

# AIXTRON Ltd Conditions of purchase 2015

## 1. Definitions used in the Schedule and these Conditions

'Contract' means the Framework Agreement referred to in the Schedule (if applicable) between AIXTRON Ltd and the Supplier;

'Completion Date' means the date set out in the Schedule for completion of all Services;

'Delivery Address' means the address set out in the Schedule as the delivery address;

'Delivery Date' means the date for delivery set out overleaf for delivery of the Products;

'AIXTRON Ltd' means AIXTRON Ltd and its successors and assigns;

'Order' means this order comprising the Schedule, and these Conditions;

'Price' means the price to be paid by AIXTRON Ltd in accordance with Clause 6 for the Products and/or Services;

'Products' means all the materials including, but not limited to, the hardware and/or software identified in the Schedule to be supplied pursuant to this Order;

'Schedule' means the Schedule set out on the front page of this Order;

'Services' means the Services identified in the Schedule and shall include (where appropriate) delivery, installation and commissioning of the Products;

'Special Conditions' means the special conditions specified in the Schedule;

'Software' means all operating systems, utilities and other programs residing in memories or other storage media and associated documentation;

'Supplier' means the addressee of this order as shown in the Schedule;

## 2. The Order

2.1 Acknowledgement of this Order shall be made by signing a photocopy duplicate of the Order and returning the same by first class pre-paid post to the AIXTRON Ltd Contact named in the Schedule within 14 days of the date of signature by AIXTRON Ltd. Should the Supplier despatch Products or perform Services in accordance with this Order without such an acknowledgement being received by AIXTRON Ltd in accordance with this Clause 2.1 such despatch or performance shall be at the

Supplier's risk and expense and AIXTRON Ltd shall not be obliged to accept, approve or pay for such Products and/or Services.

2.2 Nothing in these terms and conditions shall prejudice any condition or warranty expressed or implied, or any remedy to which AIXTRON Ltd is, or may be, entitled, in relation to the Products and/or Services, by virtue of any law (including, but not limited to, statute, custom, local laws, or regulation. having the effect of Law) in force.

2.3 No addition, alteration or substitution of these terms and conditions shall be binding on the parties unless and until accepted in writing by the parties.

2.4 Insofar as this Order is placed against the Contract: in the event of, and to the extent that the terms and conditions of the latter conflict with this Order, the latter shall prevail over this order.

2.5 In the event of a conflict the Special Conditions shall prevail over any other conditions.

### **3. Specifications, Testing and Acceptance, Audits**

3.1 The Products and/or the Services must conform in all respects with:

- (i) All samples, or patterns provided by AIXTRON Ltd, or supplied by the Supplier and accepted by AIXTRON Ltd; and/or
- (ii) The drawings, specifications and other requirements or descriptions stated in the Special Conditions and in the Contract (where appropriate); and
- (iii) All relevant requirements of law at the time of delivery, or of performance, as the case may be.

3.2 The Supplier shall maintain a recognized and suitable quality assurance system for its Products and Services. If requested by AIXTRON Limited, the Supplier shall provide proof of the existence of a recognized quality assurance system. AIXTRON Limited shall be entitled to audit the quality assurance system on the Supplier's premises with regards its existence and operation during normal business hours following 48 hours notification by AIXTRON Ltd. For this purpose, the Supplier shall allow AIXTRON Limited to access to all relevant documents and systems. AIXTRON Ltd shall treat all information regarding the Supplier made accessible or available to AIXTRON Ltd in this context confidentially. AIXTRON Ltd shall also have such rights if there are grounds to suspect that the Supplier has failed to comply with any of the principles set out in this Clause 3 and/or Clause 15; in such a case the audit may also be performed by a third party who has been authorized by AIXTRON Ltd and who is subject to confidentiality. The Supplier shall bear the reasonable costs of any audit if it is determined in the context of such audit that the Supplier has breached any of the duties set forth in Clause 3 and/or Clause 15. The results of each audit will be notified to the Supplier.

3.3 The Supplier shall impose similar obligations as contained in this Order on any lower-tier supplier (if and to the extent that such lower-tier supplier provides products or services used for any Products or Services that will be provided to AIXTRON Ltd). This shall also apply in particular to our right to perform an audit on the premises of any lower-tier supplier in the same manner as provided for in Clause 3.2 above.

3.4. In the event of any breach of the duties described in this Order AIXTRON Ltd reserve the right to demand that the Supplier carry out corrective actions within a reasonable period. In particular in case of a serious breach (e.g. failure to maintain a quality assurance system or to take corrective actions within a reasonable period) AIXTRON Ltd shall be entitled to end individual Orders, either by withdrawing from or terminating such Orders, and, if adherence to the business relationship with the Supplier is no longer reasonably acceptable to AIXTRON Ltd

3.5 The Products shall be of sound materials, workmanship and design and free from all defects. All Services shall be performed in a sound manner by appropriately qualified and experienced personnel and shall be free from defects.

3.6 All Products and/or Services may be subject to inspection before acceptance whether or not criteria for acceptance are prescribed. AIXTRON Ltd shall be entitled (notwithstanding the passing of title) to reject (at the Supplier's expense) all or any Products and all or any Services, which do not conform with this Order (and in particular, with this Clause 3). If any defects or non-conformance shall not become apparent (despite such acceptance) until after, or during, a reasonable period of use, AIXTRON Ltd may still reject the same, notwithstanding any provision of statute.

3.7 Any Products, or Services, rejected under this Order shall at AIXTRON Ltd ' request be replaced or re- performed at the Supplier's expense. AIXTRON Ltd may also (at its option) cancel this Order in respect of all or any of the Products and/or Services provided or to be provided.

3.8 Notwithstanding acceptance of the Products, or Services, and without prejudice to any other remedy available to AIXTRON Ltd under this Order or at law, the Supplier shall as soon as reasonably practicable on request from AIXTRON Ltd, at Seller's expense, repair or replace any Product{s} or re- perform any Services(s) (as appropriate) which are or become defective. Alternatively, at AIXTRON Ltd ' option, AIXTRON Ltd may cancel the Order pursuant to Clause 11.

#### **4. Deliveries and Completion**

4.1 The Products shall be delivered to the Delivery Address on the Delivery Date. The performance of all Services shall be completed no later than the Completion Date.

4.2 Terms of Carriage shall be as specified in the Schedule.

4.3 An authorised signature on behalf of AIXTRON Ltd, given on any delivery note, or other delivery document, is evidence only of the number of packages received and, if a date is given also, of the date of receipt. Such signature, and date (if given), shall not affect AIXTRON Ltd ' rights or remedies pursuant to Clause 3 or otherwise available at law.

4.4 Prior to delivery all information relating to Product health and safety hazards shall be notified to AIXTRON Ltd. The Supplier shall comply with all United Kingdom

legislation and international requirements as to the packing, labelling, carriage and delivery of the Products.

4.5 The Supplier warrants that it will be able to supply the same Products and spare parts during a period of three (3) years following the last Order for such Products in commercial quantities and at reasonable terms and conditions.

## **5. Titles and Risk**

5.1 Title in the Products shall pass to AIXTRON Ltd on the earlier of:

- (i) Payment of the Price or any part thereof;
- (ii) Receipt at the Delivery Address.

Save for the media on which the Software is stored the provisions of this Clause 5.1 shall not apply to the Software, which is proprietary to the Supplier or its third party suppliers.

5.2 Notwithstanding Clause 5.1, risk shall pass to AIXTRON Ltd on receipt at the Delivery Address.

5.3 The provisions of this Clause 5 shall not affect AIXTRON Ltd ' rights or remedies under Clause 3 or otherwise available at law.

5.4 The Supplier warrants that it has good and merchantable title to the Products and that they are free and clear of all liens, charges and encumbrances.

## **6. Price and Payment**

6.1 The Price shall be as specified in the Schedule. The price shall include (when requested) delivery, installation and commissioning of Products.

6.2 Invoices for the Products shall be submitted by the Supplier on actual delivery of the Products, and for Services on completion of "the Services, and settled by AIXTRON Ltd in accordance with our standard payment terms. Payment shall not affect AIXTRON Ltd ' rights or remedies under Clause 3 or otherwise available at law.

6.3 Invoices shall be addressed and sent to "Accounts Payable" at AIXTRON Ltd ' registered office address.

## **7. Intellectual Property Rights**

7.1 The Supplier warrants that the sale, licence, possession or use of the Products and/or the performance of the Services (which shall include any goods used, or provided, in the performance of the Services) will not infringe on any patent, trademark, service mark, registered design, copyright, or other intellectual or industrial property right whether or not similar to any of the foregoing and will indemnify AIXTRON Ltd against all actions, cost claims, demands, expenses and liabilities arising from or caused by any actual or alleged infringement and, at the Supplier's expense, defend or, at AIXTRON Ltd ' option, assist in the defense of any proceedings brought in such connection.

7.2 Where the Services result in generation or creation of copyright, patent or other intellectual property or industrial rights then such right(s) shall vest in AIXTRON Ltd.

## **8. Liabilities**

8.1 The Supplier shall indemnify AIXTRON Ltd against all losses, actions, costs, claims, demands and liabilities whatsoever in respect of personal injury to or death of any person or in respect of any loss, destruction or damage to property (save where such injury, death, loss, destruction or damage is directly attributable to the negligence of AIXTRON Ltd or its employees) arising out of, or caused by, the Supplier in the performance of this Order or in complying with the Contract).

8.2 The Supplier shall indemnify AIXTRON Ltd against all loss, costs, expenses and liabilities incurred by AIXTRON Ltd directly, or as a result of the action, claim or demand of any third party, by reason of the Supplier's negligence, or by reason of breach by the Supplier of these conditions or of any terms or obligations implied at law relevant to this Order (or, where appropriate, to the Contract.

8.3 The Supplier shall ensure that all personnel it employs or engages to perform its obligations under this Agreement or pursuant to each order shall comply with all legislation and regulations in force from time to time as to health and safety, and all AIXTRON Ltd ' policy and process statements as to the same, and AIXTRON Ltd ' policies and processes as to site access, security and confidentiality.

## **9. Assignment and Sub-Contracting**

The Supplier shall not assign or transfer this Order, or part thereof, without AIXTRON Ltd ' prior written consent. The Supplier shall not sub-contract the performance of this Order or any part thereof, without AIXTRON Ltd ' prior written consent, other than for materials or for any parts or items specified in the Special Conditions {and in respect of which AIXTRON Ltd has received written identification of the manufacturers, and/or suppliers} or to the extent sub- contracting is accepted custom of the particular trade relevant to the parts, items or services sub-contracted.

## **10. Delays**

If either party is delayed or prevented from performing its obligations under this Order by circumstances which it can show are beyond its reasonable control (including strikes, lock outs, industrial disputes -but not those involving the employees or agents of the affected party}, without prejudice to the generality of Clause 4.1, the agreed times for performance of its obligations shall be extended by such period of time as the circumstances continue provided that if the Order cannot be completed within a reasonable time (as determined by AIXTRON Ltd) AIXTRON Ltd may cancel the Order in accordance with Clause 11.2. AIXTRON Ltd shall only be liable to pay the Supplier such sum as may be fair and reasonable for the Products accepted by AIXTRON Ltd: and the Services performed prior to cancellation and in respect of which AIXTRON Ltd has received the benefit. Each party will notify the other in writing as soon as it becomes aware of a circumstance beyond its reasonable control likely to cause delay.

## **11. Termination and Cancellation**

11.1 This order may be terminated by AIXTRON Ltd:

- (i) Forthwith on expiry or termination of the Contract (where appropriate);
- (ii) Forthwith if Supplier shall pass a resolution for winding up or a court shall make an order that, Supplier shall be wound up (in either case other than for the purpose of a bona fide reconstruction) or if a receiver or manager on behalf of a creditor be appointed, or if circumstances shall arise which would entitle a court or a creditor to appoint a receiver or manager or which would entitle a court to make a winding up order against Supplier.

11.2 Without prejudice to the generality of Clause 11.1 AIXTRON Ltd may, without prejudice to its other rights or remedies, cancel the whole or part of this Order if the same is not performed or completed as prescribed or in accordance with AIXTRON Ltd ' reasonable instruction. In particular, compliance shall be of the essence with regard to Clause 3.1, 3.5 and 4.1.

11.3 In the event AIXTRON Ltd cancels this Order or part thereof pursuant to the Clause 11, AIXTRON Ltd shall be entitled to procure similar products and/or services from a third party. The Supplier shall indemnify AIXTRON Ltd for any costs or expenses incurred by AIXTRON Ltd which are over and above the price, together with any costs or expenses incurred arising out of or caused by the cancellation of the Order.

11.4 AIXTRON Ltd may, without giving a reason, cancel this Order at any time up to acceptance under Clause 3 by giving notice (which shall take effect forthwith) in writing to the Supplier. In such event AIXTRON Ltd shall only be liable to pay to the Supplier its costs in performing the Order as at the date of cancellation plus a reasonable contribution" for overheads and profit.

## **12. Confidentiality**

12.1 The Supplier shall keep confidential and shall not disclose to any third party any information provided by AIXTRON Ltd in connection with this Order or information relating to the business interests of AIXTRON Ltd which becomes known to or available to the Supplier in the course of performing the Order.

12.2 All specifications, drawings, samples and other information provided by AIXTRON Ltd may be used by the Supplier (or its sub-contractors who have accepted in writing a like obligation of confidentiality as set out in this Clause 12) solely for the purposes of performing this Order. All such in-formation shall be returned immediately on completion of the Order, or earlier demand.

12.3 The Supplier shall not mention AIXTRON Ltd ' name, or that of its other suppliers. in connection with this Order, or the Contract, or disclose the existence of this Order, or the Contract. in any publicity or promotional material without AIXTRON Ltd ' prior written consent.

12.4 If the Supplier processes or receives private data from AIXTRON Ltd, a duty to comply with data privacy rules must be imposed on its employees as provided for in §

5 of the Federal Data Protection Act (BDSG). The Supplier shall use and process such private data only for the purposes provided for in this Order.

### **13. Export Control Procedures**

13.1 The Supplier shall inform AIXTRON Ltd in writing when the (re-)export of Products or Services provided to AIXTRON Ltd by the Supplier including the provision or transmission of data, is prohibited or restricted and/or subject to a licence under any applicable export control regulations of the United Kingdom, the European Union, the USA (US (re-)export regulations) or the country of manufacture and/or supply to AIXTRON Ltd. If this is the case, the Supplier shall also inform AIXTRON Ltd of the extent of the restrictions and prohibitions, including, but not limited to, the export control classification number and any required export licenses. Any such information will also be included by the Supplier in its offers, invoices and delivery notes.

13.2 The Supplier shall be required to comply with all national, EU, and international export control regulations that are applicable to its Products/Services. The Supplier shall not directly or indirectly export or re-export any information, goods (including Products), software or technologies or related services to a country for which the EU, the USA or any other country requires, at the time of such export or re-export, an export licence or any other permit, unless the Supplier first obtains such license or permit. The Supplier shall promptly inform AIXTRON Ltd of any notification regarding a possible violation of applicable export control regulations received by it if such violation may affect AIXTRON Ltd.

13.3 In the event of a violation of any of the above obligations within the Supplier's control, the Supplier shall hold AIXTRON Ltd harmless from and indemnify AIXTRON Ltd against any and all liabilities, costs and losses resulting from such violation.

### **14. Customs Regulations**

14.1. The Supplier shall provide to AIXTRON Ltd on an annual basis the relevant supplier declarations of origin/certificates of origin for the Products/Services supplied by it.

14.2. With respect to any goods (including Products) which may be covered by the scope of application of a free trade agreement or regional trade agreement or other preferential agreement, the Supplier shall be obligated to provide such goods which actually satisfy the applicable origin rule together with a corresponding certificate (such as supplier declaration, preferential certificate/invoice etc).

14.3. The Supplier shall indicate in its invoices and delivery notes the country of origin for all goods (including Products).

### **15. Compliance**

15.1 The Supplier shall be required to comply with all national and international legislation to which it is subject and may in particular not commit any acts or

omissions which may be punishable as corruptive acts or constitute fraud or embezzlement or cause insolvency or violate any competition rules, export and import restrictions, customs and tax provisions and provisions for the protection of the environment. The Supplier agrees to adhere to the Compliance Code of AIXTRON SE and the AIXTRON Conflict Minerals Policy, which can both be found on our homepage ([www.aixtron.com](http://www.aixtron.com)), if and to the extent that the provisions contained therein apply to the Supplier. The Supplier shall inform its employees, suppliers, subcontractors and other agents of the principles described in this Clause 15. And impose similar obligations on its employees, suppliers, subcontractors and other agents.

15.2 Within the scope of its entrepreneurial responsibility the Supplier commits itself to comply with all applicable labour rules in the manufacture of Products and the provision of Services and will not allow forced labour or child labour and acknowledges the employees' right of freedom of association and declares that there will be no discrimination based on gender, ethnic origin, color, religion, sexual orientation, disability or age and that any negative impact which its business activities may have on humans and the environment will be avoided.

15.3. The Supplier shall promptly report to AIXTRON Ltd any actual or suspected violations of legal provisions or any of the provisions contained in this Clause 15 by the Supplier or any of its suppliers, subcontractors or other agents which may have an impact on AIXTRON Ltd, either directly or indirectly. If AIXTRON Ltd suspect that any of the described principles or requirements is not being complied with, AIXTRON Ltd shall be entitled to see all written information concerning such matter.

15.4. In the event of any violation of the principles and requirements described in this Clause 15, AIXTRON Ltd reserve the right to require the Supplier carry out corrective actions within a reasonable period. In particular in case of a serious violation (e.g. criminal offence) or a matter which may bring AIXTRON Ltd into disrepute, AIXTRON Ltd shall be entitled to immediately terminate individual Orders concerned and, if adherence to the business relationship with the Supplier is no longer acceptable to AIXTRON Ltd, AIXTRON Ltd may end all contractual relationships with the Supplier. This right is without prejudice to any other rights and remedies that AIXTRON Ltd may have under this Order or available under law.

## **16. General**

16.1 All notices and information required to be given in connection with this Order shall be in writing, addressed to the Company Secretary of the other party, and left at, or sent by pre-paid first class post, or confirmed facsimile transmission to the other's registered/principal office address.

16.2 No delay, neglect or forbearance on the part of AIXTRON Ltd shall be construed as a waiver, or shall prejudice its rights under this Order or, where appropriate, the Contract.

16.3 This Order shall be construed and take effect in accordance with English law. The parties hereby agree to submit to the exclusive jurisdiction of the courts of England and Wales