

Quadra Concepts UK Limited (trading as Quadra AV Furniture)

Terms and Conditions of Sale, Installation and Maintenance of Equipment (hereafter 'these Terms')

1. Interpretation

1.1 In these Terms, the following words and expressions shall have the following meanings:

Quadra or Quadra AV Furniture - means Quadra Concepts UK Limited (CRN: 6322812) a company registered in England and Wales whose registered office is at Unit 5 Millfield Lane, Nether Poppleton, York, YO26 6PQ;

Customer - means the person whose details are set out on the Quotation; and where the Customer is a partnership references to "Customer" include all partners and each partner is jointly and severally liable for performance of the Customer's obligations under these Terms;

Contract - means the agreement made between Quadra AV Furniture and the Customer comprising these Terms, the Quotation and the Scope of Work;

Delivery and Installation Date(s) - means the estimated dates for the delivery and installation of the Equipment as set out in the Quotation;

Equipment - means the items of equipment and accessories specified on the Quotation and any other items of equipment agreed between the parties from time to time;

Price - means the price for the supply and installation of the Equipment as set out in the Quotation;

Quotation - means Quadra AV Furniture's quotation attached to these Terms;

Response Time - means, the number of hours, commencing from the time at which a notification in writing, e-mail or fax of the fault is received by Quadra AV Furniture, within which Quadra AV Furniture agrees to respond to notification of a fault, as set out in the Quotation and 8.3;

Scope of Work - means the document entitled "Scope of Work" agreed in writing between the parties setting out the Customer's operational, installation and performance requirements for the Equipment;

Site - means the address specified in the Quotation where Equipment is to be installed;

Warranty Period - means the period of 10 years commencing on the date on which the tests referred to in Condition 4.5 have been successfully completed;

Working Hours - means 08.30 a.m. to 16.30 p.m. Monday to Friday inclusive (excluding bank and public holidays in England).

1.2 Each Quotation is valid until the date specified in it, unless Quadra AV Furniture withdraws the Quotation before that date. If no date is specified in the Quotation, it shall be valid for 30 days from the date of the Quotation. The Contract shall not exist and these Terms shall not come into force until a valid Quotation signed by the Customer has been received by Quadra AV Furniture.

1.3 The Terms shall govern the Contract between Quadra AV Furniture and the Customer for the sale, installation of the Equipment to the exclusion of any agreement or terms which the Customer may purport to apply under any purchase order, confirmation of order, specification or other document.

1.4 If any of the provisions of these Terms, the Quotation and the Scope of Work are inconsistent, such inconsistency shall be resolved by applying the provisions of the documents in the following order of decreasing precedence to the extent of such conflict only:

- Scope of Work;
- Quotations;
- these Terms.

1.5 In these Terms the headings are for ease of reference only and the plural shall include the singular and vice versa.

2. Scope of Terms

2.1 in accordance with the Contract Quadra AV Furniture will:

2.1.1 supply and if applicable install the Equipment at the Site;

2.2 The Customer will:

2.2.1 pay the Price and other sums in accordance with the Quotation and variations thereto due to Quadra AV Furniture in accordance with these Terms; and

2.2.2 perform its obligations under these Terms in a timely manner and co-operate with Quadra AV Furniture to enable Quadra AV Furniture to perform its obligations under the Contract.

Supply and Installation of Equipment

3. Supply of the Equipment

3.1 The price for the supply and installation of the Equipment shall be as set out in the Quotation and, unless stated otherwise in the Quotation, and subject to Condition 3.2, Quadra AV Furniture shall invoice the Customer any time after completion of the delivery of the Equipment and such invoice shall be payable within 30 days of the date of Quadra AV Furniture's invoice.

3.2 The Customer warrants to Quadra AV Furniture that the Scope of Work contains all the Customer's requirements in relation to the Equipment. The Customer is responsible for ensuring that the contents of the Quotation and the Scope of Work are complete and accurate.

3.3 The Equipment will be as described in the Quotation. Quadra AV Furniture reserve the right to amend the design of the Equipment to facilitate better and more efficient manufacture, assembly and installation. All drawings, descriptive matter, specifications and advertising issued by Quadra AV Furniture or contained in Quadra AV Furniture's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the equipment described in them. They shall not form part of the Contract.

3.4 If the Equipment is delivered to the Customer prior to installation the Equipment will be at the Customer's risk from the time of delivery until commencement of installation and during that period the Customer will insure the Equipment against damage, loss, theft or any other disastrous event and in accordance with 3.6 of these Terms.

3.5 Ownership of the Equipment will not pass to the Customer until Quadra AV Furniture has received in full in cash or cleared funds:

3.5.1 all sums payable in respect of the supply and installation of the Equipment; and

3.5.2 all other sums which are or which become payable by the Customer to Quadra AV Furniture on any account including any interest on such sums.

3.6 Until ownership of the Equipment has passed to the Customer, the Customer shall:

3.6.1 hold the Equipment on a fiduciary basis as Quadra AV Furniture's bailee; keep the Equipment separate from other equipment belonging to the Customer or any third party in a way that it is readily identifiable as Quadra AV Furniture's property; and not destroy, deface or obscure any identifying mark or packaging on or relating to the Equipment; and/or

3.6.2 keep the Equipment in satisfactory condition insured for its full price against all risks, hold the proceeds of insurance on trust for Quadra AV Furniture and not mix them with any other money, nor pay them into an overdrawn bank account.

3.7 The Customer's right to possession of the Equipment shall terminate immediately and all sums shall become due and payable immediately and the Customer agrees that Quadra AV Furniture shall have the right to rescind or terminate any order for the Equipment (including where the Equipment has been delivered) and/or to suspend any further deliveries under any order for the Equipment if before ownership of the Equipment has passed to the Customer:

3.7.1 the Customer encumbers or in any way charges any of the Equipment or suffers or allows any execution, whether legal or equitable, to be levied on the Customer's property or obtained against the Customer, or fails to observe or perform any of the Customer's obligations under the Terms or the Customer ceases to trade.

3.8 Quadra AV Furniture shall be entitled to recover payment for the Equipment and installation notwithstanding that ownership of any of the Equipment has not passed from Quadra AV Furniture.

3.9 The Customer grants Quadra AV Furniture, its agents and employees an irrevocable licence at any time to enter any premises where the Equipment is or may be kept (including but not limited to the Site) in order to inspect it or, where the Customer's right to possession has terminated, to recover it.

3.10 The Customer shall inform in writing by e-mail or fax Quadra AV Furniture immediately if the Customer intends to delay or cancel the Contact for the Equipment. Quadra AV Furniture shall charge the Customer an amount equal to the elements of the Price relating to the provision of the Equipment, to the extent that Quadra AV Furniture is unable to reallocate such elements of the Contract to another job for Quadra AV Furniture. Such elements of the Price shall be without prejudice to Quadra AV Furniture's right to charge the Customer for those elements of the Price which relate to services, goods or third party disbursements which it has incurred before the time it receives notification of such cancellation or postponement.

3.11 On termination of the Terms, howsoever caused, Quadra AV Furniture's (but not the Customer's) rights contained in this Condition 3 shall remain in effect.

4. Delivery and Installation of the Equipment

4.1 Any date specified for delivery and/or installation is an estimate only and time for delivery or installation shall not be of the essence or capable of being made of the essence by notice. Quadra AV Furniture will not be liable for any losses (including loss of profit) or costs incurred by the Customer which are caused by any delay in the delivery or installation of the Equipment nor will any delay entitle the Customer to terminate or rescind the Contract.

4.2 Subject to Condition 4.3 and to the Customer complying with its obligations under the Contract and unless otherwise agreed, Quadra AV Furniture will carry out the manufacturing and installation of the Equipment at the Site following delivery of all Equipment.

4.3 Quadra AV Furniture shall have the option to inspect the Site before installation of the Equipment to confirm that the Site is suitable for the installation of the Equipment. If in Quadra AV Furniture's opinion the Site is not suitable, Quadra AV Furniture will notify the Customer of the issues that need to be rectified before installation can take place. Inspection of the Site in accordance with this Condition 4.3 will not render Quadra AV Furniture liable in any respect for the suitability of the Site.

4.4 The Customer will provide Quadra AV Furniture with a stabilized clean mains power supply and technical earth at the Site, in accordance with Quadra AV Furniture's reasonable instructions, and maintain the same until the Equipment is installed.

4.5 The Customer warrants that it has obtained any necessary consents, including but not limited to landlord consents, listed building consents, conservation area consents, planning permissions and building regulations approvals (together "Relevant Consents") as may be required for the installation of the Equipment at the Site, and that it will notify Quadra AV Furniture of any specific requirements of such Relevant Consents which are applicable to the installation of the Equipment at the Site.

4.6 If the Customer has not fully complied with its obligations under the Contract at the time Quadra AV Furniture is due to commence installation of the Equipment, Quadra AV Furniture shall be entitled to remove the Equipment from the Site and give notice in writing to the Customer requiring it to perform its obligations within the time period specified in the notice. The Customer will be liable to Quadra AV Furniture for all loss, damage, costs and expenses suffered or incurred by Quadra AV Furniture as a result of the Customer's breach and Quadra AV Furniture may require payment of such sums prior to installation of the Equipment. If the Customer fails to remedy the breach or make the required payment, Quadra AV Furniture may terminate the Contract by notice in writing to the Customer.

4.5 Following installation of the Equipment, Quadra AV Furniture will carry out tests to confirm that the Equipment is operating in accordance with the Scope of Work. Following completion of such tests the Customer shall sign an Delivery Note as Quadra AV Furniture requires confirming the same. The Customer's acceptance of the Equipment shall be deemed to have occurred on whichever is the earliest of:

4.5.1 the signing by the Customer of the Delivery Note referred to in 4.5 above;

- 4.5.2 the expiry of five days after the completion of the tests referred to in 4.5; and
- 4.5.3 the use of the Equipment by the Customer in the normal course of its business.

5. Quadra AV Furniture's Warranties

5.1 Subject to the provisions of Condition 5.2 below, Quadra AV Furniture warrants to the Customer:

5.1.1 that Quadra AV Furniture has full right and title to the Equipment and the right to pass title in the Equipment to the Customer ;

5.1.2 Quadra AV Furniture shall install the Equipment with reasonable care and skill; and

5.1.3 that during the Warranty Period the Equipment will perform substantially in accordance with the Scope of Work and be free from defects arising from defective materials or workmanship.

5.2 The warranties contained in Condition 5.1 are given subject to the following:

5.2.1 any claims made pursuant to Condition 5.1 must be notified to Quadra AV Furniture within the Warranty Period and must include a written statement of the defect and evidence of its the existence;

5.2.2 replacement parts supplied are warranted only for the unexpired portion of the Warranty Period;

5.2.3 the Customer and/or the Customer's employees have operated the Equipment (or relevant part thereof) at all times in accordance with the operational manual or manuals provided to the Customer by Quadra AV Furniture in accordance with Condition 4.8 for each constituent item of the Equipment;

5.2.4 the Customer is not in breach of any of the Customer's obligations pursuant to the Contract; and

5.2.5 the Equipment has not been modified, altered or interfered with in any way without Quadra AV Furniture's prior written consent or been subject to misuse, improper maintenance, negligence or other damage; and

5.2.6 Quadra AV Furniture shall not have any liability for Third Party equipment.

5.3 In the event of a breach of any of the warranties contained in Condition 5.1, Quadra AV Furniture's liability to the Customer:

5.3.1 with regard to the supply and installation of Equipment, shall be limited to repairing or replacing or re-installing the Equipment in question; and

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6. Price and Payment Terms

6.1 All prices, fees and other sums due under the Contract shall be exclusive of any value added tax at the prevailing rate. Further and unless they are included in the Quotation all costs or charges in relation to loading, unloading, carriage and insurance which the Customer shall pay in addition at the then prevailing rate.

6.2 The price for supply and installation of the Equipment and all other prices quoted by Quadra AV Furniture for the provision of services apply on the basis that work will be carried out during Working Hours. If, at the Customer's request, Quadra AV Furniture performs any services outside Working Hours Quadra AV Furniture will charge for such work a supplementary charge at Quadra AV Furniture's then prevailing rates. For the avoidance of doubt nothing in these Terms shall oblige Quadra AV Furniture to perform work outside Working Hours.

6.3 The Customer will make all payments due to Quadra AV Furniture under these Terms without any deduction by way of set-off, counterclaim, discount, abatement or otherwise.

6.4 If the Customer fails to pay Quadra AV Furniture any sum due pursuant to the Terms on the due date the Customer will be liable to pay interest to Quadra AV Furniture on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Quadra AV Furniture's bankers accruing on a daily basis until payment is made, whether before or after any judgment.

6.5 The Customer shall not be entitled to delay any payments due under these Terms by reason of a failure or delay in the performance by Quadra AV Furniture of its obligations under the Contract.

6.6 Time shall be of the essence for all payments payable by the Customer under the Terms.

7. Customer's Obligations and Acknowledgements

7.1 The Customer agrees throughout the continuance of the Terms:

7.1.1 to grant Quadra AV Furniture such access to the Equipment and/or the Site as Quadra AV Furniture reasonably requires from time to time in order to discharge its obligations under the Contract;

7.1.2 to make available in respect of the Equipment such facilities as Quadra AV Furniture reasonably requires in order to discharge Quadra AV Furniture's obligations under the Contract including, without limitation, adequate workspace, storage, office furniture and equipment;

7.1.3 to take all necessary precautions to protect the health and safety of Quadra AV Furniture's employees, agents and sub-contractors whilst on the Site;

7.1.4 to make available the Equipment and supply all documentation, operating records and any other information necessary for Quadra AV Furniture to discharge its obligations under the Contract;

7.1.5 to keep and operate the Equipment in a proper and prudent manner and ensure that only competent trained persons are allowed to operate it;

7.1.6 not to make any addition, modification or adjustment to the Equipment without Quadra AV Furniture's prior written consent; and

7.1.5 to provide any other assistance as is reasonably required by Quadra AV Furniture in order to perform its obligations under the Terms..

7.2 The Customer warrants that all information it provides to Quadra AV Furniture including the information on the Quotation is true and accurate and agrees that Quadra AV Furniture may disclose information about the Customer and the Contract as Quadra AV Furniture considers reasonable and necessary.

8. Limit of Liability

8.1 The provisions of 5 above and the following provisions of this clause 8 set out Quadra AV Furniture's entire liability (including any liability for the acts or omissions of Quadra AV Furniture's employees, agents and sub-contractors) to the Customer in respect of any:

8.1.1 breach of the Contract;

8.1.2 representation, statement or tortious act or omission, including negligence or breach of statutory duty, arising under or in connection with the Contract.

8.2 All warranties, Terms and other terms implied by statute or common law (save for the Terms implied by section 6 of the Sale of Goods Act 1959) are, to the fullest extent permitted by law, excluded from the Contract.

8.3 Nothing in these Terms excludes or limits Quadra AV Furniture's liability:

8.3.1 for death or personal injury caused by Quadra AV Furniture's negligence;

8.3.2 under section 2(3) of the Consumer Protection Act 1985;

8.3.3 for any matter which it would be illegal for Quadra AV Furniture to exclude or attempt to exclude its liability; or

8.3.4 for fraud or fraudulent misrepresentation.

8.4 Subject to Terms 5, 8.2 and 8.3:

8.4.1 Quadra AV Furniture shall not be liable to the Customer or any Third Party for any pure economic loss, loss of profit, goodwill, business opportunity or production downtime or any type of indirect or consequential loss or damage, costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract; and

8.4.2 Quadra AV Furniture's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited:

(a) in relation to loss of or damage to the Equipment or any part of it caused by Quadra AV Furniture's negligence, to Quadra AV Furniture at its own expense and at its absolute discretion either restoring such Equipment or part to the condition it was in immediately before such damage or replacing such Equipment or part with items or part (as the case may be) in a condition similar to that which the lost or damaged Equipment or part was in immediately before such loss or damage;

(b) in relation to loss of, or physical damage to, the Site or to any property, other than the Equipment, lawfully on the Site caused by Quadra AV Furniture's negligence, to £100,000 per event or in aggregate whether the same shall arise out of any single event or a series of connected events;

(c) in relation to any other breach, to the price paid by the Customer for the supply and installation of the Equipment the subject of the claim.

8.5 In no event will Quadra AV Furniture be liable in respect of any failure by the Customer to comply with any Relevant Consents as defined in Condition 4.5 above or to perform any of its other obligations under the Contract.

8.6 During the continuance of the Contract Quadra AV Furniture shall have Employer's Liability insurance of not less than £10 million in respect of any one occurrence, Public Liability Insurance of not less than £5 million in respect of any one occurrence, and Product Liability Insurance of not less than £5 million in respect of any one occurrence and in aggregate.

9 Events beyond Quadra AV Furniture's control

Quadra AV Furniture reserves the right to defer the date of delivery and installation of the Equipment or to cancel the Contract (without liability to the Customer) if Quadra AV Furniture is prevented from or delayed in carrying on its business due to circumstances beyond Quadra AV Furniture's reasonable control including, without limitation, acts of God, governmental actions, war or national emergency, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), restraints or delays affecting carriers or sub-contractors or inability or delay in obtaining supplies of adequate or suitable materials.

10. Change Control and Technology Substitution

10.1 The Customer may, by giving written notice to Quadra AV Furniture at any time prior to the delivery and installation of the Equipment, request a change to the Equipment.

10.2 Within seven Working Days of receipt of such written notice, Quadra AV Furniture shall, at its standard rates then in force, prepare for the Customer, as appropriate, a written quote for or estimate of any increase or decrease in the Price and Initial Maintenance Fee, and of any effect that the requested change would have on the Terms and the Delivery and Installation Date.

10.3 Within 8 Working Days of receipt of the written quote or estimate referred to in Condition 10.2, the Customer shall notify Quadra AV Furniture in writing whether or not it wishes the requested change to be made. If the change is required, Quadra AV Furniture shall not make the requested change until the parties have agreed and signed a written variation specifying, in particular, any changes to the Contract, the Delivery and Installation Date, Price. If the Customer does not wish the requested variation to be made the Delivery and Installation Date set out in the Quotation will be amended as appropriate to reflect the time taken by the variation negotiation process.

11. Confidentiality

11.1 Except as may be required by law, the Customer agrees to keep all information disclosed to it in the course of the Contract confidential and to use it only for the purpose of performing its obligations under the Contract. The Customer shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the party's obligations under the Contract and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as the recipient.

11.2 This Clause 11 shall survive termination of the Terms.

12. Miscellaneous

12.1 Any termination of the Contract or any part of it shall not release any liability of either party arising from events prior to the termination. Any terms which either expressly or by their nature are to continue after termination shall survive and remain in effect.

12.2 These Terms, the Quotation and the Scope of Work contain the entire Contract between the parties with respect to the subject matter of the Contract and supersede all oral and written communications and any prior agreement with respect thereto. No variation to the Contract shall have effect unless expressly agreed to in writing and signed by duly authorised representatives of Quadra AV Furniture and the Customer.

12.3 The Customer acknowledges that, in entering into the Contract it has not done so on the basis of or relied on any representation, warranty or other provision except as expressly provided in the Contract.

12.4 The Customer shall not assign or otherwise transfer any of its rights or obligations under the Contract without Quadra AV Furniture's prior written consent, such consent not to be unreasonably delayed or withheld. Quadra AV Furniture shall be entitled to assign or sub-contract any of its rights or obligations under the Contract to any holding, associated or subsidiary company.

12.5 Any notice or other document to be given under the Contract shall be in writing, e-mail or fax and shall be deemed to have been served (if delivered by hand) on the date of delivery, (if delivered by first class post) on the second Working Day following the date of posting, (if given by facsimile transmission) on the date of transmission provided that within 24 hours after transmission a confirming copy thereof is sent by first class prepaid post to the other party at the address set out in the Contract.

12.6 Nothing in these Terms confers on any third party any benefit or any right to enforce any of these Terms.

12.5 In the event that any of the terms, conditions or provisions of the Contract shall be determined by any competent authority to be invalid, unlawful, unenforceable or unreasonable to any extent, such terms, conditions or provisions shall to that extent be severed from the body of the Contract and the remainder thereof shall continue to be valid and enforceable to the fullest extent permitted by law.

12.8 Failure or delay by Quadra AV Furniture in enforcing or partially enforcing any provision of the Terms will not be construed as a waiver of any of its rights under the Contract. Any waiver by Quadra AV Furniture of any breach of, or any default under, any provision of the Contract by the Customer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.

12.9 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the jurisdiction of the English Courts.