

Terms and Conditions of Sale (TCS)

§ 1. Sale of Products.

(a) All shipments, services, sales and quotations between Axitec, LLC. ("Seller") and the purchaser ("Purchaser") of Products set forth herein ("Products") shall be subject to these Terms and Conditions of Sale (these "Terms" or this "Agreement"). Purchaser acknowledges receipt hereof and accepts these Terms. ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS CONTAINED IN ANY RESPONSE HERETO BY PURCHASER OR IN PURCHASER'S INITIAL ORDER AND ANY ASSERTIONS BY THE SALES REPRESENTATIVE THAT ARE NOT EXPRESSLY DESCRIBED IN THESE TERMS AND CONDITIONS OF SALE OUTSIDE OF THESE EXPRESSED TERMS AND CONDITIONS ARE HEREBY REJECTED BY SELLER AND SHALL BE OF NO EFFECT NOR IN ANY CIRCUMSTANCES BINDING ON SELLER. Seller's acceptance of any order offered by Purchaser is EXPRESSLY MADE CONDITIONAL on Purchaser's assent to these Terms, and under no circumstances will any terms other than these Terms apply to Seller's sale of the Products.

(b) Seller's quotations are not binding on Seller after 10 business days of submission of quotation. Each order of Products shall be in writing and no order of Purchaser shall be binding on Seller until the earlier of (i) payment of products has occurred or payment terms have been established and shipping arrangements have been made (ii) shipment to Purchaser of Products or (iii) transmittal of a written acceptance by Seller. Seller's failure to respond to Purchaser's order within two (2) weeks after receipt of the order shall be considered a rejection of the order.

(c) Purchaser may cancel any order before it has become binding pursuant to subsection (b) above. Seller may cancel all accepted orders and deliveries of Products if (i) Purchaser makes an assignment for the benefit of creditors, (ii) becomes party to a voluntary or involuntary proceeding of insolvency, bankruptcy or reorganization, (iii) generally becomes unable to pay its debts as they become due, (iv) fails to remit payment to Seller in accordance with the terms hereof or under any other agreement between Seller and Purchaser, or (v) breaches any other term, provision or condition contained in these Terms. (vi) in cases where fraud and deceit is evident in the payment of products

(d) All references in sales brochures, data sheets and offers as to specifications, price and other details of the Products are approximate and shall not be binding on the Seller unless expressly agreed to in writing. Seller may, from time to time, update and replace Products in its line. Seller reserves the right to substitute updated Products, provided that such updated Products meet the specifications of the ordered Products in all material respects and are sold for the same price as the ordered Products.

(e) Purchaser acknowledges that Seller's acceptance of any purchase order is dependent on Seller's prior approval of Purchaser's business credit and personal credit with personal guarantee where warranted. Purchaser acknowledges that Seller may demand assurances of Purchaser's ability to pay by requesting such trade or banking references or a letter of credit or such other information as deemed adequate by Seller.

§ 2. Delivery.

(a) All shipments are delivered EXW Seller's facility. Risk of loss shall pass to Purchaser at the time the Product is shipped. Seller may, at its option, prepay freight charges and seek reimbursement from Purchaser. In the event that Purchaser fails to accept delivery of the Product, Seller shall have the right to store the Product at the Purchaser's cost and expense until such Product may be sold for a reasonable price to a third party. Any deposits or monies paid by purchaser will be used to cover any shortfall between the reasonable selling price and the price as originally agreed. Any overage will be repaid to purchaser within 10 business days of selling the originally purchased equipment.

(b) All dates of delivery set forth in an accepted order are approximate and non-binding on Seller.

(c) If Purchaser requests any modification of the order after Seller's acceptance, Seller shall have the right to extend the delivery time period as reasonably needed to complete Purchaser's changed order and to adjust the terms of sale and purchase price in its sole discretion.

(d) Seller reserves the right to make partial shipments. Delay in delivery of any installment shall not relieve Purchaser of its obligation to accept the remaining delivery.

§ 3. Acceptance.

Purchaser shall inspect all Products immediately following arrival thereof at the destination, and shall give written notice to Seller within five (5) days of any claim that the Products are nonconforming, provided that a reasonable inspection should have revealed such non-conformity. Such written notice shall, if applicable, include a notation on the delivering carrier's original bill of lading of any missing or damaged components. If Purchaser shall fail to give such notice within five (5) days, Purchaser is deemed to have accepted the Products.

§ 4. Prices.

- (a) Unless otherwise agreed to in writing, all prices quoted by Seller are in U.S. Dollars and exclusive of packaging, handling, freight, insurance, taxes, tariffs and duties. All payment shall be made in advance of shipment unless otherwise specified in an applicable invoice. If an invoice specifies that payment shall be made other than in advance, and payment is not paid in full within the time period specified on the invoice, then Seller shall be entitled to charge interest on the delinquent invoice commencing on the date of shipment from Seller's facility in the amount of 18% per annum. The foregoing shall be in addition to and not in lieu of any other remedies Seller may have at law or in equity for such delinquency.
- (b) Purchaser shall have no right of offset by virtue of any claim against Seller, unless Seller has acknowledged the validity and amount of such claim in writing.
- (c) Prices for Products are subject to change without notice.

§ 5. Warranties.

- (a) Seller warrants only that the Products shipped will be those Products that were duly ordered by the Purchaser.
- (b) The Seller makes no warranty and disclaims all liability for the infringement of third party intellectual property rights arising from the Purchaser's use of the Product.
- (c) THE FOREGOING WARRANTY OF SELLER IS IN LIEU OF ALL OTHER WARRANTIES OF SELLER, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE HEREBY EXPRESSLY DISCLAIMED. PURCHASER ACKNOWLEDGES THAT THE REMEDIES PROVIDED HEREIN ARE THE ONLY WARRANTIES OF SELLER, AND THAT ANY OTHER WARRANTIES OF MANUFACTURER ARE NOT WARRANTIES OF SELLER.
- (d) PURCHASER ACKNOWLEDGES THAT IN THE EVENT PURCHASER RECEIVES NON-CONFORMING GOODS, PURCHASER'S WARRANTY REMEDIES AGAINST SELLER ARE LIMITED TO THE EXCLUSIVE REMEDIES OF (1) RETURN OF THE GOODS AND SHALL RECEIVE A CREDIT FOR FUTURE PURCHASES OF THE PRICE, OR (2) REPLACEMENT OF NON-CONFORMING GOODS OR PARTS, AND PURCHASER ACKNOWLEDGES THAT IT SHALL BE AT THE EXCLUSIVE DISCRETION OF SELLER AS TO WHICH REMEDY SHALL BE AVAILABLE TO PURCHASER IN THE EVENT A DISPUTE ARISES.

§ 6. Limitation of Liability.

NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, IN ALL EVENTS, THE LIABILITY OF SELLER HEREUNDER, WHETHER BASED IN TORT, BREACH OF CONTRACT, BREACH OF WARRANTY, OR OTHERWISE, SHALL NOT EXCEED THE PRICE OF THE PRODUCT IN QUESTION OR WITH RESPECT TO WHICH SUCH BREACH, DEFAULT, OR NEGLIGENCE IS CLAIMED.

§ 7. Security Interest.

Purchaser hereby grants Seller a security interest in the Products and all proceeds thereof to secure Purchaser's obligations to Seller. From time to time, Seller shall be entitled to exercise all rights and remedies available to a secured creditor under applicable law. At Seller's request, Purchaser agrees to execute and deliver to Seller any and all documents necessary to perfect Seller's security interest, including all UCC financing statements. Purchaser further appoints Seller as Purchaser's attorney in fact for the purpose of executing all documents on Purchaser's behalf, which are necessary to perfect and maintain Seller's security interest in the Products.

§ 8. Protection of Trade Secrets and Confidential Information.

Except as required by law, the Purchaser shall not disclose any of the terms or conditions of an accepted order, including price terms, to any third party for any reason whatsoever. All specifications, drawings, models, samples, designs, other information or data, written, oral or otherwise, furnished by or on behalf of Seller shall remain the property of Seller, whether paid for by Purchaser or not, and shall be returned (together with all copies) promptly upon Seller's request. Such information shall be treated as confidential, and shall not be used, disclosed or reproduced by Purchaser, except as required in the course of performance hereunder. Purchaser's obligations of confidentiality hereunder with respect to each item of confidential information shall extend for a period of three (3) years from the date of Seller's acceptance of the last order to which the items of confidential information in question pertain; provided, however that Purchaser's obligations of confidentiality hereunder with respect to any such items of information which rise to the level of a trade secret (as defined under applicable law) shall remain in full force and effect for so long as such information remains a trade secret under applicable law. For purposes hereof, the confidentiality obligations embodied herein do not extend to any information, which, at the time of disclosure, was (i) already known or independently developed by Purchaser; (ii) in the public domain through no wrongful act of Purchaser; or (iii) received by Purchaser from a third party who was free to disclose such information. The parties acknowledge that the rights of Seller hereunder are in addition to those rights Seller may have under common law or applicable statutes for the protection of trade secrets. Upon demand by Seller, Purchaser shall immediately return all information subject to this Section 8 to the Seller.

§ 9. Governing Law.

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

§10. Jurisdiction.

Any legal suit, action, or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of New Jersey in each case located in the City of Somerset and County of Somerset, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

§ 11. Miscellaneous.

(a) Purchaser shall comply with any and all guidelines for the Products, as may be issued by Seller from time to time. Purchaser shall supply Seller with all information Seller reasonably requires to fulfill its obligations and duties to Purchaser hereunder.

(b) Notwithstanding anything herein to the contrary, Seller shall not be liable for any delay or failure to perform hereunder when such failure or delay is, directly or indirectly, caused by, or in any manner arises from fire, floods, accidents, civil unrest, acts of God, war, terrorism, governmental interference or embargoes, strikes, labor difficulties, shortage of labor, fuel, power, materials or supplies, breakage of machinery or apparatus, transportation delays, or any other cause or causes (whether or not similar in nature to any of those hereinbefore specified) beyond Seller's control. If such force majeure shall continue for a period of more than ninety (90) days, Purchaser shall have the right to withdraw its order in writing and shall have no further obligations to Seller thereunder.

(c) Purchaser's failure to initial any clause hereof, shall have no effect on the enforceability of said clause.

(d) Purchaser shall not assign this contract without the express prior written consent of Seller.

(e) Except as otherwise expressly provided herein or in a written document, signed by Seller and Purchaser, this document and attachments and exhibits thereto constitute the entire agreement between Seller and Purchaser with respect to the subject matter herein contained and all prior agreements and communications between Seller and Purchaser, whether oral or written, are superseded by this Agreement.

(f) No modification, limitation, waiver or discharge of this Agreement or of any of its terms shall bind Seller unless in writing and signed by a duly authorized employee of Seller, which employee shall be at least a "C-Level Executive" of Seller. Seller may, from time to time, modify this Agreement by giving thirty (30) days advance written notice to Purchaser.

(g) The failure of Seller to insist, in one or more instances, on performance by Purchaser in strict compliance with the terms and conditions hereof shall not be deemed a waiver or relinquishment of any right granted hereunder with respect to any succeeding breach of the same or other provision hereof.

(h) All notices required hereunder shall be in writing and sent by first class mail, or by facsimile or written confirmation to such addresses as stated herein.

(i) This Agreement shall be governed by, and construed, interpreted and enforced under the laws of the State of Delaware without giving effect to conflict of laws principles, provided however, that all aspects relating to arbitration hereunder shall be governed by the federal law of the United States of America. The UN Convention on Contracts for the International Sale of Goods shall not apply.

(j) In case any terms or conditions of this Agreement should be or become unenforceable under applicable law, the remaining provisions, stipulations and conditions of this Agreement shall not be affected thereby.