

Terms and Conditions of Sale

Throughout this document 'we', 'us' and 'our' refers to Axiom Product Development Ltd.

Standard conditions of sale

1 Interpretation

1.1 In these Conditions the following definitions and rules of interpretation apply:

Agreement means a contract between the Company and the Buyer for the sale and purchase of the Products comprising these Conditions, the Order Acknowledgment, the Specification, the Order and any special terms and conditions agreed in writing by an authorised representative of the Company and the Buyer;

Buyer means the person(s), firm or company who purchases the Products from the Company;

Company means Axiom Product Development Ltd (Company No.10407672) of Units 3-5 Manor Park, Pagham Road, Runcton, Chichester, W Sussex, England PO20 1LJ, and any wholly owned subsidiary of Axiom Product Development Ltd.

Delivery Location means the place where delivery of the Products is to take place under the Agreement as set out in the Order Acknowledgment;

Delivery Date means the estimated date of delivery of the Products under the Agreement, as set out in the Order Acknowledgment;

Order Acknowledgment means the Company's written acceptance of the Order to supply the Products incorporating these Conditions and the Specification;

Order means a purchase order from the Buyer being the offer by the Buyer to purchase the Products from the Company;

Products means any products to be supplied to the Buyer by the Company under the Agreement;

Quotation means a written quotation for supplying the Products given to the Buyer by the Company; and

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Specification means any specification for the Products which is attached to the Quotation.

Standard Product means any product supplied by the Company that is not produced to the specification of the Buyer.

Bespoke Product means any product supplied by the Company that is produced to the specification of the Buyer in terms of design, material type etc.

1.2 Condition headings shall not affect the interpretation of these Conditions.

1.3 Words in the singular shall include the plural and vice versa.

1.4 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment, and includes any subordinate legislation for the time being in force made under it.

1.5 Where the words “include(s)”, “including” or “in particular” are used in these Conditions, they are deemed to have the words without limitation following them and where the context permits, the words other and otherwise are illustrative and shall not limit the sense of the words preceding them.

2 Application of terms

2.1 Subject to Condition 2.3 the Agreement will be on these Conditions to the exclusion of all other terms and conditions (including any terms and conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).

2.2 No terms and conditions endorsed on, delivered with or contained in the Buyer’s purchase order, confirmation of order, specification or other document shall form part of the Agreement simply as a result of such document being referred to in the Agreement.

2.3 No variation to these Conditions shall have effect unless agreed in writing by a director of the Company.

3 Orders

3.1 No Quotation shall become binding upon the Company until the Company has accepted the Buyer’s Order in accordance with Condition 3.5.

3.2 If the Buyer wishes to purchase Products from the Company, it will send an Order to the Company. An Order from the Buyer for the Products must contain:

3.2.1 a unique purchase order number;

3.2.2 a full list of the Products and the quantities ordered;

3.2.3 a full Delivery Location, including a postcode or suitable address reference and a named representative of the Buyer on site at such Delivery Location;

3.2.4 a single Delivery Location address. Multiple Delivery Locations must be accompanied by unique purchase orders per Delivery Location, unless expressly agreed otherwise in writing by the Company; and

3.2.5 an appropriate invoice address for the Buyer to which all invoices and credit control enquiries are to be sent.

3.3 If the Buyer is unable to issue an Order to the Company, the Company may accept a signed Quotation at the Company's sole discretion. The Quotation must be returned to the Company and contain:

3.3.1 The dated signature and printed name of the Buyer's representative.

3.3.2 The Buyer's Unique Reference Number or Code from which the purchase can be identified by the Buyer.

3.3.3 The position held by the Buyer's representative within the Buyer's organisation.

3.4 The Buyer is responsible for the completeness and accuracy of any Order submitted to the Company.

3.5 Each Order shall be deemed to be an offer by the Buyer to purchase the Products from the Company subject to these Conditions.

3.6 No Order shall be accepted until the Company has issued an Order Acknowledgment or (if earlier) the Company commences manufacture of the Products or delivers the Products to the Buyer. Any Order Acknowledgment shall be issued at the Company's sole discretion.

4 Cancellation

4.1 No Order Acknowledgment may be cancelled, varied or amended by the Buyer except with the written agreement of the Company.

4.2 If the Buyer varies or amends an Order Acknowledgment, the Company reserves the right to increase the price payable under the Agreement to take into account such variation or amendment, and the Buyer shall pay the costs and expenses reasonably incurred by the Company as a result of such variation or amendment.

4.3 If the Buyer cancels an Order Acknowledgment in accordance with Condition 4.1:

4.3.1 in the case of Standard Products where the Buyer wishes to return goods that have been delivered, the Company will, at its discretion, refund the balance of the cost of goods less deductions for related costs (including but not limited to distribution and administration costs) provided the goods are returned in pristine condition by the Buyer to a location of the Company's specification; or

4.3.2 in the case of Bespoke Products the Buyer shall pay to the company the full price payable under their Agreement for any such Products once manufacture has commenced, the price being the price agreed at the time of their manufacture. In the event that an order for Bespoke Products is cancelled before the manufacture of the goods has commenced the Buyer agrees to pay the Company any reasonable costs incurred in prosecuting the order to the point of cancellation (including but not limited to purchase of materials, components and printing materials).

5 Description

5.1 The description of the Products shall be as set out in the Order Acknowledgment.

6 Delivery

6.1 Delivery of the Products shall take place at the Delivery Location.

6.2 Delivery Dates are intended to be an estimate only and are not guaranteed. Time for delivery shall not be of the essence, and shall not be made of the essence by notice.

6.3 Subject to the other provisions of these Conditions the Company will not be liable for any direct, indirect or consequential loss, including but not limited to, loss of profit, costs, damages, charges or expenses caused by any delay in the delivery of the Products (even if caused by the Company's negligence).

6.4 Upon arrival of the Products at the Delivery Location, a representative of the Buyer is required to be present to sign for receipt of the Products. This signature confirms the Buyer's receipt of the Products.

6.5 If for whatever reason the Buyer fails to accept delivery of any of the Products when they are ready or the Company is unable to deliver the Products on the Delivery Date because the Buyer has not provided appropriate instructions, licences or authorisations:

6.5.1 risk in the Products will pass to the Buyer (including for loss or damage caused by the Company's negligence);

6.5.2 the Products will be deemed to have been delivered and will be invoiced and paid for in accordance with the provisions of the Agreement; and

6.5.3 the Company may store the Products until actual delivery at the Buyer's cost (including but not limited to storage and insurance costs).

6.6 If the Company delivers to the Buyer a quantity of Products of up to 5% more or less than the quantity ordered by the Buyer, the Buyer shall not be entitled to object to or to reject the Products or any of them by reason of the variance and shall pay for such Products at the pro rata Agreement rate based on the quantity of the Products actually delivered to the Buyer.

6.7 Delivery specifications are available on request from the Company. Specific delivery and packaging terms must be confirmed in writing by the Buyer to the Company and must be agreed in writing by the Company. The Company's standard specifications take priority.

6.8 Unloading of the Products is the responsibility of the Buyer unless other arrangements are made and described in detail on the Company's Order Acknowledgment.

6.9 The Company may deliver the Products by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Agreement.

7 Non-delivery

7.1 Subject to Condition 7.2, the Company shall not be liable for any non-delivery of Products (even if caused by the Company's negligence) unless written notice is given to the Company within seven (7) days of the Delivery Date.

7.2 Any liability of the Company for non-delivery of the Products shall be limited, at the Company's sole discretion, to:

7.2.1 delivering the Products within a reasonable time; or

7.2.2 issuing a credit note against any invoice raised for the Products, or where partial delivery of the Products has taken place, issuing a credit note against any invoice raised for the Products not delivered at the pro rata Agreement rate based on the quantity of the Products which have not been delivered; or

7.2.3 refunding the price paid by the Buyer for the Products, or where partial delivery of the Products has taken place, refunding the price paid by the Buyer at the pro rata Agreement rate based on the quantity of the Products which have not been delivered;

7.2.4 and this shall be the Company's sole and exclusive liability and the Buyer's sole and exclusive remedy in relation to such non-delivery.

8 Risk/Title

8.1 The Products are at the risk of the Buyer from the time of delivery.

8.2 Ownership of the Products shall not pass to the Buyer until the Company has received in full and in cleared funds:

8.2.1 all sums due to it in respect of the Products; and

8.2.2 all sums due or becoming due to the Company from the Buyer.

8.3 Until ownership of the Products has passed to it, the Buyer must:

8.3.1 hold the Products on a fiduciary basis as the Company's bailee;

8.3.2 store the Products at no cost to the Company separately from other Products so they remain readily identifiable as the Company's property;

8.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Products;

8.3.4 maintain the Products in satisfactory condition, insured on the Company's behalf for their full price against all risks to the satisfaction of the Company; and

8.3.5 hold the proceeds of the insurance referred to in Condition 8.3.4 on trust for the Company and not mix them with any other money nor pay the proceeds into an overdrawn bank account.

8.4 The Buyer may resell the Products before ownership has passed to it solely on the following conditions:

8.4.1 any sale shall be effected in the ordinary course of the Buyer's business at full market value; and

8.4.2 any such sale shall be a sale of the Company's property on the Company's own behalf and the Buyer shall deal as principal when making such a sale.

8.5 The Company may terminate any Agreement and the Buyer's right to possession of the Products shall terminate immediately if:

8.5.1 the Buyer commits any material breach of any of its obligations under these Conditions;

8.5.2 the Buyer is, or the Company reasonably considers it to be, unable to pay its debts when they fall due as defined in Section 123 of the Insolvency Act 1986;

8.5.3 the Buyer makes any arrangement or composition with its creditors or makes an application to a court of competent jurisdiction for the protection of its creditors in any way;

8.5.4 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 the Buyer;

8.5.5 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 Buyer;

8.5.6 a floating charge holder over the assets of the Buyer has become entitled to appoint or has appointed an administrative receiver;

8.5.7 a person becomes entitled to appoint a receiver over the Buyer's assets or a receiver is appointed over the Buyer's assets;

8.5.8 any distraint is levied against the Buyer or its property by any third party;

8.5.9 the Buyer suffers actions analogous to those described in Conditions 8.5.2 to 8.5.8 in any jurisdiction;

8.5.10 the Buyer ceases, or threatens to cease, to carry on all or a substantial part of its business.

8.6 The Company shall be entitled to recover payment for the Products notwithstanding that ownership of the Products has not passed from the Company.

8.7 The Buyer grants the Company, its agents, sub-contractors and employees an irrevocable licence at any time to enter premises where the Products are or may be stored to inspect or where the Buyer's right to possession has terminated to recover the Products.

8.8 Where the Company is unable to determine whether any Products are those in respect of which the Buyer's right to possession has terminated the Buyer shall be deemed to have sold all Products in the order in which such Products were invoiced to the Buyer.

8.9 On termination of the Agreement, the Company's, but not the Buyer's, rights under this Condition 8 shall remain in effect.

9 Price

9.1 The price for the Products shall be the price set out in the Order Acknowledgment.

9.2 The price for the Products includes delivery to the Buyer, only where specified on the Order Acknowledgement, on the Company's standard delivery terms, but excludes value added tax and all costs of charges in relation to loading, unloading, carriage and insurance or other delivery arrangements all of which the Buyer will pay in addition when it is due to pay for the Products, unless the Order Acknowledgment expressly states that these elements are included in the price payable for the Products under the Agreement.

10 Payment

10.1 Subject to Condition 10.4, payment for the Products is due within 30 days of the date of invoice, unless otherwise agreed in writing by the Company and detailed on the Order Acknowledgment.

10.2 Time for payment shall be of the essence.

10.3 No payment shall be deemed to have been received until the Company has received payment in full and in cleared funds.

10.4 All payments payable to the Company under the Agreement shall become due immediately upon termination of this Agreement irrespective of any other provision.

10.5 The Buyer shall make all payments under the Agreement in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.

10.6 If the Buyer fails to pay the Company any sum due under the Agreement it will be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 5% above the base lending rate from time to time of the Bank of England accruing on a daily basis until payment is made, whether before or after any judgement.

11 Quality

11.1 The Company warrants that upon delivery the Products will:

11.1.1 be of satisfactory quality as defined in the Sale of Goods Act 1979; and

11.1.2 comply in all material respects with the Specification provided by the Buyer or agreed with the Buyer prior to manufacture. It is the Buyer responsibility to ensure that the specification and all accompanying technical documents ensure that the Product meets the Buyer's needs prior to approval of the specification by the Buyer. The company shall not be liable if the agreed Product Specification does meet the needs of the Buyer. Where no Specification exists, at point of manufacture, the Product will be reasonably fit for any particular purpose for which the Products are being bought if the Buyer has made known that purpose to the Company and the Company has confirmed that it is reasonable for the Buyer to rely on the skill and judgement of the Company.

11.2 The Company shall not be liable for a breach of the warranty at Condition 11 unless:

11.2.1 the Buyer gives written notice of the defect to the Company within three (5) days of inspecting the Products, which the Buyer shall do upon delivery of the Products; and

11.2.2 the Company is given a reasonable opportunity after receiving the notice to examine such Products and the Buyer (if asked to do so by the Company) retains such Products at the Delivery Location for the Company to inspect and/or collect within seven (14) days.

11.3 The Company shall not be liable for a breach of the warranty in Condition 11.1 if:

11.3.1 the Buyer makes any further use of such Products after giving such notice;

11.3.2 the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, installation, use or maintenance of the Products;

11.3.3 the defect arises because the Buyer failed to comply with the Specification; or

11.3.4 the Buyer alters or repairs such Products without the written consent of the Company.

11.4 Subject to Conditions 11.2 and 11.3 if any of the Products do not conform with the warranty in Condition 11.1, the Company shall at its sole discretion:

11.4.1 repair or replace such Products (or the defective part); or

11.4.2 refund the price of such Products at the pro rata Agreement rate based on the quantity of the Products which do not conform with the warranty;

11.4.3 and this shall be the Buyer's sole and exclusive remedy in relation to such defective Products.

12 Limitation of liability

12.1 Nothing in these Conditions excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence or for fraud or fraudulent misrepresentation, or any other liability that cannot be restricted by law.

12.2 All warranties, conditions and other terms implied by statute or common law (except for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Agreement.

12.3 Subject to Condition 12.1:

12.3.1 the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of the Agreement shall be limited to the total price payable for the Products ordered under the Agreement; and

12.3.2 the Company shall not be liable to the Buyer for any: (a) loss of profit; (b) loss of business; (c) completion of goodwill or; (d) other claims for consequential compensation (e) in each case whether direct, indirect or consequential, whatsoever or howsoever caused, which arise out of or in connection with the Agreement and the parties intend that each type of loss under this Condition 12.3.2 shall be severable in accordance with Condition 16.2.

13 Assignment

13.1 The Buyer shall not be entitled to assign the Agreement or any part of it.

13.2 The Company may assign the Agreement or any part of it.

14 Force Majeure

14.1 The Company may defer delivery of the Products, terminate the Agreement or reduce the volume of Products ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in carrying on its business due to circumstances beyond its reasonable control, including but not limited to acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

15 Dispute Resolution

15.1 In the event of a dispute between the parties, the Company at its sole discretion shall decide whether to refer the dispute for determination in accordance with Condition 15.2. In all other circumstances the parties submit to the exclusive jurisdiction of the English courts.

15.2 The parties will attempt to settle all disputes arising out of or in connection with the Agreement which are referred under Condition 15.1, by mediation in accordance with the Centre of Effective Dispute Resolution (CEDR) model mediation procedure.

16 General

16.1 Each right or remedy of the Company under the Agreement is without prejudice to any other right or remedy of the Company whether under the Agreement or not.

16.2 If any provision of the Agreement is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to that extent be deemed severable and the remaining provisions of the Agreement and the remainder of the provision shall continue in full force and effect.

16.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Agreement will not be waiver of any of its rights under the Agreement.

16.4 Any waiver by the Company of any breach of, or default under any provision of the Agreement by the Buyer will not be deemed a waiver of any subsequent breach or default.

16.5 The parties do not intend that any term of the Agreement shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

16.6 The formation, existence, construction, performance, validity and all aspects of the Agreement shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.