



QUALMARK WARRANTIES AND TERMS AND CONDITIONS

By purchasing products from Qualmark Corporation or any of its subsidiaries (Ling Electronics or ACG Dynamics) (“Qualmark”) buyer (“buyer”) agrees to be bound by the following warranties, terms and conditions:

I. WARRANTIES

1. Limited Warranties

- a. **New and Refurbished Systems/Shakers (HALT/HASS and Electrodynamic Systems) (“systems”).** Qualmark warrants the workmanship of new and refurbished systems purchased for one year from date of shipment.
 - i. If a system fails within 90 days from the date of shipment, the system will be repaired at no charge for parts, labor, and reasonable travel expenses.
 - ii. If a system fails more than 90 days from the date of shipment, the system will be repaired at no charge for parts. Labor expenses will be covered at Qualmark’s discretion. Travel expenses are not covered and will be billed to the buyer at Qualmark’s cost.
 - b. **OVTT (Omni Vibration Table Top) System.** Qualmark warrants the workmanship of a new OVTT system for one year from date of shipment. If an OVTT system fails within one-year from the date of shipment, the OVTT will be repaired at no charge for parts. Labor expenses to be covered at Qualmark’s discretion. Travel expenses are not covered and will be billed to the buyer at Qualmark’s cost.
 - c. **Equipment Upgrades.** Qualmark warrants the workmanship of equipment upgrades for 6 months (on the upgraded parts only) from date of shipment. If the upgraded portion of a system fails within 6 months from the date of shipment, the upgraded parts will be repaired or replaced at no charge for parts. Labor expenses to be covered at Qualmark’s discretion. Travel expenses are not covered and will be billed to the buyer at Qualmark’s cost.
 - d. **Replacement Parts.** Qualmark warrants replacement parts for 90 days from date of shipment. If a part fails within 90 days from the date of shipment, the part will be repaired or replaced at no charge to the buyer for parts only.
 - e. **Fixturing.** Qualmark warrants the workmanship of its fixturing equipment for 90 days from date of shipment. If a fixture component fails within the 90 day warranty period the fixture component will be repaired or replaced at no charge to the customer if and only if a Qualmark authorized service representative finds that the defective component was not misused or misapplied, and that the component failed prematurely within 90 days of shipment. Travel and labor are not included for fixturing equipment warranties. Travel expenses will be billed to the customer at Qualmark’s cost if the customer requests Qualmark perform the repairs.
 - f. **Buyer Installation.** With respect to any warranty set forth above, Qualmark may, at Qualmark’s option, ship replacement parts to the buyer for buyer installation with appropriate instruction from Qualmark. If the buyer requests that Qualmark perform the repairs, travel and labor expenses will be billed to the buyer at Qualmark’s cost. With respect to installation of new or refurbished systems and/or upgrades, if buyer elects to install the system, above warranties may be void at Qualmark’s discretion.
2. **Intended Use Guidelines** Qualmark publishes from time to time guidelines regarding the proper use of its products. Warranty coverage may be invalidated in cases where, in Qualmark’s sole opinion, a buyer or operator uses products outside these guidelines. A listing of current guidelines may be found on Qualmark’s company website (www.qualmark.com).

3. **Transfer of Warranty Coverage between Countries.** All of Qualmark's limited warranties are valid only within the country where the systems, upgrades or parts were originally purchased. If a buyer installs a system in a different country, Qualmark's warranty coverage automatically reverts to "parts-only" coverage. If the buyer wishes to obtain continued warranty service coverage for their system, a separate service contract must be established with Qualmark or the Qualmark-authorized service agent within the country where the system is installed.
4. **Warranty Limitations.** The above limited warranties do not apply to any Qualmark product that has been damaged or rendered defective for any of the following reasons:
 - a. As a result of accident, misuse, misapplication or abuse;
 - b. By use of the product in a manner not in conformance with its published specifications or intended use guidelines;
 - c. By use of parts not manufactured or sold by Qualmark specifically for use with the applicable product;
 - d. By use of the product with other products, systems, or software not manufactured, sold or recommended by Qualmark;
 - e. By modification without prior written permission of Qualmark; or
 - f. As a result of service by anyone other than a Qualmark service representative or an authorized Qualmark third-party service provider.

Software is not included in this limited warranty. It is covered under its own warranty as set forth in the Qualmark Software License.

5. **Exclusive Remedy; No Implied Warranties; Disclaimer of Liability.** THE FOREGOING EXPRESS WARRANTIES ARE THE EXCLUSIVE REMEDIES OF THE BUYER, AND ARE IN LIEU OF ALL OTHER WARRANTIES, WHETHER WRITTEN, ORAL OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. QUALMARK EXPRESSLY DISCLAIMS ALL WARRANTIES NOT EXPRESSLY STATED HEREIN. TO THE FULL EXTENT PERMITTED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES SHALL QUALMARK BE LIABLE TO THE BUYER, OR ANY OF ITS CUSTOMERS, FOR DAMAGES ARISING OUT OF THE USE OF, OR INABILITY TO USE, THE QUALMARK PRODUCT, OR FOR ANY DAMAGES OR EXPENSES OF ANY KIND WHATSOEVER ARISING OUT OF THE USE OF PRODUCTS TESTED BY THE QUALMARK PRODUCT. QUALMARK SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL, PROFITS, DATA, OR BUSINESS INTERRUPTION ARISING OUT OF QUALMARK'S ACT OR FAILURE TO ACT, AND WHETHER SUCH DAMAGES ARE LABELED IN TORT, CONTRACT, PRODUCT LIABILITY OR OTHERWISE, EVEN IF BUYER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL QUALMARK BE LIABLE FOR AN AMOUNT GREATER THAN THE AMOUNT PAID HEREUNDER. THE LIMITATIONS SET FORTH IN THIS SECTION SHALL APPLY EVEN IF ANY EXCLUSIVE REMEDY IN THESE TERMS AND CONDITIONS FAILS OF ITS ESSENTIAL PURPOSE.

I. ADDITIONAL TERMS AND CONDITIONS

1. **Utilities.** Services required for operating the system (e.g., electrical power, LN₂, and compressed air) are the purchasers' responsibility. The purchaser is responsible for connecting the required services to the system, unless this is specifically contracted with Qualmark. Equipment approval drawings, including all required utilities, will be provided to the purchaser in a timely fashion after order placement.
2. **Rigging.** Unloading the system from the common carrier and locating the equipment at its site shall be the responsibility of the purchaser.
3. **Building Alterations.** Any penetrations or alterations to the facility are the responsibility of the purchaser. These may include, but are not limited to, securing the equipment to the building floor, if required, and providing any building supports or hanging devices for supporting interconnecting material. Any facility modifications such as window, door, or roof removal and replacement are the sole responsibility of the purchaser.
4. **Pricing.** Quoted prices do not include VAT, National, Federal, State or Local taxes or any import duties or taxes. Taxes, whenever applicable, shall be brought to the attention of the seller prior to the issuance of invoice for inclusion, and as a separate charge, to be paid by the purchaser.
5. **F.O.B.** All prices are quoted F.O.B. Qualmark shipping point. F.O.B Qualmark means that title ownership transfers to the purchaser when the product leaves Qualmark's shipping dock and that shipping and insurance costs from the Qualmark shipping point, are the responsibility of the purchaser.
6. **Shipping.** Unless otherwise specified on the purchase order, all freight will be shipped by Qualmark's chosen carrier(s) on a collect basis (paid by the purchaser). All orders quoted freight not included.
7. **Invoice Schedule.**
 - Ling Electronics (Electrodynamic) orders that exceed \$25,000: 1/3 is due at receipt of order, 1/3 is due prior to shipment, 1/3 is due Net 30 from shipment date.
 - Qualmark (HALT/HASS) orders that exceed \$50,000: 1/3 is due at receipt of order, 1/3 is due prior to shipment, 1/3 is due Net 30 from shipment date.
 - Fixturing orders: 50% is due at receipt of order, 50% is due upon shipment from Qualmark's facility.
 - All remaining orders: The total order amount will be invoiced at shipment of the equipment and will be due Net 30 days from invoice date.
8. **Payment Terms.** All prices quoted herein are in U.S. funds. All equipment for shipment outside of the USA is subject to payment in full or confirmed irrevocable letter of credit drawn in favor of Qualmark on a US bank before the equipment can be released for shipment.
9. **Delivery.** Delivery dates quoted are reasonable estimates based on situations at the time of the issuance of the quotation.
10. **Cancellation.** Orders canceled by purchaser prior to ship date require a payment of 50% of quoted price for incurred material costs. All orders processed and shipped are final. Qualmark considers the request of test service dates with the receipt of a purchase order as confirmed test time. If the client chooses to cancel the confirmed test time and Qualmark is unable to sell the time, client is responsible for a minimum daily fee of 50% of the quoted daily rate.

11. **Validation.** Proposal shall remain valid for 30 days unless otherwise specified. Qualmark reserves the right to revise prices and specifications detailed within this proposal after the stated, lapsed date. No verbal orders will be accepted by Qualmark; purchase orders are subject to acceptance and written acknowledgment. Qualmark cannot be held responsible for any misapplied product, nor for consequential damages arising from the use of its product. No claims for damages or missing merchandise will be considered if made more than 15 days after the date of shipment. No returned materials will be honored without prior approval.
12. **Choice of Law; Fees.** All disputes arising out of or related to any sale or these Terms and Conditions shall be determined under the law of the State of Colorado without regard to its conflict of laws provisions. Neither the sale of products hereunder, nor these Terms and Conditions, shall be subject to the United Nations Convention on Contracts for the Sale of Goods. No action arising out of or related to these Terms and Conditions may be brought more than one (1) year after the claiming party knew or should have known of the cause of action. In the event any proceeding or lawsuit is brought by either party in connection with this Agreement, the prevailing party in such proceeding will be entitled to receive its costs, expert witness fees and reasonable attorneys' fees, including costs and fees on appeal.
13. **Nondisclosure.** The parties understand and acknowledge that information disclosed by either of them to the other may be confidential in nature and proprietary to the party providing the information (the "Disclosing Party"). Any such information so identified by Disclosing Party shall remain the sole property of Disclosing Party, and the party receiving the information (the "Receiving Party") shall protect its confidentiality by not copying, disseminating, or otherwise disclosing to any third party the substance of any such information for a period of two years following disclosure. On request, copies of any such information shall be returned to the Disclosing Party. The provisions of this paragraph shall not apply to information that is: (i) already rightfully in the Receiving Party's possession without a nondisclosure obligation; (ii) developed independently by the Receiving Party; (iii) publicly available when received, or thereafter becomes publicly available through no fault of the Receiving Party; or (iv) disclosed by the Disclosing Party to a third party without a nondisclosure obligation.
14. **Export.** Buyer agrees to comply strictly with all applicable U.S. and foreign export, import and re-export laws and regulations.
15. **Entire Terms and Conditions.** THESE TERMS AND CONDITIONS CONSTITUTE THE COMPLETE AND EXCLUSIVE AGREEMENT BETWEEN THE PARTIES CONCERNING THE SUBJECT MATTER HEREOF AND SUPERSEDE ANY PRIOR OR CONTEMPORANEOUS COMMUNICATION. NEITHER PARTY IS RELYING, NOR SHALL RELY, ON ANY PROMISES, INDUCEMENTS, OR REPRESENTATIONS MADE BY THE OTHER PARTY WITH RESPECT TO THE SUBJECT MATTER HEREOF, NOR ON THE EXPECTATION OF ANY OTHER BUSINESS DEALINGS WITH THE OTHER PARTY, NOW OR IN THE FUTURE, EXCEPT AS SPECIFICALLY PROVIDED HEREIN. IT IS CONTEMPLATED BY THE PARTIES THAT THESE TERMS AND CONDITIONS MAY BE ACCEPTED BY A PURCHASE ORDER(S) FROM THE BUYER ORDERING SPECIFIC QUALMARK PRODUCTS. THE PURPOSE OF ANY SUCH PURCHASE ORDER(S) IS TO SPECIFY PRODUCT ORDERED AND QUANTITIES ONLY. THE PROVISIONS OF THESE TERMS AND CONDITIONS WILL CONSTITUTE THE COMMERCIAL TERMS THAT WILL BE BINDING UPON THE PARTIES AND APPLY TO THE SALE OR LICENSE OF ANY QUALMARK PRODUCTS. IN THAT REGARD, THE PROVISIONS OF THESE TERMS AND CONDITIONS WILL SUPERCEDE THE TERMS AND CONDITIONS CONTAINED IN ANY PURCHASE ORDER OR OTHER DOCUMENT OF BUYER, AND ANY ADDITIONAL OR VARYING TERMS CONTAINED IN ANY SUCH INSTRUMENT ARE EXPRESSLY REJECTED.



16. **Modification.** Any modification of any term or condition of these Terms and Conditions shall be effective only if in writing and signed by authorized representatives of both parties. No other act, usage, or custom shall be deemed to modify these Terms and Conditions.
17. **Waiver.** Any waiver of any default or breach of these Terms and Conditions shall be effective only if in writing and signed by an authorized representative of the party providing the waiver. No such waiver shall be deemed to be a waiver of any other or subsequent breach or default.
18. **Severance.** If any provision of these Terms and Conditions is held to be invalid, the remaining portions of these Terms and Conditions shall remain in full force.
19. **Assignment.** Neither party may assign any agreement of sale or these Terms and Conditions, in whole or in part, without the written consent of the other party and any such attempt at assignment shall be void. Notwithstanding the immediately preceding sentence, either party may assign an agreement of sale, subject to these Terms and Conditions, to an entity that is wholly-owned by the party or, in the event of a sale of all or substantially all of its assets or equity, each without the consent of the other party. These Terms and Conditions shall extend to and be binding upon any successors and permitted assigns of the parties.
20. **Non-Exclusivity.** These Terms and Conditions shall not be construed to limit either party's right to deal with any other entities.
21. **Force Majeure.** Neither party shall be in default under these Terms and Conditions by reason of its delay in the performance of, or failure to perform, any of its obligations under these Terms and Conditions, other than obligations to make any payments due under these Terms and Conditions if, and to the extent, such delay or failure is caused by circumstances beyond the control of the party, including but not limited to strikes, acts of God or the public enemy, delays in transportation or supplies, failure of computer systems, government action, or riots. Upon claiming any excuse or delay under this section, such party shall promptly so notify the other party, use reasonable efforts to remove the cause, and continue its performance under these Terms and Conditions whenever the cause is removed.
22. **Independent Contractors.** Neither these Terms and Conditions nor the sale of products hereunder shall be construed as constituting a partnership, agency, distributorship, or joint venture between the parties. Neither party shall have any right to obligate or bind the other party in any manner whatsoever, and nothing herein shall give, or is intended to give, any rights of any kind to any third persons.