

AXFLOW LIMITED TERMS AND CONDITIONS OF SALE

Part I

1. Contract Conditions

- 1.1 Unless otherwise agreed or varied by us in writing these conditions shall apply to all goods or services supplied by AxFlow Limited (“us”) to any other party (“you”) and you shall be deemed to have notice of them immediately before placing an order with us. All other terms and conditions are hereby expressly excluded.
- 1.2 A binding contract shall only arise when an order placed by you is accepted by us in writing (“contract”). Any quotation or estimate issued by us does not constitute an offer to supply the relevant goods or services and we reserve the right to withdraw or revise the same at any time before our acceptance of your order. Any written statements regarding prices and technical or other data are by way of general information only and not binding unless a contract explicitly refers to them.
- 1.3 No condition, warranty or representation as to the quality of any goods sold by us or their fitness for any purpose, whether express or implied by statute, custom of the trade or otherwise, shall have effect.
- 1.4 Any samples provided are to be regarded as type samples, and complete conformity of delivered goods with samples is not guaranteed.

2. Drawings and technical documents

All drawings and technical documents delivered by one party to the other remain the property of the delivering party.

3. Price and Specification

- 3.1 We reserve the right, by giving notice to you prior to delivery, to increase prices to reflect increases in the cost to us due to any factor beyond our control such as (without limitation) any foreign exchange fluctuation, inflation, currency regulation, alteration of any applicable duties and taxes, changes in any applicable legislation, significant increases in the cost of labour, materials or other costs of manufacture.

3.2 We reserve the right to make any changes in the specification of any goods which are required to conform with any applicable statutory or EC requirements which do not materially affect their quality or performance.

4. Delivery and storage

4.1 Delivery of the goods shall be made by you collecting the goods from our premises within fourteen days after we have notified you that the goods are ready for collection or, if some other place for delivery is agreed between us in writing at an additional cost to you, by us delivering the goods to that place, using our nominated carrier.

4.2 Each contract is for delivery in one consignment and we reserve the right to charge you extra for partial deliveries made at your request.

4.3 If goods are not collected or any relevant delivery information we request is not provided to us within 14 days of notification by us that the goods are ready for collection, we shall be entitled to charge you a reasonable amount for storage of the goods or to arrange storage elsewhere for your account.

4.4 Goods shall be at your risk immediately upon delivery or expiry of fourteen days from the date we notify you that the goods are ready for collection, whichever is the earlier.

4.5 Any goods stored on our premises as a result of non-delivery to you for the reasons specified above or stored pending repair to such goods shall be stored at your entire risk in respect of loss or damage from any cause whatsoever and shall not be insured by us.

5. Loss or damage in transit

5.1 Where we effect or arrange delivery, we will, at our option, replace or repair any goods lost or damaged in transit, provided that we are given written notification of such loss or damage within the time required to enable us to comply with any carrier's relevant conditions concerning such loss or damage or, where we effect delivery ourselves, within 10 days of delivery of the goods.

5.2 We shall not be liable for any delay in delivery or liable to compensate you for such loss of or damage to goods, whether or not caused by any default by us, our servants or agents.

6. Acceptance and Inspection

- 6.1 You shall inspect any goods immediately upon delivery or collection and, subject to the following provision, shall be deemed to have accepted any goods and have waived any claim in respect of them unless you notify us in writing within 14 days of any complaint in respect of such goods.
- 6.2 Where the contract stipulates for test or inspection of the goods by you or on your behalf before delivery, if following reasonable notice you do not inspect or test the goods or if having inspected or tested the goods you do not notify us in writing within fourteen days thereafter of any claim that the goods do not conform with the contract, specifying the matters complained of, then you shall be conclusively deemed to have accepted the goods as being in conformity with the contract and shall not thereafter be entitled to reject the goods on the grounds of anything within the scope of the test or inspection.

7. Default or insolvency

- 7.1 We shall be entitled, without prejudice to our other rights and remedies, either to terminate wholly or in part any or every contract between us and you or to suspend any further deliveries or the performance of services under any or every such contract in any of the following events:
- (a) if any debt is overdue and payable by you to us but is unpaid;
 - (b) if you have failed to provide any letter of credit, bill of exchange or any other security provided in the terms of the contract;
 - (c) if you become insolvent or (i) being a body corporate pass a resolution for voluntary winding-up to be made, have a receiver appointed or become subject to an administration order (or carry out or undergo any analogous act or proceeding under foreign law) or (ii) being an individual or partnership suspend payment of your debts in whole or in part, propose or enter into any composition or arrangement with your creditors or have a bankruptcy order made against you.
- In the event of any such suspension, we shall be entitled as a condition of resuming delivery or services under any contract between us to require prepayment of or such security as we may require for the payment of the price of any further delivery or services.

8. Title

8.1 Title to goods shall remain with us until we have received full payment of the price for such goods and all other charges invoiced to you. Until such payment you shall:

- a) have possession of the goods as our bailee and store them in such a way as to enable them to be identified as our property ; or
- b) resell the goods as our agent in the ordinary course of your business on condition that until such payment as aforesaid :
 - (i) you shall hold all proceeds of such sales in trust for us and in a separate account;
 - (ii) account to us for such proceeds on demand;

Provided that such right of resale may be revoked by us at any time by written notice or automatically be determined if any of the insolvency situations referred to in condition 7 above occur.

8.2 If the goods are combined by you with other items or materials or utilised or consumed in the production of other items or materials we shall have legal and beneficial ownership of such resulting items and you shall store such items in the manner set out above or may resell such items subject to the provisions of this condition.

8.3 We reserve the right to repossess any goods in respect of which payment is overdue and resell the same and for this purpose you hereby grant an irrevocable right and licence to our servants and agents to enter upon all or any of your premises with or without vehicles during normal business hours.

9. Performance of Services

We shall carry out all services with reasonable care and skill and shall be entitled, with your consent, to engage subcontractors and consultants to carry out any services.

10. Installation

- 10.1 Where the contract includes the supervision of installation and/or erection and/or commissioning you will provide, at your sole cost, suitable access to and possession of the site, proper foundations ready to receive the goods as and when delivered, adequate lifting facilities and scaffolding, all skilled and unskilled labour, suitable protection for the goods from time of delivery, any lighting and heating necessary on the site during installation and/or erection and/or commissioning, work permits for our employees or agents if required and all other necessary materials, facilities and assistance.
- 10.2 If we incur extra cost owing to suspension of the work by your instructions or lack of instructions, interruptions, delays, overtime, unusual hours, mistakes or work for which we are not responsible, such extra cost as well as the cost of keeping any of our employees or agents on the site after installation and/or erection shall be charged as extra to the contract price and paid for accordingly.
- 10.3 The goods supplied shall be deemed to have been taken over by you when such installation and/or erection and/or commissioning, including tests on site, have been completed, or the date upon which such goods have been put into use by you, whichever is the earlier. The time of such taking over shall not be delayed on account of additions, minor omissions or defects which do not materially affect the commercial use of the goods. Except as provided in this condition all liability on our part shall cease on such taking over.

11. Time not of the Essence

- 11.1 Any times or dates quoted for delivery of goods or performance of services are estimates only, and not guaranteed or of the essence. We shall not be liable to you in respect of any failure to deliver or perform at or on any particular time or date howsoever caused.
- 11.2 The time for delivery of goods or performance of services shall be extended for a reasonable period if delay in the delivery of goods or performance of services is caused by instruction or lack of instruction from you, or by any circumstances referred to in condition 14.

- 11.3 In those exceptional cases where guaranteed delivery or performance times and dates are agreed in writing AND the contract provides for liquidated damages for delay, compensation shall only be payable in the circumstances as agreed in the contract and limited to the amounts specified therein.
- 11.4 In those instances where the contract states that time is of the essence and you have made it clear delay will result in consequential losses you have the right to cancel the contract insofar as it applies to the delayed goods or services and condition 17 shall not apply; but you shall not be entitled to any other remedy.

12. Warranty and exclusion of Liability

- 12.1 Subject to the remaining provisions of this condition, we will make good by repair, or at our option, by replacement, defects which under normal use and conditions appear in goods within a period of 12 months after the goods have been delivered and which arise solely from faulty design, materials or workmanship, provided always that the conditions relating to terms of payment have been strictly observed. We shall have no further liability to you.**
- 12.2 Where defective goods are replaced, the provisions of this condition shall apply to the replacement goods for the unexpired balance of the warranty period.**
- 12.3 The warranty contained in this condition shall only apply to you.**
- 12.4 We shall be under no liability in respect of defects arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow our or any manufacturer's directions (whether oral or in writing), misuse or alterations or repair of the goods without our prior written approval; or any other defect or damage caused which neither we nor the manufacturer has a responsibility to repair or replace.**
- 12.5 In respect of goods not manufactured by us, you shall only be entitled to the benefit of the warranty or guarantee provided to us by the manufacturer of the goods. In such event the liability referred to above shall not apply.**

- 12.6** Any claim by you which is based on any defect in the quality or condition of the goods shall be notified to us in writing within 14 days from the date of delivery, or where the defect or failure was not apparent on delivery (on reasonable inspection) forthwith upon discovery of the defect but in any event within 12 months from the date of delivery.
- 12.7** All faulty goods must be returned to our premises at your cost for inspection and repair or replacement.
- 12.8** Where we agree to inspect the faulty goods at your premises:-
- a)** You shall provide, free of charge, all services and assistance reasonably required by us in order to inspect the goods and carry out any necessary repair or replacement;
 - b)** if the faulty goods have been installed within a product which was not supplied by us, we shall not be responsible for the cost of removal of the faulty goods and subsequent re-installation of the repaired or replacement goods; and shall only carry out such removal and/or re-installation at an additional cost to you; and you will be required to provide written confirmation of your acceptance of the required works and costs;
 - c)** unless the contract included the installation or commissioning of our goods, then although any replacement goods or parts shall be provided by us free of charge, we shall be entitled to charge you a reasonable fee in respect of the labour and other expenses incurred in attending your premises;
- 12.9** If upon examination by us, the defect or failure is found not to be due to any defect in goods supplied by us, then all costs incurred by us in relation to such examination shall be paid by you;
- 12.10** Nothing in these conditions shall exclude or restrict our liability for death or personal injury resulting from our negligence or that of our employees and agents or affect the statutory rights of any buyer dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977) or exclude the applicability of any English or Irish laws relating to consumer protection which cannot be derogated from by contract;

- 12.11 Subject as expressly provided in these conditions 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 any contract for any loss of profit or any indirect special or consequential loss, damage or expenses (whether for loss of profits, contracts, goodwill, reputation or otherwise) costs, expenses or other claims of compensation whatsoever (whether caused by our negligence or that of our employees or otherwise) which arise out of or in connection with the supply of goods and/or services to you.**
- 12.12 We shall not be liable for any fault or defect in the goods which has arisen during transportation which is carried out by an independent carrier.**
- 12.13 In the event that you are able to establish a valid claim against us, our entire liability under or in connection with any contract shall not exceed the price of the relevant part of the goods and/or services to which any claim relates.**

13. Test certificate

- 13.1 If required by the contract, we will provide, free of charge, test certificates compiled by us or the relevant manufacturer covering goods manufactured by us or the manufacturer.
- 13.2 Where an independent certificate is required from a third party, any fees levied by such third party shall be paid by you.

14. Force Majeure

We shall not be liable to you for any loss or damage which may be suffered by you as a direct or indirect result of our performance or the contract being prevented hindered delayed or rendered uneconomic by reason of circumstances or events beyond our reasonable control including but not limited to acts of God, war, riot, strike, lock-out, trade dispute or labour disturbance, accident, breakdown of plant or machinery, fire, flood, storm, or other circumstances affecting the supply of the goods or raw materials or the manufacture or delivery of the goods.

15. Third Party Rights

If the goods are delivered in accordance with drawings, models or other prototypes or patterns supplied by you or in accordance with analysis prescriptions or descriptions given by you, you shall indemnify us against all loss, damages, costs and expenses awarded against or incurred by us in connection with any claim for infringement of any patent, copyright, design, trademark or other industrial or intellectual property rights of any other person which results from our use of such of your materials or specification.

16. Terms of Payment

- 16.1 Unless otherwise agreed in writing by us, all invoices will be raised by us on delivery of the goods or completion of the relevant services and payment of the contract price is due thirty days from the date of invoice rendered by us to you.
- 16.2 Where the contract requires payment of the contract price by way of several progress payments the sum due in respect of each progress payment shall be due thirty days from the date of the invoice rendered by us to you in respect of each progress payment. In the event that you fail to make any progress payment in full on the due date our obligations in respect of the contract shall be suspended until such time as payment of the amount overdue with interest in accordance with condition 16.4 is made by you.
- 16.3 All payments shall be made by you to us without any set-off, counterclaim or other deduction whatsoever.
- 16.4 We shall be entitled to charge interest (both before and after judgement) on any sums not paid on the due date. Such interest shall be calculated on a day-to-day basis on the amount outstanding at an annual rate of four per cent above the Bank of England base rate.
- 16.5 Neither party's rights shall be prejudiced or restricted by any indulgence or forbearance extended by either party to the other and no waiver by either party in respect of any breach shall operate as a waiver in respect of any subsequent breach.

17. Cancellation

- 17.1 In the event of cancellation of any order at any time by you and subject to condition 17.2:-
- a) if the cancelled order relates to a product ordinarily stocked by us, you shall immediately pay to us a cancellation fee equal to 20% of the proposed selling price of such product.;
 - b) if the cancelled order relates to a product which has been specifically manufactured for you and such manufacture has been completed, you shall immediately pay to us a cancellation fee equal to the full selling price of such product.;
 - c) if the cancelled order relates to a product which has been specifically manufactured for you but such manufacture has not been completed at the time of cancellation, you shall immediately:-
 - i) reimburse us in full for all costs and obligations incurred by us in connection with such manufacture which are non-cancellable and any penalties incurred by us as a result of such cancellation; and
 - ii) pay to us a cancellation fee equal to a percentage (calculated pro rata according to the stage of production) of the profit anticipated by us in respect of the product.
- 17.2 The minimum cancellation fee payable by you to us pursuant to this condition shall be €100.00.

18. Severance

If any provision in any contract or these conditions is held by any competent authority to be invalid or unenforceable in whole or in part this shall not effect the validity of the remainder of the relevant provision or any other provision.

19. Law Applicable

The contract shall be governed by and construed in accordance with English law. On entering into a contract you submit to the jurisdiction of the English courts.

20. Disputes

Any dispute as to whether any goods or services are defective and not in accordance with the contract shall be referred in accordance with the provisions of the Arbitration Act 1996 or any statutory modification or re-enactment thereof for the time being in force, to a single arbitrator to be agreed between us or in default of agreement to be nominated by the president for the time being of the Law Society of England and Wales.