



01773 882602



info@axesssystems.co.uk



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Terms and Conditions for the supply of IT Services

1. Documentation Information and Control

VERSION HISTORY

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Document Owner

Name & Job Title
Heath Roberts

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3. DEFINITIONS AND INTERPRETATION

The definitions and rules of interpretation in this clause apply in these terms and conditions.

3.1 definitions

- **Axess Systems, We, Us or Our:** Axess Systems Limited, Axess House, New Winnings Court, Denby Hall Business Park, Denby, Derbyshire, DE5 8LE Contract: a contract for the supply of the Services created in accordance with condition 5.3.
- **Customer, You or Your:** the person, firm or company who purchases Services from Us
- **Deliverables:** all products and materials developed by Us in relation to the Project in any media, including, without limitation, computer programs, data, diagrams, reports and specifications (including drafts).
- **Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trademarks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including without limitation all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.
- **Pre-existing Materials:** materials which existed before the commencement of the Contract.
- **Services:** the services to be provided, facilitated or made available by Us to You under the Contract.
- **Third Party Services:** has the meaning given in Condition 6.3. **VAT:** value added tax chargeable under English law for the time being and any similar additional tax.

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

3.3 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.

3.4 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

3.5 A reference to writing or written includes faxes and email.

4. APPLICATION OF CONDITIONS

4.1 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.

4.2 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 Our duly authorised representative.

5. BASIS OF CONTRACT

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

5.2 Each order or acceptance of a quotation for Services 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.

5.3 A binding contract for the supply of the Services 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 Services; or
- (b) You accept Our quotation for the supply of the Services; or
- (c) We issue a written order acknowledgement to You accepting Your order; or
- (d) We commence the delivery the Services to You.

6.SUPPLIER'S OBLIGATIONS

6.1 We shall use reasonable endeavours to provide the Services, in accordance in all material respects with the Contract.

6.2 We shall use reasonable endeavours to meet the performance dates specified in the Contract, but any such dates shall be estimates only and time shall not be of the essence of the Contract.

6.3 Where We arrange or make available to You any services or products which are supplied by a third party (Third Party Services), We will assist in the facilitation and provision of any Third Party Services and, by entering into the Contract, You agree to the accept and take the Third Party Services during the Term. We agree and undertake that we shall take reasonable care in the selection and use of any Third Party Services.

7. CUSTOMER'S OBLIGATIONS

7.1 You shall:

- (a) co-operate with Us in all matters relating to the Services;
- (b) provide in a timely manner such access to Your premises and data, and such office accommodation and other facilities, as We request;
- (c) provide in a timely manner such information as We may request, and ensure that such information is accurate in all material respects; and
- (d) be responsible (at Your own cost) for preparing the relevant premises for the supply of the Services.

7.2 If Our performance of its obligations under the Contract is prevented or delayed by any act or omission of either You or Your agents, sub-contractors or employees, You shall in all circumstances be liable to pay to Us on demand all reasonable costs, charges or losses sustained or incurred by Us (including, without limitation, any direct or indirect consequential losses, loss of profit and loss of reputation, loss or damage to property, injury to or death of any person and loss of opportunity to deploy resources elsewhere), subject to Us confirming such costs, charges and losses to You in writing.

7.3 You shall not, without Our prior written consent, at any time from the date of the Contract to the expiry of six months after the termination or expiry of the Contract, solicit or entice away from Axess Systems or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of Axess Systems.

7.4 Any consent given by Us in accordance with condition 7.3 shall be subject to the Customer paying to Us a sum equivalent to 20% of the then current annual remuneration of Our employee or sub-contractor or, if higher, 20% of the annual remuneration to be paid by You to such employee or sub-contractor.

8. CHANGE CONTROL

8.1 If either party wishes to change the scope of the Services, it shall submit details of the requested change to the other in writing.

8.2 If either party requests a change to the scope or execution of the Services, We shall, within a reasonable time, provide a written estimate to You of:

- (a) the likely time required to implement the change;
- (b) any variations to Our charges arising from the change; and
- (c) any other impact of the change on the terms of the Contract.

8.3 If We request a change to the scope of the Services, You shall not unreasonably withhold or delay consent to it.

8.4 If You wish us to proceed with the change, We have no obligation to do so unless and until the parties have agreed in writing on the necessary variations to Our charges and any other relevant terms of the Contract.

9. CHARGES AND PAYMENT

9.1 Condition 9.2 shall apply if the Services are to be provided on a time and-materials basis. Conditions 9.3 and condition 9.4 shall apply if the Services are to be provided for a fixed price. The remainder of this condition 9 shall apply in either case.

9.2 Where the Services are provided on a time-and-materials basis:

- (a) the charges payable for the Services shall be calculated in accordance with Our standard daily fee rates from time to time;
- (b) Our standard daily fee rates are calculated on the basis of an eight-hour day worked between 8.00 am and 5.00 pm on weekdays (excluding weekends and public holidays);
- (c) We will invoice You monthly in arrears for Our charges for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this condition 9.

9.3 Where the Services are provided for a fixed price or a monthly or annual charge the price for the Services shall be the amount set out in the Contract to be paid to Us at the times and in the manner set out in the Contract. All amounts due under this agreement shall be paid by You to Us in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

9.4 Any price for the Services excludes:

- (a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the project team in connection with the Services, and the cost of any materials or services reasonably and properly provided by third parties required by Us for the supply of the Services. Such expenses, materials and third party services shall be invoiced by Us in addition to the price; and
- (b) VAT, which We shall add to Our invoices at the appropriate rate.

9.5 Unless otherwise specified in the Contract, You shall pay each invoice submitted to You by Us in full, and in cleared funds, within 30 days of receipt.

9.6 Without prejudice to any other right or remedy that We may have, if You fail to pay Us on the due date We may:

- (a) charge interest on such sum from the due date for payment 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; and
- (b) suspend all Services until payment has been made in full.

9.7 Time for payment shall be of the essence of the Contract.

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

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

10. INTELLECTUAL PROPERTY RIGHTS

10.1 All Intellectual Property Rights and all other rights in the Deliverables shall be owned by Us or Our supplier (where applicable). We hereby license all such rights to You free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable You to make reasonable use of the 2 Deliverables and the Services as is envisaged by the parties. If We terminate the Contract under condition 8.1, this licence will automatically terminate.

10.2 You acknowledge that Your use of rights in Pre-existing Materials is conditional on Us obtaining a written end-user licence (or sub-licence) of such rights from the relevant licensor or licensors on such terms as will entitle Us to license such rights to You.

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;
- (b) any use made by You of the Services, the Deliverables or any part of them; and
- (c) any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including without limitation negligence) arising under or in connection with the Contract.

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

11.3 Nothing in these conditions excludes or limits the liability of Axess Systems:

- (a) any breach of the Contract howsoever arising;
- (b) for death or personal injury caused by Our negligence;
- (c) for fraud or fraudulent misrepresentation; or
- (d) for any liability which cannot lawfully be excluded or limited.

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, depletion of goodwill or similar losses, loss of anticipated savings, loss of goods, loss of contract, loss of use, 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 or 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 paid for the Services under the Contract.

11.5 In respect of any Third Party Services, We shall endeavour to ensure that You obtain the full benefit of any warranties, guarantees or service levels which the provider of the Third Party Services gives in respect of the Third Party Services but We otherwise give no warranty or guarantee in connection with such Third Party Services and, subject to condition 11.3, We exclude any liability in respect of such Third Party Services (or their use).

12. TERMINATION

12.1 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Contract without liability to the other if:

- the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than fourteen days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of twenty one days after being notified in writing to do so;
- (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (f) 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 the other party;
- (g) the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (i) a creditor or encumbrancer of the other party 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 the other party's assets and such attachment or process is not discharged within 14 days;

- (j) there is a change of control of the other party (within the meaning of section 1124 of the Corporation Tax Act 2010).

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

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

13. FORCE MAJEURE

We shall not in any circumstances have any liability to You under the Contract if We are prevented from, or delayed in, performing its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond Our reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving Our workforce or any other party), failure of a utility service or transport 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.

14. GENERAL

14.1 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.

14.2 The rights and remedies provided under the Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

14.3 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.

14.4 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 the Services.

14.5 Each party acknowledges that, in relation to the Services, 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.

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

14.7 The Customer shall not, without the prior written consent of Axess Systems, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

14.8 Axess Systems may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

14.9 Nothing in the Contract is intended to or shall operate to create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including without limitation the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

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

15. NOTICES

15.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office; or
- (b) sent by fax to its main fax number.

15.2 Any notice or communication shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service;
- (c) if sent by fax, at 9.00 am on the next Business Day after transmission.

15.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, "writing" shall not include email.

16. GOVERNING LAW

The Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including without limitation noncontractual 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 this agreement or its subject matter or formation (including non-contractual disputes or claims).



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axess

SYSTEMS



01773 882602

info@axesssystems.co.uk

Axess Systems Limited. Axess House Denby Hall Business Park Denby DE5 8LE