

# AXTOR

## Terms and Conditions of Sale

### 1. DEFINITIONS

1.1 In these terms and conditions "we", "us", "our" and "ourselves" refer to Axtor and "you", "your" and "yourselves" refer to the person, firm or company for whom we supply goods and/or services as specified on the quotation, upon the terms and conditions ("the Conditions") hereinafter contained.

### 2. TERMS OF CONTRACT

2.1 The written quotation requested by you and given by us for the supply of goods and services ("the Quotation") is done so subject to the Conditions save where it is subsequently agreed in writing between ourselves and yourselves to amend the terms of the Quotation or Conditions.

2.2 Upon receiving confirmation that you accept the Quotation (by signing the order acknowledgement) we shall, subject to clause 3.1, use all reasonable endeavours to arrange for the provision of the goods and/or services set out in the Quotation in accordance with Conditions.

2.3 Any advice or recommendation given by us or our employees or agents to you as to the provision of the goods and/or services (or any part thereof) which is not confirmed in the Quotation by us or subsequently in accordance with clause 2.1 is followed or acted upon entirely at your own risk and accordingly we shall not be liable for any such advice or recommendation which is not so confirmed.

2.4 Save as expressly set out in the Quotation or any subsequent advice in writing in accordance with clause 2.1 the price for the goods and services shall not include the cost of any alteration, supply and/or fitment of (without limitation), lighting, power points, electronic, electrical or security installations, plumbing, air conditioning or sprinkler systems within the buildings where the goods are being installed.

### 3. ORDERS AND SPECIFICATIONS

3.1 No order submitted by you shall be deemed to be accepted by us unless and until confirmed by our authorised representative.

3.2 You shall be responsible to us for ensuring the accuracy of the information given, set out or referred to in the Quotation or any subsequent advice in writing confirming the same submitted by us and for giving us any necessary or requested information relating to the goods and/or services within sufficient time to enable us to perform this contract.

3.3 The quantity, quality and description of and any specification shall be those set out or referred to in the Quotation or any subsequent advice in writing in accordance with clause 2.1 although you acknowledge that if you require a particular colour on a particular material we cannot accept liability in this respect if a deemed effect or appearance is not achieved. Furthermore, we cannot guarantee that any colour, material or desired effect set out or referred to in the Quotation or otherwise will match an existing colour, material or effect and furthermore, you acknowledge that there are likely to be colour variations in the different batches of colours, materials or effects used or created (whichever shall be relevant) to provide the goods and services in accordance with the Conditions.

3.4 No Quotation which has been accepted by you pursuant to clause 2.2 may be cancelled (in whole or part) or varied by you except with the agreement in writing of us and on terms that you shall indemnify us in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by us as a result of cancellation (in whole or part) or variation including (without limitation) any cancellation and/or penalty charges imposed on us by any third party.

3.5 If the goods or services are to be manufactured, designed or installed (in the case of the goods) or any process is to be applied to the goods or services by us in accordance with a specification submitted by you, you shall indemnify us against all loss, damages, costs and expenses incurred by us in connection with or paid or agreed to be paid by us in settlement of any claim for infringement or any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from our use of your specification.

3.6 We reserve the right to make any changes in any specification provided that such changes do not materially affect your functional use of the goods being supplied and/or installed.

3.7 The goods and services are provided and will be carried on in accordance with the assumptions set out or referred to in the Quotation and the assumption that the buildings where the goods are to be installed are soundly and properly constructed and are capable of being altered or used in the manner proposed by the Quotation without any other work being undertaken in respect of the said building save as specified in the Quotation. If additional works are necessary in order to provide the goods and services in accordance with the Quotation you will be responsible for additional charges at our current rates from time to time in force undertaken on a time and materials basis.

### 4. YOUR OBLIGATIONS

4.1 You shall co-operate with and assist us to the extent we reasonably require in order to supply the goods and provide the services in accordance with these Conditions.

4.2 You shall provide us with continued access (at no cost) to such locations that we have agreed to delivery of the goods to and (if relevant) carry out the services.

4.3 You shall provide us with a suitable environment at the relevant location where the goods are to be delivered in order for us to carry out the services which will include (without limitation) the provision of: electrical power, heating, ventilation, lighting and secured storage facilities.

4.4 You shall be required to obtain (at your own cost) all necessary consents, licenses and requests in order for us to deliver, supply and install the goods and services in accordance with this Contract and agree to indemnify us against any costs, claims and expenses made by any third party in failing to obtain such consents, licenses or requests.

### 5. PRICE

5.1 Subject to the remaining provisions of this clause 5 the price of the goods and/or services shall be as set out in the Quotation.

5.2 No price given in a Quotation by us shall be a confirmed price unless and until we confirm the price in writing to you in accordance with clause 3.1.

5.3 All prices quoted in the Quotation and subsequently confirmed in writing relate to a particular source of supply of the goods and services and are therefore valid for as long as that source of supply is made available to us from our suppliers or 3 months whichever shall be the lesser.

5.4 We reserve the right to increase the price of the goods and services to reflect any increase in the cost to us which are due to an alteration of duties, variations in the terms of the Quotation or any specification referred to therein, any change in delivery dates, quantities or the qualities or any delay caused by a change in your instructions, information or lack of instructions and/or information as required by us in order to provide you with the goods and/or services.

5.5 The prices for the goods and services are exclusive of any applicable value added tax, which you shall be additionally liable to pay us.

5.6 Except as otherwise stated in the Quotation or unless otherwise agreed in writing in accordance with clause 2.1 all of our prices are given on an ex works basis and where we agree to deliver the goods otherwise than at our premises, you shall be liable to pay our charges for transport, packaging and insurance.

### 6. TERMS OF PAYMENT

6.1 Upon receiving confirmation of acceptance of our Quotation pursuant to clause 2.2 you shall pay us a deposit forthwith of 50% of the price referred to in the Quotation, unless otherwise stated.

6.2 Further deposits may become payable at any time after acceptance of our Quotation but prior to delivery of the goods and provision of the services if required by us.

6.3 In any event all remaining sums due under this contract shall become due and payable in full to us upon the date for delivery of the goods.

6.4 If you fail to pay any of the amounts on the due dates then without prejudice to any right or remedy available to us we shall be entitled to:

6.4.1 Cancel this contract and attempt to resell such elements of the goods and/or services that we may be able to do and you shall be responsible for our reasonable and proper costs incurred thereto.

6.4.2 Charge you interest (both before and after any judgement) on any amount unpaid at the rate of 2 per cent per month (compounded monthly) until payment is made in full (a part of a month being treated as a full month for the purpose of calculating interest).

6.4.3 Appropriate any payment made by you to such of the goods and services (or the goods and services supplied under any other contract between you and us) as we may think fit (notwithstanding any purported appropriation by you).

### 7. DELIVERY

7.1 Unless otherwise stated in the Quotation or otherwise agreed in accordance with clause 2.1, you shall be responsible for all carriage/delivery charges incurred by us in complying with the remaining provisions of this clause 7.

7.2 Any dates quoted for delivery of the goods are approximate only and we shall not be liable for any delay in delivery of them however caused. Time for delivery shall not be of the essence in this contract unless previously agreed by us in writing. The goods and provision of the services may be provided by us in advance of the quoted delivery date upon giving reasonable notice to you.

- 7.3 Where the goods or services are to be delivered/provided in instalments, each delivery/provision shall constitute a separate contract and failure by us to deliver/provide any one or more of the instalments in accordance with these Conditions or any claim by you in respect of any one or more instalments shall not entitle you to treat this contract as a whole as repudiated.
- 7.4 If you fail to take delivery of the goods or allow us to provide the services or fail to give us adequate delivery instructions at the time stated for delivery then, without prejudice to any other right or remedy available to us, we may:
- 7.4.1 Store the goods until actual delivery and charge you for the reasonable costs (including insurance) of storage; or
- 7.4.2 Sell the goods at then current market price readily obtainable and, (after deducting all reasonable storage and selling expenses) charge you for any shortfall below the price obtained under this contract.

## 8. RISK AND PROPERTY

- 8.1 Risk of damage to or loss of the goods shall pass to you:
- 8.1.1 In the case of goods to be delivered at our premises, at the time when we notify you that the goods are available for collection; or
- 8.1.2 In the case of goods to be delivered otherwise than at our premises, at the time of delivery or, if you wrongfully fail to take delivery of them, the time when we have tendered delivery of the goods.
- 8.2 Notwithstanding delivery and the passing of risk in the goods or any other provision of these Conditions, the property in the goods shall not pass to you until we have received in cash or cleared funds payment in full of the price of the goods and services and all other goods and services agreed to be sold by us to you for which payment is then due.
- 8.3 Until such time as the property in the goods passes to you, you shall hold the goods as our fiduciary agent and bailee, and shall keep them separate from those of your and third parties and properly stored, protected and insured and identified as our property, but you shall be entitled to use the goods in the ordinary course of its business.
- 8.4 Until such time as the property in the goods passes to you (and provided the goods are still in existence and have not been resold), we shall be entitled at any time to require you to deliver up the goods to us and, if you fail to do so forthwith we shall be entitled to enter upon your premises or entry onto any third party premises where they are stored or located and repossess them.

## 9. WARRANTIES AND LIABILITY

- 9.1 Subject to the remaining conditions set out in clause 8 we warrant that:
- 9.1.1 The services will be provided with due skill and care.
- 9.1.2 The goods will be free from defects in material and workmanship to a material degree for a period of 90 days from the date of delivery and shall materially accord with the specification on installation.
- 9.2 The above warranty is given by us subject to the following conditions:
- 9.2.1 we shall be under no liability in respect of any defect in the goods or services arising from any information, drawing, design, materials or specification supplied by you;
- 9.2.2 we shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow our reasonable (or our suppliers) instructions (whether oral or in writing), misuse or alteration or repair of the goods;
- 9.2.3 We shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the goods and services has not been paid by the due date for payment;
- 9.2.4 no warranty is given in relation to the goods and/or services (and the materials used therein) and their use in conjunction with any other external equipment or that they are provided for a specific or particular purpose save where it is agreed in writing in accordance with clause 2.1.
- 9.3 Our liability under this contract does not extend to any other equipment used in conjunction with the goods.
- 9.4 Any claim by you under this contract (whether or not delivery is refused by you) must be notified to us within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and you do not notify us accordingly, you shall not be entitled to reject the goods or services and we shall have no liability for such defect or failure, and you shall be bound to pay the price as if the goods and/or services had been delivered in accordance with this contract.
- 9.5 Where any valid claim in respect of any of the goods and/or services which is based on any defect in the quality or condition of the goods and/or services in accordance with these Conditions, our total aggregate liability arising out of any such claim shall be limited to the replacement of the goods (or the part in question) free of charge (in respect of the goods) or, at our sole discretion, a refund to you of the price actually paid by you for the goods and/or services (in the case of goods and services)(or a proportionate part of the price), but we shall have no further liability to you. If goods and/or services are replaced the items so replaced shall be or become our property.
- 9.6 Except in respect of death or personal injury caused by our negligence, we shall not be liable to you by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of us, our employees or agents or otherwise) which arise out of or in connection with the supply of the goods or provision of services or their use or resale by you, and the entire liability of us under or in connection with this contract shall not exceed the price of (where paid) for the relevant good and/or service complained of except as expressly provided in these Conditions.
- 9.7 We shall not be liable to you or be deemed to be in breach of this contract by reason of any delay in performing, or any failure to perform, any of our obligations in relation to the goods or services, if the delay or failure was due to any cause beyond our reasonable control.

## 10. INSOLVENCY OF CLIENT

- 10.1 This clause applies if:
- 10.1.1 you make any voluntary arrangement with your creditors or (being an individual or firm) become bankrupt or (being a company) becomes subject to an administration order or go into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
- 10.1.2 An encumbrancer takes possession, or a receiver is appointed, of any of your property or assets; or
- 10.1.3 You cease, or threatens to cease, to carry on business; or
- 10.1.4 We reasonably apprehend that any of the events mentioned above is about to occur and we notify you accordingly.
- 10.2 If this clause applies then, without prejudice to any other right or remedy available to us we shall be entitled to cancel this contract or suspend any further deliveries under this contract without any liability to you, and if the goods or services have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

## 11. GENERAL

- 11.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 11.2 No waiver by us of any breach of this contract by you shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 11.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.
- 11.4 Save as expressly provided herein it is not intended that a third party shall have a right to receive notice or enforce a provision of this Agreement and the Contracts (Rights of Third Parties) Act 1999 shall be modified accordingly.
- 11.5 In the event of a dispute the parties shall each undertake to use their reasonable efforts to reach an amicable settlement. If the dispute has not been resolved by negotiation the parties shall attempt to resolve the dispute by mediation through the Centre for Dispute Resolution. If the dispute has not been resolved within 90 days of referral to the Centre for Dispute Resolution it shall become subject to action in the courts save that it is hereby agreed that if we take any action for injunctive relief or for non-payment of monies it may at our sole discretion to commence such an action in the courts immediately and without the need to first refer the matter to the Centre for Dispute Resolution.
- 11.6 This Agreement shall be governed by English law and the parties shall submit to the non-exclusive jurisdiction of the English Courts.