



## General Terms and Conditions of Sale for Software Products

### 1. Purpose

These General Terms and Conditions of Sale are applicable to software products and services, offered by AXT Pty Ltd ABN 92 056 460 845 (“AXT”) and except to the extent expressly excluded shall be deemed to be incorporated into and form part of any contract in respect of any sale of such products and services (as the case may be) by AXT to any customer. Any agreed variation to these General Terms and Conditions of Sale must be evidenced in writing or may be part of the special conditions specified or agreed to in writing by AXT in a formal offer. These General Terms and Conditions may be amended generally by AXT from time-to-time in which case AXT shall post the amended General Terms and Conditions on its website and such amended terms and conditions shall apply in respect of all subsequent sales (until further so amended) without requirement for further notice to AXT’s customers. In the case of a sale of services by AXT, these General Terms and Conditions shall operate with and shall be read together with AXT’s “Terms & Conditions for Service of Equipment”<sup>2</sup> separately published by AXT on its website and in such version as exists at the time that such services are contracted.

### 2. Formation and Content of Contract

Descriptions and specifications contained in catalogues, brochures and advertising materials are subject to change without notice, and are supplied for indicative purposes only and do not form part of any contract with AXT. AXT reserves the right to make or accept changes to the AXT-marketed products and services from the description or specifications contained in any catalogues, brochures or advertising materials.

- a. Any order or acceptance of an offer issued by AXT automatically entails acceptance of these General Terms and Conditions of Sale which will fully supplant any purported terms and conditions submitted by the customer.
- b. The contract of sale shall be entered on AXT’s acceptance of the order issued by the customer, such acceptance being taken to have occurred on the earliest of the express acceptance in writing of the order, or the invoicing of the customer, or the ordering of the goods by AXT to meet the order, or the despatching of the goods ordered, or the initial allocation or deployment of personnel to perform the services ordered.
- c. Purchase orders are required before any product or service is supplied. Any request for goods or services in writing may be considered as an official order and an acceptance of these terms and conditions.

### 3. Intellectual and Industrial Property

- a. Plans, diagrams, technical and commercial specifications, recommendation documents, test results, software, catalogues, brochures, notices, patents, drawings and models shall remain



the property of AXT or (where applicable) its principals. Consequently, the customer undertakes not to directly or indirectly distribute or reproduce, either for itself or on behalf of any other entity, all or any part of such property without the prior written consent of AXT or the software supplier.

- b. If the sale involves software products, AXT or the software supplier shall grant the customer a user right but shall not transfer AXT's proprietary or non-proprietary copyrights in the software.
- c. If the goods or services are supplied by AXT in accordance with plans, drawings or specifications provided by the customer, then the customer shall indemnify and keep indemnified AXT and its principals against any claims and damages resulting from the alleged or actual infringement of industrial or intellectual ownership rights belonging to third parties arising out of AXT or its principals' use of such plans drawings or specifications. If such a claim were to be made by a third party, the customer undertakes to assume all the expenses, costs (including any legal costs on an indemnity basis) and damages arising therefrom.

#### 4. Prices and Terms of Payment

- a. The selling prices of the products or services stipulated in any formal offer issued by AXT are valid for a maximum of 30 days from the date that appears on the document unless specified otherwise. Outside this period, prices may be subject to review without notice.
- b. Selling prices may be calculated having regard to the prevailing rate of exchange of the relevant foreign currency with respect to the Australian dollar and are subject to fluctuations over which AXT has no control. After having quoted a price, AXT may adjust the quoted or invoiced price of goods sold to reflect such fluctuations although normally, AXT will absorb fluctuations in the cost of goods of less than \$100. Where such adjustment occurs, a separate invoice or adjustment note may be issued by AXT.
- c. Prices quoted are deemed to be single-unit prices, ex-factory, exclusive of packaging, freight, insurance, importation costs and all duties, taxes and GST where applicable, unless specified otherwise.
- d. Where AXT allows credit to a customer, invoices shall be paid within 30 days of invoice date without discount using any one of the various payment options offered. Any delay in payment shall automatically trigger recovery action, which may, in addition to the commencement of legal proceedings, lead to reduced credit facilities or existing credit facilities being cancelled.
- e. For orders exceeding a total value of \$10,000 (excluding duties and taxes, freight and other importation costs) pre-payment of 30 per cent of the order value may be required by AXT on acceptance of the order. The balance shall be payable within 30 days from the delivery date or, where the goods sold require installation or commissioning by AXT, within 30 days from the latter of the installation or commissioning date.

#### 5. Guarantee

AXT undertakes to honour the original manufacturer's product warranty. This will vary from product to product and details are available upon request. All AXT-supplied equipment must be used by appropriately trained operators in accordance with the instructions presented in the equipment



operating manuals. No warranty will be due to any defect cause by misuse, negligence, accidents or as a direct result of a failure to carry out proper maintenance service. However, all products (except consumables, worn items and spare parts) shall be guaranteed against manufacturing and assembly defects and any raw material defects for one year from delivery subject to proof of the existence of said defects unless specified otherwise. The guarantee covers parts and, in some cases, labour but, unless otherwise agreed, this warranty specifically excludes the associated costs of any form of transport or movement of product, equipment or service personnel. All repairs shall be carried out either on designated AXT premises or on the site on which the product or products are being used. This will be at the sole discretion of AXT and shall not imply an extension of the guarantee beyond the stated term. AXT reserves the right to make modifications to the product in order to carry out the abovementioned repairs on the understanding that the ownership of any part replaced free of charge reverts to AXT. In any event, implementing the guarantee shall not authorise the customer to defer all or part of the payment.

## **6. Limitation of Liability for Special Equipment**

The customer acknowledges that the ownership, operation and storage of some equipment sold by AXT is subject to the Code of Practice for the Protection Against Ionising Radiation Emitted from X-ray Analysis Equipment (1984). Owners and users of X-ray analysis equipment requiring information regarding their obligations under the radiation control legislation shall refer to the statutory authority in the relevant states or territories. Obtaining any required statutory permits and licences is the customer's sole responsibility. It is to the responsibility of the users of AXT-sold products to take all necessary safety measures and to ensure that they are used only in such a way that a failure in any of the AXT-sold products cannot be the cause of a loss or injury. The customer agrees to be solely responsible to become informed and aware of such products as supplied by AXT that must be installed or used only under conditions that they are not a direct or indirect source of danger to persons or property. The customer shall therefore assume the sole liability for any events causing a loss (including any loss caused a consequence of personal accident, property damage or loss of earnings) where such loss arises from matters relating to the installation or use products supplied by AXT. In any event, if the loss is the result of the failure of an AXT-supplied product, AXT shall not, under any circumstances for any indirect losses such as financial, commercial or technical losses resulting from that failure and the customer agrees to indemnify AXT and keep it indemnified in respect of any claim for any such loss or alleged loss.

## **7. Limitation of Liability Generally**

Notwithstanding anything else herein contained, the liability of AXT for any loss or damage arising from any breach by AXT of any contract for the sale of goods or the supply of services shall be limited to, in the case of AXT-supplied goods, the replacing of the goods, or the supplying of equivalent goods, or repairing the goods, or paying the cost of replacing the goods or of acquiring equivalent goods, or paying the cost of having the goods repaired (whichever of these alternatives AXT considered most practicable) and, in the case of AXT-supplied services, supplying the services again, or paying the cost of supplying the services again (whichever of these AXT considered more practicable).



The customer agrees and represents that it is buying for its own internal use only and not for resale unless otherwise agreed. The sale, resale or other disposition of AXT-supplied products and any related technology or documentation may be subject to the export control laws, regulations and orders of the United States, EEU and other jurisdictions and may be subject to the export or import control laws and regulations of other countries. The customer agrees to comply with all such laws, regulations and orders and acknowledges that it shall not directly or indirectly export any products to any country to which such export or transmission is restricted or prohibited. The customer acknowledges its responsibility to obtain any licence to export, re-export or import as may be required.

## **8. Force Majeure**

AXT shall not be liable for any delay in or non-performance of any of its contractual obligations if such performance is prevented by circumstances of Force Majeure. Force Majeure is defined as any unforeseeable, irresistible or other event or incident out of AXT's control. By express agreement of the parties, Force Majeure shall include all natural catastrophes, any regulation or requirement of the public authorities, any non-availability of raw materials, boycotts, strikes, attacks or acts of war (whether declared or not) or terrorism. The customer shall not be liable for any delay in or non-performance of its contractual obligations if such performance is prevented by circumstances of Force Majeure. A customer invoking circumstances of Force Majeure must advise AXT accordingly within 7 days of the occurrence or threat of those circumstances. If the delay caused by Force Majeure lasts more than 30 days, AXT reserves the right to cancel the order.

## **9. General Provisions**

**Severability:** If any of these provisions or any part thereof were to be declared null and void under the terms of any law, that provision or that part shall be deemed to be excluded, without affecting the validity of the other provisions or parts. **No Waiver:** The fact AXT may not avail itself of any of the provisions of these General Terms and Conditions of Sale may not be interpreted as waiver of its right to subsequently avail itself of any such provision. **Applicable Law and Settlement of Disputes:** These General Terms and Conditions of Sale shall be governed by Australian Law. Before any dispute relating to the formation, existence, interpretation, performance, termination or cancellation of the order or in respect to these General Terms and Conditions of Sale can be referred to any court, it must be first subject to a bona fide attempt at amicable settlement. Any dispute the parties cannot resolve by amicable agreement within one month of its notification in writing (or such shorter time as may be reasonably necessary for the preservation of a party's rights or substantial interests) shall fall within the jurisdiction of the courts of the place in which the invoice was raised.

## **10. Third Party Suppliers and Products**

Where AXT is not the supplier, agent or distributor of a product or installation that is covered by any AXT agreement then:

- a. The customer gives AXT the rights to deal on their behalf with that agent or supplier for the purposes of fulfilling the agreement.
- b. AXT reserves the right to charge a handling fee.



- c. Redistribution and use in source and binary forms, with or without modification, are permitted provided that the following conditions are met:
- Redistributions of source code must retain the above copyright notice, this list of conditions and the following disclaimer.
  - Redistributions in binary form must reproduce the above copyright notice, this list of conditions and the following disclaimer in the documentation and/or other materials provided with the distribution.
  - Neither the name of the software produce or its supplier, its subsidiaries, nor the names of its contributors may be used to endorse or promote products derived from this software without specific prior written permission.

This software is provided by the copyright holders and contributors "as is" and any express or implied warranties, including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose are disclaimed. In no event shall the copyright holder or contributors be liable for any direct, indirect, incidental, special, exemplary, or consequential damages (including, but not limited to, procurement of substitute goods or services; loss of use, data, or profits; or business interruption) however caused and on any theory of liability, whether in contract, strict liability, or tort (including negligence or otherwise) arising in any way out of the use of this software, even if advised of the possibility of such damage

### **11. Travelling and Expenses**

All travel is priced using economy air travel, 3 or 4 star motels, a "per day" budget for meals and medium-sized rental cars. Mileage is charged when no rental car is used. Travel is calculated on a SHARED basis and where no sharing is possible the agreement will state "Travel not shared".

### **12. Special Urgency and Extraordinary Services**

The customer agrees to be responsible for reasonable charges and expenses associated with its requests for urgent or extraordinary services or supplies.

### **13. Agreement Payments**

There are 3 types of rates:

- "Do-and-charge"- This is the standard hourly rate for the applicable equipment category. Invoicing will be at the conclusion of the service.
- "Discount" - A rate that is included in an agreement that is not pre-paid. Invoicing will be at the conclusion of the work or in the final month of the agreement, whichever comes first.
- "Prepaid"- A double-discounted rate applicable only to labour paid upfront in a service agreement.