

## **AXIUM PROCESS LTD - TERMS AND CONDITIONS OF SALE**

### **1. Interpretation**

1.1 In these Conditions:

"Buyer" means the person who accepts a quotation of the Seller for the sale of the Goods, or whose order for the Goods the Seller accepts.

"Goods" means the goods (including any instalment of the goods or any parts of them) which the Seller is to supply in accordance with these Conditions.

"Seller" means Axiom Process Ltd, Hendy Industrial Estate, Hendy, Swansea SA4 0XP.

"Conditions" means the conditions set out in this document.

"Contract" means the contract for the purchase by the Buyer and sale by the Seller of the Goods.

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended re-enacted or extended at the relevant time. The headings in these Conditions are for convenience only and shall not affect their interpretation.

### **2. Basis of the sale**

2.1 The Seller shall sell, and the Buyer shall purchase the Goods in accordance with any oral or written quotation of the Seller which is accepted by the Buyer, subject in either case to these Conditions which shall govern the Contract to the exclusion of any other terms and conditions which may be specified or purported to be specified by the Buyer.

2.2 No variation to these Conditions shall be binding unless agreed in writing by an authorised representative of the Seller. The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of any such representations which are not confirmed in writing.

2.3 Any advice or recommendations given by the Seller or its employees or the agents to the Buyer or its employees or agents as to the storage application or use of the Goods which is not confirmed in writing by the Seller is followed or acted upon entirely at the Buyer's own risk and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

### **3. Orders and specifications**

3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in writing by an authorised representative of the Seller.

3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including applicable specification) submitted by the Buyer and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.

3.3 The quantity, quality and description of and any specification for the Goods shall be those set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller).

3.4 All descriptions and illustrations contained in the Seller's catalogues, price lists and advertisements or otherwise communicated to the Buyer are intended merely to present a general idea of the Goods described therein and nothing contained in any of them shall form any part of the Contract.

3.5 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with, or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, copyright, design, trademark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.

3.6 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory requirements or where the Goods are to be supplied to the Seller's specification which do not affect their quality or performance.

3.7 No order which has been accepted by the Seller may be cancelled by the Buyer except with the

agreement in writing of the Seller. In the event that the Buyer (through no fault of the Seller) returns goods which are stocked by the Seller, in a good and unused condition and at his own expense, and within 30 days of the date of the order, a restocking charge of 20% will be made. If the required return of stocked items is through the fault of the Seller, and they are returned in a good and unused condition, the costs of return will be borne by the Seller and no restocking charge will be made. If special or non-stock goods are ordered by the Buyer for manufacture by the Seller, then the goods cannot be returned by the Buyer.

#### **4. Price of Goods**

4.1 The price of the Goods shall be the Sellers quoted price. Where the goods are supplied for export from the United Kingdom the sellers published price list current at the date of contract shall apply or such price as may be quoted to the Buyer. All prices quoted are valid for thirty days only or until earlier acceptance by the Buyer after which time they may be altered by the Seller without giving notice to the Buyer.

4.2 The Seller reserves the right by giving notice to the Buyer at any time before delivery to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller, any change in delivery dates, or specifications for the Goods which is requested by the Buyer or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

4.3 Except as otherwise stated under the terms of any quotation or in any price list of the Seller and unless otherwise agreed in writing between the Buyer and the Seller all prices are given by the Seller on an ex-works basis and where the Seller has undertaken to provide or arrange carriage from its works to the place of delivery specified by the Buyer; the Buyer shall be liable to pay the Sellers charges for transport, packaging and insurance.

#### **5. Terms of payment**

5.1 Subject to any special terms agreed in writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after the delivery of the Goods unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods when the Seller shall invoice the Buyer at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) has tendered delivery of the Goods.

5.2 The Buyer shall pay the price of the Goods within thirty days of the date of the Sellers invoice notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of essence of the Contract.

5.3 If the Buyer fails to make any payment on the due date then without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:-

5.3.1 cancel the contract or suspend any further deliveries to the Buyer;

5.3.2 appropriate any payment made by the Buyer to such of the Goods (or the Goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and

5.3.3 charge the Buyer interest (both before and after any judgement) on the amount unpaid at the rate of 5% per annum above the base lending rate of Lloyds Bank Plc from time to time enforced from the date when payment was due until payment in full is made.

5.4 Payment shall be made at the office of the Seller and shall take effect upon receipt of cash, banker's draft or bank transfer to the Seller's bank account or upon a cheque tendered by the Buyer being cleared for payment.

#### **6. Delivery**

6.1 Delivery of the Goods shall take place upon despatch of the Goods from the Seller's premises unless otherwise agreed. In such event delivery shall be deemed to take place immediately after the Seller has notified the Buyer that the Goods are ready for collection.

6.2 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable

for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Seller in writing. The Goods may be delivered in advance of the quoted delivery date upon giving reasonable notice to the Buyer.

6.3 Should the Seller be prevented from or hindered in delivery the Goods or any part thereof by reason of war, riot, explosion, fire, flood, strike, lockout, shortage of materials or labour or any cause beyond the Seller's control, the time for delivery shall be extended by a period equal to that during which the cause preventing or hindering delivery exists.

6.4 Should the Seller be prevented from delivering part of the Goods by reason of any of the causes specified in the preceding sub-clause, the Seller shall deliver and the Buyer shall take and pay for such part of the Goods as the Seller shall be able to deliver in accordance with the Contract.

6.5 Where the Goods are to be delivered in instalments each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

6.6 If the Seller fails to deliver the Goods for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar Goods to replace those not delivered over the price of the Goods.

6.7 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then without prejudice to any other right or remedy available to the Seller, the Seller may: store the Goods until actual delivery and charge the Buyer for the reasonable cost (including insurance) of storage; or sell the Goods for the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract, or charge the Buyer for any shortfall below the price under the Contract.

## **7. Risk and property**

7.1 Risk of damage to or loss of the Goods shall pass to the Buyer upon delivery in accordance with condition 6.1.

7.2 Notwithstanding delivery and the passing of risk in the Goods title shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other Goods agreed to be sold by the Seller to the Buyer for which payment is then due.

7.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and shall keep the goods separate from those of the Buyer and third parties and properly stored protected, insured and identified as the Seller's property. Until that time the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business (but not to pledge or charge the same as security for any reason) but shall account to the Seller the proceeds of the sale or otherwise of the Goods and shall keep all such proceeds separate from any monies or property of the Buyer and third parties.

7.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold) the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and if the Buyer fails to do so forthwith to enter upon any premises to the Buyer or any third party where the Goods are stored and repossess the Goods.

## **8. Warranties and Liability**

8.1 Subject to the conditions set below the Seller warrants that at the time of delivery the goods will correspond with their specification and will be free from defects in material and workmanship.

8.2 The above warranty is given by the Seller subject to the following conditions;

8.2.1 the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer.

8.2.2 the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without Seller's approval.

8.2.3 the Seller shall be under no liability under the above warranty (or any other warranty condition or guarantee) if the total price for the Goods has not been paid by the due date of payment;

8.2.4 the above warranty does not extend to parts, materials or equivalent not manufactured by the Seller in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.

8.3 Subject as expressly provided in these conditions except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977) all warranties conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

8.4 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Buyer are not affected by these Conditions.

8.5 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If the Buyer does not notify the Seller accordingly the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure and the Buyer shall be bound to pay the price.

8.6 Where a valid claim is notified to the Seller in accordance with condition the Seller shall be entitled to replace the Goods (or the part in question) free of charge or at the Seller's sole discretion refund to the Buyer the price of the Goods (or a proportionate part of the price) but the Seller shall have no further liability to the Buyer.

8.7 Except in respect of death or personal injury caused by the Seller's negligence the Seller shall not be liable to the Buyer by reason of any representation or any implied warranty condition or other term or any duty at common law or under the express terms of the Contract for any consequential loss or damage (whether from loss of profit or otherwise) costs, expenses, or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer except as expressly provided in these Conditions.

8.8 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing or any failure to perform any of the Seller's obligations in relation to the Goods if the delay or failure was due to any cause beyond the Seller's reasonable control including (without prejudice to the generality of the foregoing) act of God, explosion, flood, tempest, fire or accident, war or threat of war, sabotage, insurrection, civil disturbance or requisition; strikes, lockouts or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party); difficulties in obtaining raw materials, labour, fuel, parts of machinery or power failure or breakdown in machinery.

## **9. Insolvency of buyer**

9.1 This clause applies if the Buyer makes any voluntary arrangement with its creditors or becomes subject to any administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or an encumbrancer takes possession, or a receiver is appointed of any of the property or assets of the Buyer; or the Buyer ceases or threatens to cease to carry on business; or the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

9.2 If this clause applies then without prejudice to any other right or remedy available to the Seller the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

## **10. General**

10.1 Any notice required or permitted to be given by either party to the other under these conditions shall be in writing addressed to that other party at its registered office or principle place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice. No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same of any other provision.

10.2 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby. The Contract shall be governed by and interpreted in accordance with English Law, and the Buyer submits to the Jurisdiction of the High Court of Justice in England but the Seller may enforce the Contract in any court of competent jurisdiction.

10.3 The Buyer shall not assign any benefit under the Contract without the consent in writing of the Seller, which may, if given, be on such terms as to guarantee an indemnity, or otherwise as the Seller thinks fit.

Axiom Process Ltd 2003