



Appendix

Terms and Conditions





“The Large Print”

(we hate small print)

We have to have a set of terms of conditions with every contract, it protects both our customers and axon. We do however hate the idea of hiding away the nasty bits in the small print, thinking we have got away with it!

Hence “the Large Print”

The following summary highlights the parts of the terms and conditions that we believe are the main areas you need to know and understand if you don't want to read 10+ pages

This summary attempts to explain the relevant clauses in as simple English as we can:

7.1 – our payment terms are 30 days from date of invoice

7.6.1 – if you are late paying us without agreement by both parties we do have the right to charge interest at 8% over the current base rate

10.2 – our services are provided for a minimum contract length of 12 months. After this minimum period or period agreed between us, we require you to give us 12 months notice of termination

11.1 – you will pay us for all the services up to the date the services are ceased

11.2 – we will help you transfer the service to yourselves or indeed another provider as much as possible

The full document clearly sets out, in as simple English as we can ...

- What YOU can expect from us, and
- What WE can expect from you



Axon-IT.com Terms and Conditions

1 Definitions

In these Terms, the following words have the following meanings:

Axon IT Axon-IT.com Ltd (CRN: 04228490) whose address is Guildford House, Heather Close, Macclesfield, Cheshire, SK10 0LR and any of its group or associated companies from time to time;

Client The client details of whom are set out in the Specification;

Software all software (including any software licensed to the Client by a third party) which is supplied by Axon IT as set out in the Specification and/or used by the Client (or any of its employees, contractors or representatives) on the Commencement date, or which is added to or replaced after the Commencement Date;

Systems (1) the computers, all forms of network, telecommunications and Hardware either to be supplied by Axon IT or belonging to the Client located at the Premises at the Commencement Date or is added to or replaced after the Commencement Date, and (2) the Software as set out in the Specification;

Commencement Date the date on which Axon IT is to commence performing the Services as set out in the Specification;

Fee(s) the amount(s) set out in the Specification or (failing that) on the website of Axon IT;

Hardware all computer-related hardware needed or used with the computers, network, and telecommunications at the

Premises

Commencement Date, or are added to or replaced after the Commencement Date by Axon IT and shall include, but not be limited to routers, cabling, printers, and all other forms of computers and related equipment and including such Hardware agreed to be supplied by Axon IT in the Specification;

Management the operation, management, running, setup, installation, support and/or maintenance of the Systems at the Premises as set out in the Specification;

Premises the agreed places where the Systems are or shall be located;

Services the sale of Hardware and/or the Management of the Systems as set out in the Specification;

Service Levels the standards of performance which Axon IT shall reach or provide in performing the Services under these Terms, as set out in the Specification, and as amended from time to time by the Parties;

Specification the sales order for the supply of Hardware and/or Services of Axon IT to the Client incorporating such other additional information if relevant as established pursuant to clause 3.1.

2 Services

2.1 Axon IT shall provide the Services in accordance with the Specification to the Client from the Commencement Date for the term of these Terms at the Premises in consideration for the Client paying the Fee to Axon IT, subject to the provisions of these Terms.

2.2 Axon IT shall also be permitted to provide some or all of the Services other than at the Premises. Axon IT may perform the Services at Axon IT's own facilities and/or premises or such other places as Axon IT reasonably requires as specified in the Specification and as determined by Axon IT in their absolute discretion.

- 2.3 Axon IT shall use such commercially reasonable efforts that are necessary to provide the Services in accordance with the Services Levels and the Specification.
- 2.4 Where Axon IT fails to meet one or more Services Levels then Axon IT shall use such commercially reasonable efforts that are necessary to:
- 2.4.1 establish the cause or reason for the failure to meet that or those Service Level(s);
 - 2.4.2 report the cause or reason for the failure to Client;
 - 2.4.3 discuss the cause or reason for the failure with the Client;
 - 2.4.4 undertake such actions as are necessary so that Axon IT begins to meet the failed Service Level(s); and
 - 2.4.5 inform the Client what has been done to overcome the cause or reason of the failure to meet the Service Levels; and
 - 2.4.6 notify the Client of when Axon IT is meeting the Service Level(s) which had been failed.
- 2.5 Axon IT shall not fail to meet any Service Level where failure is as a result of or caused by:
- 2.5.1 a breach by the Client to perform or meet any of its obligations under these Terms or those obligations which prevent, hinder or restrict Axon IT from performing some or all of the Services; or
 - 2.5.2 a Force Majeure Event as set out in clause 13.1.
- 2.6 The Services shall be performed by such members of Axon IT's staff who have the degree and skill of experience necessary to provide the Services which Axon IT shall allocate to them.
- 2.7 Axon IT shall ensure, and instruct its employees and agents accordingly, that Axon IT's employees and agents shall take all reasonable steps to safeguard their safety and the safety of other persons who may be affected by their actions or omissions.
- 3 Preparation of Specification and Service Levels
- 3.1 From the Commencement Date the Parties shall discuss and agree the particular Management of the Client Systems to be provided by Axon IT to the Client and the relevant Services Levels which are to be specified and attained by Axon IT. What has been agreed by the Parties, the timing and dates for the particular Services to be provided, the Service Levels to be attained, and Fees shall be set out in the sales order of Axon IT and/or in a specification document (together the 'Specification').
- 3.2 Axon IT shall be responsible for preparing the Specification. On completion of the Specification it shall be provided to the Client. For Axon IT to commence providing the Services as stated in the Specification the Client shall first provide a signed copy of the Specification to Axon IT to indicate the Client's acceptance of the content of the Specification and that the Client is willing for Axon IT to provide the Services in accordance with the Specification.
- 3.3 The Specification may be varied or added to as agreed by the Parties from time to time, in writing. Any variation or addition to the Specification shall be clearly indicated (including any additional or different Fees to be paid by the Client).
- 4 Fee rates based on time spent
- Where Axon IT's Fees are calculated on the amount of time spent by Axon IT the following applies:
- 4.1 a 'day' will mean a period of 7 hours. This will include the time spent in travelling to and from the place where the Services are performed. Where the work carried out in performing the Services exceeds the period of 7 hours, then that period shall be charged at the pro-rated rate for a day.
 - 4.2 where Axon IT's charges are based on an hourly rate, any time spent which is less than an hour is charged on a pro-rated basis.
- 5 Obligations on the Client
- 5.1 During the performance of the Services the Client shall:
- 5.1.1 co-operate with Axon IT as Axon IT reasonably requires;
 - 5.1.2 make available to Axon IT such Facilities as Axon IT reasonably requires at the Client's Premises while Axon IT is performing the Services on the Client's Premises;
 - 5.1.3 not terminate, but continue any maintenance and support contracts with suppliers, sellers or support companies as set out in the Specification or in existence at the Commencement Date;
 - 5.1.4 ensure that Axon IT shall be able to use, contact and receive services from

- providers of maintenance and support contracts of any other systems the Client has or may have from time to time;
- 5.1.5 permit Axon IT to take away from the Premises such Hardware and Client Software as may be necessary to perform any of the Services;
- 5.1.6 allow Axon IT to install such computer and other hardware and equipment and software ('Axon IT Equipment') at the Premises (and permit Axon IT Equipment to interface, run with and/or be connected with the Hardware) as is necessary for Axon IT to perform the Services at the Premises;
- 5.1.7 ensure that the Client's staff and agents cooperate and assist Axon IT at all times; and
- 5.1.8 permit Axon IT access to the Premises at the dates and times that Axon IT reasonably requires.
- 5.2 Facilities mean office and working space, computer equipment, access to the internet, and the Client's computer network, telecommunications system etc, and shall include not only access to such resources but also use of them to the extent that Axon IT needs to do so in order to perform the Services.
- 5.3 The Client will not charge for Axon IT's use of the Facilities made available by the Client.
- 5.4 By the Commencement Date the Client will have prepared and provide to Axon IT details of:
- 5.4.1 all Hardware;
- 5.4.2 the Software;
- 5.4.3 all support, maintenance and other contracts provided or supplied by third parties,
- to be used in the provision of the Services (if any) including such detail and information (and copies of all documentation, licences and billing and invoices which relate to the Hardware and Client Software) as specified in the Specification or as Axon IT reasonably requires;
- 5.5 The Client warrants, represents and undertakes that:
- 5.5.1 it is the owner of the all the Hardware not supplied by Axon IT (or is authorised to use and run the Hardware by the owner or lessor of the Hardware);
- 5.5.2 it owns or has right to use all third party software which Axon IT need to perform the Services;
- 5.5.3 it has the right to allow Axon IT to use all and any of the Software to perform any of the Services on such hardware and equipment that Axon IT uses in performing the Services.
- 5.6 Where software has been written or developed by Axon IT for the Client, the Client acknowledges that such software may only be compatible with the current versions of other software and/or hardware and Axon IT provides no guarantee that it will be compatible with later versions of other software and/or hardware. For the avoidance of doubt, unless otherwise agreed between the parties in writing, Axon IT is under no obligation to supply the Client with any updates or add-ons to the software.
6. Supply of Hardware
- 6.1 Axon IT will sell and the Client will buy the Hardware set out in the Specification. No order submitted by the Client is deemed to be accepted by Axon IT unless Axon IT first confirms this in writing.
- 6.2 The Client is responsible for ensuring the accuracy of the terms of any order (including any applicable Specification) submitted by the Client.
- 6.3 All software, whether supplied, installed or implemented is provided within the terms and conditions and licence of the software provider.
- 6.4 If the software comprised in the Hardware is not owned by Axon IT then the Client will be required to enter into an end-user licence agreement with the owner of the software concerned.
- 6.5 If any software has to any extent been written or developed by Axon IT then subject to clause 6.3 above, Axon IT hereby grants a non-exclusive, non-transferable licence for the use of such software by the Client for the duration of this Contract and all copies of such software are the property of Axon IT and notwithstanding clause 6 no title or ownership thereof will be transferred to the Client.
- 6.6 Delivery of the Hardware will take place by Axon IT delivering the Hardware to the place agreed in writing with the Client.
- 6.7 Any dates and times quoted for delivery are estimates only and unless otherwise agreed in writing, delivery times are not of the essence of the contract. Axon IT will not be liable for any loss or damage (howsoever arising) to the Client should Axon IT be unable to deliver the Hardware within the quoted period.

- 6.8 Axon IT is entitled to make partial deliveries by instalments and these Terms will apply to each partial delivery.
- 6.9 If the Hardware is to be delivered in instalments, each delivery will constitute a separate contract and failure by Axon IT to deliver any one or more instalments in accordance with these Terms will not entitle the Client to treat the contract as a whole as terminated.
- 6.10 Risk in respect of the Hardware passes to the Client at the time of delivery but the title in the Hardware will not pass to the Client until Axon IT has received payment in full of the price of the Hardware and all other goods agreed to be sold or services to be provided by Axon IT to the Client for which payment is then due.
- 6.11 Until title in the Hardware has passed to the Client, Axon IT will be entitled at any time to require the Client to deliver up the Hardware to Axon IT and, if the Client fails to do so forthwith, to enter upon any premises of the Client or any third party where the Hardware are stored and repossess the Hardware.
- 6.12 Until title in the Hardware has passed to the Client, the Client will hold the Hardware as Axon IT's fiduciary agent and bailee, will not dispose of the Hardware and will keep the Hardware separate from those of the Client and third parties and properly stored, protected and insured and identified as Axon IT's property.
- 7 Fees and payment of Fees
- 7.1 The payment of the Fees shall be made by the Client to Axon IT as stated in the Specification or within 20 days from the end of the month in which the invoice is raised by Axon IT in respect of the provision of all or part of the Services whichever is the earlier.
- 7.2 The Fees are calculated on the amount of time spent by Axon IT in performing the Services based on the rate (*or*) at the rate(s) specified in the Specification. Axon IT shall be entitled to vary the hourly (*or*) day rates during the existence of these Terms without the consent of the Client. Before implementing new hourly (*or*) day rates Axon IT shall provide them in writing to the Client.
- 7.3 Axon IT is permitted to charge for all costs and expenses reasonably incurred in performing the Services, including but not limited to travelling, courier and postage.
- 7.4 Axon IT shall be entitled to invoice the Client weekly (*or*) monthly (*or*) as specified in the Specification.
- 7.5 All amounts stated are exclusive of VAT and any other applicable taxes, which will be charged in addition at the
- rate in force at the time the Client is required to make payment.
- 7.6 If the Client does not make a payment by the date stated in an invoice or as otherwise provided for in these Terms then Axon IT shall be entitled to:
- 7.6.1 charge interest on the outstanding amount at the rate of 8% per annum above the base lending rate of Barclays Banks plc., accruing daily;
- 7.6.2 require the Client to pay, in advance, for any Services (or any part of the Services) which have not yet been performed; and
- 7.6.3 not perform any further Services (or any part of the Services).
- 7.7 When making a payment the Client shall quote relevant reference numbers and the invoice number.
- 8 Confidentiality
- 8.1 Each Party ('Receiving Party') shall keep the confidential information of the other Party ('Supplying Party') confidential and secret, whether disclosed to or received by the Receiving Party. The Receiving Party shall only use the confidential information of the Supplying Party for the Purpose and for performing the Receiving Party's obligations under these Terms. The Receiving Party shall inform its officers, employees and agents of the Receiving Party's obligations under the provisions of this clause 8, and ensure that the Receiving Party's officers, employees and agents meet the obligations.
- 8.2 The obligations of clause 8.1 shall not apply to any information which:
- 8.2.1 was known or in the possession of the Receiving Party before the Providing Party provided it to the Receiving Party;
- 8.2.2 is, or becomes, publicly available through no fault of the Receiving Party;
- 8.2.3 is provided to the Receiving Party without restriction or disclosure by a third party, who did not breach any confidentiality obligations by making such a disclosure;
- 8.2.4 was developed by the Receiving Party (or on its behalf) who had no direct access to, or use or knowledge of the confidential information supplied by the Supplying Party; or
- 8.2.5 is required to be disclosed by order of a court of competent jurisdiction.
- 8.3 This clause 8 shall survive termination of these Terms.
- 8.4 Axon IT is permitted to use other persons to provide some or all of the Services.

8.5 Axon IT shall be responsible for ensuring that the work of a sub-contractor is to the same standard as that stated in these Terms. However, the Parties acknowledge and agree that the some sub-contractors have their own terms and conditions on which the sub-contractor trades and which are more restrictive than those in these Terms. For example, without limiting the generality of the foregoing, a sub-contractor may have more restrictive wording as to the standard they will reach in work they perform (as to timing or quality), what is to happen if that standard is not reached or met, issues concerning the restriction and exclusion of liability, and so on). Where the terms and conditions of a sub-contractor or more restrictive or exclusory then the provisions of these Terms, the Parties agree that for work provided by a sub-contractor will be governed by the terms and conditions of the sub-contractor rather than the provisions of these Terms.

9 Warranties, liability and indemnities

9.1 Axon IT warrants that it will use reasonable care and skill in performing the Services.

9.2 If Axon IT performs the Services (or any part of the Services) negligently or materially in breach of these Terms, then if requested by the Client, Axon IT will re-perform the relevant part of the Services, subject to clauses 10.4 and 10.5 below. The Client's request must be made within 1 month of the date Axon IT completes performing the Services.

9.3 Axon IT provides no warranty that any result or objective can be or will be achieved or attained at all or by a given completion date or any other date, whether stated in these Terms or the Specification or elsewhere.

9.4 Except in the case of death or personal injury caused by Axon IT's negligence, the liability of Axon IT under or in connection with these Terms whether arising in contract, tort, negligence, breach of statutory duty or otherwise howsoever shall not exceed the Fee(s) paid by the Client to Axon IT under these Terms. The provision of this clause 10.4 shall not apply to clause 10.6.

9.5 Neither Party shall be liable to the other Party in contract, tort, negligence, breach of statutory duty or otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by that other Party of an indirect or consequential nature including without limitation any economic loss or other loss of turnover, profits, business or goodwill. The provisions of this clause 10.5 shall not apply to clause 10.6.

9.6 The Client shall indemnify and hold harmless Axon IT from and against all Claims and Losses arising from loss, damage, liability, injury to Axon IT, its employees and third parties,

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infringement of third party intellectual property, or third party losses by reason of or arising out of any information supplied to the Client by Axon IT, its employees or contractors, or supplied to Axon IT by the Client within or without the scope of these Terms. 'Claims' shall mean all demands, claims, proceedings, penalties, fines and liability (whether criminal or civil, in contract, tort or otherwise); and 'Losses' shall mean all losses including without limitation financial losses, damages, legal costs and other expenses of any nature whatsoever.

9.7 Each of the Parties acknowledges that, in entering into these Terms, it does not do so in reliance on any representation, warranty or other provision except as expressly provided in these Terms, and any conditions, warranties or other terms implied by statute or common law are excluded from these Terms to the fullest extent permitted by law. Nothing in these Terms excludes liability for fraud.

10 Termination

10.1 These Terms shall commence on the Commencement Date and shall continue until terminated by the agreement of the Parties or as provided for under this clause 10.

10.2 On or after the first anniversary of the Commencement Date either Party may terminate any of the Services provided under these Terms by giving no less than 12 months' written notice to the other Party.

10.3 Without prejudice to the other remedies or rights a Party may have, either Party may terminate these Terms, at any time, on written notice to the other Party ('Other Party'):

10.3.1 if the other Party is in material breach of its obligations under these Terms and (in the case of a breach capable of remedy) fails to remedy the same within 14 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied; or

10.3.2 if the other Party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or if the the other Party's financial position deteriorates to such an extent that in Axon IT's opinion the ability of the

10.3.3 if the other Party becomes insolvent or if an order is made or a resolution is passed for the winding up of the other Party (other than voluntarily for the purpose of solvent amalgamation or re-construction), or if an administrator, administrative receiver or receiver is appointed in respect of the whole or any

part of the other Party's assets or business, or if the other Party makes any composition with its creditors or takes or suffers any similar or analogous action in consequence of debt.

10.4 The notice will take effect as specified in the notice.

11 Consequences of termination

11.1 On termination of these Terms, the Client shall pay for all Services provided up to the date of termination, and for all expenditure falling due for payment after the date of termination from commitments reasonably and necessarily incurred by Axon IT for the performance of the Services prior to the date of termination.

11.2 Provided that all sums have been paid in accordance with clause 11.1 above, upon termination by either Party Axon IT shall co-operate with the Client so that the Services are transferred to the Client and/or another provider of the Services in a timely and professional manner and which will not cause, as far as it is possible to do so, any interpretation in the provision of the Services or in the work or activities of the Client.

11.3 Upon termination of these Terms for any reason:

11.3.1 Those clauses expressed to continue or which remain to be performed shall continue in force without limit of time;

11.3.2 Axon IT shall at the request of the Client return all Client Systems and other hardware, equipment, or software of the Client under its possession or control at the date of termination;

11.3.3 Axon IT shall return any documents, materials or other information in its possession or control which contain or record any of the confidential information of the Client, or at the written request of the Client, Axon IT shall destroy such documents, materials or other information (and if recorded or stored electronically, permanently erasing from any electronic media on which it is stored); and

11.3.4 subject as provided in this clause 11 and except in respect of any accrued rights, neither Party shall be under any further obligation to the other.

12 Data protection

12.1 Axon IT shall if so required by law:

12.1.1 register with and maintain registration with the Information Commissioner under the Data Protection Act 1998; and

12.1.2 ensure that it, and its staff and its agents and representatives, comply with the obligations of a data controller (as defined and set out in the Data Protection Act 1998);

12.1.3 have in place sufficient and appropriate technical resources and organisational practices to ensure that any data of the Client is only processed lawfully;

12.1.4 ensure that it has technical and security procedures and resources sufficient that any data of the Client is not lost, destroyed, deleted, damaged or corrupted whether accidentally or deliberately;

12.1.5 process any data of the Client only for the purposes of these Terms,

12.2 This clause 12 shall survive termination of these Terms for such period as required by law.

13 General

13.1 Force majeure

13.1.1 Neither Party shall have any liability under or be deemed to be in breach of these Terms for any delays or failures in performance of these Terms which result from a Force Majeure Event. A Force Majeure Event means circumstances beyond the reasonable control of that Party including but not limited to strikes, lock-outs or other industrial disputes, failure of a utility supplier or transport network, act of God, war, riot, civil commotion, malicious damage, accident, breakdown of plant or equipment, fire, flood, storm or default of suppliers or subcontractors. The Party affected by such circumstances shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than 6 months, either Party may terminate these Terms by written notice to the other Party.

13.2 Amendments

13.2.1 These Terms may only be amended in writing signed by duly authorised representatives of both Parties.

13.3 Assignment

13.3.1 Axon IT may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under these Terms without the prior agreement of the Client. The Client shall not, without the prior written consent of Axon IT, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under these Terms.

13.4 Entire agreement

13.4.1 These Terms contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into these Terms on the

basis of any representation that is not expressly incorporated into these Terms. Nothing in these Terms excludes liability for fraud.

13.5 Waiver

13.5.1 No failure or delay by Axon IT in exercising any right, power or privilege under these Terms shall impair the same or operate as a waiver of the same nor shall any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege. The rights and remedies provided in these Terms are cumulative and not exclusive of any rights and remedies provided by law.

13.6 Agency and partnership

13.6.1 These Terms shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in these Terms. Neither Party shall have, nor represent that it has, any authority to make any commitments or act in anyway on the other Party's behalf.

13.7 Severance

13.7.1 If any provision of these Terms is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from these Terms and rendered ineffective as far as possible without modifying the remaining provisions of these Terms, and shall not in any way affect any other circumstances of or the validity or enforcement of these Terms.

13.8 Interpretation

In these Terms unless the context otherwise requires:

13.8.1 words importing persons include firms, companies and corporations and vice versa;

13.8.2 references to numbered clauses and schedules are references to the relevant clause in or schedule to these Terms;

13.8.3

13.8.4 any obligation on any Party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;

13.8.5 the headings to the clauses, schedules and paragraphs of these Terms are not to affect the interpretation;

13.8.6 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and

13.8.7 where the word 'including' is used in these Terms, it shall be understood as meaning 'including without limitation'.

13.9 Notices

13.9.1 Any notice to be given by either Party shall be in writing and shall be sent by first class mail or air mail, or by facsimile or e-mail (confirmed by first class mail or air mail), to the address or facsimile number of the relevant Party set out in the Specification or such other address or facsimile number as that Party may from time to time notify to the other Party in accordance with this clause 13.11.

13.9.2 Notices sent as above shall be deemed to have been received 3 working days after the day of posting (in the case of inland first class mail), or 7 working days after the date of posting (in the case of air mail), or on the next working day after transmission (in the case of facsimile messages, but only if a transmission report is generated by the sender's facsimile machine recording a message from the recipient's facsimile machine, confirming that the facsimile was sent to the number indicated above and confirming that all pages were successfully transmitted), or next working day after sending (in the case of e-mail).

13.9.3 In proving the giving of a notice it shall be sufficient to prove that the notice was left, or that the envelope containing the notice was properly addressed and posted, or that the applicable means of telecommunication was addressed and despatched and despatch of the transmission was confirmed and/or acknowledged as the case may be.

13.10 Law and jurisdiction

The validity, construction and performance of these Terms shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.

13.11 Third parties

For the purposes of the Contracts (Rights of Third Parties) Act 1999 and notwithstanding any other provision of these Terms these Terms are not

intended to, and does not, give any person who is not a party to it any right to enforce any of its provisions.