

# 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 work performed under any contract entered into with Axess ("Axess Products") of any kind whatsoever to Customer. Any terms and conditions that differ from the GTC must be agreed to in writing by both an authorized representative of Axess and Customer in order to preempt a particular GTC. Otherwise, these GTC shall control, even if reference to a differing term or 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 chats are not acceptable forms of writing hereunder.

**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 signed by both Customer and an authorized representative of Axess. Axess employees do not have authority to amend or restate these GTC, and Customer shall not rely on any changes to the GTC, except as agreed to in writing by Axess.

**1.c.** Axess, in its sole and absolute discretion, reserves the right to amend and/or revise the GTC. Changes will be communicated to Customer in writing so that the Customer can, if applicable, file an objection to said changes. If the Customer does not file a written 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, but it shall be within Axess's sole and absolute discretion as to whether to institute such amendment or revision to these GTC.

## 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 the order by the Customer. 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 details contained in brochures or similar documents, such as diagrams, drawings, descriptions, measurements, weight, performance, and consumption data, are approximations and reference values only and are not binding, unless an authorized Axess representative has specifically described and assured that a particular detail is binding. Axess reserves the right to make technical and design changes to Axess Products at any time. Customer Orders shall require a written order confirmation signed by Axess by means of post, fax, or email prior to processing of the same.

## 3. Delivery Deadlines and Dates

**3.a.** Delivery dates and deadlines set forth in accepted Orders are estimates only and are nonbinding on Axess. Axess will use its best efforts to deliver on the dates set forth in any Order. Once the Customer prepares the location for installation of any Axess Products (see 4(c) below) and Order is defined in detail, the deadline for Axess to deliver shall commence. If subsequent changes or additions to the Order are made, delivery deadlines will be adjusted accordingly. If Customer requests additional delivery locations and addresses, such additional locations/addresses shall be agreed to in writing, signed by both Customer and an authorized Axess representative.

**3.b.** Axess's adherence to the proposed delivery and installation dates are conditioned upon timely receipt of agreed upon installment payments from Customer, Customer's preparation of the location as required by 4(c) below, the completion of the individual steps over the course of the project according to the time schedule stipulated by Axess and the execution of agreed partial acceptances (location acceptance, software acceptance, if applicable work acceptance, initial training), if any.

**3.c.** Except in the case of flat rate price agreements, Axess charges for actual deliveries and services provided, and such charges are invoiced at Axess's hourly rates. All services will be provided during customary business hours for the industry; if services are required outside of such customary business hours, additional costs may be incurred by Customer and invoiced by Axess. Axess reserves the right to use third parties to provide certain services.

**3.d.** Customer may change an Order and such changes will only be binding if such change is agreed to in writing signed by both Customer and an authorized Axess representative. The existing contract shall apply accordingly to the extended scope. Any change to systems and system requirements will be billed on a pro-rata basis. The written order confirmation (or supplementation) shall be binding for the scope of the delivery and service.

**3.e.** If costs of materials of a single item 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.** Axess shall have the sole and exclusive right to make changes to all Axess Products in order to comply with changes in material and design due to technical progress.

**3.g.** Based on the site inspection, any fifteen percent (15%) increase or decrease in quantity of Axess Products needed shall be permitted and added to the final invoice to the 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 and payment for the same. Axess maintains the right to assert 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 its behalf. Customer must inform Axess about possible conditions that could impair the execution 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.

**3.i.** Customer may cancel its Order if Axess is in default of these GTC, but only after providing Axess with a registered letter, notifying Axess of such default and only after allowing Axess sixty (60) calendar days to remedy such default. Claims for damages owing to occurred default are excluded except in the event of gross fault.

**3.j.** Customer may cancel the order as set forth in 3(i), or make a claim for damages as set forth in 10 below, only if Axess is responsible for any delay in the Order. Axess is not liable if a delay in the Order is caused by the Customer for lack of payment of any installment due as set forth in 3(b), any lack of preparation of the location as set forth in 4(c), or any force majeure event, including but not limited to, strike, lock-out, mobilization, war, civil commotion, or natural disaster.

**3.k.** If providing any Axess Products (whether goods or service) is rendered partially or fully impossible and such impossibility is not caused by Axess or Customer, Axess shall invoice Customer for the actual costs incurred to date, the Axess Products provided to date, and all cash expenses incurred to date. If the provision of Axess Products is not carried out due to a default of Customer, Axess shall invoice Customer for total actual costs to date, the Axess Products provided to date, and thirty percent (30%) of the cost set forth in the Order for the total project but not yet provided.

**3.l.** If delivery of Axess Products is not possible due to Customer's default in payment or failure to prepare the location, Axess reserves the right to invoice Customer for storage fees for the Axess Products.

## 4. Delivery and Commissioning

**4.a.** Customer bears the risk of loss: (1) as of the date that any Axess Product leaves the Axess plant in Innsbruck, Austria; (2) as of the date any shipment is made within scope of assembly of any Axess Product; and (3) as of the date the transport is prepared, if the transport is prepared by Axess. In absence of a written agreement to the contrary, the place of performance of the Order is the plant in Innsbruck, Austria. Partial deliveries of the Order are permitted. All delivery shall be carried out by a third party, with costs borne by Customer. The use of subcontractors for delivery is permitted.

**4.b.** Customer shall be deemed to have accepted the delivered Axess Products thirty (30) calendar days after installation. The existence of insignificant defects does not entitle Customer to refuse delivery of 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 list of defects provided by Customer. The repair of any defects caused by the Customer shall be invoiced directly to Customer.

**4.c.** Customer is solely responsible for on-time preparation of the location for installation of the Axess Products according to Axess specifications, including without limitation, prepping the foundation by installing provided assembly aids, establishing power supply according to all governmental standards and specifications, establishing network connections between locations and individual devices. The assembly of devices which are necessary for the preparation of the location, at the envisaged location, is the task of the Customer.

**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 connections as agreed to in the Order. Work for which Axess does not have a valid concession are excluded (e.g. electrician concessions - installations with more than 120 volt) Axess is not liable for any installation work performed by any third-party.

**4.e.** If installation is delayed for any reason not caused by Axess (e.g. if preliminary preparations for which Customer or a third party are responsible have not been completed), Axess shall be released from its obligation to install any Axess Products for the duration of the delay, without Customer being entitled to cancel the Order, or seek damages of any kind against Axess. Axess shall invoice Customer for any additional expenses incurred due to such delay.

**4.f.** 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 refuses acceptance of 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 shall use best efforts to deliver all brand name and type designations of standard hardware but such information is nonbinding and subject to change. Axess shall deliver the Axess Products of its choice that are available at the time of execution of the Order. Axess shall charge for the

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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 operation, troubleshooting 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 and its suppliers retain all rights (including copyrights) to 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.

**5.b.** Customer shall not change, edit, copy, reproduce in any form, decode, decompile, or transfer to any other computer, the licensed Software.

**5.c.** The right to use the Software granted by Axess that is required for the operation of the hardware (firmware or operating system software), is transferable to third parties only with the prior written consent of an authorized Axess representative. Software licenses for application software are not transferable. Customer shall not grant sub-licenses, shall not forward software to third

parties, or otherwise use the software other than as licensed to Customer.

**5.d.** Copies of the Software may only be produced for backup, archiving purposes, or for error searches. All copies must include the property right notice of the original Software and all copies must be destroyed after fulfillment of their purpose. Customer shall ensure that the programs and documents as well as copies of all Software are not accessible by third parties.

**5.e.** For licensing of third-party programs included in the scope of the Order, the third-party licensing conditions and restrictions regarding use shall apply.

**5.f.** For individual Software created for Customer by Axess, the scope of service shall be determined by the specifications agreed to in writing, signed by both Customer and an authorized Axess representative. Non-specified but necessary features may be created by Axess in Axess's sole and absolute discretion. Axess shall retain ownership of all source programs and any rights attached thereto.

## 6. Maintenance of Software

Upon conclusion of installation and training 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 support and maintenance agreement. Maintenance of Software shall be performed at the flat rate for such services set forth in the support and maintenance agreement. Axess insures that support services are performed properly by qualified personnel, with reasonable care and attention. All support and maintenance shall be performed during Axess's regular business hours by remote maintenance. Axess can, at its discretion, perform support and maintenance services, at Customer's business premises.

**6.a.** Troubleshooting ("Bug-Fix" Service)

**6.a.i.** An error or "bug" in the Software exists if the installed Software produces a reproducible error that deviates from the corresponding service specifications in the respective valid Software version. Remedies including installing a "Bug-fix", a software update, or an appropriate workaround.

**6.a.ii.** Axess shall use best efforts to resolve recognized bugs for which Axess is responsible within a reasonable time after discovery. Axess is not liable and is not obligated to fix any issues that are impeded by defects caused by and not remedied by Customer.

**6.a.iii.** Axess may hire subcontractors to provide support services without requiring the consent of Customer.

**6.b.** Helpdesk

**6.b.i.** Axess shall provide a central e-mail address and telephone number to Customer for support questions and services during certain time periods as set forth in the service and maintenance agreement with Customer depending upon Customer's operations (i.e., summer season, winter season, event operation, or whole-year operation).

**6.b.ii.** Axess shall use its best efforts to respond to Customer inquiries within a reasonable time after receipt. Axess's business hours are listed at [www.teamaxess.com](http://www.teamaxess.com).

**6.b.iii.** Support services shall include application advice per telephone or e-mail, and assistance with interference arising from the use of Software and Axess Products. Support services may only be used by trained personnel.

**6.b.iv.** The support in the execution of tasks for daily operations (e.g. creation of new tariffs, re-configuration of an access control system, etc.) is not included in this service and will be charged separately.

**6.c.** Software Update Service

**6.c.i.** Within the scope of Axess' services, new releases for software programs will be issued. Update Services include the provision of new releases in the originally agreed scope of functions.

**6.c.ii.** Axess is not obliged to provide software-upgrades (new versions, releases or inline-releases) unless the delivery of upgrades and the payment of upgrades fees have been agreed upon in a separate agreement

(e.g. contract including software maintenance)

**6.d.** Server availability

**6.d.i.** Axess guarantees the availability of a server, its network, and interfaces used for connection to the Internet at the rate of 99% on an annual average. Downtime caused by scheduled maintenance work is not included in this average.

**6.e.** Obligations of Customer to Provide Assistance

**6.c.i.** For the quick and successful processing of error messages, Customer will forward such messages to Axess and reference its contract number as well as a full description of the error.

**6.c.ii.** Customer shall comply with Axess's instructions and shall make reasonable effort to enable Axess to perform any service and/or maintenance required, which may include supplying Axess with information, support, materials and access to operating means that are necessary to install all Service Packs and Hotfixes and to procure, install or maintain all operating means, telephone lines, Internet accesses, communication interfaces and hardware necessary for use with Axess Products and Software.

**6.c.iii.** Customer shall use qualified and trained personnel for use of Axess Products and Software licensed to Customer.

**6.c.iv.** Customer shall comply with all provisions under applicable federal, state and local data protection laws. If a claim is asserted against Axess by a third party for Customer's violation of any federal, state or local data protection law, Customer shall indemnify Axess and hold Axess harmless therefrom.

**6.c.v.** Customer shall make available its computer systems, software programs, protocols, diagnosis documents, data used by Customer, online connection for remote diagnosis and remote maintenance, free of charge to Axess, and Customer shall support Axess in this respect.

**6.f.** Liability

**6.f.i.** Axess is not liable for interferences to the ability to retrieve data stored on the agreed upon storage space on the Internet or other access to the server, which may include interfaces to the Internet, and interference owing to failure of lines or networks of other operators, the causes of which are not on the server or Axess network.

**6.f.ii.** Axess is not liable for interruption to service owing to force majeure. For other interruption to service, Axess is only responsible to the extent such interference substantially exceeds permissible downtimes set forth in 6(d).

**6.f.iii.** Axess is not liable for interference, interruption to service, and damages resulting therefrom, that are the result of improper use or misuse of the Software or Axess Products by Customer.

**6.f.iv.** Axess is not liable for loss or deletion of data stored on the agreed upon storage space, unless such loss is caused by the willful misconduct or gross negligence of Axess.

**6.g.** Term and Settlement For Software License Agreement

**6.g.i.** The initial term of any agreement, which includes software services, for license and maintenance, is five (5) years. After five (5) years, the term will be automatically renewed for one (1) year periods if Customer does not provide written notice of termination within three (3) months before the expiration of the current term. The maximum term of any license agreement is nine (9) years. Any license agreement beyond nine (9) years shall be renegotiated and set forth in a new written agreement.

**6.g.ii.** The parties shall have the right to terminate a license agreement when good cause is shown. "Good cause" shall mean:

- > Bankruptcy proceedings are commenced by either Axess or the Customer;
- > Judicial proceedings against the Customer are commenced that would impede its ability to pay Axess or against Axess that would impede its ability to provide Axess Products and Software as set forth in the agreement(s) between Customer and Axess;

- > A party breaches its contractual obligations and this breach is not resolved within a reasonable time at the written request of 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.

**6.g.iii.** All service and maintenance will be invoiced by Axess at the beginning of each accounting year.

**6.h.** Price Adjustments For Support and Maintenance Service

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

**6.h.ii.** On an annual basis, the prices for support services will be subject to any increase or decrease in the Consumer Price Index (CPI) based on the Consumer Index for Urban Wage Earners and Clerical Workers (Base Period 1982-1984 = 100) published by the U.S. Department of Labor for the preceding year (the "Index"). If the Index no longer exists, then any increase or decrease shall be carried out according to the index which replaces the Index and that results in approximately the same financial effect.

**6.h.iii.** Costs of travel, accommodation and travel time for the person(s) hired to perform support and maintenance service will be 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 flight is economy; overseas is premium economy.

**6.h.iv.** 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 program adjustments or new programming and program changes owing to changes to statutory regulations requiring changes to program logic, remedy of errors caused by improper treatment by Customer, failure to Customer to

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perform stipulated measures such as backups, or by third parties and data conversion, restoration of data stocks and interface adjustments.

**6.h.v.** Axess is and shall be released from all support and maintenance obligations if program changes are attempted or performed on 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 Customer has provided partial or 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 guarantees that the delivered tickets will function correctly on its output devices and readers so long as Customer complies with all Axess provisions concerning storage and recommended useful life of the products. Tickets and chip cards are subject to the effects of ageing with storage and use. Axess recommends the careful examination of all tickets prior to distribution. The following list details the useful life of tickets and cards:

Barcode tickets:	3 days
Oneway cards:	30 days
SmartCard lite:	6 months
Reusable SmartCards:	24 months

Deviations in color on tickets and cards may occur due to production and material availability with one, or between various deliveries to Customer. Proofs and sample tickets are approximations of actual colors of the delivered tickets. Tickets made of plastic are mostly break- and tear-proof within an ambient temperature range of -20°C to +50°C. Instructions regarding storage deadlines and storage conditions are printed on ticket/card packaging.

**7.c.** Customer will absorb excess or shortfall of up to fifteen percent (15%) of ordered printed products. Axess reserves the right to make partial deliveries. Axess shall not be held liable for printing and design errors when Customer has proofed copies described by Customer as "ready to print". Set changes ordered by telephone or other non-written communication will be made by Axess without any liability for accuracy. Contract orders that are produced as customer-specific production, cannot be changed from the order confirmation and must be accepted by Customer in the full quantity ordered.

**7.d.** The warranty period for tickets is limited by the storage deadline marked on the packaging. In no event is the warranty period longer than two (2) years for any tickets or cards. The sole remedy of Customer within the warranty period shall be repair or replacement of goods, at Axess's sole discretion. Customer shall report all defects in writing to Axess immediately after such defect occurs, describing the defect, and by enclosing samples of the defective goods. Replaced and/or returned goods shall become the sole property of Axess. If tickets delivered by Axess are specified for use on non-Axess systems, and such tickets feature a comparably more than average frequency of function errors with the output on output devices, or with the use of reading devices, and these faults are clearly a result of deficient quality of the delivered tickets, Axess shall have no liability for such tickets so long as Axess provides proof to Customer within a reasonable time period, that possible function errors are not the result of deficient quality of the delivered tickets.

**7.e.** Customer shall make written complaints regarding printing errors or delivered quantities in writing to Axess within eight (8) calendar days of receipt of the goods. The goods for which the complaint is made are to be stored until settlement of the complaint and shall be sent to Axess or a designated third party in the original packaging upon request, at the cost of and risk to Customer.

**7.f.** Axess shall be the sole owner of all copyrights and the right to reproduction of any products. Customer warrants that it is the sole owner of the reproduction rights to all printing templates, provided by Customer, or ordered printed images, lettering, fonts, etc. Since Axess is the holder and owner of all copyrights and rights of use under ancillary copyrights to delivered printed products, or parts thereof, Customer shall only acquire the right, with the acceptance of the delivery, to distribute the delivered products; incidentally, the rights of use (and in particular, the right of reproduction), shall remain unaffected and solely owned by Axess. Axess holds the exclusive right to use reproduction means (set, films, etc.) produced by it, and printed products for the production of reproduction pieces. Axess is not required or obligated to examine whether the Customer is entitled to the right to reproduce printing templates provided by Customer, or otherwise to use such templates in the specified manner, but Axess is entitled to assume Customer is entitled to all of those rights that are necessary for the execution of the order. Customer shall indemnify Axess and hold Axess harmless against all claims that are asserted by third parties for infringement of copyrights, ancillary copyrights, other intellectual property rights, or personal protection rights. Axess shall report such claims to Customer as soon as possible and will use best efforts to give third parties notice in case of the assertion of such a claim in court. If Customer does not join the proceedings as a joint litigant of Axess following notice to a third party, Axess is entitled to defend against any claim and to hold itself harmless therefrom notwithstanding the legality of the claim asserted.

**7.g.** Axess is entitled to print its corporate name and/or its trademark designation on all printed products without Customer's approval.

## 8. Data Protection

**8.a.** The Customer and Axess agree to comply with all provisions under applicable federal, state and local 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, scope, 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 processing of data is carried out in line 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 guarantee 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 for the same.

**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 in the processing of personal data. If Axess changes or intends to change 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 (such as in the case of imminent danger) Axess may enter into a written contract with the subcontractor so long as the subcontractor agrees to be bound by all relevant local, state and federal data protection laws.

**8.g.** Before any personal data is shared and before working with such data, Axess shall ensure that all Axess personnel who deal with data processing have signed a confidentiality agreement that addresses processing of personal data. The confidentiality agreement shall extend beyond termination of such Axess personnel. Information shall not be shared unless required by local, state or federal law.

**8.h.** Axess shall take all technical and organizational measures to aid Customer in satisfying the rights of data subjects according to local, state and federal law with respect to data protection.

**8.i.** Axess shall aid Customer by providing data that complies with all local, state and federal law concerning data protection.

**8.j.** Axess shall make all necessary information (i.e., existing certifications, technical and organizational measures, etc.) available to Customer upon written request.

**8.k.** Axess shall inform Customer if there is a breach of personal data or if Axess is of the opinion that an instruction of the Customer violates the data protection provisions of applicable local, state and/or federal law.

**8.l.** Upon termination of the agreement between Customer and Axess, Axess shall use best efforts to return all personal data to Customer in a form that is customary for data processing, or to delete this data, if there is no obligation to store the personal data according to local, state or federal law.

## 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 Customer properly notifies Axess of and within the warranty period, by substitute delivery (exchange of goods) or improvement (subsequent improvement and/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 the improvement or substitute delivery have failed, whereby a claim for refund further presumes that the defect/failure is not a slight defect. In the case of slight defects, Axess will decide whether the resolution will be an improvement or price reduction.

**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 warranty inspection as well as the such costs and risk for the transport when returning hardware to the Customer.

**9.g.** Defects to software programs: As soon as possible (which may depend on the release of improved 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

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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 improved 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 improvement. EXCEPT AS SPECIFICALLY PROVIDED IN THESE GTC, 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.i.** Limitation on warranty: The devices and their associated software may only be operated by Customer according to the instructions for use, operating instructions and license provisions set forth by Axess. In case of improper use, improper storage, care, maintenance, or repair by anyone other than authorized contractual dealers of Axess, any warranty claim shall be void and Axess shall have no liability for resulting damages. Axess does not and shall not assume any warranty for defects and interferences owing to improper use or use of non-certified materials by Customer or third parties, deficient or faulty operation or maintenance, or natural wear and tear.

**9.j.** Slight deviations, in particular with regard to the surface condition, shades, construction, or software, shall not be deemed a defect within the scope of customary trade practices, and do not entitle Customer to assert warranty claims for the same.

**9.k.** Interferences and defects caused by deficient and/or unstable preliminary services, in particular, energy supplies, networks, etc., are excluded from warranty claims and/or claims for damages. The warranty shall lapse in the case of non-authorized changes to the services set forth in the contract with Customer.

**9.l.** Services such as the operation of servers, computer performance, and web services will be performed with customary care and attention, reliability and availability. Axess shall not and does not warrant the services are accessible without interruption, that the requested connections can always be established, or that stored data shall be retained under all conditions. Customer shall not be entitled to any claims whatsoever as a result of downtime or impairments over the course of interferences, maintenance, installation work or online problems.

**9.m.** Deadlines to report a complaint: Customer must inspect the goods upon receipt and report obvious defects including damage during transport, incompleteness, deviations from the order, and deliveries in error, by stating the exact nature of the complaint in writing to Axess within three (3) calendar days from receipt of the goods. If Customer does not satisfy this obligation to inspect and report within this deadline, Customer forfeits the warranty on the goods and the right to damages. In the case of obvious defects, this deadline will begin on the day of commissioning, and with hidden defects, on the day on which the defect is discovered or remained undiscovered owing to negligence. Hidden defects are to be reported within the same deadline from their occurrence (three (3) calendar days), in a complete and written manner by stating the exact defect, or warranty claims of Customer shall lapse.

## 10. Damages

**10.a.** Customer waives any and all claims for damages of any kind whatsoever against Axess and/or its employees as a result of negligence, as such waiver may be permitted by law. This liability exclusion applies to damages due to a defect and also to all damages caused by faulty condition(s). Additionally, Axess shall not be liable to Customer for consequential damages and indirect damages such as lost or missed profit, business interruptions, lost orders, interest loss, damages payments, etc. Claims for damages as a result of willful misconduct or gross negligence are not excluded.

**10.b.** If damages were not caused by the willful misconduct or gross negligence of Axess, Customer's claims for damages are limited to fifty percent (50%) of the net order value, with a maximum recovery of US\$100,000. If Axess does not provide deliveries or services in time and such fault causes device configurations to not operate the equipment, Customer may seek damages up to the amount of one half percent (0.5%) of the value of outstanding goods for each week of delay, with a total maximum recovery of five percent (5%) of the total order purchase price. Customer waives all claims against Axess beyond those set forth in this Section 10.

**10.c.** If the Order or other contract calls for customer-specific programs developments, the first eight (8) weeks after commissioning shall be deemed a "trial period". During the trial period, Customer shall have no right to bring any damage claims against Axess unless Axess caused such damage by willful misconduct or gross negligence.

## 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 request a bank guaranty to secure payments. 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 the placement of the Order; sixty percent (60%) 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.

**11.c.** Invoices issued by Axess are due within ten (10) calendar days after the invoice date without any deduction and free of any service charge. Payment

instructions, checks and bills of exchange will only be accepted if set forth in a written agreement that is agreed to and signed by both parties. Warranty claims made by Customer, claims for damages or claims for non-fulfillment do not entitle Customer to retain or to offset payments due under the Order or per an Axess invoice.

**11.d.** Default of payment: If Customer does not make an agreed upon payment within thirty (30) calendar days from the signing of the Order or other agreement, Axess is entitled to cancel the Order or other agreement immediately. In the case of such cancellation, Customer shall have no claim for damages. Axess shall be entitled to charge and collect from Customer, ten percent (10%) of the gross Order amount, in addition to any other claims and rights Axess may have against Customer.

**11.e.** In the event of default of payment(s), interest shall accrue on all amounts payable and outstanding at the rate of ten percent (10%) per year as well as dunning fee of USD 15.00 for each reminder. Any claims of the customer for retention and offsetting are excluded. Customer shall be solely liable for all costs incurred by Axess to collect any amounts due under the Order and/or other agreement(s), including without limitation, out-of-court and in-court collection of claims and attorney's fees.

**11.f.** If Customer is in default with a payment for longer than thirty (30) days, Axess shall not be required to perform or provide any further services, delivery obligations, or warranty obligations for the duration of the delay.

**11.g.** Payments are deemed to be made if the amount due has been received into one of the accounts cited on Axess's invoice forms.

## 12. Reservation of Title

**12.a.** Axess retains ownership 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 separate and remove the goods and software, even if firmly connected to the ground or a building and to take them into its safekeeping. Axess shall only hand over the goods and software after the outstanding claims and the cost of disassembly, storage and expected costs of reassembly are paid to and received by Axess. Axess shall be entitled to file the necessary secured interests in the state in which the goods and software are located to protect its security interest therein.

**12.b.** Customer shall mark all goods and software as the property of Axess until Customer satisfies all contractual obligations including payments.

**12.c.** Customer shall defend the good and software against third party claims and shall inform Axess of such claims immediately.

**12.d.** In case of Customer's default in payment, Customer shall immediately hand over all goods and licensed software products to Axess. A request for the return of goods and software by Axess shall be deemed a cancellation of the Order 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 sale(s) shall offset its claims against Customer. In the event of default of payment by Customer, Axess may require advance payment or additional security in order fulfill future deliveries and services.

## 13. General Provisions

**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, unless expressly provided otherwise; 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 not 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 of 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.

**13.e.** The parties shall hold all operating secrets disclosed between them confidential for an unlimited period of time. In the event of a breach of the Customer or persons to be attributed to it, the customer shall pay liquidated damages to Axess of twenty percent (20%) of the gross order amount, without any requirement to apportion fault. This provision shall survive termination of these GTC.

**13.f.** Customer and Axess agree, that for a period of one year after termination of any contract between the parties, they shall not (i) induce or attempt to 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

# General Business Terms and Conditions Axess Americas (GTC)



any customer, supplier, licensee or other business relation of Axess or the 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.** 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.i.** 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 waives 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.