

# QUMU HARDWARE TERMS

These Hardware Terms outline the terms on which Qumu provides Hardware to a Client pursuant to an Order Form when the Client is using such Hardware in conjunction with Qumu's Cloud Platform or Hybrid Services. These Hardware Terms are made by and between the Qumu legal entity identified on the Order Form ("Qumu") and the client legal entity identified in the Order Form (the "Client"). Each Party agrees that the following terms and conditions govern each Order Form that references these Hardware Terms in addition to terms of the Cloud Agreement (defined below).

## **PREAMBLE:**

WHEREAS, Qumu distributes Hardware owned by Qumu or a or a third-party supplier of Qumu; and

WHEREAS, the Client desires to purchase the Hardware listed in an Order Form in conjunction with its license to use the Cloud Platform, related Software and Hybrid Services pursuant to its agreement to the Qumu Agreement for the Provision of the Qumu Cloud Platform (the "**Cloud Agreement**") and entrance into an Order Form for the use of the Qumu Cloud Platform, related Software and Hybrid Services. These Hardware Terms apply in addition to the terms of the Cloud Agreement.

NOW THEREFORE, in consideration of the mutual benefits of the covenants and restrictions herein contained, Qumu and the Client hereby agree to the following terms and conditions:

## 1. **ARTICLE 1: DEFINITIONS**

Unless otherwise defined herein, all capitalized terms shall have the meaning attributed to them in the Cloud Agreement. The following definitions shall apply to these Hardware Terms.

- 1.1. "**Delivery Date**" means the date the Hardware is shipped to the Client.
- 1.2. "**Effective Date**" means either: i) if these Hardware Terms are to be signed, the date the last party executes these Hardware Terms; or ii) if these Hardware Terms will not be signed and will be incorporated by reference under an Order Form or other applicable document, the date the last party executes such Order Form or other applicable document.
- 1.3. "**FCA**" shall have the meaning given to that term in the Incoterms.
- 1.4. "**FOB Origin**" shall have the meaning to the term F.O.B the place of shipment as per section 2-319 of the Uniform Commercial Code.
- 1.5. "**Hardware**" means any hardware or other equipment supplied by Qumu to the Client as specified in the Order Form.
- 1.6. "**Incoterms**" means the international rules for the

interpretation of trade terms of the International Chamber of Commerce 2010 edition.

- 1.7. "**Qumunity**" means Qumu's help center website available at <https://qumunity.qumu.com>.
- 1.8. "**Term**" means a period of time commencing on the Effective Date and continuing until these Hardware Terms is terminated or canceled under article 5.
- 1.9. "**Third Party Technology**" means third party software, hardware, peripherals, components, devices, equipment and technology used in connection with or related to Hardware.
- 1.10. "**Warranty Term**" means, unless otherwise noted in an Order Form, a period of time commencing on the Delivery Date and ending one year thereafter for Hardware.

## 2. **ARTICLE 2: HARDWARE**

- 2.1. Qumu agrees to sell Hardware to the Client pursuant to an Order Form for Hardware between the Client and Qumu.
- 2.2. End Use: The Client hereby represents and warrants that it shall only use the Hardware for its own use and not for rental, leasing, resale, sublicensing, distribution, outsourcing, or offering service bureau services or software as a service purposes.

## 3. **ARTICLE 3: DELIVERY AND TRANSFER OF RISK OF LOSS**

### 3.1. Delivery of Hardware:

- (a) U.S. shipments. The following terms apply to shipments of Hardware to a destination within the United States:
  - i. Unless otherwise agreed on an Order Form, Qumu shall arrange for the Hardware to be shipped FOB Origin. The Client shall pay all freight charges for the delivery of the Hardware in accordance with these Hardware Terms and the terms of the relevant Order Form. Qumu shall add such freight charges to the Client's invoice for the Hardware purchased by the Client. The Client shall be responsible for procuring all necessary insurance and for filing any claims with the carrier; or
  - ii. Subject to Qumu's prior written agreement, the Client may directly pay a carrier for the Hardware to be shipped FOB Origin, in which event the Client shall be directly responsible for all shipping costs, procuring all necessary insurance and for filing any claims with the carrier.
- (b) Non-U.S. shipments. The following terms apply to shipments to a destination outside the United

States:

- i. Unless otherwise agreed on an Order Form, Qumu shall arrange for the Hardware to be shipped FCA, Qumu's premises or other point of origin. The Client shall pay all charges for shipping or related costs after the Hardware leaves Qumu's premises; and
- ii. the Client shall be directly responsible for paying all shipping costs, procuring all necessary insurance and for filing any claims with the carrier.

(c) All shipments of Hardware:

- i. Qumu does not guarantee delivery on a specific date. Delivery schedules are estimates only and are based upon prompt receipt from the Client and appropriate governmental authorities of all necessary information and documentation. The date and time of delivery is not of the essence. In the event that Qumu, or the nominated carrier, fails to deliver within an agreed schedule, for any reason, such failure shall not entitle the Client to terminate these Hardware Terms or the Order Form for the Hardware, and shall not form the basis for a claim for consequential, liquidated or other damages.
- ii. Qumu reserves the right to deliver in partial shipments or installments.
- iii. the Client hereby agrees that it shall be deemed to have waived any non-conformity which is discoverable upon visual inspection if such non-conformity is not reported to Qumu in writing within three (3) business days after delivery by the carrier or reported orally to Qumu within three (3) business days and confirmed in writing within five (5) business days after delivery by the carrier.

3.2. Transfer of Risk of Loss for Hardware: All risk of loss or damage will transfer to the Client at the time of shipment from Qumu's premises or other point of origin.

3.3. Transfer of Title to the Hardware: Title to the Hardware shall only pass to the Client once Qumu receives payment in full in cleared funds for the Hardware. Until title to the Hardware passes to the Client, the Client shall (a) keep the Hardware separate from all other hardware so that they remain readily identifiable as Qumu's property; (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Hardware; and (c) not encumber, charge, sell or otherwise dispose of the Hardware.

#### 4. **ARTICLE 4: PAYMENT**

4.1. Price and Invoicing: Except as expressly set forth in the applicable Order Form, the Client shall pay the amounts listed on the applicable Order Form pursuant to the terms of the applicable invoice and shall pay all invoices in accordance with the provisions set out in the Cloud Agreement.

4.2. Costs: The Client shall pay all third-party costs incurred by Qumu in performing these Hardware Terms. Such costs shall include (without limitation) freight and related insurance fees if applicable.

#### 5. **ARTICLE 5: TERMINATION**

5.1. Term and Termination: These Hardware Terms shall, unless otherwise terminated in accordance with the terms of these Hardware Terms, continue in force for as long as there is an Order Form existing between Qumu and the Client which incorporates these Hardware Terms.

5.2. Return: Upon termination or cancellation of these Hardware Terms, the Client shall promptly remove or return (at the Client's expense) any Hardware for which Client has not fully paid or was purchased on a term license under an Order Form, and to return all materials provided by Qumu to Client hereunder, and shall provide Qumu with a certificate of compliance with this article 5.4 signed by an authorized representative of the Client. Notwithstanding the foregoing, the Client shall be entitled to retain the Hardware purchased and paid for by the Client.

#### 6. **ARTICLE 6: WARRANTY AND LIABILITY**

6.1. Hardware Warranty and exclusions:

(a) Hardware Warranty: Qumu warrants the Hardware against defects in materials and workmanship under normal use for the Warranty Term. If a Hardware defect arises and a valid claim is received within the Warranty Term, at its option and to the extent permitted by law, Qumu will either:

- i. repair the defect at no charge, using new or refurbished replacement parts; or
- ii. exchange the Hardware with Hardware that is new or has been manufactured from new or serviceable used parts and is at least functionally equivalent to the original Hardware.

(b) Exclusions: Neither the foregoing warranty in article 6.1 (a) nor the terms of any maintenance or support agreement apply:

- i. to damage caused by use with non-Qumu products without the written permission of Qumu;
- ii. to damage caused by accident, abuse, neglect, misuse, flood, fire, earthquake, or other external causes;

- iii. to damage caused by operating the Hardware outside the permitted or intended uses;
  - iv. to damage caused by services (including upgrades and expansions) performed by anyone who is not a representative of Qumu or a Qumu authorized service provider;
  - v. to Hardware that has been modified to alter functionality or capability without the written permission of Qumu;
  - vi. to cosmetic damage, including but not limited to scratches, dents, and broken plastic on ports;
  - vii. if any Qumu serial number has been removed or defaced; or
  - viii. after the Warranty Term has expired.
- 6.2. Third Party Warranties: To the extent permitted under the terms of Qumu's agreements with the relevant Hardware manufacturers, Qumu hereby assigns to the Client the benefit of any and all manufacturer warranties for Third Party Technology, and may cooperate (as mutually agreed by the parties) with the Client in securing the benefit of any remedies available to the Client under any such manufacturer warranty.
- 6.3. Disclaimer: THE WARRANTIES SET FORTH IN ARTICLES 6.1, 6.2 AND 6.4 ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, QUMU HEREBY DISCLAIMS AND THE CLIENT HEREBY WAIVES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING (WITHOUT LIMITATION) ANY AND ALL IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND IMPLIED WARRANTIES OF MERCHANTABILITY.
- 6.4. Express Warranties: The Client hereby acknowledges and agrees that Qumu (including Qumu's officers, employees, agents, directors, independent contractors, affiliates, distributors and successors) has not made or granted any warranties concerning the Hardware except as expressly set forth in this article 6.
- 6.5. Cooperation: The Client shall cooperate with Qumu by providing Qumu with information concerning Hardware as may be requested by Qumu from time to time and by providing Qumu with access to the personnel, facilities, computers, computer software and data of the Client.
- 6.6. Repossession: If the Client fails to pay the balance of the price when due (as provided in article 4.1), and the Client fails to make any payment within thirty (30) days after receiving written notice from Qumu that such payment is delinquent, Qumu shall have the right to require the Client to return to Qumu the

Hardware and all materials provided by Qumu to the Client hereunder. If the Client fails to return the Hardware, Qumu shall have the right to enter the Client's facilities and to repossess the Hardware without further notice. If any event of bankruptcy occurs before payment of the balance of the price when due (as provided in article 4.1), Qumu shall be entitled to any and all remedies available to a secured creditor under applicable law, including, as applicable and without limitation, the U.S. Bankruptcy Code and applicable state or federal law.

## 7. **ARTICLE 7: INTELLECTUAL PROPERTY**

- 7.1. Ownership and Title: The Client acknowledges and agrees that Qumu and/or its licensors own all Intellectual Property Rights in the Hardware.
- 7.2. Trademarks: Qumu trademarks, trade dress, logos, trade names or insignia ("**Qumu Marks**") are owned exclusively by Qumu. Qumu shall retain all rights, title and ownership interests in Qumu Marks.

## 8. **ARTICLE 8: MISCELLANEOUS**

- 8.1. Entire Hardware Terms and Non-reliance: This Hardware Terms and any Order Forms, and any other attachment or exhibit to these Hardware Terms contain the entire understanding of the parties and supersede:
- (a) previous verbal and written agreements between the parties; and
  - (b) the Client's order confirmation or other purchasing related document concerning the Products; and all conflicting terms of such verbal statement or document shall be of no force or effect.

Each party agrees that it has not entered into these Hardware Terms (or any agreement or document entered into pursuant to these Hardware Terms) in reliance upon any statement, representation, covenant, warranty, undertaking or understanding (whether negligently or innocently made) of any person (whether party to these Hardware Terms or not) except as expressly set out in these Hardware Terms. Nothing in this provision shall exclude any liability on the part of either party for fraud or fraudulent misrepresentation.

## 8.2. Conflict and Precedence.

- (a) In the event of a conflict between the terms of these Hardware Terms and the terms of an Order Form, the terms of such Order Form shall prevail.
- (b) In the event of a conflict between the terms of these Hardware Terms and the terms of the Cloud Agreement, then the terms of the Hardware Terms will prevail in relation to Hardware and the provision of such Hardware to a Client only and the terms of the Cloud Agreement shall prevail in all other circumstances.

8.3. Import and Export Compliance: In connection with these Hardware Terms, each party will comply with all applicable import, re-import, export, and re-export control laws and regulations, including the Export Administration Regulations, the International Traffic in Arms Regulations, and country-specific economic sanctions programs implemented by the Office of Foreign Assets Control. For clarity, the Client is solely responsible for compliance related to the manner in which the Client chooses to use the Products, including the transfer and processing of the Client's content or data and the provision of the Client's content or data to any third party.