) any act of God, war, riot, strike, lock-out, trade dispute or labour disturbance, accident, breakdown of plant or machinery, failure or shortage of power supplies, fire, flood, drought, explosion, difficulty in obtaining workmen, materials or transport, refusal of any licence or permit or any order, sanction or request of any Government or governmental authority.

5.6 Risk Risk shall be as provided in the relevant trade term as described in Condition 5.2 above.

5.7 Title Until payment in full has been received by QUANTUM DESIGN UK AND IRELAND LTD for the System and any other goods supplied by QUANTUM DESIGN UK AND IRELAND LTD under this or any other contract between the BUYER and QUANTUM DESIGN UK AND IRELAND LTD:-

(a) the property in the System shall remain in QUANTUM DESIGN UK AND IRELAND LTD; and



(b) the BUYER will not remove the System, or allow it to be removed, from the Site or from the premises of the BUYER (other than to the Site) without QUANTUM DESIGN UK AND IRELAND LTD's prior written consent; and (c) the liberty of the BUYER to use the System in the ordinary course of business may be revoked at any time by QUANTUM DESIGN UK AND IRELAND LTD by notice in writing to the BUYER, whereupon the BUYER shall place the System at QUANTUM DESIGN UK AND IRELAND LTD disposal, and QUANTUM DESIGN UK AND IRELAND LTD shall be entitled to enter upon the BUYER's premises for the purpose of removing the same; and (d) QUANTUM DESIGN UK AND IRELAND LTD may at any time after delivery of the System and until the total price of the System has been paid in full maintain an action against the BUYER for such total price notwithstanding that title to the System has not passed or that the contract has terminated.

## 6. WARRANTY

6.1 Extent QUANTUM DESIGN UK AND IRELAND LTD warrants that the System shall for a period of twelve months from the date of delivery be free from defects in design, workmanship and materials, (other than defects attributable to ordinary wear and tear) and, where applicable, shall meet the specifications referred to in the Special Conditions. If the System does not conform to such warranty QUANTUM DESIGN UK AND IRELAND LTD shall at its option:-

(a) replace the System or any part of it found by QUANTUM DESIGN UK AND IRELAND LTD in its sole judgment not to conform to the warranty (all parts replaced by QUANTUM DESIGN UK AND IRELAND LTD becoming the property of QUANTUM DESIGN UK AND IRELAND LTD); or  
(b) take such steps as QUANTUM DESIGN UK AND IRELAND LTD deems necessary to bring the System into a state where it is free from such defects or meets such specifications.

PROVIDED THAT if there is a manufacturer's guarantee in force in respect of the System or any part thereof, the period of twelve months shall be substituted by the period left to expire of such manufacturer's guarantee.

6.2 Limitation Subject as herein provided the aggregate liability of QUANTUM DESIGN UK AND IRELAND LTD in contract, for negligence or otherwise shall in no event exceed the price payable or paid by the BUYER for the System and Performance of either one of the options under the above warranty shall constitute an entire discharge of QUANTUM DESIGN UK AND IRELAND LTD's liability under the above warranty.

6.3 Conditions The above warranty is conditional upon:-

(a) the BUYER providing QUANTUM DESIGN UK AND IRELAND LTD with adequate written notice of the alleged defect within the above warranty period;  
(b) the BUYER affording QUANTUM DESIGN UK AND IRELAND LTD reasonable opportunity to inspect the System on site;  
(c) the BUYER using and maintaining the System in accordance with any instructions or recommendations of QUANTUM DESIGN UK AND IRELAND LTD and in particular not subjecting





the System to misuse, abuse, neglect, accident, improper alteration or modification or negligence in use, storage, transportation or handling;

(d) as regards defects in design, the design in question not having been made, furnished or supplied by the BUYER.

## **7. LIABILITY, PATENTS COPYRIGHT AND TRADE SECRET INFRINGEMENT**

7.1 Nothing in the Contract shall exclude liability for:

(a) death or personal injury resulting from the negligence of QUANTUM DESIGN UK AND IRELAND LTD or of its employees while acting in the course of their employment.

(b) Direct physical loss of, or damage to, the property of the BUYER which is directly attributable to QUANTUM DESIGN UK AND IRELAND LTD's breach of contract, negligence or other cause PROVIDED THAT in no case shall the amount of such liability in respect of any one incident or series of incidents arising from a common cause exceed a sum equivalent to £100,000.

7.2 Save as provided in Conditions 6 and 7 QUANTUM DESIGN UK AND IRELAND LTD shall have no liability to the BUYER in respect of any defect in the System or other breach of contract of whatsoever nature or other default or negligence on the part of QUANTUM DESIGN UK AND IRELAND LTD its employees subcontractors or agents and all conditions warranties or other terms whether express or implied statutory or otherwise in relation to the System its quality and its fitness for any purpose are hereby excluded. Without prejudice to the generality of the foregoing QUANTUM DESIGN UK AND IRELAND LTD not be liable to the BUYER for any indirect or consequential loss or damage of any kind including any loss of business, contracts, profits or anticipated savings.

7.3 Indemnity The BUYER shall indemnify and keep indemnified QUANTUM DESIGN UK AND IRELAND LTD in respect of any loss or damage whatsoever arising from the claim of any person against QUANTUM DESIGN UK AND IRELAND LTD in relation to the System and against all associated damages losses costs and expenses. This indemnity shall be a continuing indemnity.

7.4 QUANTUM DESIGN UK AND IRELAND LTD shall indemnify the BUYER against all claims and proceedings arising from infringement (or alleged infringement) of any patent, design, copyright or trade secret, by reason of the BUYER's use or possession of the System or the Software. As a condition of this indemnity the BUYER shall:

(a) notify QUANTUM DESIGN UK AND IRELAND LTD promptly in writing of any allegation of infringement;

(b) make no admission relating to the infringement;

(c) allow QUANTUM DESIGN UK AND IRELAND LTD to conduct and settle all negotiations and proceedings and give QUANTUM DESIGN UK AND IRELAND LTD all reasonable assistance in respect thereof.

7.5 If at any time an allegation of infringement of patents, design, copyright or trade secret is made QUANTUM DESIGN UK AND IRELAND LTD may at its own expense modify the System or



the Software so as to avoid the infringement or may replace the System or the Software, so it becomes non-infringing.

7.6 The indemnity in Condition 7.4 does not apply to infringements occasioned by:-

(a) modification to the System or the Software not authorised by QUANTUM DESIGN UK AND IRELAND LTD;

(b) used of the System or the Software in combination with other products not supplied by QUANTUM DESIGN UK AND IRELAND LTD, or

(c) designs or specifications made by or to the order of the BUYER or the BUYER's customers.

The BUYER shall indemnify QUANTUM DESIGN UK AND IRELAND LTD against claims, proceedings and expenses arising from any such infringement.

## 8. SOFTWARE LICENCE

8.1 The BUYER agrees and acknowledges that QUANTUM DESIGN UK AND IRELAND LTD or the licensors of the Software have and shall retain all right, title and interest including copyright and any other intellectual property rights in and to the Software and the BUYER shall obtain only such rights as are specifically provided or referred to in the Conditions, the Special Conditions, or in any agreement in respect of the Software.

8.2 In any case where the Special Conditions provide that an agreement in respect of the Software is to accompany the delivery of the Software the BUYER shall enter into such agreement under QUANTUM DESIGN UK AND IRELAND LTD's then prevailing terms and conditions with QUANTUM DESIGN UK AND IRELAND LTD or with the licensor specified in such agreement.

8.3 In the absence of any such agreement referred to in Condition 8.2 supply of the Software to the BUYER shall be deemed to confer upon the BUYER a non-exclusive non-transferable paid up licence or sub licence from QUANTUM DESIGN UK AND IRELAND LTD or the licensor of the Software (as appropriate) to use the Software and Documentation only on the System upon and subject to the Conditions and in particular the following Conditions 8.4 to 8.9.

8.4 QUANTUM DESIGN UK AND IRELAND LTD shall supply the BUYER with a single copy of the Software in machine readable form and the BUYER shall not make or cause to be made any copy, reproduction, translation, adaptation, variation, version or modification of the Software (other than copies for back-up use and archival purposes) without the prior written consent of QUANTUM DESIGN UK AND IRELAND LTD

8.5 The BUYER shall keep the Software and the rest of the Documentation and all and any copies of the Software and the rest of the Documentations in whatever form at all times within its own control and shall take all steps necessary to ensure that such materials do not come into other hands whether by loan or theft or otherwise.

8.6 No right or licence granted to the BUYER in respect of the Software shall be assigned, sub-licensed or transferred or otherwise dealt with in any way without the prior written consent of QUANTUM DESIGN UK AND IRELAND LTD



8.7 All and any rights and licences granted to the BUYER in respect of the Software (and any other software supplied by QUANTUM DESIGN UK AND IRELAND LTD to the BUYER) shall terminate automatically without the need for notice on the part of QUANTUM DESIGN UK AND IRELAND LTD in the event of termination of the Contract for any reason.

8.8 Should the BUYER fail to comply with any of the Conditions or the Special Conditions relating to the Software or to the rest of the Documentation (and if capable of remedy fail to rectify such non-compliance within 30 days of written notice of it) or upon the occurrence in relation to the BUYER of any of the events specified in Condition 10.1(b) then (and in any such case) QUANTUM DESIGN UK AND IRELAND LTD reserves the right to give written notice to the BUYER terminating all and any rights and licences granted to the BUYER in respect of the Software (and any other software supplied by QUANTUM DESIGN UK AND IRELAND LTD to the BUYER) with immediate effect.

8.9 In the event of termination of the rights and licences granted to the BUYER in respect of the Software howsoever arising the BUYER shall return to QUANTUM DESIGN UK AND IRELAND LTD or destroy (as QUANTUM DESIGN UK AND IRELAND LTD shall direct) the Software the Documentation and all copies (in whole or in part) of the Software and (where required by QUANTUM DESIGN UK AND IRELAND LTD) certify that to the best of its knowledge all such copies have been returned or destroyed.

8.10 The BUYER shall not erase, remove, cover, deface or alter any trade mark, trade mark or copyright notice, guarantee or other statement or marking affixed or applied by QUANTUM DESIGN UK AND IRELAND LTD on or to (or incorporated in) the System the Software or any related technical or promotional material.

## 9. CONFIDENTIALITY AND INTELLECTUAL PROPERTY RIGHTS

9.1 Confidentiality The BUYER shall keep and shall procure that its directors, employees and agents shall keep confidential and shall not copy or part with possession of or otherwise disclose in any manner to any other person any of the Software or information relating to the System or any other of the Documentation including drawings, descriptions, part lists and other technical or promotional material supplied by QUANTUM DESIGN UK AND IRELAND LTD or any part of such information or material.

9.2 Policing The BUYER shall use its best endeavours to protect all intellectual property rights in the System and the Software and other Documentation and shall promptly inform QUANTUM DESIGN UK AND IRELAND LTD of any infringement or suspected infringement of such rights which may come to its attention.

## 10. TERMINATION

10.1 Breach If the BUYER:-

(a) fails to make any payment when it becomes due or shall default in due performance or observance of any other obligations under the Contract, or (b) shall cease or threaten to cease





to carry on business or make any composition with creditors or shall have entered into or shall propose to enter into any voluntary arrangement within the meaning of the Insolvency Act 1986, or suffer the appointment of a receiver, administrative receiver or administrator of the whole or any part of its assets or undertaking, or if an order shall be made or a notice be issued convening a meeting of shareholders to consider the passing of a resolution for or a resolution shall be passed for its winding-up (otherwise than for the purposes of amalgamation or reconstruction), or if the BUYER being an individual commits any act of bankruptcy or compounds with his creditors or takes or suffers any similar action in consequence of debt then (and in any such case), QUANTUM DESIGN UK AND IRELAND LTD may give written notice to the BUYER terminating the Contract forthwith.

10.2 Consequences Termination of the Contract howsoever arising shall be without prejudice to the rights and liabilities of either party which may have accrued on or at any time up to the date of termination or any of the provisions of the Contract (such as those relating to Confidentiality and Intellectual Property Rights) which are of a continuing nature.

## 11. GENERAL

11.1 All recommendations and advice whether oral or written given by or on behalf of QUANTUM DESIGN UK AND IRELAND LTD to the BUYER as to any methods of using or applying the System or the Software and the purposes to which the System or the Software may be applied are given without liability on the part of QUANTUM DESIGN UK AND IRELAND LTD.

11.2 All drawings, photographs, illustrations, specifications, performance data, dimensions, weights and the like, contained in any literature or other material supplied by QUANTUM DESIGN UK AND IRELAND LTD under or in connection with the Contract or otherwise communicated to the BUYER are provided or made by QUANTUM DESIGN UK AND IRELAND LTD in the belief that they are as accurate as reasonably possible, but except for current published QUANTUM DESIGN UK AND IRELAND LTD system and software specifications, they do not constitute a description of the System or of the Software, nor shall they be taken as representations by QUANTUM DESIGN UK AND IRELAND LTD nor are they warranted to be accurate.

11.3 No relaxation, forbearance, delay or indulgence by QUANTUM DESIGN UK AND IRELAND LTD in enforcing any of the terms or conditions of the Contract or the granting of time by it to the BUYER shall prejudice affect or restrict its rights and powers under the Contract.

11.4 The BUYER shall not assign, transfer, charge or otherwise deal with the whole or any part of the Contract without the prior written consent of QUANTUM DESIGN UK AND IRELAND LTD.

11.5 Any notice or invoice to be given hereunder shall be given by sending the same by prepaid first-class post, or by telex or by facsimile transmission to the principal place of business of the relevant party or to such other address as such party may have notified to the other for the purposes hereof. Any notice or invoice sent by post shall be deemed (in the absence of evidence of earlier receipt) to have been served ten days after dispatch. Any notice



sent by telex or facsimile transmission shall be deemed to have been served on the day following its dispatch.

11.6 The Contract will be governed by and construed according to the Laws of England.