

## **McQuay International Electronic Media Agreement Terms and Conditions of Use, Privacy Statement And Conditional License,**

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Your participation in on-line communications is not edited, censored, or otherwise controlled by McQuay. McQuay does not and cannot screen content provided by users. Nevertheless, McQuay reserves the right to monitor content on McQuay Electronic Media and to remove content which McQuay, in its sole discretion, determines to be harmful, offensive, illegal, or in violation of these Terms and Conditions of Use. The following rules shall apply:

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- C. You may not interfere with others' use of McQuay Electronic Media.
- D. You may not post or transmit any destructive programming or files, including without limitation code or files containing viruses, Trojan horses, or worms.
- E. You may establish hyperlinks to our Home Page for your own use, but may not link to other pages within our site. You may not create any link to our Website for any commercial purpose, nor use any other technology, such as framing, which suggests to others that our Website is provided or sponsored by anyone other than McQuay.
- F. You may not post or transmit any charity requests, petitions, chain letters or messages pertaining to multi-level marketing or pyramid schemes, advertising, promotional materials or other solicitations of others to provide or acquire goods or McQuay Electronic Media.
- G. You may not use McQuay Electronic Media to conduct any illegal activity or to solicit any illegal activity or other activity that infringes the rights of others.

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You understand and agree that McQuay does not warrant that files available for download will be free of viruses, worms, Trojan horses or other destructive programming. You are responsible for implementing procedures sufficient to satisfy your needs for data back up and security. You agree that McQuay shall not be liable for any cost or damage arising directly or indirectly from any such code. You assume total responsibility and risk for your use of McQuay Electronic Media and of the Internet. McQuay does not warrant that McQuay Electronic Media will be uninterrupted or

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#### **7. Indemnity**

You agree to defend, indemnify, and hold McQuay, its officers, directors, shareholders, affiliates, agents, employees, and licensors harmless and to defend them against all claims, losses, expenses, damages and costs, including without limitation reasonable attorneys fees, resulting from any violation of this Agreement by you.

#### **8. Governing Law; Jurisdiction and Venue; Limitation of Actions**

This Agreement shall be governed and construed in accordance with the laws of the State of Minnesota applicable to agreements and performed in Minnesota, excluding any conflicts of laws statutes and the United Nations Convention on the International Sales of Goods. The laws of the United States shall apply when Minnesota State law does not. You agree that any legal action or proceeding between McQuay and you concerning this Agreement, McQuay Electronic Media, or the parties' other contractual relationships shall be brought exclusively in the courts of the State of Minnesota and you hereby consent to the subject matter and personal jurisdiction of such courts. Any cause of action or claim you may have with respect to McQuay Electronic Media must be brought within one year after the claim or cause of action arises or it shall be barred.

McQuay's failure to insist upon or enforce strict performance of any provision of this Agreement shall not be construed as a waiver of such provision or right. Neither the course of dealing between the parties nor the practices of others in a similar trade, business, or industry shall act to modify any provision of this Agreement. McQuay may assign its rights and duties under this Agreement to any party at any time without notice or consideration.

#### **9. Security**

Access to McQuay Electronic Media is based upon the nature of your relationship with McQuay and use of a User Login ID and password where applicable. McQuay Electronic Media will provide commercially available, reasonable security measures. However, you understand and acknowledge that certain risks are inherent in the transmission of information over the Internet and you agree to assume the risk for the transmission of information you provide to use this Site. You agree that you will access only those areas of McQuay Electronic Media and only that information on McQuay Electronic Media pertaining to you and only as authorized by your employer and McQuay. You further agree that only authorized persons shall be provided with your assigned User Login ID and password, that you are solely responsible for controlling and/or authorizing access to or use of the User Login ID and password, and that you shall be solely liable for all authorized and unauthorized access using the User Login ID and password. Without limiting any other provision of this Agreement, you agree, for yourself and your employer, that McQuay shall have no liability for any claim, loss or damages arising out of access to McQuay Electronic Media by anyone using your Login ID and/or password. You agree to change your password at least once every 90 days, or more frequently as may be requested by McQuay.

## **10. Confidentiality**

You agree that the information you receive through McQuay Electronic Media is confidential. You agree not to try to access and not to access any information through McQuay Electronic Media which does not pertain to you and which you are not properly authorized to receive. You agree that if you access information about another individual or entity, or otherwise receive information you are not authorized to receive, or if you become aware that someone else has accessed information that person was not authorized to receive, you will immediately cease such unauthorized access, notify McQuay of the unauthorized access, and assist McQuay in identifying and correcting the circumstances which permitted such unauthorized access. All information you receive concerning another individual or entity will be kept confidential, shall be returned to McQuay immediately, shall not be transmitted to any other person or entity, and shall not be retained in any electronic or other form.

## **11. Termination; Survival of Terms**

The provisions of this Agreement shall survive termination of McQuay Electronic Media, your use of McQuay Electronic Media, and your other contractual and legal relationships with McQuay. All rights not expressly granted herein are reserved.

## **Privacy Statement**

McQuay recognizes its obligation to protect the privacy and safety of its online guests. We have developed these privacy and safety practices in order to maintain these standards.

### **1) Personal Information**

We will collect no personal information about you when you visit our Web site unless you choose to provide that information to us. We do not require any personal information for access to most of our Web site. Any personal information that you provide by email or Web forms will be used only for such purposes as are described at the point of collection, such as to respond to your questions or comments, or to send information or products to you. If you provide contact information, McQuay staff or our contractors may contact you to clarify your comment or question, or to learn about your level of customer satisfaction with our services. We use customer contact information to help us provide better products and service and to send you information or promotional materials you request. You may decline the opportunity to receive future mailings; your personal information will remain in our database, however. We will not disclose any personal information to third parties except when it is required to complete a customer-requested transaction or delivery, or if a court subpoenas this information.

### **2) Protection of Children's Personal Information**

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### **3) Statistical vs. Personal Information**

Some non-personal information may be collected and stored automatically when you visit McQuay Electronic Media. If you do nothing during your visit but browse through the Web site, read pages or download information, we will gather and store certain information about your visit automatically. This information does not identify you personally. Our system collects data in the server log that may include IP address, domain name, type of browser, operating system, pages viewed, search requests, and if you linked to our site from another Web site, that Web site's address may be logged. We aggregate this data and use it for statistical purposes. For example, the aggregated data helps us to determine the volume of our Web site users' interest in areas of our Web site. It also helps us understand how we can improve the navigation and content of our Web site. We may disclose this to third parties, but only in an aggregated form.

### **4) Use of Cookies**

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to view most of the site; however, you may not be able to take advantage of personalized content, conveniences or services that may be offered on the site.

#### **5) Password Protection**

To protect against unauthorized access to your password and your computer, it is important that you log out when you have completed your business on McQuay Electronic Media on a shared computer.

#### **6) Online Shopping**

When you shop online at McQuay Electronic Media, you are in a secured environment that is designed to protect your transaction and credit card number. We use Secure Sockets Layer (SSL) software that encrypts the information you provide. In addition, we only display the last four digits of your credit card number when confirming your order, although the entire number is transmitted to your credit card company. On our Web site, you can tell that the site is secure because the Web address (URL) begins with https://. You may also see an icon representing a lock in the lower right corner of your browser window.

#### **7) Security**

McQuay Electronic Media will provide commercially available, reasonable security measures. However, you understand and acknowledge that certain risks are inherent in transmission of information over the Internet and you agree to assume the security risk for transmission of the information you provide to use this Site. McQuay Electronic Media may, at any time, revise these policies by updating this posting. Your continued use of this Site indicates your acceptance of all revisions. You should, therefore, periodically visit this page to review these policies for changes.

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McQuay may provide reasonable technical support for the current version and the latest prior version of the Licensed Software at hours, and or terms and conditions, determined solely by McQuay. Licensee shall, promptly upon discovery thereof, notify McQuay, in writing, of any errors or defects in the Licensed Software and/or periodic update thereto. McQuay will repair or remedy such errors or defects which McQuay deems necessary.

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- a) If the Licensed Software is supplied to the Department of Defense (DOD), the Licensed Software is classified as "Commercial Computer Software" and the Government is acquiring only "restricted rights" in the Licensed Software and related documentation defined in the DFARS, and
- b) If the Licensed Software is supplied to any unit or agency of the United States Government other than the Department of Defense, the Government's rights in the Licensed Software and documentation relating thereto will be defined in Clause 52.227-19(c)(2) of the FAR.
- c) Use, duplication, or disclosure by the Government is subject to restrictions set forth in the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013(c) (1) (ii).

#### **12) Confidentiality**

- a) Licensee acknowledges that Licensed Software and periodic updates contain valuable confidential information belonging to McQuay. Licensee agrees to use its best efforts not to release, disclose or otherwise permit unauthorized access to such confidential information.
- b) No information provided by Licensee will be deemed confidential unless McQuay so agrees in writing.
- c) Licensee will use its best efforts to ensure that all individuals who are provided access to the Licensed Software will observe and perform this nondisclosure covenant.

#### **13) Termination of Agreement**

- a) McQuay may terminate this Agreement immediately in the event Licensee becomes or is declared insolvent or bankrupt.
- b) In the event of termination of this Agreement, all rights granted by this Agreement shall revert to McQuay, and Licensee will deliver to McQuay all material furnished by McQuay pertaining to the Licensed Software and will also warrant that all copies thereof have been returned to McQuay or destroyed.
- c) In the event of termination of this Agreement, Licensee and McQuay shall remain obligated with respect to the provisions of this Agreement relating to confidentiality of information.

#### **14) Completeness**

This Agreement constitutes the complete agreement and understanding between the parties relating to Licensed Software and updates thereto. This Agreement supersedes all prior agreements, understandings, and negotiations whether written or verbal with respect to the subject matter thereof. This Agreement can only be modified by a written agreement signed by both parties.

#### **15) Export Regulations**

Licensee understands that the Export Administration Regulations of the Department of Commerce of the United States may prohibit the export of the Licensed Software to certain countries, agrees to conform to those regulations and to indemnify McQuay against any loss related to Licensee's failure to conform to those regulations.

#### **16) Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota, United States of America and not the UNCISG. To the extent required in order to comply with the laws and regulations of any country in which Licensed Software is distributed or used, the terms and conditions of this Agreement shall be construed to most nearly effectuate the purposes of the Agreement as set forth herein. If any provision of this Agreement shall be held to be unenforceable, such holding shall not affect the enforceability of any other provision hereof.

#### **17) Attorney's Fee's**

In the event of any legal action or other proceeding to enforce this Agreement, the prevailing or successful party shall be entitled to recover reasonable attorneys' fees as well as other costs incurred in that action or proceeding in addition to compensation to which it may be entitled as a result.

#### **18) Agreement Successors and Assigns**

The terms and conditions of this Agreement shall inure to the benefit of and be enforceable by McQuay and the successors and assigns of McQuay's interest in this Agreement and/or McQuay's ownership of the Licensed Software.

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