



TERMS AND CONDITIONS OF SALE

1 Contract conditions

- 1.1 AxFlow Limited is a company incorporated in England and Wales with company number 04087125 with its registered office address at 820 Yeovil Road, Slough Trading Estate, Slough SL1 4JA.
- 1.2 Unless otherwise agreed in writing, these terms and conditions (the "**Conditions**") shall apply to any orders for the purchase of goods and/or services (the "**Deliverables**") from AxFlow Limited (the "**Supplier**") by any third party (the "**Customer**").
- 1.3 No terms or conditions endorsed on, delivered with, or contained in the Customer's conditions, order, confirmation of order, specification or other document shall form part of the Contract except to the extent that the Supplier otherwise agrees in writing.
- 1.4 The Supplier shall not be bound to supply the Deliverables until an order placed by the Customer is accepted by the Supplier in writing ("**Order**") and on which date a contract shall come into existence. Each contract between the Supplier and the Customer is made up of the Conditions and the Order (the "**Contract**").
- 1.5 Each Order by the Customer to the Supplier shall be an offer to supply the Deliverables as set out in the Order and shall be subject to these Conditions.
- 1.6 An Order may be withdrawn or amended by the Customer at any time before acceptance by the Supplier. If the Supplier is unable to accept an Order, it shall notify the Customer as soon as reasonably practicable.
- 1.7 The Supplier may accept or reject an Order at its discretion. An Order shall not be accepted, and no binding obligation to supply any Deliverables shall arise, until the earlier of:
 - 1.7.1 the Supplier's written acceptance of the Order; or
 - 1.7.2 the Supplier dispatching or performing the Deliverables or notifying the Customer that they are ready to be delivered or performed (as the case may be).
- 1.8 Rejection by the Supplier of an Order, including any communication that may accompany such rejection, shall not constitute a counter-offer capable of acceptance by the Customer.
- 1.9 The Supplier may issue quotations to the Customer from time to time. Quotations are invitations to treat only. They are not an offer to supply or perform the Deliverables and are incapable of being accepted by the Customer.

- 1.10 Unless otherwise stated, a quotation or estimate issued by the Supplier will be available for 30 days. However, the Supplier reserves the right to withdraw or revise the same at any time before our acceptance of the Order. Any written statements regarding prices and technical or other data are by way of general information only and shall not be binding unless explicitly stated in the Contract.

2 Price

- 2.1 The price for the Deliverables shall be set out in the Order or, in default of such provision, shall be calculated in accordance with the Supplier's scale of charges in force from time to time (the "Price").
- 2.2 The Prices are exclusive of:
- 2.2.1 packaging, delivery and insurance which shall be charged in addition at the Supplier's standard rates; and
 - 2.2.2 VAT (or equivalent sales tax).
- 2.3 The Customer shall pay any applicable VAT to the Supplier on receipt of a valid VAT invoice.
- 2.4 The Supplier may increase the Prices at any time by giving the Customer not less than 15 working days' notice in writing.

3 Payment

- 3.1 The Supplier shall invoice the Customer for the Deliverables at any time.
- 3.2 The Customer shall pay all invoices:
- 3.2.1 in full without deduction or set-off, in cleared funds within 30 days of receipt of such invoice; and
 - 3.2.2 to the bank account nominated by the Supplier.
- 3.3 Time of payment is of the essence. Where sums due under the Contract are not paid in full by the due date:
- 3.3.1 the Supplier may, without limiting its other rights, charge interest on such sums at a rate of 8% per annum above the base rate of the Bank of England from time to time in force; and
 - 3.3.2 interest shall accrue on a daily basis, and apply from the due date for payment until actual payment in full, whether before or after judgment.

4 Credit limit

- 4.1 The Supplier may set and vary credit limits from time to time and withhold all further supplies if the Customer exceeds such credit limit.

5 Delivery and performance

- 5.1 The goods as set out in the Order (the "Goods") shall be delivered by the Supplier to the location specified

in the Order (the “**Location**”) and on the date(s) specified in the Order. The Goods shall be deemed delivered by the Supplier on completion of unloading of the Goods at the Location.

5.2 The services as set out in the Order (the “**Services**”) shall be performed by the Supplier at the Location on the date(s) specified in the Order. The Services shall be deemed delivered by the Supplier only on completion of the performance of the Services at the Location.

5.3 The Supplier may deliver or perform the Deliverables in instalments. Any delay in performance or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5.4 Time of delivery is not of the essence. The Supplier shall use its reasonable endeavours to meet delivery dates but such dates are approximate only.

5.5 The Supplier shall not be liable for any delay or failure of delivery caused by:

5.5.1 the Customer’s failure to:

- a) make the Location available;
- b) prepare the Location as required for delivery; or
- c) provide the Supplier with adequate instructions for delivery or otherwise relating to the Goods;

5.5.2 the Customer’s failure to collect the Goods from the Supplier’s premises; or

5.5.3 Force Majeure (as defined in clause 12.1).

5.6 If the Customer fails to accept delivery of the Goods the Supplier shall store and insure the Goods pending delivery, and the Customer shall pay all reasonable costs and expenses incurred by the Supplier in doing so.

5.7 If 10 working day following the last day of the period for delivery of the Goods, the Customer has not taken delivery of or collected them, the Supplier may resell or otherwise dispose of the Goods. The Supplier shall:

5.7.1 deduct all reasonable storage charges and costs of resale; and

5.7.2 account to the Customer for any excess of the resale price over, or invoice the Customer for any shortfall of the resale price below, the Price paid by the Customer for the Goods.

6 Title and Risk

6.1 Risk in the Goods shall pass to the Customer on delivery.

6.2 Title to the Goods shall pass to the Customer once the Supplier has received payment in full and cleared funds for the Goods.

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

6.3.1 hold the Goods as bailee for the Supplier;

- 6.3.2 store the Goods separately from all other material in the Customer's possession;
 - 6.3.3 take all reasonable care of the Goods and keep them in the condition in which they were delivered;
 - 6.3.4 insure the Goods from the date of delivery:
 - a) with a reputable insurer;
 - b) against all risks;
 - c) for an amount at least equal to their Price; and
 - d) noting the Supplier's interest on the policy;
 - 6.3.5 ensure that the Goods are clearly identifiable as belonging to the Supplier;
 - 6.3.6 not remove or alter any mark on or packaging of the Goods;
 - 6.3.7 inform the Supplier immediately if it becomes subject to any of the events or circumstances set out in clauses 11.1.1 to 11.1.4 or 11.2.1 to 11.2.8; and
 - 6.3.8 on reasonable notice permit the Supplier to inspect the Goods during the Customer's normal business hours and provide the Supplier with such information concerning the Goods as the Supplier may request from time to time.
- 6.4 If, at any time before title to the Goods has passed to the Customer, the Customer informs the Supplier, or the Supplier reasonably believes, that the Customer has or is likely to become subject to any of the events specified in clauses 11.1.1 to 11.1.4 or 11.2.1 to 11.2.8, the Supplier may:
- 6.4.1 require the Customer at the Customer's expense to re-deliver the Goods to the Supplier; and
 - 6.4.2 if the Customer fails to do so promptly, enter any premises where the Goods are stored and repossess them.

7 Warranty

- 7.1 The Supplier warrants that, for a period of 12 months from delivery (the "**Warranty Period**"), the Deliverables shall:
- 7.1.1 confirm in all material respects to any sample or their description;
 - 7.1.2 be free from material defects in design, material and workmanship;
 - 7.1.3 if Goods, be of satisfactory quality within the meaning of the Sale of Goods Act 1979;
 - 7.1.4 if Services, be supplied with reasonable care and skill within the meaning of the Supply of Goods and Services Act 1982.
- 7.2 The Supplier shall, at its option, correct, repair, remedy, re-perform or refund the Deliverables that do not comply with this clause 7, provided that the Customer:

- 7.2.1 serves a written notice on the Supplier not later than 10 working days from delivery or performance in the case of defects is discoverable by a physical inspection, or within a reasonable period of time from delivery or performance in the case of latent defects;
 - 7.2.2 specifies in the notice that some or all of the Deliverables do not comply with clause 7.1 and identifying in sufficient detail the nature and extent of the defects; and
 - 7.2.3 gives the Supplier a reasonable opportunity to examine the claim of the defective Deliverables.
- 7.3 Except as set out in this clause 7:
- 7.3.1 the Supplier gives no warranties and makes no representations in relation to the Deliverables;
 - 7.3.2 the Supplier shall have no liability for their failure to comply with the warranty in clause 7.1; and
 - 7.3.3 all warranties and conditions (including the conditions implied by sections 12 to 16 inclusive of the Supply of Goods and Services Act 1982 and sections 13 to 15 inclusive of the Sale of Goods Act 1979), whether express or implied by statute, common law or otherwise are excluded to the extent permitted.

8 Indemnity and insurance

- 8.1 The Customer shall indemnify the Supplier from and against any losses, damages, liability, costs (including legal fees) and expenses which the Supplier may suffer or incur directly or indirectly from the Customer's breach of any of the Customer's obligations under the Contract.
- 8.2 The Customer shall have in place contracts of insurance with reputable insurers incorporated in the United Kingdom to cover its obligations under the Contract. On request, the Customer shall supply (so far as is reasonable) evidence of the maintenance of the insurance and all of its terms from time to time applicable.

9 Limitation on liability

- 9.1 The extent of the parties' liability under or in connection with the Contract shall be set out in this clause 9.
- 9.2 Subject to clause 9.4, the Supplier's total liability shall not exceed the Price paid by the Customer to the Supplier for the Deliverables.
- 9.3 Subject to clause 9.4, the Supplier shall not be liable for consequential, indirect or special losses.
- 9.4 Subject to clause 9.4, the Supplier shall not be liable for any of the following (whether direct or indirect):
 - 9.4.1 loss of profit;
 - 9.4.2 loss or corruption of data;
 - 9.4.3 loss of use;

- 9.4.4 loss of production;
 - 9.4.5 loss of contract;
 - 9.4.6 loss of opportunity;
 - 9.4.7 harm to reputation or loss of goodwill.
- 9.5 Notwithstanding any other provision of the Contract, the liability of the parties shall not be limited in any way in respect of the following:
- 9.5.1 death or personal injury caused by negligence;
 - 9.5.2 fraud or fraudulent misrepresentation; or
 - 9.5.3 any other losses which cannot be excluded or limited by applicable law.

10 Confidential Information

- 10.1 Each party undertakes that it shall keep any information that is confidential in nature concerning the other party including any details of its business, affairs, customers, clients, suppliers, plans or strategies ("**Confidential Information**") confidential and that it shall not use or disclose the other party's Confidential Information to any person, except as permitted by clause 10.2.
- 10.2 A party may:
- 10.2.1 disclose any Confidential Information to any of its employees, officers, representatives or advisers ("**Representatives**") who need to know the relevant Confidential Information for the purposes of the performance of any obligations under this Agreement, provided that such party must ensure that each of its Representatives to whom Confidential Information is disclosed is aware of its confidential nature and agrees to comply with this clause 10 as if it were a party;
 - 10.2.2 disclose any Confidential Information as may be required by law, any court, any governmental, regulatory or supervisory authority (including any securities exchange) or any other authority of competent jurisdiction to be disclosed; and
 - 10.2.3 use Confidential Information only to perform any obligations under this Agreement.
- 10.3 The provisions of this clause shall not apply to:
- 10.3.1 any information which was in the public domain at the date of the Contract; and
 - 10.3.2 any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement.
- 10.4 This clause shall remain in force for a period of two years from the date of the Contract.
- 10.5 The Customer shall not make any public announcement or disclose any information regarding the Contract,

except to the extent required by law or regulatory authority.

11 Termination

- 11.1 The Supplier may terminate the Contract at any time by giving notice in writing to the Customer if:
- 11.1.1 the Customer commits a material breach of the Contract and such breach is not remediable;
 - 11.1.2 the Customer commits a material breach of the Contract which is not remedied within 14 working days of receiving written notice of such breach;
 - 11.1.3 the Customer has failed to pay any amount due under the Contract on the due date and such amount remains unpaid 30 days after the date that the Supplier has given notification to the Customer that the payment is overdue; or
 - 11.1.4 any consent, licence or authorisation held by the Customer is revoked or modified such that the Customer is no longer able to comply with its obligations under the Contract or receive any benefit to which it is entitled.
- 11.2 The Supplier may terminate the Contract at any time by giving notice in writing to the Customer if the Customer:
- 11.2.1 stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;
 - 11.2.2 is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if the Supplier reasonably believes that to be the case;
 - 11.2.3 becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;
 - 11.2.4 has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
 - 11.2.5 has a resolution passed for its winding up;
 - 11.2.6 has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;
 - 11.2.7 has a freezing order made against it; or
 - 11.2.8 is subject to any events or circumstances analogous to those in clauses 11.2.1 to 11.2.7 in any jurisdiction.
- 11.3 The right of the Supplier to terminate the Contract pursuant to clause 11.2 shall not apply to the extent that the relevant procedure is entered into for the purpose of amalgamation, reconstruction or merger (where applicable) of the Customer where the amalgamated, reconstructed or merged entity agrees to adhere to the Contract.

- 11.4 If the Customer becomes aware that any event has occurred, or circumstances exist, which may entitle the Supplier to terminate the Contract under this clause 11, it shall immediately notify the Supplier in writing.
- 11.5 On termination of this Contract for any reason:
- 11.5.1 the Customer shall immediately pay all outstanding invoices of the Supplier;
 - 11.5.2
 - 11.5.3 the Supplier shall promptly invoice the Customer for all Deliverables supplied but not yet invoiced and payment for such invoices shall be due immediately on receipt by the Customer; and
 - 11.5.4 the accrued rights and liabilities of the Supplier at any time up to the date of termination shall not be affected.

12 Force Majeure

- 12.1 In this clause the following definitions shall apply:
- “Force Majeure”** means an event or sequence of events beyond a party’s reasonable control preventing or delaying it from performing its obligations under the Contract.
- 12.2 The Supplier shall not be liable if delayed in or prevented from performing its obligations due to Force Majeure, provided that it:
- 12.2.1 promptly notifies the Customer of the Force Majeure event and its expected duration; and
 - 12.2.2 uses reasonable endeavours to minimise the effects of that event.

13 Notices

- 13.1 Any notice given by a party under these Conditions shall:
- 13.1.1 be in writing and in English;
 - 13.1.2 be signed by, or on behalf of, the party giving it (except for notices sent by email); and
 - 13.1.3 be sent to the relevant party at the address set out in the Contract.
- 13.2 Notices may be given and are deemed received:
- 13.2.1 by hand: on receipt;
 - 13.2.2 by post: at 9:00 am on the second working day after posting;
 - 13.2.3 by fax: on receipt of a transmission report from the correct number confirmation uninterrupted and error-free transmission; and

13.2.4 by email: on receipt of a delivery receipt from the correct address.

13.3 Any change to the contact details of a party as set out in the Contract shall be notified to the other party in accordance with clause 13.1 and shall be effective:

13.3.1 on the date specified in the notice as being the date of such change; or

13.3.2 if no date is so specified, five working days after the notice is deemed to be received.

13.4 This clause does not apply to notices given in legal proceedings or arbitration.

14 Time

14.1 Unless stated otherwise, time is of the essence of any date or period specified in the Contract in relation to the Customer's obligations only.

15 Further assurance

15.1 The Customer shall at the request of the Supplier, and at the Customer's own cost, do all acts and execute all document which are necessary to give full effect to the Contract.

16 Entire agreement

16.1 The parties agree that the Contract, and any documents entered into pursuant to it, constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.

16.2 The Customer acknowledges that it has not entered into the Contract in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Contract.

16.3 Nothing in these Conditions purports to limit or exclude any liability for fraud.

17 Variation

17.1 No variation of the Contract shall be valid or effective unless it is in writing, refers to the Contract and is duly signed or executed by, or on behalf of, the Supplier.

18 Assignment

18.1 The Customer may not assign, subcontract or encumber any right or obligation under the Contract, in whole or in part, without the prior written consent of the Supplier.

19 Set-off

19.1 The Supplier shall be entitled to set-off under the Contract any liability which it has or any sums which it may owe to the Customer under the Contract.

19.2 The Customer shall pay all sums that its owes to the Supplier under the Contract without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

20 Compliance with law

20.1 The Customer shall comply with all laws, enactments, regulations, regulatory policies, guidelines and industry codes applicable to it and shall maintain such authorisations and all other approvals, permits and authorizes as are required from time to time to perform its obligations under, or in connection with, the Contract.

21 Costs and expenses

21.1 The Customer shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of the Contract (and any documents referred to in it)

22 Third Party Rights

22.1 A person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract.

23 Waiver

23.1 No failure, delay or omission by the Supplier in exercising any right, power or remedy provided by law or under the Contract shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.

23.2 No single or partial exercise of any right, power or remedy provided by law or under the Contract by the Supplier shall prevent any future exercise of it or the exercise of any other right, power or remedy by it

24 Severance

24.1 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract shall not be affected.

24.2 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.

25 Interpretation

25.1 In these Conditions, unless the context otherwise requires:

25.1.1 any clause or other headings in these Conditions are included for convenience only and shall have no effect on the interpretation of the Conditions;

- 25.1.2 a reference to a “party” includes that party’s personal representatives, successors and permitted assigns;
- 25.1.3 a reference to a “person” includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person’s personal representatives, successors and permitted assigns;
- 25.1.4 a reference to a “company” includes any company, corporation or other body corporate wherever and however incorporated or established;
- 25.1.5 words in the singular include the plural and vice versa;
- 25.1.6 any words that follow “include, “including” and “in particulars” or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;
- 25.1.7 a reference to “writing” or “written” includes any method of reproducing words in a legible and non-transitory form; and
- 25.1.8 a reference to legislation is a reference to that legislation as in force at the date of the Contract.

26 Governing law and jurisdiction

- 26.1 The Contract and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 26.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, the Contract, its subject matter or formation (including non-contractual disputes or claims).