

## axept Special terms and conditions

rev August 12, 2009

**1. General.** The purchase order, together with these terms and conditions, and any attachments and exhibits, specifications, drawings, notes, instructions and other information, whether physically attached or incorporated by reference (collectively the "Purchase Order"), constitutes the entire and exclusive agreement between the axept company ("axept") and the supplier (the "Supplier") identified in the Purchase Order.

**2. Definitions.** "Deliverables" means the goods, materials, products, software, technical data, intellectual property, drawings, personal property, personnel, services or items identified and/or listed in this purchase order for Buyer's internal use and resale. "Personal data" means any information that can identify a specific living individual.

**3. Electronic Transmission.** If this Purchase Order is transmitted by means of electronic transmission, such transmission shall have the legal significance of a duly executed original delivered to the Supplier.

**4. Acceptance of purchase order.** This purchase order constitutes Buyer's offer to Seller and shall become a binding contract upon the terms and conditions stated in this purchase order upon acceptance by Seller by any expression of acceptance, or commencement of performance, whichever occurs first. Any terms and conditions proposed by Seller in acknowledging or accepting Buyer's offer which are different from or in addition to the terms set forth in this purchase order shall not be binding upon Buyer and shall be void and of no effect, except to the extent expressly accepted in writing by Buyer's authorized procurement representative(s).

**5. Payment.** Discount terms are as set forth in the Form. If no terms are specified, the net amount shall be payable within 30 days after the later of (i) delivery and acceptance of goods or other performance conforming with the terms of this Purchase Order and (ii) invoicing. Except as otherwise provided in the Purchase Order, the price includes all applicable Federal, State and local taxes and duties. Supplier assigns to Buyer all rights to refunds of sales and use taxes paid in connection with this Purchase Order and agrees to co-operate with Buyer in the processing of any refund claims. Unless expressly otherwise provided in the Form, Buyer shall not be liable for any shipping, handling, fuel surcharges or similar fees.

### **6. Delivery.**

6.1 Supplier will immediately notify axept if Supplier's timely performance under the Purchase Order is delayed or is likely to be delayed. axept's acceptance of Supplier's notice will not constitute axept's waiver of any of Supplier's obligations.

6.2 If Supplier delivers Work after the Delivery Date, axept may reject such Work.

6.3 axept will hold any Work rejected under this Purchase Order at Supplier's risk and expense, including storage charges, while awaiting Supplier's return shipping instructions. Supplier will bear all return shipping charges, including without limitation, insurance charges axept incurs on Supplier's behalf. axept may, in its sole discretion, destroy or sell at a public or private sale any rejected Work for which axept does not receive return shipping instructions within a reasonable time, and apply the proceeds, if any, first toward any storage charges.

6.4 Supplier will preserve, pack, package and handle the Deliverables and Products so as to protect the Deliverables and Work Product from loss or damage and in accordance with best commercial practices in the absence of any specifications axept may provide. Without limiting the foregoing, Supplier shall observe the requirements of any local laws and regulations relating to hazardous Work, including, without limitation, with respect to its accompanying information, packing, labeling, reporting, carriage and disposal.

6.5 Supplier will include with each delivery of Products a packing list identifying the Purchase Order number, the axept part number for each of the Products (if applicable), a description and the quantity of each of the Products, and the date of shipment.

6.6 Unless axept expressly instructs otherwise, Supplier will deliver all Work to axept's plant at

the address set forth in the Purchase Order. Seller assumes responsibility for all shipping and delivery charges including, without limitation, customs, duties, costs, taxes and insurance. Risk of loss of the Work passes to asept upon acceptance in accordance with Section 6.

**7. Inspection and acceptance.** asept may reject any or all of the Work which does not conform to the applicable requirements within 10 business days of Supplier's delivery of the Work. At asept's option, asept may (i) return the non-conforming Work to Supplier for a refund or credit; (ii) require Supplier to replace the non-conforming Work; or (iii) repair the non-conforming Work so that it meets the requirements. As an alternative to (i) through (iii), asept may accept the non-conforming Work conditioned on Supplier providing a refund or credit in an amount asept reasonably determines to represent the diminished value of the non-conforming Work. asept's payment to Supplier for Work prior to asept's timely rejection of such Work as non-conforming will not be deemed as acceptance by asept.

**8. Improper performance and dispute.** In addition to other remedies provided by law, Buyer reserves the right to reject any goods or to revoke any previous acceptance and to cancel all or any part of the Purchase Order if Supplier fails to deliver all or any part of the goods or perform any of the work in accordance with the terms and conditions of this Purchase Order.

**9. Warranty.** Seller warrants that all Deliverables will conform to applicable specifications, drawings, descriptions, and samples, and will be of new manufacture, good workmanship and materials, and free from design defect, claim, encumbrance or lien, and be suitable for the purpose intended by Buyer. Seller warrants that it has full title, right, power and authority to enter into this purchase order and perform its obligations under the purchase order.

**10. Risk of Loss.** Unless the Purchase Order expressly states otherwise, all goods shall be shipped FOB: the "Ship to" location designated in the Form. Risk of loss shall not pass to Buyer until goods called for in this Purchase Order actually have been received and accepted by the Buyer at the destination specified herein. Supplier assumes full responsibility for packing, crating, marking, transportation and liability for loss and/or damage even if Buyer has agreed to pay freight, express or other transportation charges.

**11. Examination of Records.** The Supplier agrees that Buyer, and any Federal agency providing funding for this Purchase Order and the Comptroller General of the United States or any of their duly authorized representatives, shall have access to and the right to examine any pertinent books, documents, papers and records of the Supplier involving transactions related to this Purchase Order to the extent necessary to verify the nature and extent of costs incurred under this Purchase Order until the expiration of four (4) years after final payment under this Purchase Order. Nothing in this Purchase Order shall be deemed to preclude an audit by the U.S. General Accounting Office of any transaction under this Purchase Order. The preceding two sentences shall not apply if this Purchase Order does not involve a sum in excess of One Thousand Dollars (\$1,000), or if this is an agreement for public utility services at rates established for uniform applicability to the general public, or if this is as agreement for general inventory goods not specifically identifiable with work under the Buyer's contract with the government.

**12. Taxes and Duties.** The prices stated in this purchase order include all applicable taxes and duties, except state and local sales and use taxes, which by statute may be passed on to Buyer.

**13. Set-off.** Buyer shall be entitled at all times to set off any amount owing at any time from Seller to Buyer (or any of Buyer's affiliates and subsidiaries) against any amount payable at any time by Buyer (or any of its affiliates and subsidiaries) to Seller.

**14. Title.** Title to and the right of immediate possession of all articles, tooling, equipment, software, or materials furnished to Seller or paid for by Buyer directly or indirectly for use by Seller in connection with this purchase order shall be and remain in Buyer.

**15. Governing law.** The Purchase Order will be construed in accordance with, and all disputes will be governed by, the laws of the State of Arkansas, without regard to its conflict of laws rules.

**16. Insurance.** Supplier will secure and maintain insurance providing coverage for liabilities to third parties for bodily injury (personal injury) and damage to property in amounts sufficient to protect axept in the event of such injury or damage, and will be in compliance with any and all laws, regulations or orders addressing the liabilities of an employer to its employees for injuries and disease suffered in connection with employment. Supplier further will maintain such additional types and limits of insurance as is customary for a company of similar size and similar operations to Supplier in the jurisdiction or jurisdictions in which Supplier's operations take place.

**17. Limitation of Liability.** In no event shall Buyer be liable for any incidental, indirect, special, consequential or punitive damages, even if Buyer knew or should have known of the possibility of such damages.