



Make IT Effective

# **Terms and Conditions for the supply of IT Equipment**

Version 1.2

Public



Cert No. 15239  
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## 1. DEFINITIONS

1.1 The definitions in this clause apply in these conditions.

Contract: a contract for the supply of the Equipment created in accordance with condition 3.3.

Axess Systems, We, Us or Our: **Axess Systems Limited, Axess House, New Winnings Court, Denby Hall Business Park, Denby, Derbyshire, DE5 8LE**

Customer, You or Your: the person, firm or company who purchases Equipment from Us.

Equipment: the equipment agreed in the Contract to be purchased by You from Us (or any part or parts of it).

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Software: any operating system installed on the Equipment.

VAT: value added tax chargeable under English law for the time being and any similar additional tax.

## 2. APPLICATION OF CONDITIONS

2.1 These Conditions shall:

- (a) apply to and be incorporated in the Contract; and
- (b) prevail over any inconsistent terms or conditions contained in or referred to in Your purchase order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing.

2.2 No addition to, variation of, exclusion or attempted exclusion of any term of the Contract shall be binding on Us unless in writing and signed by a duly authorised representative of Axess Systems.

### 3. BASIS OF SALE

3.1 Any quotation is valid for a period of 30 days only, and We may withdraw it at any time by notice to You.

3.2 Each order or acceptance of a quotation for Equipment by You shall be deemed to be an offer by You subject to these Conditions. You agree to ensure that the order is complete and accurate.

3.3 A binding contract for the supply of the Equipment shall come into existence between Us and You on the earliest to occur of the following events:

- (a) We and You enter into a written agreement in writing for the supply of the Equipment; or
- (b) You accept Our quotation for the supply of the Equipment; or
- (c) We issue a written order acknowledgement to You accepting Your order; or
- (d) We deliver the Equipment to You.

3.4 We may deliver the Equipment by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the applicable Contract. Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle You to repudiate or cancel any other Contract or instalment.

3.5 No order which has been acknowledged by Us may be cancelled by You, except with the agreement in writing of Us and provided that You indemnify Us in full against all loss (including without limitation loss of profit), costs (including without limitation the cost of all labour and materials used), damages, charges and expenses incurred by Us as a result of cancellation.

## 4. QUANTITY AND DESCRIPTION

4.1 The quantity and description of the Equipment shall be as set out in the Contract or (if applicable) in Our quotation.

4.2 All samples, drawings, descriptive matter, specifications and advertising issued by Us, and any descriptions or illustrations contained in any catalogues or brochures provided by Us are issued or published for illustrative purposes only and they do not form part of the Contract.

4.3 You acknowledge that we are not the manufacturer of the Equipment and give no warranty or guarantee in relation to it. However, We shall use reasonable endeavours to transfer to You the benefit of any warranty or guarantee given by the manufacturer to Us.

## 5. PRICES

5.1 All prices shall be as stated in the Contract or, if there is no written contract in Our quotation. Unless otherwise stated in the Contract, all prices are exclusive of delivery, packaging, packing, shipping, carriage, insurance, VAT and other charges and duties.

5.2 The price of the Equipment shall be Our quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in Our price list current at the date of the Contract.

5.3 We reserve the right, by giving notice to You at any time before delivery, to increase the price of such of the Equipment as has not been delivered to reflect any increase in the cost to Us which is due to market conditions or any factor beyond Our control, any change in delivery dates, quantities or specifications for the Equipment which is requested by You, or any delay caused by any instructions of You or failure of You to give Us adequate information or instructions.

## 6. PAYMENT

6.1 Subject to any special terms specified in the Contract, We may invoice You for the price of the Equipment on or at any time after delivery of the Equipment and the terms of payment shall be within 30 days of the date of Our invoice, whether or not delivery has taken place or title in the Equipment has passed to You.

6.2 Time for payment of the price shall be of the essence of the Contract.

6.3 If You fail to make payment in full on the due date, the whole of the balance of the price of the Equipment then outstanding shall become immediately due and payable and, without prejudice to any other right or remedy available to Us, We shall be entitled to:

- (a) terminate the Contract or suspend any further deliveries of Equipment (whether ordered under the same contract or not) to You;
- (b) charge interest on the amount outstanding from the due date to the date of receipt by Us (whether or not after judgment), at the annual rate of 4 % above the base lending rate from time to time of Barclays Bank plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment. Us reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998;
- (c) suspend all further delivery or installation until payment has been made in full;
- (d) make a storage charge for any undelivered Equipment at its current rates from time to time;
- (e) stop any Equipment in transit; and
- (f) a general lien on all Equipment and property belonging to You, exercisable in respect of all sums lawfully due from You to Us. We shall be entitled, on the expiry of 14 days' notice in writing, to dispose of such Equipment or property in such manner and at such price as it thinks fit and to apply the proceeds towards the amount outstanding.

6.4 All sums payable to Us under the Contract shall become due immediately on its termination, despite any other provision of the Contract. This condition 6.4 is without prejudice to any right to claim for interest under the law, or any right under the Contract.

6.5 We may, without prejudice to any other rights it may have, set off any liability of You to Us against any liability of Us to You.

## 7. DELIVERY OF EQUIPMENT AND ACCEPTANCE

7.1 We shall use Our reasonable endeavours to deliver the Equipment on the date or dates specified in the Contract or, if there is no written contract, our quotation, but any such date is approximate only. If no dates are so specified, delivery shall be within a reasonable time of the date of the Contract. Time is not of the essence as to the delivery of the Equipment and We are not in any circumstances liable for any delay in delivery, however caused.

7.2 The Equipment may be delivered by Us in advance of the quoted delivery date on giving reasonable notice to You.

7.3 You shall be responsible (at Your cost) for preparing the delivery location for the delivery of the Equipment and for the provision of all necessary access and facilities reasonably required to deliver and install the Equipment. If We are prevented from carrying out delivery or installation on the specified date because no such preparation has been carried out, We may levy additional charges to recover Our loss arising from this event.

7.4 You shall be deemed to have accepted the Equipment when You have had 14 days to inspect it after delivery.

7.5 We shall be responsible for any damage, shortage or loss in transit, provided that You notify it to Us (or Our carrier, if applicable) within three days of delivery or the proposed delivery date of the Equipment and that the Equipment has been handled in accordance with Our stipulations. Any remedy under this condition 7.5 shall be limited, at Our option, to the replacement or repair of any Equipment which is proven to Our satisfaction to have been lost or damaged in transit.

## 8. RISK AND PROPERTY

8.1 The Equipment shall be at Our risk until delivery to You at the place of delivery specified in the Contract or, if there is no written contract, Our quotation.

8.2 Ownership of the Equipment shall pass to You on the later of completion of delivery (including without limitation off-loading), or when We have received in full in cleared funds all sums due to Us in respect of:

- (a) the Equipment; and
- (b) all other sums which are or which become due to Us from You on any account.

8.3 Until ownership of the Equipment has passed to You, You shall:

- (a) hold the Equipment on a fiduciary basis as Our bailee;
- (b) store the Equipment (at no cost to Us) in satisfactory conditions and separately from all Your other equipment or that of a third party, so that it remains readily identifiable as Our property;
- (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Equipment; and
- (d) keep the Equipment insured on Our behalf for its full price against all risks with a reputable insurer and hold the proceeds of such insurance on trust for Us and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.

8.4 Your right to possession of the Equipment before ownership has passed to it shall terminate immediately if any of the circumstances set out in condition 13 arise or if You encumber or in any way charge the Equipment, or if You fail to make any payment to Us on the due date.

8.5 You grant to Us, Our agents and employees an irrevocable licence at any time to enter any premises where the Equipment is or may be stored in order to inspect it, or where

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Your right to possession has terminated, to remove it. All costs incurred by Us in repossessing the Equipment shall be borne by You.

8.6 On termination of the Contract for any reason, Our rights in this condition 8 shall remain in effect.

## 9. SOFTWARE LICENCE

9.1 If We refer to a software licence in the Contract or, if there is no written Contract, Our quotation, the price of the Equipment includes the licence fee for Your right to use the Software.

9.2 If You are provided with any operating system software licence in respect of the Software, You shall sign and return it to Us within seven days of installation of the software, unless the licence has been supplied on a "shrink-wrap" or "click-wrap" basis.

## 10. REMEDIES

10.1 We shall not in any circumstances be liable for any non-delivery of Equipment (even if caused by Our negligence) unless You notify Us in writing of the failure to deliver within seven days after the scheduled delivery date.

10.2 Any liability of Us for non-delivery of the Equipment shall in all circumstances be limited to replacing the Equipment within a reasonable time or issuing a credit note at the pro rata contract rate against any invoice raised for such Equipment.

10.3 If Our performance of Our obligations under the Contract is prevented or delayed by any act or omission of You (other than by reason of a Force Majeure Event under condition 14), You shall be liable to pay to Us all reasonable costs, charges or losses sustained by Us as a result, subject to Us notifying You in writing of any such claim We might have against You in this respect.



## 11. LIMITATION OF LIABILITY

11.1 The following provisions set out Our entire financial liability (including without limitation any liability for the acts or omissions of its employees, agents and sub-contractors) to You in respect of:

- (a) any breach of the Contract howsoever arising; and
- (b) any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including without limitation negligence) arising out of or in connection with the Contract.

11.2 All warranties, conditions and other terms implied by statute or common law are excluded from the Contract to the fullest extent permitted by law.

11.3 Nothing in these conditions excludes or limits Our liability for:

- (a) death or personal injury caused by Our negligence; or
- (b) fraud or fraudulent misrepresentation.

11.4 Subject to condition 11.2 and condition 11.3:

- (a) We shall not in any circumstances be liable, whether in tort (including without limitation for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for: loss of profits; loss of business; or depletion of goodwill or similar losses; or loss of anticipated savings; or loss of contract; or loss of use; or loss or corruption of data or information or any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- (b) Our total liability in contract, tort (including without limitation negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the price payable for the Equipment under condition 5.

## 12. INTELLECTUAL PROPERTY RIGHTS

12.1 You acknowledge that all Intellectual Property Rights used by or subsisting in the Equipment are and shall remain Our sole property or (as the case may be), the Manufacturer or other third party rights owner.

12.2 In relation to the Software:

- (a) You acknowledge that You are buying only the media on which the software is recorded and the accompanying user manuals;
- (b) nothing contained in these conditions shall be construed as an assignment of any Intellectual Property Rights in the Software or user manuals; and
- (c) You shall be subject to the rights and restrictions imposed by the owner of the Intellectual Property Rights in the Software and user manuals, and shall comply with all licence Contracts, terms of use and registration requirements relating to them.

## 13. TERMINATION

13.1 Without prejudice to any other right or remedy available to Us, We may terminate the Contract or suspend any further deliveries under the Contract without liability to You and, if the Equipment has been delivered but not paid for, the price shall become immediately due and payable notwithstanding any previous contract or arrangement to the contrary if:

- (a) Your ability to accept delivery of the Equipment is delayed, hindered or prevented by circumstances beyond Your reasonable control;
- (b) You suspend, or threaten to suspend, payment of Your debts or are unable to pay Your debts as they fall due or You admit inability to pay Your debts or are deemed unable to pay Your debts within the meaning of section 123 of the Insolvency Act 1986;
- (c) You commence negotiations with all or any class of Your creditors with a view to rescheduling any of Your debts, or make a proposal for or enter into any compromise or arrangement with its creditors;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with Your winding up;
- (e) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over You;

- (f) the holder of a qualifying floating charge over Your assets has become entitled to appoint or has appointed an administrative receiver;
- (g) a person becomes entitled to appoint a receiver over Your assets or a receiver is appointed over Your assets;
- (h) a creditor or encumbrancer of Yours attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of Your assets and such attachment or process is not discharged within 14 days;
- (i) You suspend or cease, or threaten to suspend or cease, carrying on all or a substantial part of Your business;
- (j) You are subject to a change of control (within the meaning of section 1124 of the Corporation Tax Act 2010).

13.2 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

13.3 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

## 14. FORCE MAJEURE

We reserve the right to defer the date of delivery, or to cancel the Contract or reduce the amount of Equipment ordered, if We are prevented from or delayed in carrying on its business by acts, events, omissions or accidents beyond Our reasonable control, including without limitation strikes, lock-outs or other industrial disputes, failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors (Force Majeure Event).

## 15. GENERAL

15.1 No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

15.2 Except as expressly provided in the Contract, the rights and remedies provided under the Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

15.3 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

15.4 If any provision or part-provision of the Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

15.5 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

15.6 Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract.

15.7 Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.

15.8 You shall not, without Our prior written consent, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

15.9 No one other than a party to the Contract, their successors and permitted assignees, shall have any right to enforce any of its terms.

## 16. INTERPRETATION

16.1 Clause, Schedule and paragraph headings shall not affect the interpretation of these Conditions.

16.2 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

16.3 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

16.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular and a reference to one gender shall include a reference to the other genders.

16.5 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of the Contract under that statute or statutory provision.

16.6 A reference to writing or written includes faxes and e-mail.

## 17. GOVERNING LAW AND JURISDICTION

The Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including without limitation disputes or claims) are governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees 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 or its subject matter or formation (including non-contractual disputes or claims).



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