

Axial3D Limited: Online terms and conditions of supply of good

This page (together with our *Privacy Policy* (<http://www.axial3d.com/privacy-policy.pdf>), *Terms of Website Use* (<http://www.axial3d.com/terms-website-use.pdf>) and *Website Acceptable Use Policy* (<http://www.axial3d.com/acceptable-use-policy.pdf>) tells you information about us and the legal terms and conditions (**Conditions**) on which we sell any of the products (**Goods**) via our website (**our site**) to you.

These Conditions will apply to any contract between us for the sale of Goods to you (**Contract**). Please read these Conditions carefully and make sure that you understand them, before ordering any Goods from our site. Please note that before placing an order you will be asked to agree to these Conditions. If you refuse to accept these Conditions, you will not be able to order any Goods from our site.

You should print a copy of these Conditions or save them to your computer for future reference.

We amend these Conditions from time to time as set out in clause 15.6. Every time you wish to order Goods, please check these Conditions to ensure you understand the Conditions which will apply at that time.

Your attention is drawn in particular to the provisions of clause 13.

1. Interpretation

1.1. Definitions

In these Conditions, the following definitions apply:

Business Day means a day (other than a Saturday, Sunday or public holiday) when banks in Belfast are open for business.

Conditions means the terms and conditions set out in this document as amended from time to time in accordance with clause 15.6.

Delivery Charges means the costs of delivering the Goods to you.

DPA means the Data Protection Act 1998 or any other similar or equivalent legislation in force from time to time.

Force Majeure Event has the meaning given in clause 14.

Goods means the goods (or any part of them) set out in the Order.

Intellectual Property Rights means patents, utility models, rights to inventions, copyright and neighbouring and related rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Order means your order for the Goods, as set out in your written acceptance of our Quotation together with a purchase order number (if applicable).

Purpose means (i) To enhance pre-operative planning; (ii) as otherwise agreed in writing by us.

Quotation means the price for the Goods and the Delivery Charges.

Specification means any specification for the Goods, including any related plans and drawings, that is based upon the information provided by you for us and is agreed in writing by you and us by the issue by us of a Quotation.

1.2. **Construction.** In these Conditions, the following rules apply:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors or permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (d) Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (e) A reference to **writing** or **written** includes emails but not fax.

2. **Information about us**

- 2.1. We operate the website <http://www.axial3d.com>. We are Axial Medical Printing Limited, a company registered in Northern Ireland under company number NI618621 and with our registered office at Axial3d 7-11 Linenhall Street, Belfast, BT2 8AA. Our main trading address is Axial3d, 7-11 Linenhall Street, Belfast, BT2 8AA.
- 2.2. You may contact us by telephoning us at [028 90 183 590] or by e-mailing us at [info@axial3d.com]. If you wish to give us formal notice of any matter in accordance with these Conditions, please see clause 15.2.

3. **Use of our site**

Your use of our site is governed by our *Terms of website use* (<http://www.axial3d.com/terms-website-use.pdf>) and *Website Acceptable Use Policy* (<http://www.axial3d.com/acceptable-use-policy.pdf>). Please take the time to read these, as they include important terms which apply to you.

4. **Basis of contract**

- 4.1. These Conditions apply to the Contract to the exclusion of any other terms that you may seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 4.2. You confirm that you have authority to bind any business or entity on whose behalf you use our site to purchase Goods.
- 4.3. These Conditions and any document expressly referred to in our *Privacy Policy, Terms of Website Use* and *Website Acceptable Use Policy* constitute the entire agreement between you and us and supersede and extinguish all previous agreements, promises, assurances, warranties, representations and understandings between us, whether written or oral, relating to its subject matter.

- 4.4. You acknowledge that in entering into this Contract you do not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Conditions or any document expressly referred to in them.
- 4.5. You and we agree that neither of us shall have any claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Contract.
- 4.6. The Order constitutes an offer by you to purchase the Goods in accordance with these Conditions. You are responsible for ensuring that the terms of the Order and any applicable Specification (or information on which the Specification is based) submitted by you are complete and accurate and do not infringe the Data Protection Act 1998 or the Copyright Designs and Patents Act or any other laws.
- 4.7. Our shopping pages will guide you through the steps you need to take to submit a Specification to create an Order. Our shopping process allows you to check and amend any errors before submitting your Specification and/or Order to us. Please take the time to read and check your Order at each page of the order process.
- 4.8. After you place an Order, you will receive an e-mail from us acknowledging that we have received your Order. However, please note that this does not mean that your Order has been accepted. Our acceptance of your Order will take place as described in clause 4.9.
- 4.9. Upon receipt of your Order, we shall review the Specification and contact you with a Quotation. A Quotation shall only be valid for a period of 10 Business Days from its date of issue unless we in our absolute discretion notify you in writing that we will permit you to accept at a later date.. The Order shall only be deemed to be accepted when we have received from you written acceptance of the Quotation, at which point the Contract shall come into existence.
- 4.10. The Contract constitutes the entire agreement between us. You acknowledge that you have not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of us which is not set out in the Contract.

5. **Data**

For the purposes of this clause 5, personal data, data subject, data controller and data processor shall have the meaning given to each in the DPA.

- 5.1. If you are an individual providing us with personal data relating to yourself, we only use your personal data in accordance with our *Privacy Policy* (<http://www.axial3d.com/privacy-policy.pdf>). Please take the time to read our *Privacy Policy* as it includes important terms which apply to you as a data subject.
- 5.2. Subject to 5.2.2, if you are providing us with personal data in relation to data subjects (in respect of which you are data controller or data processor);
 - 5.2.1. you are responsible for complying with your obligations under the DPA, and to the extent that we are a data processor in respect of such personal data, we shall process such personal data in accordance with your reasonable written instructions in relation thereto;
 - 5.2.2. all information or data provided to us by you in relation to individuals for the purpose manufacturing the Goods must be anonymised in all respects prior to transfer to us; without limitation to the foregoing, it must not be possible to identify an individual from such information or data (**Anonymised Information**).

6. **IP Ownership and Use**

- 6.1. All Intellectual Property Rights in the Goods (other than the Anonymised Information), whether such Intellectual Property Rights is developed before or after the date of these Conditions are and shall remain the exclusive property of us.

6.2. We hereby grant to you a non-exclusive licence to use the Intellectual Property Rights in the Goods solely for the Purpose (or any other purpose agreed between us in writing). For the avoidance of doubt, you may not use the Goods for any other purpose without our prior written permission.

7. **Goods**

7.1. The Goods shall be manufactured by us specifically for you according to the Specification. We will use our reasonable endeavours to reproduce the Goods so that they reflect that Specification as accurately as possible, however you acknowledge that the nature of the Goods is such that it is impossible to reproduce a model which is 100% accurate and there will be discrepancies from time to time.

7.2. You acknowledge and agree that the Goods are a diagnostic tool only to assist you in providing medical services and that the Goods are not warranted to be used for treatment. Accordingly the Goods should not be considered to be a medical product or device.

7.3. You shall indemnify us against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by us in connection with any claim made against us for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with our use of the Specification. This clause 7.3 shall survive termination of the Contract.

8. **Delivery**

8.1. We shall ensure that:

(a) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

(b) if we require you to return any packaging materials to us, that fact is clearly stated on the delivery note. You shall make any such packaging materials available for collection at such times as we shall reasonably request. Returns of packaging materials shall be at our expense.

8.2. We shall deliver the Goods to the location set out in the Order or such other location as we may agree (**Delivery Location**) at any time after we notify you that the Goods are ready.

8.3. Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.

8.4. Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. We shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or your failure to provide us with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

8.5. If we fail to deliver the Goods, our liability shall be limited to the costs and expenses incurred by you in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. We shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or your failure to provide us with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

8.6. If you fail to take delivery of the Goods within three Business Days of us notifying you that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or our failure to comply with our obligations under the Contract:

- (a) delivery of the Goods shall be deemed to have been completed at 9.00am on the third Business Day after the day on which we notified you that the Goods were ready; and
- (b) we shall store the Goods until delivery takes place, and charge you for all related costs and expenses (including insurance).

8.7. If 10 Business Days after the day on which we notified you that the Goods were ready for delivery you have not taken delivery of them, we may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to you for any excess over the price of the Goods or charge you for any shortfall below the price of the Goods.

8.8. We may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle you to cancel any other instalment.

9. **Quality**

9.1. We warrant that on delivery the Goods shall:

- (a) conform in all material respects with the Specification;
- (b) be free from material defects in material and workmanship; and
- (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

9.2. Subject to clause 9.3, if:

- (a) you give us notice in writing within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 9.1;
- (b) we are given a reasonable opportunity of examining such Goods; and
- (c) you (if asked to do so by us) returns such Goods to our place of business at your cost,

we shall, at our option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

9.3. We shall not be liable for Goods' failure to comply with the warranty set out in clause 9.1 in any of the following events:

- (a) you make any further use of such Goods after giving notice in accordance with clause 9.2;
- (b) the defect arises because you failed to follow our oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of our following any drawing, design or Specification supplied by you;
- (d) you alter or repair such Goods without our written consent;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- (f) the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

9.4. Except as provided in this clause 9, we shall have no liability to you in respect of the Goods' failure to comply with the warranty set out in clause 9.1 and for the avoidance of doubt we do not warrant the fitness of the Good for any particular purpose.

9.5. The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

9.6. These Conditions shall apply to any repaired or replacement Goods supplied by us.

10. **Title and risk**

10.1. The risk in the Goods shall pass to you on completion of delivery.

10.2. Title to the Goods shall not pass to you until we receive payment in full (in cash or cleared funds) for the Goods and any other goods that we have supplied to you in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.

10.3. Until title to the Goods has passed to you, you shall:

- (a) store the Goods separately from all other goods held by you so that they remain readily identifiable as our property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- (d) notify us immediately if you become subject to any of the events listed in clause 12.2; and
- (e) give us such information relating to the Goods as we may require from time to time.

10.4. If before title to the Goods passes to you, you become subject to any of the events listed in clause 12.2, then, without limiting any other right or remedy we may have:

- (a) Your right to use the Goods in the ordinary course of your business ceases immediately; and
- (b) We may at any time:
 - (i) require you to deliver up all Goods in your possession; and
 - (ii) if you fail to do so promptly, enter any of your premises or premises of any third party where the Goods are stored in order to recover them.

11. **Price and payment**

11.1. The price of the Goods shall be the price set out in the Quotation.

11.2. We may, by giving notice to you at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

- (c) any factor beyond our control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (d) any request by you to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
- (e) any delay caused by any instructions from you or failure by you to give us adequate or accurate information or instructions.

- 11.3. The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be set out in the Quotation and invoiced to you.
- 11.4. The price of the Goods is exclusive of amounts in respect of value added tax (**VAT**). You shall, on receipt of a valid VAT invoice from us, pay us such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 11.5. We may invoice you for the Goods on or at any time after the completion of delivery.
- 11.6. You shall pay the invoice in full and in cleared funds within 20 Business Days of the date of the invoice. Payment shall be made to the bank account nominated in writing by us. Time of payment is of the essence.
- 11.7. If you fail to make any payment due to us under the Contract by the due date for payment, then we shall be entitled to charge interest on the overdue amount at the rate of 4% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. You shall pay the interest together with the overdue amount.
- 11.8. You shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). We may at any time, without limiting any other rights or remedies we may have, set off any amount owing to us by you against any amount payable by us to you.

12. **Termination and suspension**

- 12.1. If you become subject to any of the events listed in clause 12.2, we may terminate the Contract with immediate effect by giving written notice to you.
- 12.2. For the purposes of clause 12.1, the relevant events are:
 - (a) you suspend, or threaten to suspend, payment of your debts, or are unable to pay your debts as they fall due or admit inability to pay your debts;
 - (b) you commence negotiations with all or any class of your creditors with a view to rescheduling any of your debts, or make a proposal for or enters into any compromise or arrangement with your creditors;
 - (c) a creditor or encumbrancer of you attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of your assets and such attachment or process is not discharged within 14 days;
 - (d) you suspend, threaten to suspend, ceases or threatens to cease to carry on all or a substantial part of your business; and
 - (e) your financial position deteriorates to such an extent that in our opinion your capability to adequately fulfil your obligations under the Contract has been placed in jeopardy.
- 12.3. Without limiting our other rights or remedies, we may suspend provision of the Goods under the Contract or any other contract between us if you become subject to any of the events listed in clause 12.2, or we reasonably believe that you are about to become subject to any of them, or if you fail to pay any amount due under this Contract on the due date for payment.
- 12.4. On termination of the Contract for any reason you shall immediately pay to us all of our outstanding unpaid invoices and interest.
- 12.5. Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.

12.6. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

13. **Limitation of liability**

13.1. Nothing in these Conditions shall limit or exclude our liability for:

- (a) death or personal injury caused by our negligence, or the negligence of our employees, agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- (d) defective products under the Consumer Protection Act 1987.

13.2. Subject to clause 13.1:

- (a) we shall under no circumstances whatsoever be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- (b) our total liability to you in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 100% of the price of the Goods (excluding Delivery Charges and VAT).

14. **Force majeure**

Neither party shall be liable for any failure or delay in performing their obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

15. **General**

15.1. **Assignment and other dealings:**

- (a) We may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of our rights or obligations under the Contract.
- (b) You may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of our rights or obligations under the Contract without our prior written consent.

15.2. **Notices:**

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at their registered office (if it is a company) or their principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered

personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or email.

- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 15.2(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or email, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

15.3. **Severance:**

- (a) If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- (b) If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

15.4. **Waiver:** A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

15.5. **Third party rights:** A person who is not a party to the Contract shall not have any rights to enforce its terms.

15.6. **Variation:** We amend these Conditions from time to time. Please look at the top of this page to see when these Conditions were last updated and which Conditions were changed. Every time you order Goods from us, the Conditions in force at the time of your order will apply to the Contract between you and us. If we have to revise these Conditions as they apply to your order, we will contact you to give you reasonable advance notice of the changes and let you know how to cancel the Contract if you are not happy with the changes. You may cancel either in respect of all the affected Goods or just the Goods you have yet to receive. If you opt to cancel, you will have to return (at our cost) any relevant Goods you have already received and we will arrange a full refund of the price you have paid, including any delivery charges.

15.7. **Governing law:** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of Northern Ireland.

15.8. **Jurisdiction:** Each party irrevocably agrees that the courts of Northern Ireland shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).