General Business Terms
and Conditions Axess Americas (GTC)

1. General Terms

1.a. These General Business Terms and Conditions ("GTC") of Axess Americas, Inc. ("Axess") govern all contractual relationships entered into between the customer ("Customer") and Axess, and shall govern all additional and future deliveries of any goods or services, including without limitation any contracts that arise under any contracts between Customer and Axess Products ("Agreements").

1.b. All agreements that contain differing terms than those set forth herein or supplemental agreements between Customer and Axess, shall be in writing and any authorization or acceptance of Axess Products shall only be effective if in writing by both Customer and Axess representative.

1.c. Axess, in its sole and absolute discretion, reserves the right to amend the GTC, or revise the GTC. Changes will be communicated to Customer in writing so the Customer can, if applicable, file an objection to said changes. If the Customer does not file an objection within thirty (30) calendar days of Axess’s notification of amendment or revision, such amendment or revision shall be deemed approved by the Customer. Axess will use its best efforts to address objections from Customers with respect to any amendments and/or revisions to the GTC. The Proposal will be tailored, to the best of Axess’s ability, to meet the Customer’s requirements as discussed in prior meetings and conversations between Customer and Axess representatives, or in response to a formal tender from Customer, as the case may be, and are exclusively to be understood as a request of Axess for proposals.

2. Proposals and Acceptance of Proposals

Proposals ("Proposals") are prepared by an Axess specialist and shall be tailored, to the best of Axess’s ability, to meet the Customer’s requirements as discussed in prior meetings and conversations between Customer and Axess representatives, or in response to a formal tender from Customer, as the case may be, and are exclusively to be understood as a request of Axess for proposals. All Proposals are nonbinding and remain valid for thirty (30) calendar days from presentation to Customer. The Proposal will be deemed accepted upon Customer and an authorized Axess representative signing the Proposal, at which time the Proposal becomes an order ("Order"). Any changes to Proposals are in brochures or similar documents, drawings, descriptions, measurements, weight, performance, and consumption data, are approximations and reference values only and are not binding, unless authorized by Axess representative. If any condition is made in the proposal to the Customer. Email is an acceptable form of writing as referenced in these GTC. SMS, text message and electronic chat are forms of writing permitted.

3. Delivery Deadlines and Dates

3.a. If delivery deadlines set forth in accepted Agreements are estimates only and are nonbinding on Axess. Axess will use its best efforts to deliver on the dates set forth in any order. If the Customer prepares the location for installation of the Axess Products (see 4.b. below) and Order is defined in detail, the deadline for Axess to deliver shall be extended. If subsequent changes or additions to the Order are made, delivery deadlines will be adjusted according to Customer’s request. The delivery deadlines can be extended based on the Customer’s request.

3.b. Axess’s adherence to the proposed delivery and installation dates are conditioned upon timely receipt of agreed upon installment payments from Customer.

3.c. Axess’s adherence to the delivery deadline is contingent upon timely receipt of agreed upon installment payments from Customer.

3.d. Axess shall have the right to make changes to Axess Products in order to comply with changes in material and design due to technical progress.

3.e. Costs of materials of a single increase more than five percent (5%) during the term of an Order (from the time the Order is accepted to the time of actual delivery to Customer), Axess shall adjust the cost and bill for the full amount of the cost increase so long as Axess does not cause such increase.

3.f. Based on the site inspection, any fifteen percent (15%) increase in delivery dates and deadlines set forth in accepted Agreements are estimates only and are nonbinding on Axess. Axess will use its best efforts to deliver on the dates set forth in any order.

3.g. Axess maintains the right to assess all claims it may have for breach directly against the Customer. If permits are required in order to execute the Order, Customer grants Axess a power of attorney to obtain such necessary permits on behalf of Customer.

3.h. If any Order is financed through a lease, the lessor of that lease shall be named on and bound by the Order; however, the Customer remains primarily liable for the Order amount and thirty (30) calendar days of Axess’s notification of amendment or revision, such amendment or revision shall be deemed approved by the Customer. Axess will use its best efforts to address objections from Customers with respect to any amendments and/or revisions to the GTC. If a delivery on a such additional locations/addresses shall be agreed to in writing, signed by or additions to the Order are made, delivery deadlines will be adjusted accordingly.

4. Delivery and Commissioning

4.a. Customer bears the risk of loss of or damage to the Axess Products at all times during the term of an Order (from the time the Order is accepted to the time of delivery to Customer). For lack of payment of an overdue invoice, Axess may retain possession of the Order as soon as such conditions are known to Customer. If such information is not provided to Axess in a timely manner, Axess shall have the right to invoice Customer for any incurred additional expense due to the impairment.

4.b. Customer may cancel the Order if Axess is in default of these GTC, but only after providing Axess thirty (30) calendar days to remedy such default. Claims for damages owing to occurred default are excluded except in the event of gross fault.

4.c. Customer may cancel the order as set forth in 3.j, or make a claim for damages as set forth in 10 below, only if Axess is responsible for any delay in the Axess Products. If Axess is not liable if a delay in the Order is caused by the Customer (including for lack of payment of an overdue invoice), Axess may retain possession of the Order as soon as such conditions are known to Customer. If such information is not provided to Axess in a timely manner, Axess shall have the right to invoice Customer for any incurred additional expense due to the impairment.

4.d. Axess shall install the Axess Products by connecting the pre-mounted assembly units at the locations specified in the Order and the software installation and program commissioning as agreed to in the Order or acceptance of the Axess Products. Customer shall accept the Order and Axess Products and within three (3) calendar days of receipt of the same, Customer shall create a list of any defects and provide the same to Axess in writing. Axess shall have sixty (60) calendar days within which to remedy the defects provided by Customer. The repair of any defects caused by the Customer shall be invoiced directly to Customer.

4.e. If Customer delays in the acceptance of any Axess Products when they are delivered, Customer shall pay all storage fees incurred by Axess. If Customer fails to accept any Axess Products when they are delivered, Axess may charge Customer an additional fifteen percent (15%) on the total Order amount as a penalty for such delay.

4.f. Customer delays in the acceptance of any Axess Products when they are delivered, Customer shall pay all storage fees incurred by Axess. If Customer fails to accept any Axess Products when they are delivered, Axess may charge Customer an additional fifteen percent (15%) on the total Order amount as a penalty for such delay.

4.g. Axess will use its best efforts to deliver all brand name and type designs of standard hardware but such information is nonbinding and subject to change. Axess will deliver the Axess Products of its choice that are available at the time of execution of the Order. Axess shall charge for the
General Business Terms and Conditions Axess Americas (GTC)

actual work for installing software programs on computers provided by Axess. 4.h. Axess shall provide “one-off” initial training of Customer’s personnel regarding trouble shooting and maintenance as agreed to in the Order. Follow-up, repeat and new employee training will be invoiced to the Customer separately.

5. Usage Licenses for Software Programs 5.a. Axess is the owner and/or licensee and distributor of software programs and associated documents (together, “Software”). Upon Customer’s full payment of periodic license fees, Axess grants to Customer a simple, non-exclusive and non-transferable license for the internal use of the delivered Software for the specified purpose and for the duration set forth in the Order. Axess shall retain all rights (including copyright), title and ownership of the Software. Payment of the license fees by Customer gives Customer the right to use the Software for its agreed upon and intended purpose during the license period.

6. Maintenance of Software 6.a. Maintenance and installation on Software, Axess shall provide support and maintenance of the Software pursuant to an agreement for such support and maintenance entered into by Customer and an authorized representative of Axess. Axess shall make updates available to Customer by download, CD, or other means, and Customer shall be responsible for installation of all updates. If Customer wants Axess to install updates, Axess shall invoice the costs of installation of updates to Customer, separate from the agreed upon flat rate program fee set forth in the agreement. The third party licensing conditions and restrictions regarding use shall apply. 6.b. For individual Software created for Customer by Axess, the scope of service shall be determined by the specifications attached thereto.

Price Adjustments For Support and Maintenance Service

A party breaches its contractual obligations and this breach is not remedied by the non-breaching party or;

The agreed payments have not been made within thirty (30) calendar days after the due date and notice has been provided.

All service and maintenance will be invoiced by Axess at the beginning of each accounting period.

Price Adjustments For Support and Maintenance Service

Axess may adjust agreed upon flat rate fee(s) on an annual basis by comparing actual expenditures to costs that exceed ten percent (10%) of the fees set forth in the support/maintenance agreement.

Axess has a history of providing support and maintenance service at the same cost to all customers. Axess reserves the right to adjust the fee charged to Customer as follows: Hotel category is 3 star rates; railway class is 2; official mileage allowance posted by IRS for travel by car; rental of auto is economy car; airline upgrade service; overseas is premium economy.

Not included in any flat rate fee(s) are services provided due to operating system changes, hardware changes, and/or changes to non-contractual reciprocal program-based software programs and interfaces, individual software products and program changes owning to changes to statutory regulations requiring changes to program logic, remedy of errors caused by improper treatment by Customer, failure to Customer to
perform stipulated measures such as backups, or by third parties and data conversion, restoration of data stocks and interface adjustments.

6. Delivery. The Software and/or Axess Products by Customer's employees or third parties, without the prior written consent of an authorized Axess representative, or if the Software is not used properly.

7. Ticket and Accessory Delivery

7.a. All materials produced by Axess for printing, such as typesets, printing plates, lithographs, photographically produced films and plates, cutting dies and other work aids used in the production process shall remain the sole and exclusive property of Axess, even if Customized for or produced for full payment for the same. All work aids provided by another company hired by Axess shall remain the sole and exclusive owner of such property.

7.b. Axess shall remain the sole and exclusive owner of such property. Stipulated measures such as backups, or by third parties and data conversion, restoration of data stocks and interface adjustments.

8. Data Protection

8.a. The Customer and Axess agree to comply with all provisions under the Data protection laws.

8.b. Axess processes personal data on behalf of the Customer based on the contract needs of the individual Customer, and whereby the subject matter, type, categories of the processed data, purpose of the processing and categories of persons concerned (customer data) result from the respective contract entered into between the contracting parties.

8.c. Axess has implemented technical and organizational measures to ensure that the carrying out of data in conformance with the requirements of local, state and federal law. A claim of whatever kind can only be brought if a breach has occurred.

8.d. Changes to Axess's technical and organizational measures that guaranty consistent standards of protection for the processed personal data or that improve this standard, shall be deemed to be approved and will be provided to Customer upon written request.

8.e. Axess undertakes to only process personal data within the scope of existing contracts and according to individual instructions from the Customer. If it is obligated to disclose such data to third parties by local, state or federal law, Axess shall inform Customer of these legal requirements beforehand if the relevant law does not forbid such notification. Processing of data for Axess's own purposes requires the written consent of the Customer.

8.f. Axess may use sub-processors. Customer shall be notified in advance in writing so that it can file an objection. If notification of such change is not possible, Axess may in its absolute sole discretion, Axess shall remedy defects that a breach has occurred.

9. Warranty

9.a. Axess provides a warranty for defects in its products that exist upon hand-over to Customer. Customer must prove the existence of any defect at the time of hand-over.

9.b. The warranty commences upon delivery of the products, or, if commissioning is part of the contract, with the declaration of operational readiness by Axess.

9.c. For defects in immovable objects, the warranty period is one (1) year.

9.d. The warranty period is six (6) months for defects in movable objects. Axess shall honor warranties by subsequent improvement or replacement of the goods. Onsite repairs are not included in the scope of warranty, unless such service is expressly included in the contract with Customer. For replaced parts, the aforementioned warranty applies.

9.e. In its absolute sole discretion, Axess shall remedy defects that a breach has occurred.

9.f. Defects to hardware: Unless otherwise agreed to in writing in the contract, Customer bears the costs and risk for the transport of hardware to Axess for improvement or replacement of the missing part. A customer claim for refund or price reduction shall only exist if, after Axess's review of the defect, improvement or substitute delivery cannot be performed, are impossible, will be associated with a disproportionately high amount of work for Axess, or may in its absolute sole discretion, Axess shall remedy defects that a breach has occurred.

9.g. Defects to software programs: As soon as possible (which may depend on the release of improved source software versions), Axess will fix defects to programs within the agreed upon warranty period that existed at hand-over to Customer. Defects in customer-specific program developments will be fixed within the scope of that program's warranty and warranty period.

9.h. Customer acknowledges, agrees, and understands that according to the current technical development status, errors cannot be fully excluded in software production. Such errors shall not be deemed "defects." In the case
of defects that substantially impair the use of software programs, the provisions set forth in §9(g) shall apply, with the condition that the installation of an updated software version or instruction for the remedy or bypass of the cause of the defect are also to be seen as a sufficient subsequent improvement, so long as customary use is made possible by such improvements. Exceptionally, periods for SPECIFICELY type NO WARRANTIES, OTHER THAN THE STATED PRODUCT WARRANTIES, ARE EXPRESSED OR IMPLIED WITH RESPECT TO THE PRODUCTS, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

9. Limitation on warranty: The devices and their associated software may only be operated by Customer according to the instructions for use, operating instructions, checks and bills of exchange will only be accepted if set forth in accordance with the relationship between Axess or the Customer, or any of their respective affiliates and any such person, or (ii) induce employee or officer of Axess or the Customer, to leave the employ of, or terminate its affiliation with Axess or the Customer, or in any way interfere with the relationship between Axess or the Customer, or any of their respective affiliates and any such person, or (ii) induce or attempt to induce any customer, supplier, licensee or other business relation of Axess or the Customer will comply with statutory export bans and export restrictions.


13.a. These GTC and all schedules, annexes and exhibits attached hereto: (a) constitute the entire agreement among the parties with respect to the subject matter hereof and supersede all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof; (b) are not intended to confer upon any other person, entity, or other third party any rights or remedies hereunder; and (c) shall not be assigned by operation of law or otherwise except as otherwise specifically provided.

13.b. Any general business terms and conditions set forth by the Customer are binding. Axess's failure to reply to any deviating business terms and conditions shall not be deemed consent to such terms.

13.c. In the event that any provision of these GTC or the application thereof, becomes or is declared by a court of competent jurisdiction to be illegal, void, or unenforceable, the remainder of these GTC will continue in full force and effect and the application of such provision to other persons or circumstances will be interpreted to reasonably give effect to the intent of the parties hereto. The parties further agree to replace such void or unenforceable provision of these GTC with a valid and enforceable provision that will achieve, to the greatest extent possible, the economic, business and other purposes of such void or unenforceable provision.

13.d. The Customer will comply with statutory export bans and export restrictions.

11. Payments

11.a. Prices and terms of payment are set forth in Customer’s specific Order confirmation and are deemed net, duty unpaid and untaxed ex works. Axess may require a bank guaranty to secure payment. Unless otherwise agreed to in writing, payments are to be made in United States dollars.

11.b. Unless otherwise agreed upon in writing, the following shall apply as payment dates: thirty percent (30%) of the Order value due with readiness for delivery (prior to shipment); and ten percent (10%) of the Order value due thirty (30) days after delivery.

12. Reservation of Title

12.a. Axess retains all rights in the form of a secured interest in the goods and software delivered to Customer until Customer has satisfied all payments and other contractual obligations. In the event payment is not made as set forth in the Order and/or other written agreement between the parties, Customer grants Axess the right to sell and dispose of the software and goods, even if it is affixed to the property of Customer, or if it is in any way secured by Customer. Axess is entitled to collect payment and/or security for the entire amount of the claims and/or other written agreement(s) if Axess expressly states such cancellation in writing. Axess may sell the recaptured property (including goods and software) on the free market and the proceeds of such sales shall offset its claims against Customer. In the event of default of payment by Customer, Axess may request advance payment or additional security in order fulfill future deliveries and services.
Customer, or any of their respective affiliates to cease doing business with Axess or the Customer, or their respective affiliates or in any way interfere with the relationship between any such customer, supplier, licensee or business relation and Axess or the Customer or any of their respective affiliates. The party that breaches this nonsolicitation provision shall be liable to the nonbreaching party in the amount of the annual salary of the employee who was so induced by the breaching party.

13.g. All of the terms and conditions set forth herein shall be binding upon and shall inure to the benefits of the parties hereto and their respective heirs, legal representative, successors and assigns.

13.h. Any claim or dispute arising out of or related to this Agreement shall be subject to mediation as a condition precedent to the institution of legal or equitable proceedings by either party. The parties shall use good faith to resolve their claims and disputes through mediation, which, unless the parties mutually agree otherwise, shall be in accordance with mediation laws and rules established in the Utah Code and/or by the Utah District Courts currently in effect. The party with a claim or dispute shall send a request for mediation to the other party. The parties agree that once a request for mediation has been made in writing and sent to the other party, any legal or equitable proceedings shall be stayed for sixty (60) days from receipt of such mediation request so that mediation can be scheduled and take place. Each party shall submit the name(s) of at least one (1) mediator who specializes in construction law to the other party. From the list of names, the parties shall mutually agree upon a mediator. If the parties cannot agree upon a mediator, the parties shall agree upon a neutral third party to select a construction law mediator for the parties. The parties agree to equally share the costs of mediation, including the mediator’s fee, any filing fees, and any facility costs. The parties shall be responsible for their own attorney’s fees incurred in preparation for and during mediation. The mediation shall be held in a neutral location, such as the mediator’s office. Complete and fully signed agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction over the claim and/or dispute.

13.i. If litigation is commenced between the parties hereto to enforce or interpret any terms or provisions of this Agreement, the prevailing party in the action shall be entitled, in addition to all other relief and sums, to its reasonable costs and expenses incurred in litigation, including costs, expert witness fees, and reasonable attorney fees, both at trial and on appeal.

13.j. All notices that are required or desired to be given by either party shall be in writing and shall be personally delivered to the other party, mailed to the other party by United States certified or registered mail, postage prepaid, or faxed to the other party, addressed as stated in this Agreement, or sent via electronic communication to the addresses provided by party. Any such notice not personally served shall be deemed received forty-eight (48) hours after faxed or deposited in the mail to the address designated above and after twenty-four (24) hours after sent via electronic communication to the addresses provided by each party. A party may change its address for service of notice by providing written notice of the change to the other party.

13.k. These GTC shall be governed by and construed in accordance with the laws of the State of Utah, regardless of the laws that might otherwise govern under applicable principles of conflict of laws thereof. The application of the UN-convention on contracts for the International Sale of Goods (CISG) is explicitly excluded.

13.l. For purposes of any action or proceeding involving these GTC or any of the obligations of the parties, the parties hereby irrevocably submit to the jurisdiction of the courts of Summit County, State of Utah, or the United States District Court for the District of Utah (as the case may be), and agree not to raise and waive any objection to or defense based upon the jurisdiction or venue of any such court or based upon forum non conveniens. The parties agree not to bring any action or other proceeding with respect to these GTC or with respect to any obligations set forth herein in any other court unless such courts of the State of Utah and of the United States determine that they do not have jurisdiction in the matter.