

AIXTRON Ltd Conditions of purchase 2010

1. Definitions used in the Schedule and these Conditions

'Contract'	means the Framework Agreement referred to in the Schedule (if applicable) 5 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

- 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.
- Nothing in these terms and conditions shall prejudice any condition or warranty expressed or implied, or any legal. 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.
- 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.
- 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.
- In the event of a conflict the Special Conditions shall prevail over any other conditions.

3. Specifications, Testing and Acceptance

- The Products and/or the Services must conform in all respects with:
 - All samples, or patterns provided by us, or supplied by you and accepted by us; and/or
 - The drawings, specifications and other requirements or descriptions stated in the Special Conditions and in the Contract (where appropriate); and
 - All relevant requirements of law at the time of delivery, or of performance, as the case may be
- In addition 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.
- 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.
- 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.
- Notwithstanding acceptance of the Products, or Services, 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

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

5. Titles and Risk

- Title in the Products shall pass to AIXTRON Ltd on the earlier of:
 - Payment of the Price or any part thereof;
 - 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.
- Notwithstanding clause 5.1, risk shall pass to AIXTRON Ltd on receipt at the Delivery Address.
- The provisions of this Clause 5 shall not affect AIXTRON Ltd ' rights or remedies under Clause 3 or otherwise available at law.
- 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

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

- 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.

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

- 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.

- 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

- 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).

- 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.

- 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.

- 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. Terminations and Cancellation

- This order may be terminated by AIXTRON Ltd:
 - Forthwith on expiry or termination of the Contract (where appropriate);
 - 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.
- 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, 3.2 and 4.1.

- 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.

- 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

- 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.
- 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.

- 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.

13. General

- 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.
- 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.
- 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.