

AXITEC, LLC
General Purchasing Terms and Conditions

1. Applicability. These General Purchasing Terms and Conditions (the “**Terms**”) of AXITEC, LLC (the “**Buyer**”) apply to all purchases of goods and services (the “**Goods**”) from the party to whom these Terms are addressed below (the “**Seller**”) and to each purchase order issued by Buyer to Seller (in each case, the “**Order**”), to which Order(s) these Terms are hereby incorporated as if set forth in full therein. The Order, together with these incorporated Terms, constitutes the sole and entire agreement of the parties with respect to the Order, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, with respect to the subject matter of the Order. The Order expressly limits Seller’s acceptance to the terms of the Order. Except as otherwise provided herein, these Terms prevail over any terms or conditions contained in any other documentation and expressly exclude any of Seller’s general terms and conditions of sale or any other document issued by Seller in connection with the Order. These Terms apply to any repaired or replacement Goods provided by Seller hereunder. Buyer is not obligated to any minimum purchase or future purchase obligations under the Order.
2. Acceptance. The Order is not binding on Buyer unless Seller accepts the Order in writing within 5 business days of receipt. Buyer may withdraw the Order at any time before it is accepted by Seller.
3. Delivery Date. Seller shall deliver the Goods in the quantities and on the date(s) specified in the Order or as otherwise agreed in writing by the parties (the “**Delivery Date**”). Timely delivery of the Goods is of the essence. If Seller fails to deliver the Goods in full on the Delivery Date, Buyer may terminate the Order immediately by providing written notice to Seller and Seller shall indemnify Buyer against any losses, claims, damages, and reasonable costs and expenses directly attributable to Seller’s failure to deliver the Goods on the Delivery Date. Buyer has the right to return any Goods delivered prior to the Delivery Date at Seller’s expense and Seller shall redeliver such Goods on the Delivery Date. Seller acknowledges that timely delivery and performance of the Goods and the Services is of the essence hereunder.
4. Quantity. If Seller delivers more or less than the quantity of Goods ordered, Buyer may reject all or any excess Goods. Any such rejected Goods shall be returned to Seller at Seller’s risk and expense. If Buyer does not reject the Goods and instead accepts the delivery of Goods at the increased or reduced quantity, the Price for the Goods shall be adjusted on a pro-rata basis.
5. Delivery Location. All Goods shall be delivered to the address specified in the Order (the “**Delivery Location**”) during Buyer’s normal business hours, or as otherwise instructed by Buyer.
6. Shipping Terms. Delivery shall be made DDP (Buyer’s warehouse) Incoterms 2010. Seller shall give written notice of shipment to Buyer when the Goods are delivered to a carrier for transportation. Seller shall provide Buyer all shipping documents, including the commercial invoice, packing list, air waybill/bill of lading and any other documents necessary to release the Goods to Buyer within 3 business days after Seller delivers the Goods to the transportation carrier. The Order number must appear on all shipping documents, shipping labels, bills of lading, air waybills, invoices, correspondence and any other documents pertaining to the Order. The bill of lading shall further contain Goods article numbers, types and quantities, container number (if applicable), weight and volume in cubic meters.
7. Title and Risk of Loss. Title passes to Buyer upon delivery of the Goods to the Delivery Location. Seller bears all risk of loss or damage to the Goods until delivery of the Goods to the Delivery Location.
8. Packaging. All goods shall be packed for shipment according to Buyer’s documentation and marking regulations, which Seller shall obtain from Buyer instructions and in a manner, sufficient to ensure that the Goods are delivered in undamaged condition. Seller must provide Buyer prior written notice if it requires Buyer to return any packaging material. Any return of such packaging material shall be made at Seller’s expense.
9. Stock levels. Seller shall, upon Buyer’s request and at no cost to Buyer, maintain sufficient stock levels of Goods to provide flexibility, respond rapidly to increases in Buyer’s demand and to restore Buyer’s inventory holding such stock levels as reasonably required or, if higher, the stock levels as specified in any written agreement.

10. Change Orders. Buyer may at any time, by written instructions and/or drawings issued to Seller (each a “**Change Order**”), order changes to the Goods. Seller shall within 7 days of receipt of a Change Order submit to Buyer a firm cost proposal for the Change Order. If Buyer accepts such cost proposal, Seller shall proceed with the changes subject to the cost proposal and the terms and conditions of the Order. Seller acknowledges that a Change Order may or may not entitle Seller to an adjustment in Seller’s compensation or the performance deadlines under the Order.

11. Subcontractors. Seller shall obtain Buyer’s written consent, which may be given or withheld in Buyer’s sole discretion, prior to entering into agreements with or otherwise engaging any person or entity, including all subcontractors and affiliates of Seller, other than Seller’s employees, to provide any Goods to Buyer (each such approved subcontractor or other third party, a “**Permitted Subcontractor**”). Buyer’s approval shall not relieve Seller of its obligations under the Order, and Seller shall remain fully responsible for the performance of each such Permitted Subcontractor and its employees and for their compliance with all of the terms and conditions of the Order as if they were Seller’s own employees. Nothing contained in the Order shall create any contractual relationship between Buyer and any Seller subcontractor or supplier. Seller shall require each Permitted Subcontractor to be bound in writing by the confidentiality provisions of the Order, and, upon Buyer’s written request, to enter into a non-disclosure or intellectual property assignment or license agreement in a form that is reasonably satisfactory to Buyer.

12. Seller’s Obligations Regarding Services. Seller shall:

(a) before the date on which the Services are to start, obtain, and at all times during the term of the Order, maintain, all necessary licenses and consents and comply with all relevant laws applicable to the provision of the Services;

(b) comply with all rules, regulations and policies of Buyer, including security procedures concerning systems and data and remote access thereto, building security procedures, including the restriction of access by Buyer to certain areas of its premises or systems for security reasons, and general health and safety practices and procedures;

(c) maintain complete and accurate records relating to the provision of the Services under the Order, including records of the time spent and materials used by Seller in providing the Services in such form as Buyer shall approve. During the term of the Order and for a period of two (2) years thereafter, upon Buyer’s written request, Seller shall allow Buyer to inspect and make copies of such records and interview Seller personnel in connection with the provision of the Services;

(d) ensure that all persons, whether employees, agents, subcontractors, or anyone acting for or on behalf of the Seller, are properly licensed, certified or accredited as required by applicable law and are suitably skilled, experienced and qualified to perform the Services;

(e) ensure that all of its equipment used in the provision of the Services is in good working order and suitable for the purposes for which it is used, and conforms to all relevant legal standards and standards specified by the Buyer; and

(f) keep and maintain any Buyer equipment in its possession in good working order and shall not dispose of or use such equipment other than in accordance with the Buyer’s written instructions or authorization.

13. Amendment and Modification. No change to the Order is binding upon Buyer unless it is in writing, specifically states that it amends the Order and is signed by an authorized representative of Buyer.

14. Inspection by Buyer and Rejection of Nonconforming Goods. The Buyer has the right to inspect the Goods on or after the Delivery Date. Buyer, at its sole option, may inspect all or a sample of the Goods, and may reject all or any portion of the Goods if it determines the Goods are nonconforming or defective. If Buyer rejects any portion of the Goods, Buyer has the right, effective upon written notice to Seller, to: (a) rescind the Order in its entirety; (b) accept the Goods at a reasonably reduced price; or (c) reject the Goods and require replacement of the rejected Goods. If Buyer requires replacement of the Goods, Seller shall, at its expense, promptly replace the nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective goods and the delivery of replacement Goods. If Seller fails to timely deliver replacement Goods, Buyer may replace them with goods from a third party and charge Seller the cost thereof and terminate the Order for cause pursuant to Section 25. Any inspection or other action by Buyer under this Section 14 shall not reduce or otherwise

affect Seller's obligations under the Order, and Buyer shall have the right to conduct further inspections after Seller has carried out its remedial actions.

15. Inspection by Seller, Audit and Records.

(a) Seller shall inspect the Goods before shipment and record in durable form time and date; means of inspection; name and position of the inspector; and inspection results ("**Seller Inspection Records**").

(b) Seller shall archive, at no cost to Buyer, Seller Inspection Records according to applicable law, regulations and ordinances but in no case for less than ten (10) years after the date of inspection.

(c) Seller shall archive, at no cost to Buyer, any design and production documentation pertaining to the Goods ("**Seller Goods Records**") for no less than ten (10) years after the date of production.

(d) Upon request by Buyer, Seller shall make any Seller Inspection Records and Seller Goods Records available (i) for review, or (ii) for use in any litigation by Buyer or Buyer's representatives.

(e) During the term of the Order (i) Buyer or its representatives may on request and during regular business hours, at its own expense, inspect Seller's facilities (ii) Seller shall notify of the revocation, withdrawal or similar action pertaining to any permits or licenses regarding Seller's facilities and send to Buyer all third-party inspection reports pertaining to Seller's facilities; (iii) Seller shall make any Seller Inspection Records available for review by Buyer or Buyer's representatives; and (iv) Seller shall require its suppliers that supply parts or components for the Goods to follow inspection, recording, and archive requirements no less stringent than the requirements set forth in this Section 15.

16. Price. The price of the Goods is the price stated in the Order (the "**Price**"). If no price is included in the Order, the Price shall be the price set out in Seller's published price list in force as of the date of the Order. Unless otherwise specified in the Order, the Price includes all packaging, transportation costs to the Delivery Location, insurance, customs duties and fees and applicable taxes, including, but not limited to, all sales, use or excise taxes. No increase in the Price is effective, whether due to increased material, labor or transportation costs or otherwise, without the prior written consent of Buyer. Seller represents and warrants that the price for the Goods is the lowest price charged by Seller to any of its external buyers for similar volumes of similar Goods. If Seller charges any other buyer a lower price, Seller must apply that price to all Goods under the Order. If Seller fails to meet the lower price, Buyer, at its option, may terminate the Order without liability pursuant to Section 25 hereof.

17. Payment Terms. Seller shall issue an invoice, separately from the Goods, to Buyer on or any time after the completion of delivery and only in accordance with the Terms, containing at a minimum the following information: (i) names and addresses of the parties to the Order, (ii) Seller's tax identification number, (iii) number and date of order, (iv) supplier number, (v) additional customer data, (vi) delivery location(s), (vii) number and date of delivery docket, (viii) quantity of Goods invoiced, (ix) Goods country of origin, (x) and payment instructions of Seller (a conforming invoice so issued, an "**Invoice**"). Buyer shall pay properly invoiced amounts due to Seller within 14 days (minus 3% Rebate) after receipt of the invoice or within 45 days without reduction. For purposes of clarification, if Buyer makes payment within 14 days from Buyer's receipt of such Invoice, Buyer shall be entitled to deduct 3 percent from the amount of the Invoice ("**Early Payment Discount**"), and Seller acknowledges that any such payment after deducting the Early Payment Discount constitutes payment in full of the invoiced amount. Buyer shall make all payments hereunder in US dollars by check, electronic transfer or wire transfer. In the event of a payment dispute, Buyer shall deliver a written statement to Seller no later than 5 days prior to the date payment is due on the disputed Invoice listing all disputed items and providing a reasonably detailed description of each disputed item. Amounts not so disputed are deemed accepted and must be paid, notwithstanding disputes on other items, within the period set forth in this Section 17, subject to Section 18 hereof. The parties shall seek to resolve all such disputes expeditiously and in good faith. Seller shall continue performing its obligations under the Order or any other Buyer order notwithstanding any such dispute.

18. Setoff. Without prejudice to any other right or remedy it may have, Buyer reserves the right to set off at any time any amount owing to it by Seller against any amount payable by Buyer to Seller.

19. Warranties. Seller warrants to Buyer that for a period of twenty-four (24) months from the Delivery Date, all Goods will: (a) be free from any defects in workmanship, material and design; (b) conform to applicable specifications, drawings, designs, samples and other requirements specified by Buyer; (c) be fit for their intended purpose and operate as intended; (d) be merchantable; (e) be free and clear of all liens, security interests or other encumbrances; and (f) not infringe or misappropriate any third party's patent or other intellectual property rights.

Seller warrants to Buyer that the Goods comply with all applicable laws, regulations and ordinances of the Delivery Location and the intended location of use of the Goods, if such location of use is known to Seller or if Buyer notified Seller of such location in the Order or otherwise before delivery. These warranties survive any delivery, inspection, acceptance or payment of or for the Goods by Buyer.

The seller warrants using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar Goods and shall devote adequate resources to meet its obligations under these Terms and the Order.

These warranties are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of Buyer's discovery of the noncompliance of the Goods with the foregoing warranties. If Buyer gives Seller notice of noncompliance pursuant to this Section 19, Seller shall, at its own cost and expense, and at Buyer's option, promptly replace or repair the defective or nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective or nonconforming Goods to Seller and the delivery of repaired or replacement Goods to Buyer.

20. Spare Parts. Seller agrees that it will, for a period of ten (10) years after the last delivery of Goods under the Order, make available and sell to Buyer all necessary replacement parts and spare parts (together, "**Spare Parts**") for the Goods, at prevailing price, delivery and payment terms, required for maintenance and repair of the Goods. The parties acknowledge that in the event that Spare Parts consisting of or including components manufactured by a third party supplier and not manufactured by Seller cease to be available from such third party supplier, Seller shall be entitled to identify a suitable replacement or work-around solution for such Spare Parts. After such ten (10) year period has expired, Buyer may request that Seller continue to supply Spare Parts and, if Seller does not choose to continue to supply such Spare Parts, Seller agrees to provide Buyer, upon Buyer's request therefore, with an opportunity for Buyer to make final purchases of any Spare Parts then in the possession of Seller and supply Buyer with copies of all manufacturing drawings of Spare Parts that are manufactured by Seller so that Buyer can maintain the Goods, provided that Buyer shall only be able to use such drawings to make or have made Spare Parts for Goods supplied by Seller and for no other purpose.

21. General Indemnification. Seller shall defend, indemnify and hold harmless Buyer and Buyer's parent company, their subsidiaries, affiliates, successors or assigns and their respective directors, officers, shareholders and employees and Buyer's customers (collectively, "**Indemnitees**") against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers (collectively, "**Losses**") arising out of or occurring in connection with the products purchased from Seller or Seller's negligence, willful misconduct or breach of the Terms. Seller shall not enter into any settlement without Buyer's or Indemnitee's prior written consent.

22. Intellectual Property Indemnification. Seller shall, at its expense, defend, indemnify and hold harmless Buyer and any Indemnitee against any and all Losses arising out of or in connection with any claim that Buyer's or Indemnitee's use or possession of the Goods infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party. In no event shall Seller enter into any settlement without Buyer's or Indemnitee's prior written consent.

23. Insurance. During the term of the Order and for a period of five (5) years thereafter, Seller shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including bodily injury and property damage and product liability) in a sum no less than \$10,000,000 per occurrence and \$20,000,000 in the aggregate with financially sound and reputable insurers. Upon Buyer's request, Seller shall provide Buyer with a certificate of insurance from Seller's insurer evidencing the insurance coverage specified herein. The certificate of insurance shall name Buyer as an additional insured. Seller shall provide Buyer with 30 days' advance written notice in the event of a cancellation or material change in Seller's insurance policy. Except where prohibited by law, Seller shall require its insurer to waive all rights of subrogation against Buyer's insurers and Buyer or the Indemnitees.

24. Compliance with Law. Seller is in compliance with and shall comply with all applicable laws, regulations and ordinances. Seller has and shall maintain in effect all the licenses, permissions, authorizations, consents and

permits that it needs to carry out its obligations under the Order. Seller shall comply with all export and import laws of all countries involved in the sale of Goods under the Order. Seller assumes all responsibility for shipments of Goods requiring any government import clearance. Buyer may terminate the Order if any government authority imposes antidumping duties, countervailing duties or any retaliatory duties on the Goods.

25. Termination. Buyer may terminate the Order, in whole or in part, at any time with or without cause for undelivered Goods or unperformed Services with immediate effect upon written notice to Seller. In addition to any remedies that may be provided under these Terms, Buyer may terminate the Order with immediate effect upon written notice to the Seller, either before or after the acceptance of the Goods, if Seller has not performed or complied with any of these Terms, in whole or in part. If the Seller becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors, then the Buyer may terminate the Order upon written notice to Seller. If Buyer terminates the Order for any reason, Seller's sole and exclusive remedy is payment for the Goods received and accepted by Buyer prior to the termination.

26. Limitation of Liability. Nothing in the Order shall exclude or limit (a) Seller's liability under Sections 19, 21, 22 and 28 hereof, or (b) Seller's liability for fraud, personal injury or death caused by its negligence or willful misconduct.

27. Waiver. No waiver by any party of any of the provisions of the Order shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in the Order, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from the Order shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

28. Confidential Information.

(a) All non-public, confidential or proprietary information of the Buyer, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, moulds, models, templates, tools, samples, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Buyer to Seller, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with the Order is confidential, solely for the use of performing the Order and may not be disclosed or copied unless authorized by Buyer in writing. Upon Buyer's request, Seller shall promptly return all documents and other materials received from Buyer. Buyer shall be entitled to injunctive relief for any violation of this Section 28(a). This Section 28(a) shall not apply to information that is: (a) in the public domain; (b) known to the Seller at the time of disclosure; or (c) rightfully obtained by the Seller on a non-confidential basis from a third party. To the extent there is an inconsistency between this Section 28(a) and any separate confidentiality or non-disclosure agreement between the parties, such confidentiality or non-disclosure agreement controls.

(b) Any moulds, models, tools, machinery, drawings, plans, lithographs and data created by Seller ("**Seller Confidential Order Fulfillment Information**") or provided by Buyer ("**Buyer Confidential Order Fulfillment Information**") to perform the Order are confidential, solely for the use of performing the Order, and may not be disclosed unless authorized by Buyer in writing. Seller Confidential Order Fulfillment Information becomes property of Buyer upon payment of the Order Invoice, as the case may be, and Seller shall store any Seller Confidential Order Fulfillment Information at no cost to Buyer until Buyer takes possession of such Seller Confidential Order Fulfillment Information. Buyer Confidential Order Fulfillment Information remains property of Buyer and Seller shall return such Buyer Confidential Order Fulfillment Information to Buyer without delay upon termination of the Order, non-acceptance of the Order pursuant to Section 2, and at any time upon Buyer's request.

29. Force Majeure. Neither party shall be liable to the other for any delay or failure in performing its obligations under the Order to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, without such party's fault or negligence, and which by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable ("**Force Majeure Event**"). Force Majeure Events include, but are not limited to, acts of God or the public enemy, government restrictions, floods, fire, earthquakes, explosion, epidemic, war, invasion, hostilities, terrorist acts, riots, strike, embargoes or industrial disturbances. Seller's economic hardship, changes in market conditions or a Permitted Contractor's

inability to perform under the Order are not considered Force Majeure Events. Seller shall use all diligent efforts to end the failure or delay of its performance, ensure that the effects of any Force Majeure Event are minimized and resume performance under the Order. If a Force Majeure Event prevents Seller from carrying out its obligations under the Order for a continuous period of more than 30 business days, Buyer may terminate the Order immediately by giving written notice to Seller.

30. Reference Supplier. Buyer may designate Seller as a reference supplier by giving notice of such designation to Seller (“**Reference Designation**”). Seller hereby grants to Buyer a fully paid, non-exclusive, royalty-free, irrevocable right and license, exercisable only upon the occurrence of the Reference Designation, to use Seller’s name, trade names, logos and similar intellectual property of Seller in connection with the promotion, advertising, distribution, and sale of Buyer’s products worldwide. Buyer may exercise any or all of its rights under this license through one or more of its affiliates.

31. Assignment. Seller shall not assign, transfer, delegate or subcontract any of its rights or obligations under the Order without the prior written consent of Buyer. Any purported assignment or delegation in violation of this Section 31 shall be null and void. No assignment or delegation shall relieve the Seller of any of its obligations hereunder.

32. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in the Order or hereunder shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever. No relationship of exclusivity shall be construed from the Order.

33. No Third-Party Beneficiaries. The Order is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing therein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever, or under or by reason of these Terms.

34. Governing Law. All matters arising out of or relating to the Order shall be governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Delaware. The United Nations Convention on Contracts for the International Sale of Goods (CISG) and the United Nations Convention on the Limitation Period in the International Sale of Goods shall not apply to this Agreement.

35. Submission to Jurisdiction. Any legal suit, action or proceeding arising out of or relating to the Order shall be instituted in the United States District Court for the Delaware or the courts of the State of Delaware located in the City of Dover and County of Kent County, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

36. Cumulative Remedies. The rights and remedies under the Order, including for the avoidance of doubt these Terms, are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise.

37. Notices. All notices, request, consents, claims, demands, waivers and other communications related to the Order (each, a “**Notice**”) shall be in writing and addressed to the parties at the addresses set forth on the face of the Order or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in the Order, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section 37

38. Severability. If any term or provision of the Order, including for the avoidance of doubt these Terms, is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any

other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

39. Survival. Provisions of the Order, including for the avoidance of doubt these Terms, which by their nature should apply beyond their terms will remain in force after any termination or expiration of the Order including, but not limited to, the following provisions: Inspection by Seller, Audits and Records; Setoff; Warranties; General Indemnification; Intellectual Property Indemnification; Insurance; Compliance with Laws; Confidential Information; Assignment; Governing Law; Submission to Jurisdiction and Survival.

SELLER:

[SELLER NAME]

[SELLER ADDRESS]

By:

Title:

Date: