



## AIXTRON SE

### SALES TERMS AND CONDITIONS

#### (01. September 2017)

##### 1. General Conditions of Sale

1.1 These Sales Terms and Conditions ("T&C") govern the sale by AIXTRON SE ("Seller") to the purchaser ("Purchaser") of equipment, systems and components as defined by either (i) Seller's purchase order confirmation or (ii) Purchaser's unconditional acceptance of Seller's quotation or Seller's final proposal ("Product"). Any amendments or changes by Purchaser to Seller's quotations, final proposals or purchase order confirmations and thereto shall only be valid if confirmed by Seller in writing. Any reference to "process specifications" or "performance specifications" shall be deemed to solely refer to specifications accepted by Seller in writing.

1.2 These T&C constitute an essential element of the contractual relationship between the Seller and the Purchaser ("Contract"). Sales of Products from Seller to Purchaser are expressly made conditional on the Purchaser's acceptance to these T&C. The provisions of the T&C may be amended only by a written document signed by both parties.

##### 2. Payment Terms and Conditions

2.1 Unless otherwise expressly agreed in writing, prices are based on INCOTERMS 2010 EXW (ex works) Herzogenrath, Germany, and shall be exclusive of all taxes, in particular VAT (if applicable) which shall be invoiced separately.

2.2 Costs for the installation and the commissioning of the Product are only included in the purchase price if explicitly accepted by Seller in writing.

2.3 Payment shall be due not later than thirty (30) days after presentation of the invoice by the Seller.

2.4 If incurred by Seller the Purchaser shall pay in particular, but not limited to, the following expenses: taxes, duties, tariffs, customs charges, insurance, freight, cartage, and warehousing. Any additional costs for which Purchaser is required to reimburse Seller, Seller shall invoice Purchaser separately. Payment for additional cost shall be due with presentation of invoice.

2.5 In the event of a late payments, interest shall accrue on said outstanding balance at the rate of 9 percentage points above the basis interest rate of the European Central Bank but Seller's right to claim higher damages shall not be affected thereby. Purchaser shall pay any attorney's fees and/or other costs incurred by Seller in collecting any payment in case of late payment.

2.6 In case the delivery of the Product cannot be performed due to reasons attributable to Purchaser, especially if Purchaser' site or facilities are not ready for delivery or installation of the Product at the date of the scheduled shipment, Seller reserves the right to claim from Purchaser all additional costs resulting from such delay; alternatively Seller shall be entitled to claim liquidated damages in the amount of EUR 150.00 net per day of delay.

##### 3. Governmental Authorizations

3.1 Purchaser shall be responsible for obtaining and maintaining any required import certificates, end-user-certificates or any other governmental authorization in a timely manner to facilitate the sale of Products from Seller to Purchaser. Seller shall not be liable if any authorization of any government authorization is delayed, denied, rescinded, restricted or not renewed for reasons Seller is not responsible, and Purchaser shall not be released thereby of its obligations to pay Seller for the Product or any other charges hereunder.

3.2 Seller will apply for any required export license. Purchaser shall reasonably assist Seller upon Seller's request.

3.3 In the event that it becomes obvious that a necessary export license will not be granted by the responsible authorities within a reasonable period of time, the Seller shall be entitled to withdrawal from the contract with immediate effect.

##### 4. Delay or Non-performance

4.1 The shipping date communicated to Purchaser is approximate only. A shipment made within a reasonable time before or after the date specified for shipment shall be deemed to be a timely shipment.

4.2 Seller agrees to make best efforts to ship within the time stated, but Seller shall not be liable for failure to ship or any delay in shipment, or failure or delay in the performance of other obligations due unforeseeable circumstances beyond the Seller's control, such as strikes, work stoppages, lockouts, fires, floods, accidents, wars, rebellions, riots, civil commotion or public strike, acts of any government, whether legal or otherwise, acts of public enemies, force majeure, inability to secure or delay in obtaining machinery, materials, or sufficient qualified labor forces, failure of delivery by suppliers.

4.3 If the Purchaser refuses to or does not perform its obligations to cooperate with Seller (e.g. by unfounded refusal of acceptance of shipment) despite a warning notice, Seller may rescind the Contract and claim liquidated damages in the amount of ten percent (10 %) of the purchase price. Seller's further statutory rights shall remain unaffected.

##### 5. Installation; Commission

If Seller agreed in writing to install the Product at Purchaser's site or any other site as agreed upon in writing, the following shall apply:

a) Purchaser shall make adequate preparations at the installation site, including space, electrical power, conducting, and environmental conditions in accordance with Seller's specifications and installation requirements. Seller will provide installation specifications and requirements, if any, no later than four (4) weeks after conclusion of contract.

b) If, in Seller's reasonable judgement, the installation site is not adequately prepared prior to the shipment of the Product due to Purchaser's default, Purchaser shall reimburse Seller for any and all expenses resulting from such delay (including, without limitation, cost of travel, labor and storing and preserving the Product).

c) Purchaser hereby authorizes and empowers Seller to perform or cause to be performed the services necessary to install, inspect, test and repair the Product. Purchaser shall grant Seller, Seller's representatives or contractors access to its facilities to perform the services mentioned above. Such services shall be performed between 8:00 am and 5:00 pm on normal business days, excluding Saturdays, Sundays and public holidays in Germany or the country of Purchaser. Cost and expenses resulting from the performance of such services during excluded time periods shall be borne by Purchaser. Purchaser shall

d) Purchaser further authorizes Seller to make or cause to be made, at Purchaser's expense, any changes in or alterations to the Product requested by Purchaser, or made necessary by any deviations of the installation site from Seller's specifications and installation requirements.

##### 6. Acceptance Tests and Certificates

6.1 For each Product a total of three (3) acceptance tests ("Acceptance Test" or "First/Second/Third Acceptance Test" or "Final Acceptance Test") will be performed. Following successful completion of each acceptance test Seller and Purchaser shall sign off an acceptance certificate ("Acceptance Certificate"). For Upgrades, however, unless otherwise agreed upon in writing, only one (1) Final Acceptance Test will be performed.

6.2 The First Acceptance Test shall be performed at the site of the Seller's factory after production of the Product and shall show that the Product meets the agreed specifications related to system hardware, software, and basic functionality.

6.3 The Second Acceptance Test shall be performed following installation of the Product at the installation site and shall show that the Product meets the agreed specifications related to hardware and software.

6.4 Seller upon Purchaser signing the Second Acceptance Certificate grants a limited right to use Products for testing purposes only in order to validate Product meeting agreed "process specifications" or "performance specifications" and to prepare the Third Acceptance Test. Purchaser shall not be entitled to utilize the Product for production or near production like purposes prior to signing the Third Acceptance Certificate.

6.5 All Acceptance Tests shall be performed in the presence of the representatives of Seller and Purchaser.

6.6 If and to the extent the Purchaser is not the end-user that will use the Product, any statements that are issued by the end-user in connection with any of the Acceptance Tests, in particular any Acceptance Certificate signed by the end-user, shall be binding on the Purchaser.

6.7 Seller shall reasonably determine the date for the performance of the First Acceptance Test and shall notify Purchaser in writing in due time prior to the planned date. However, if Purchaser elects not to participate in the First Acceptance Test, Seller shall perform the First Acceptance Test on its own, and the Purchaser authorizes Seller to sign the First Acceptance Certificate on Purchaser's behalf.

6.8 The performance of the Second Acceptance Test shall be performed within sixty (60) days from the scheduled shipment of the Products. If the Second Acceptance Test cannot be performed within sixty (60) days from the scheduled shipment of the Products due to reasons for which the Purchaser is responsible (including reasons caused by an end user), the Purchaser agrees to sign off the Second Acceptance Certificate on or before the 61st day from the scheduled delivery date of the Product.

6.9 The performance of the Third Acceptance Test shall be performed within ninety (90) days from the scheduled shipment of the Products. If the Third Acceptance Tests cannot be completed within ninety (90) days from the scheduled shipment of the Product due to reasons for which the Purchaser is responsible (including reasons caused by an end user), the Purchaser agrees to sign off the Third Acceptance Certificate on or before the 91st day from the scheduled Delivery Date of the

- Product. Nevertheless Seller shall be obliged to complete the installation and the commissioning of the Products as specified.
- 6.10 Notwithstanding the provision of Art. 6.9 above, if the installation and the performance of acceptance tests for Product cannot be completed within six (6) months from the scheduled shipment date, Seller shall be relieved from any further contractual obligation, including but not limited to the installation and commissioning of the Products unless such delay is agreed to in writing by or caused by Seller.
- 6.11 In addition to Art. 6.10, Seller may at its sole discretion exercise its statutory rights to rescind the Contract and to claim damages.
- 6.12 Upon expiry of the period of six (6) months stated above, Buyer or, if applicable, End User may ask Seller to quote for the installation and commissioning of the system for an additional charge.
- 6.13 If an Acceptance Test has been successfully completed Seller and Purchaser shall sign off the respective Acceptance Certificate. The Acceptance Test shall be deemed to have been successfully completed when the agreed test items and/or agreed specifications listed in the checklist have been demonstrated with no or only minor defects or deviations. For the purposes hereof, "minor defects" or "minor deviations" shall be those defects or deviations which will not affect or only insignificantly affect the function of the Product. Any (minor and non-minor) defects and/or deviations from the agreed specifications observed during the performance of an Acceptance Test shall be recorded in an acceptance test protocol. Seller shall rectify any such defects and/or deviations without undue delay. Any other warranty rights of the Buyer, in particular any further claims for damages, shall be excluded.
- 7. Release to Purchaser**
- 7.1 Seller transfers title to the Product and grants an unconditional right to use the Product to Purchaser upon Purchaser having signed the Third Acceptance Certificate and having fully paid the purchase price of Product.
- 7.2 In case Purchaser utilizes the Product for production purposes prior to having signed the Third Acceptance Certificate and having affected full payment, Seller shall be free and released from any obligation related to warranty, start up and performance demonstrations for Product.
- 8. Warranty**
- 8.1 Seller warrants the Product delivered hereunder to be free from defect in material and workmanship under normal use and service for a period of twelve (12) months following the shipment date but not more than fourteen (14) months as of the date of the First Acceptance Certificate; provided, however, that the above warranty shall not apply to (and Seller shall have no obligation with respect to) any alleged defect of Product arising from, caused by, related to, or with respect to which (as appropriate):
- any alteration, addition, or attachment to or modification of the Product not having been authorized in writing in advance by Seller;
  - relocation, shifting or displacement of Product after installation without the prior written consent of Seller;
  - electrical influences such as but not limited to electrical surge, overvoltage to the Product caused by factors not under control of Seller;
  - non-compliance with environmental specifications relative to proper installation of the Product;
  - normal wear and tear to;
  - without limitation, neglect, misuse, repair, or maintenance by any party other than Seller not authorized in advance by Seller, accidents, failure of electrical power, air conditioning, humidity control, or acts not within the reasonable control of Seller;
- (hereinafter referred to as "Warranty"). The Warranty also applies to repaired or replaced parts, except that the maximum warranty period for new parts shall be no longer than six (6) months from date of shipment. Quartz and graphite parts, filters, lamp heaters, O-Rings, consumables and contaminated parts are excluded from the Warranty.
- 8.2 Seller's Warranty shall be limited as follows:
- All specifications, performance figures, drawings, and particulars of weight and dimensions made available by Seller which are not included in this Contract are approximate only, and the descriptions and illustrations contained in Seller's catalogues, price lists, or sales material are intended only to present a general idea of their subject matter, and none of the items referred to above shall form part of this Contract.
  - Recommendations by Seller for the use of the Product are suggestions only and not directions, and Seller makes no express or implied warranties with respect thereto.
  - EXCEPT AS NOTED ABOVE, THE PARTIES AGREE THAT THERE IS NO WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTIES BY SELLER, EITHER EXPRESS OR IMPLIED, OR ANY AFFIRMATION OF FACT OR REPRESENTATION WHICH EXTENDS BEYOND THE DESCRIPTION CONTAINED HEREIN.
- 8.3 Procedure for making a Warranty claim
- Any Warranty claim must be presented to Seller in writing within the applicable warranty period, and such notification must describe in reasonable detail the alleged defect of Product.
- Subject to Purchaser's and/or end-users support Supplier shall investigate the Warranty claim and shall provide Purchaser with an investigation report. In case such report concludes that the Product is defective and such defect is subject to Seller's Warranty, Seller shall provide a mitigation plan to rectify and/or repair the defect. Upon Seller's request Purchaser shall, at its sole cost, risk, and expense, pack and ship the defective part, component or Product to the repair facility designated by Seller in accordance with packing instructions provided by Seller.
  - In case that Seller and Purchaser choose to perform repair work at the installation site, Purchaser and/or end user shall provide Seller, Seller's representatives and/or external third parties retained to perform the repair work access to the Product to be repaired. Purchaser and/or end user shall be obliged to purge the Product with an inert gas at least twenty-four (24) hours before the planned start of the repair work.
- 8.4 Remedy
- Seller will repair or replace, at its sole discretion, any defective or non-conforming Product or any defective or non-conforming part or component thereof under Seller's Warranty.
  - In the event that Seller elects to replace a defective Product or any defective or non-conforming part or component thereof, the replaced Product or part or component thereof, shall become the sole property of Seller.
  - In the event that Seller elects to perform the repair work at the installation site, Purchaser shall be responsible for all reasonable travel and living expenses incurred by Seller due to the performance of such repair work.
- 8.5 Limitation of Remedy
- 8.6 REPAIR OR REPLACEMENT OF THE DEFECTIVE PRODUCT OR PART THEREOF CONSTITUTES THE SOLE AND EXCLUSIVE REMEDY AVAILABLE TO PURCHASER IN THE EVENT OF BREACH OF ANY WARRANTY BY SELLER, EXPRESSED OR IMPLIED, OR OF THIS CONTRACT.
- 9. Limitation of Liability**
- IN NO EVENT SELLER SHALL BE LIABLE FOR INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL AND/OR PUNITIVE DAMAGES (INCLUDING, BUT NOT LIMITED TO, INCIDENTAL OR CONSEQUENTIAL DAMAGES FOR LOST PROFITS, LOST SALES, OR ANY OTHER INCIDENTAL OR CONSEQUENTIAL LOSS) RESULTING FROM SELLER'S PERFORMANCE OR FAILURE TO PERFORM ANY PROVISION OR TERM OF THIS CONTRACT OR IN CONNECTION WITH THE PURCHASE, OPERATION OR USE OF THE PRODUCT, WHETHER DUE TO A BREACH OF CONTRACT, BREACH OF WARRANTY, THE NEGLIGENCE OF SELLER, OR OTHERWISE. IF, NOTWITHSTANDING THE FOREGOING, MONETARY DAMAGES ARE IMPOSED UPON SELLER IN CONNECTION WITH THIS AGREEMENT, PURCHASER AGREES THAT SELLER'S TOTAL LIABILITY TO PURCHASER AND/OR ANY OTHER PARTY SHALL NOT EXCEED THE FEES PAID BY COMPANY (UNDER THE PURCHASE CONTRACT) WHICH REPRESENT THE PURCHASE PRICE OF THE PRODUCT.
- 10. Claims, Commencement of Actions**
- 10.1 No claims against the Seller will be allowed unless asserted in writing within sixty (60) days after delivery, or in the case of an alleged breach of Warranty, within sixty (60) days after the date within the Warranty period on which the defect is or should have been discovered by Purchaser.
- 10.2 Any lawsuit or other action based upon breach of any contract to which these T&Cs apply other than an action by Seller against Purchaser for payment of the purchase price of Products must be commenced within one (1) year from the date of the First Acceptance Certificate or, in the case of an alleged breach of Warranty, within one (1) year from the date within the Warranty period on which the defect is or should have been discovered by Purchaser.
- 11. Retention of Title**
- 11.1 Seller reserves ownership and title in Products supplied until such time as the Third Acceptance Certificate has been signed by Purchaser and all payments arising from the business relationship with the Purchaser have been made by Purchaser. In the event of Purchaser's breach of contract, in particular in the case of arrears of payment, Seller shall be entitled to take back the Product after setting a reasonable deadline. Taking back the Product shall not constitute any withdrawal from the contract by Seller unless Seller has expressly declared the latter in writing. The withdrawal from the contract shall not exclude the assertion of damage claims against the Purchaser. Upon taking back the Product Seller shall be authorized to sale it. The proceeds of the sale shall be offset against the Purchaser's open payments, subject to deduction of reasonable expenses in connection with the sale. The provisions of the German Insolvency Regulations (InsO) (if applicable) shall remain unaffected. The Purchaser shall be obliged to handle the Product with care, and it shall in particular be obliged to adequately insure it against damage and losses caused by fire, water and theft, at the reinstatement value, at its own expense. In the event of any seizures or other interventions by third parties in relation to Products for which Seller retains title, the Purchaser shall be required to inform

- Seller in writing without delay. The Purchaser shall be liable vis-à-vis Seller for the judicial and extrajudicial expenses related to actions by Seller to defend Products against such seizures or other interventions by third parties.
- 11.2 Should the Product delivered to a place outside Germany, the following shall apply: Should the Product delivered have been supplied prior to payment of any amounts owed by the Purchaser arising from the contract, it shall, in so far as permissible under the law pertaining to the laws governing the Product, remain Seller' property until such time as payment is made in full. Should such law not permit retention of ownership, however should it permit Seller to reserve any other rights in the Product, Seller may exercise any rights of this nature. The Purchaser shall be obliged to co-operate in regard to any measures taken by Seller in order to protect its right of ownership or any alternative right in the Product substituting the right of ownership.
- 12. Cancellation**  
Purchaser agrees that a purchase order under an executed contract shall in no event be subject to cancellation by Purchaser except by prior written consent of Seller and then only after Seller has been fully compensated for any and all damages resulting from such cancellation, including but not limited to lost profits, cost for work performed and materials used and such other costs, expenses or claims that Seller may elect to pursue.
- 13. Non-Solicitation of Employees**  
Neither the Purchaser nor any entity acting on its behalf shall solicit directly for employment any person employed by the Seller for a period of two (2) years after the consummation of the sale.
- 14. Indemnification (Injury)**  
14.1 To the extent that Seller's agents, employees or subcontractors enter upon premises occupied by or under the control of Purchaser or any of its Purchasers or suppliers in the course of performance hereunder, Purchaser shall take all necessary precautions to prevent the occurrence of any injury, including death, to any person, or any damage to any property, arising out of any acts or omissions of such agent, employees, or subcontractors.  
14.2 Except to the extent that any such injury or damage is due solely and directly to Seller's negligence, Purchaser shall indemnify and hold Seller harmless against all losses, claims, liabilities, and expenses, including reasonable attorney's fees, arising out of any act or omission of Purchaser, its agents, employees or subcontractors, and Purchaser shall maintain such Public Liability, Property Damage, and Employee's Liability and Compensation Insurance (collectively "Insurance") as will protect Seller from any claims under any applicable Occupational Health and Safety, Workman's Compensation, and Occupational Disease Acts. Upon Seller's request, Purchaser shall provide Seller with evidence of such Insurance.
- 15. Confidentiality**  
15.1 The confidentiality agreement entered into between the parties shall apply to this Contract.  
15.2 In case Seller and Purchaser have not entered into a confidentiality agreement prior to the execution of this Contract, confidential information shall be protected as follows:  
"Confidential Information" shall mean any business, marketing, technical, scientific, financial or other information; products, specifications or any other technical matters, designs, plans, drawings, software, prototypes, devices, inventions, improvements, process technique, test results, know-how, items of proprietary equipment and samples, of a party or its affiliated companies, which (i) at the time of disclosure is designated as confidential (or a like designation), (ii) is disclosed in circumstances of confidence, or (iii) would be understood by the parties, exercising reasonable business judgment, to be confidential. The term "Confidential Information" shall further mean and include (i) all analyses, reports, summaries, forecasts, studies and other documents which were prepared by one of the parties or a Representative of a party or any of its affiliates and are in whole or in part derived from Confidential Information or contain or reflect Confidential Information, and (ii) the existence of this Contract, the intention of the parties to explore and establish a business relation, the fact that a party received or requested Confidential Information, the fact that the parties are conducting negotiations and/or talks and what is being discussed during such negotiations and/or talks.  
In order for certain information to be considered Confidential Information, it is not relevant whether such information is or was furnished orally, in writing, electronically or in any other manner or whether the information became known or was seen during a visit at the operational site of the other party.  
However, information shall not qualify as Confidential Information if such information (i) was at the time of disclosure by the disclosing party to the receiving party in the possession of the receiving party as shown by written records of the receiving party, without being subject to any duty of confidentiality; (ii) was at the time of use or disclosure by the receiving party, lawfully and independently available to or possession of the receiving party, not as a result of any unauthorized act or omission on the part of the receiving party or any third party; (iii) was developed by the receiving party independently of and without use of the

Confidential Information disclosed by the disclosing party; (iv) was already publicly available prior to its receipt from the disclosing party, or becomes publicly available thereafter without breach of this Agreement; (v) was rightfully received by the receiving party from a third party without a duty or confidentiality; (vi) was approved for release in writing by the disclosing party; or (vii) was required to be disclosed by the receiving party pursuant to any order of competent court or administrative or governmental authority.

For term of two (2) years from the date on which this Contract has entered into force, but in any event not before a period of one year has expired after the date of Third Acceptance, each receiving party will (i) ensure that it and its affiliates and Representatives will keep all Confidential Information in strictest confidence and that it and its affiliates and Representatives will use all Confidential Information solely for the purposes of exploring, preparing and implementing the business relationship of both parties; (ii) not directly or indirectly duplicate or use any Confidential Information of the disclosing party, except as reasonably required to accomplish the purposes set forth in this Contract; (iii) not directly or indirectly disclose without the prior written consent of the disclosing party any Confidential Information disclosed to it by the disclosing party, other than to its affiliates and Representatives of the receiving party which reasonably require knowledge of such Confidential Information to accomplish the purposes set forth in this Contract. The receiving party shall ensure that each of its affiliates and Representatives maintains in strictest confidence all Confidential Information disclosed to such affiliates and Representative. Notwithstanding the foregoing, any affiliates or Representative receiving Confidential Information as well as the Confidential Information itself will explicitly be communicated to the disclosing party upon request of the disclosing party. Furthermore, (iv) each receiving party will inform the other party without undue delay if it or any of its Representatives becomes aware or has reason to assume that third parties have gained unauthorized access to Confidential Information.

For the purposes of this Contract, the term "Representatives" shall mean any of the parties' or affiliates' members of the management board or board of directors, employees or advisors (including, but not limited to, lawyers, auditors and financial advisors) or any appointed agents.

**16. IP; Software- and Hardware-Licenses**

16.1 All rights in data, information, drawings, designs, photographs and similar materials provided to the Purchaser in connection with the Product or the contractual relationship between the Parties shall be and shall remain at all times with Seller.

16.2 The Seller hereby grants to the Purchaser a non-exclusive, non-transferable, royalty-free right to use the CACE/AIXACT software programs AIXcontrol, AIXedit, AIXlog, AIXana, CACE/PLC, CACE/SLC and the optional driver software modules (e.g. EpiTune, Epison, etc.) and documentation delivered herewith ("Programs") at one workstation in connection with (and only in connection with) the Product sold to Purchaser by the Seller the Seller. Purchaser is permitted to use the Programs only in connection with the Product and only on one workstation. Purchaser may not rent, lease or distribute copies of the Programs to third parties. Purchaser may not modify or translate the Programs without the prior written consent of the Seller the Seller and any such modification or translation shall be owned solely by the Seller. Purchaser may not reverse assemble, reverse compile, or otherwise attempt to create source code from the Programs. Purchaser may make one (1) copy of the Programs for backup purposes, but Purchaser shall not sublicense, assign, delegate or otherwise transfer the Programs (or any part thereof) or the license granted hereby or any of the related rights or obligations for any reason. Any attempt to make any such sublicense, assignment, delegation or other transfer by Purchaser shall be void. The Programs are copyrighted. Purchaser may not copy any Program (including without limitation any related documentation) except to provide a backup copy and to load the Programs into the computer as part of executing the Programs. Any and all other copies of the Programs made by Purchaser are in violation of this license unless expressly permitted by this Contract. The Purchaser shall not allow to analyze, reverse engineer, or otherwise attempt to derive the composition, structure, or underlying information of the Programs, unless explicitly permitted by statutory laws.

16.3 The quotation (or, if accepted, the purchase Contract) includes a license and license fees for the Seller patented or licensed components of the Product (Vent-Run switching, manifold, gas inlet chamber, reactor cell, gas foil rotation, scrubber). The license applies only to the particular Product of this Contract and is limited to the use of the Product by Purchaser only the Seller. There is no license to manufacture market or sell patented components.

**17. Indemnification (Intellectual Property)**

The Seller warrants that the structure of the hardware of Product sold to Purchaser does not infringe any patent, copyright, trademark or other intellectual or industrial property right. The Seller shall indemnify and hold Purchaser harmless from all costs and expenses, including settlement or judgement arising out of any infringement claim or suit filed, by a third person, which asserts that the structure of the hardware

of Product sold to Purchaser by the Seller infringes the patent, trademark, copyright, or other intellectual property right (collectively, "Intellectual Property Rights") of such third person; provided, however, that Purchaser shall provide the Seller with reasonable notice of such claim or suit and with the opportunity to defend such claim or suit. It is expressly provided, by way of example but not limitation, that the Seller shall not indemnify Purchaser for claims or suits by a third person which assert that such third person's Intellectual Property Rights have been infringed through or by: (i) the method of operation of the Product, other than generic use to control the technical features as provided by the hardware and related operational software of the Product; (ii) the processes used in the Product; (iii) the materials and/or devices produced using the Product; or (iv) the structure of the hardware of the Product, if such structure has been modified by Purchaser (or a third person), customized by Purchaser (or a third person), and/or used or combined in any manner with (whether by Purchaser or a third person) hardware and/or software other than Seller hardware and/or Seller's software (collectively, "Non-Seller Products"), unless such Non-Seller Products have been supplied to Purchaser by the Seller or the use by Purchaser of such Non-Seller Products has been approved in advance, in writing, by Seller.

Purchaser shall indemnify and hold Seller harmless from (and Purchaser shall release the Seller from and not assert any claim or suit against the Seller) any suits, claims, costs, liabilities or expenses incurred or suffered by Purchaser arising from any claim by a third person of infringement of patent, copyright, trademark, or other proprietary right or intellectual property right, at common law or otherwise, or claim of unfair trade or of unfair competition, arising from or otherwise occasioned by, (i) the method of operation of the Product, other than generic use to control the technical features as provided by the hardware and related operational software of the Product; (ii) the processes used in the Product; (iii) the materials and/or devices produced using the Product; or (iv) the structure of the hardware of the Product, if such structure has been modified by Purchaser (or a third person), customized by Purchaser (or a third person), and/or used or combined in any manner with (whether by Purchaser or a third person) hardware and/or software other than the Seller hardware and/or the Seller software (collectively, "Non-Seller Products"), unless such Non-Seller Products have been supplied to Purchaser by the Seller or the use by Purchaser of such Non-Seller Products has been approved in advance, in writing, by the Seller.

Purchaser warrants, and legally solely is responsible for, that any kind of re-sale and/or delivery of the Product will not be executed to a country if this will violate any country's export control laws or export and import regulations.

## 18. Data Protection

The Seller adheres with the applicable data protection laws. It will collect, use, process and transfer personal data only to the extent necessary for the performance of this contract or allowed by applicable law.

## 19. Compliance

19.1 Purchaser shall be required to comply with all national and international laws and regulations 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. Purchaser agrees to adhere to the Compliance Code of AIXTRON SE and the AIXTRON Conflict Minerals Policy, which can both be found on Seller's homepage ([www.aixtron.com](http://www.aixtron.com)), if and to the extent that the provisions contained therein apply to the Purchaser. Purchaser shall inform its employees, suppliers, subcontractors and other agents of the principles described in this Clause 19 and impose similar obligations on its employees, suppliers, subcontractors and other agents.

19.2 Within the scope of its entrepreneurial responsibility Purchaser commits itself to comply with all applicable labor rules in the manufacture of products and the provision of services and will not allow forced labor or child labor 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.

19.3 Purchaser shall promptly report to Seller any actual or suspected violations of legal provisions or any of the provisions contained in this Clause 19 by Purchaser or any of its suppliers, subcontractors or other agents which may have an impact on Seller or a member of the AIXTRON group, either directly or indirectly. If Seller suspects that any of the described principles or requirements is not being complied with, Seller shall be entitled to see all written information concerning such matter.

19.4 In the event of any violation of the principles and requirements described in this Clause, Seller reserves the right to require Purchaser 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 Seller or a member of the AIXTRON group into disrepute, Seller shall be entitled to immediately terminate the Contract. This right is without prejudice to any other rights and remedies that Seller may have under this Contract or available under law.

## 20. Governing Law; Arbitration

20.1 This Contract and any non-contractual obligations in connection therewith shall be governed by and construed in accordance with the laws of the Federal Republic of Germany excluding its conflicts of laws rules and excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).

20.2 All disputes arising out of or in connection with the Contract including its existence, validity or termination shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (ICC) without recourse to the ordinary courts of law. The place of arbitration is Frankfurt am Main, Germany. Temporary relief before the courts of the competent jurisdiction shall remain unaffected. The number of arbitrators shall be three (3). The language of the arbitral proceedings shall be English. The parties undertake to keep confidential (i) all awards obtained in the arbitration, (ii) all materials submitted or created for the purposes of the arbitration and (iii) all other documents produced by a party, in each case of (i) to (iii) except and to the extent that information or documents are (x) already lawfully in the public domain, or (y) disclosure thereof may be required by a party to comply with mandatory law or to protect or pursue a legal right or to enforce or to challenge an award granted in legal proceedings before a court.

## 21. Miscellaneous

21.1 Any provision of these T&Cs may be amended or cancelled only by a written agreement duly executed by Seller and Purchaser. The same applies to change or cancellation of this clause requiring written form.

21.2 General terms and conditions or purchase conditions of the Purchaser (if any) shall not be applicable and shall be void even if added or inserted in Purchaser's order documents.

21.3 Any statutory rights of the Purchaser to set-off counterclaims against the claims of the Seller for payment are hereby excluded, except where the counterclaim of the Purchaser has either been finally determined by court or recognized by the Seller in writing.

21.4 The Purchaser may not assign, delegate or otherwise transfer in whole or in part any of its rights or obligations under any contract with Seller without the prior written consent of the Seller.

21.5 By signing a contract with Seller each of the undersigned confirms that he/she is authorized to enter into such contract and undertakes, in the event of non-authorization, to personally discharge the duties of the party on whose behalf he/she has signed the contract.

21.6 All communications, declarations, notices etc. are to be drawn up exclusively in the English language. Communications by means of e-mail or fax shall fulfill the requirement of being in writing.

21.7 Should any provision of these T&Cs, or any provision incorporated a contract to which these T&Cs apply, be or become, either in whole or in part, void, ineffective or unenforceable, this shall not affect the validity, effectiveness and enforceability of the other provisions of the contract. In such event the parties shall agree on and give effect to such valid, effective and enforceable provision or provisions that comes or come as close as legally possible to the commercial intention of the parties pursued with the void, invalid or unenforceable provision. The same shall apply in the event that a contract contains any gaps.