

AXTONE S.A.**GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY****1. LIST OF DEFINITIONS**

1.1. The capitalized terms used in these General Terms and Conditions of Sale and Delivery have the meaning ascribed to them in the following Sections:

General Conditions	defined in <u>Section 2.1</u>
Axtone	defined in <u>Section 2.1</u>
Goods	defined in <u>Section 2.1</u>
Customer	defined in <u>Section 2.1</u>
Parties	defined in <u>Section 2.1</u>
Party	defined in <u>Section 2.1</u>
Website	defined in <u>Section 2.2</u>
Contract	defined in <u>Section 3.1</u>
Effective Date	defined in <u>Section 3.1</u>
Electronically Generated Offer	defined in <u>Section 3.2</u>
Written Offer	defined in <u>Section 3.2</u>
Sale Offer	defined in <u>Section 3.2</u>
Sale Offer Acceptance	defined in <u>Section 3.3</u>
Order	defined in <u>Section 3.4</u>
Non-complaint Order	defined in <u>Section 3.4</u>
Confirmation of Order	defined in <u>Section 3.5</u>

AXTONE S.A.

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Creation date: 2015-05-21
Update date: 2015-08-11

Modified Order Confirmation	defined in <u>Section 3.7</u>
Delivery Period	defined in <u>Section 4.1</u>
Production Site	defined in <u>Section 5.1</u>
Sales Price	defined in <u>Section 6.1</u>
Infringing Goods	defined in <u>Section 7.4</u>
Retention of Title	defined in <u>Section 8.1</u>
Warranty	defined in <u>Section 9.1</u>
Warranty Term	defined in <u>Section 9.5</u>
Subsequent Performance	defined in <u>Section 9.9</u>
Cap	defined in <u>Section 10.1</u>
Address	defined in <u>Section 13.2</u>
E-mail Address	defined in <u>Section 13.3</u>

2. SCOPE

- 2.1. These General Terms and Conditions of sale and delivery ("**General Conditions**") apply to any and all sales and deliveries by Axtone S.A. ("**Axtone**") of goods (including in particular goods manufactured and/or assembled by Axtone, as well as other traded goods) ("**Goods**") to its customers, whether located in or outside Poland ("**Customer**"). Axtone and the Customer are hereinafter jointly referred to as "**Parties**", and each of them as a "**Party**".
- 2.2. These General Conditions are published on the Axtone website: <http://www.axtone.eu/download/GTC.pdf> ("**Website**") and/or might be delivered to the Customer by Axtone before the conclusion of the sale agreement in the manner set forth in Section 13.2 or in Section 13.3. In any case, these General Conditions are deemed acknowledged and accepted by the Customer by approving Axtone's offer or placing an order with Axtone. These General Conditions are binding on both Axtone and the Customer in full scope, unless Axtone and the Customer agree otherwise in writing.

- 2.3. Sales and deliveries of Goods by Axtone to the Customer shall be subject, exclusively, to these General Conditions and the application of any Customer's general terms and conditions or contract templates (irrespective of whether conflicting, supplementary or other) shall be ruled out, even if such general terms and conditions are not expressly objected to by Axtone. Art. 385(4) of the Polish Civil Code shall not apply.

3. CONCLUSION OF CONTRACT

- 3.1. The contract between Axtone and the Customer ("**Contract**") (i) shall be formed by: the Sale Offer and the Sale Offer Acceptance, or the Order and the Confirmation of Order (or Modified Order Confirmation in the case specified in Section 3.9 below) (all terms as defined below), and (ii) shall incorporate and be subject to these General Conditions. The Contract shall become effective, and be regarded as concluded upon ("**Effective Date**"): (i) delivery by the Customer of the Sale Offer Acceptance to Axtone, or (ii) delivery by Axtone of the Confirmation of Order to the Customer (subject to Section 3.9 below in which case the Contract shall become effective upon delivery of the Modified Order Confirmation to the Customer and the lapse of the deadline referred to in Section 3.9 unless the Customer disagreed in due time).
- 3.2. For Axtone offer to be valid and binding (thereafter, "**Sale Offer**"), it must be: (i) expressly marked by Axtone as an offer, (ii) made in writing and signed by duly authorized representatives of Axtone ("**Written Offer**") or, alternatively, generated electronically without any signature of representatives of Axtone, provided that it contains a respective reservation to the effect that (a) it was generated electronically by Axtone's IT system, and that (b) it requires neither signature nor stamp of Axtone representatives to be valid ("**Electronically Generated Offer**"), and (iii) delivered to the Customer in accordance with these General Conditions.
- 3.3. Any Sale Offer shall (unless otherwise stated therein) (i) be binding upon Axtone no longer than for 7 (seven) days following its receipt by the Customer, (ii) be accepted by the Customer: exclusively as it is, made with no reservations, supplements or additions (if any such reservations, supplements or additions are made, the Customer reply shall not be deemed as valid acceptance of the Sale Offer and no contract shall be deemed concluded; Axtone may, however, treat such Customer reply, at its sole discretion, as a new Customer order, being subject to Axtone's acceptance pursuant to these General Conditions), in writing, with the acceptance of the Sale Offer signed by duly authorized representatives of the Customer, and be submitted in accordance with these General Conditions ("**Sale Offer Acceptance**"); any Customer's acceptance of the Sale Offer that will not meet the above requirements, will not be deemed as binding on Axtone. If, the Customer duly accepted the

Sale Offer, these General Conditions shall fully apply to the contract resulting from such acceptance.

- 3.4. For Customer orders to be valid and binding, they must be: (i) made in writing, (ii) signed by duly authorized representatives of the Customer, and (iii) delivered to Axtone in accordance with these General Conditions (“**Order**”). Any order placed by the Customer otherwise (e.g. verbally) (“**Non-compliant Order**”) shall be deemed as not placed unless it is expressly accepted by Axtone in writing pursuant to Section 3.5 below. If, in a given case, Axtone accepted a Non-compliant Order, that Non-compliant Order shall be recognized as the Order within the meaning of these General Conditions, and these General Conditions shall fully apply to the contract resulting from such acceptance.
- 3.5. Axtone reserves the right not to accept any Order or Non-Compliant Order, at its sole discretion. No Order or Non-compliant Order shall be binding on Axtone unless accepted and confirmed by Axtone in writing, such confirmation to be signed by duly authorized representatives of Axtone and submitted to the Customer in accordance with these General Conditions (“**Confirmation of Order**”). Art. 68(2) of the Polish Civil Code does not apply.
- 3.6. Axtone reserves the right to refuse to accept each order with the value not exceeding EUR 500. In case the value of the order does not exceed EUR 1000, the order may be accepted by Axtone provided that the administrative fee amounting to EUR 500 is added.
- 3.7. Axtone reserves the right to accept the Order only on condition that such Order is subject to the amendment or supplement as made by Axtone (in particular, Axtone, may make the reservation that a contract resulting from an acceptance of the Order will be governed by these General Conditions with the exclusion of any other general terms and conditions or template contracts) (“**Modified Order Confirmation**”). In such a case, Art. 68(1) of the Polish Civil Code applies as amended by Sections 3.8-3.9 below.
- 3.8. If the amendment or supplement to the Order as made by Axtone regards material terms of the Order, the following rules shall apply: (i) Axtone’s Modified Order Confirmation shall be deemed as a new offer (counteroffer) of Axtone and recognized as the Sale Offer within the meaning of these General Conditions (irrespective of whether it is expressly marked by Axtone as such Sale Offer or not), (ii) all respective provisions of these General Conditions regarding the Sale Offer shall apply accordingly to such Axtone’s Modified Order Confirmation, including, in particular, Section 3.3 of these General Conditions, (iii) all respective provisions of these General Conditions regarding the Sale Offer Acceptance shall apply accordingly to the Customer’s acceptance of such Axtone’s Modified Order Confirmation, and (iv) these General Conditions shall fully apply to the contract resulting from the Customer’s acceptance of such Axtone’s Modified Order Confirmation.

- 3.9. If the amendment or supplement to the Order as made by Axtone regards non-material terms of the Order, the following shall apply: if Customer disagrees with such Modified Order Confirmation, Axtone must be notified of this immediately, however not later than on the next working day following the receipt of the Modified Order Confirmation by the Customer. If such notification on disagreement is timely and duly made by the Customer, no contract is deemed concluded, and the Parties shall negotiate the terms of the sale and delivery of Goods in good faith.
- 3.10. Any statements, letters, pricelists or fee proposals and other correspondence or communication (irrespective of whether they are made in writing, by e-mail, fax, orally or otherwise) made by Axtone shall not constitute or be construed as binding offers unless they meet all requirements as specified in Section 3.2 above.
- 3.11. In case of any discrepancies between: (i) the Sale Offer and the Sale Offer Acceptance, the provisions of the Sale Offer shall prevail, and (ii) the Order and the Confirmation of Order (or Modified Order Confirmation, where applicable), the provisions of the Confirmation of Order (or Modified Order Confirmation, where applicable) shall prevail.
- 3.12. In case of any discrepancies between the Contract and these General Conditions, the provisions of the Contract shall prevail.

4. DELIVERY PERIOD

- 4.1. Unless otherwise agreed in writing, delivery dates are as set forth by Axtone in the Sale Offer (or Confirmation of Order, if applicable) ("**Delivery Period**"). The Delivery Period might be specified by indicating the week of the calendar year during which the delivery will take place; in such case, any delivery made by Axtone no later than on the last business day of that week shall be deemed as made in timely fashion. Any such Delivery Period shall not commence and, if it has started, it shall be suspended until: (i) the Customer provides Axtone with all detail and documents requested by Axtone in the Sale Offer (or Confirmation of Order or Modified Order Confirmation, if applicable) or otherwise, and (ii) receipt by Axtone of the down payment, if applicable.
- 4.2. Should the Customer be in default of the receipt of the Goods within the Delivery Period, Axtone, without prejudice to other rights it may have, shall be entitled to place the Goods into storage at the Customer's risk and expense provided that (i) it prior notified the Customer on the readiness of the Goods for delivery and/or shipment, and (ii) the Customer failed to receive the Goods before the expiry of the Delivery Period. Placing the Goods into storage in accordance with this Section 4.2 shall constitute the due performance of the Contract by Axtone. The above right to place Goods into storage at the Customer's risk and

expense applies accordingly should the Customer be in breach of any other of its obligations under the Contract; in such case, Axtone shall notify the Customer of the breach, setting out in reasonable detail the nature of the breach and granting the Customer a reasonable cure period, and shall be authorized to place the Goods (also those still unfinished) into storage if the Customer fails to cure such breach before the lapse of the cure period. In case the Goods placed in storage are yet unfinished, Delivery Period shall be suspended accordingly.

- 4.3. The Customer shall not refuse acceptance of a partial delivery of Goods by Axtone, unless such acceptance would infringe the Customer's justified interest.
- 4.4. Axtone may, at any time during the Contract performance, demand a relevant down payment to be made by the Customer, especially, if it has reasonable doubt as to the financial standing of the Customer (e.g. Axtone becomes aware of a deterioration of the financial standing of the Customer from any sources, or the Customer is not in the position to timely settle its financial liabilities towards Axtone on other basis), or in case the track-record of transactions between Axtone and the Customer shows delays in payments by the Customer. Unless otherwise agreed in the Contract, the down payment shall be paid by the Customer within (i) 5 (five) days after the Effective Date, or, (ii) if demand for a down payment was notified to the Customer after the Effective Date, within 5 (five) days following such notification.
- 4.5. Should the Customer be in delay with any payment (including the down payment referred to under Section 4.4) due to Axtone (on the basis of the given Contract or otherwise), Axtone, without prejudice to other rights it may have, shall be entitled, by notifying the Customer accordingly, to withhold performance of the Contract until such payment is duly made. In such case, the Delivery Period shall be suspended accordingly.

5. DELIVERY, PASSAGE OF RISK

- 5.1. Unless otherwise stated in the Contract, the delivery of Goods shall be carried out pursuant to EXW (Incoterms 2010) address: ul. Zielona 2, 37-220 Kańczuga, Poland ("**Production Site**").
- 5.2. The risk, profits and burdens related to Goods shall pass to the Customer on the date of the delivery of Goods pursuant to Section 5.1 (if the Goods are shipped - on the date the Goods were delivered to the shipment company at the Production Site). Should the delivery of Goods be delayed for reasons attributable to the Customer, the risk, profits and burdens related to Goods shall pass to the Customer on the date the Customer is notified by Axtone on the readiness of the Goods for delivery.

- 5.3. Shipment and/or other accessory services shall be arranged or provided by Axtone only if and on the terms and conditions as agreed by the Parties in the Contract, upon separate remuneration. Unless agreed otherwise in the Contract: (i) the Customer shall bear all the risks, responsibilities and liability connected with such services, and (ii) such services shall be provided on behalf and/or for the benefit of the Customer (the Customer agrees to issue respective power of attorney or other document as might be required by Axtone). The Customer shall reimburse Axtone for any and all expenses incurred in connection with such services, provided such expenses are properly documented in the manner usually applied in such cases. In particular, insurance shall be taken out only upon the request and at the expense of the Customer, in accordance with the above.
- 5.4. Wherever in these General Conditions reference to "delivery" of Goods is made, such reference should be understood as the moment in which the Goods are made available by Axtone to the Customer (or shipment company) at the place of delivery. Wherever in these General Conditions reference to "receipt" of Goods by the Customer is made, such reference should be understood as the moment in which the Customer actually came into possession of the Goods.

6. PRICES, TERMS OF PAYMENT AND PAYMENT

- 6.1. The price for the Goods shall be as agreed by the Parties in the Contract (the "**Sales Price**").
- 6.2. If the agreed delivery date falls on or after 6 (six) months from the Effective Date, and, due to circumstances that were unforeseen at the Effective Date, Axtone needs to incur additional costs with regard to the Goods and/or the services to be delivered to the Customer, the Parties undertake to renegotiate the Sales Price in good faith.
- 6.3. The Sales Price is exclusive of VAT and/or other taxes that may apply. The Customer shall bear all public duties relating to the delivery and receipt of the Goods and/or the services to be provided under the Contract, such as, in particular (but not limited to), custom duties.
- 6.4. Subject to any down payment, if applicable, the payment for the Goods shall be made within 30 (thirty) days from the invoice issuance date unless the Contract provides otherwise. Axtone shall be entitled to charge statutory interest for each day of delay in payment by the Customer.
- 6.5. Payment shall be deemed to be made on the date the full amount of the Sales Price, as stipulated in the invoice, is credited to Axtone's bank account stipulated in the invoice. Payments may only be made in the agreed currency. The Customer shall not be entitled to

set-off the Sales Price, or any part thereof, against any amounts due to it by Axtone, unless specifically agreed to in writing by Axtone.

7. INTELLECTUAL PROPERTY

- 7.1. All names, trademarks, copyrights, patents, trade secrets, know-how and other intellectual property rights to the Goods and/or the sales documentation is and shall remain the property of Axtone and nothing in these General Conditions or the Contract shall be deemed to grant the Customer a license or other right to use Axtone's intellectual property, except the right to use it within the scope and for the purposes necessary for the Customer's own use of the Goods.
- 7.2. The Customer will not use any of Axtone's trademarks or trade names in any manner, in particular as part of the Customer's corporate or trade names, and shall not permit any third party to do so without the prior written consent of Axtone. The Customer undertakes not to use names similar or possibly confusing with Axtone's trademarks or trade names, in particular not to use such names as registration name(s) for Internet domain(s).
- 7.3. The Customer shall refrain from doing research with respect to Goods, and shall refrain from making, creating or reducing to practice any invention or discovery which relates to the Goods, without having first agreed with Axtone in writing the terms of the intellectual property rights related to such invention or discovery. Without limitation to the foregoing, any intellectual property which the Customer may, directly or indirectly, develop in violation of the preceding sentence that relates to the Goods, or to the way they are used, shall be the property of Axtone and Customer, upon Axtone's first demand, and on a free of charge basis, shall immediately (i) transfer any and all rights to such intellectual property to Axtone (or its affiliate) to the broadest possible extent, including, at all available fields of exploitations and without any limitations, in particular any time or territory restrictions, and (ii) undertake any and all actions, both legal and factual, including signing of any agreements, statements, deeds, motions or other documents, as might be required to give full effect to the above.
- 7.4. If any third party asserts that a patent or other intellectual property right owned by it is infringed by the use of the Goods by the Customer ("**Infringing Goods**"), either Party shall promptly notify the other Party within 6 (six) working days of receipt of such claim. Axtone shall indemnify, defend and hold the Customer harmless from and against any claims, suits, actions, damages, losses and expenses (including reasonable attorneys' fees) relating to any such infringement and in connection therewith Axtone agrees to undertake the sole and complete defence, at its sole cost and expense, of any such claim through the counsel of its choice and control the settlement of any such claim. The Customer shall cooperate with

Axtone, if so required, in the defence of any such claim, in particular, it undertakes to grant all required powers to Axtone or its legal counsel. Further, the Customer agrees not to enter into any settlement, accept any claim (including statements of claim) or liability, waive any claim or undertake any other actions that could result in Axtone's liability hereunder, without the express written consent of Axtone. The total maximum Axtone's liability under this Section 7.4 is limited as set forth in Section 10.1. Notwithstanding the above, Axtone shall be released from any liability under this Section 7.4 if it delivers to the Customer, as replacement for the Infringing Goods, equivalent Goods that do not infringe third party rights; in such case the Infringing Goods shall be returned to Axtone.

8. RETENTION OF TITLE

- 8.1. Notwithstanding any other provisions of these General Conditions or the Contract, the delivered Goods shall remain the property of Axtone until the Sales Price is fully paid by the Customer in accordance with Section 6 above ("**Retention of Title**").
- 8.2. The Customer shall not transfer or dispose of the Goods subject to the Retention of Title, otherwise than in the ordinary course of business of the Customer. In such case, the Customer shall inform its customer on the Retention of Title in an appropriate manner, presenting its customer with the Contract and these General Conditions. Any establishment of a pledge, encumbrance and/or other limited right *in rem* on the Goods subject to the Retention of Title, or execution of a transaction, which may affect Axtone's rights, or otherwise limit or hinder Axtone in exercising its rights regarding those Goods, requires Axtone's prior written consent.
- 8.3. The Customer hereby assigns to Axtone any and all future claims against or receivables from third parties in connection with any transactions relating to the Goods subject to the Retention of Title, and Axtone hereby accepts such assignment. Axtone hereby authorizes the Customer to collect any such receivables in its own name. The above authorization may be revoked by Axtone at any time. Should the appropriate side agreement or any other document be needed to give full effect to the above, the Customer hereby undertakes to execute any such agreement or document as Axtone may reasonably require, upon first demand of Axtone.
- 8.4. The Customer shall at all times provide Axtone with all necessary information concerning the Goods subject to the Retention of Title and/or receivables assigned to Axtone under or in performance of the Contract. Any attachments of or claims by third parties to the Goods subject to the Retention of Title shall be immediately reported and the underlying documentation shall be submitted by the Customer to Axtone. The Customer shall at the same time advise such third party of the Retention of Title. The costs of any defense

against attachments and/or claims (including in particular, but not limited to, procedural costs, legal attorney fees, etc) shall be borne by the Customer.

- 8.5. The Customer is obliged to treat the Goods subject to the Retention of Title with due care for the duration of the Retention of Title. In particular, upon Axtone's demand, the Customer shall be obliged to (i) insure the Goods subject to the Retention of Title against any risks (Pol. *ubezpieczenie mienia od wszelkich ryzyk*) up to the value corresponding to at least the Sales Price, and insure them against any other risks that Axtone may reasonably demand, (ii) provide Axtone with proof of such insurance, and (iii) assign any and all claims arising from such insurance policy to Axtone.
- 8.6. If the Contract is rescinded by Axtone pursuant to these General Conditions, the Customer shall grant Axtone (or Axtone's agents) immediate access to the Goods subject to the Retention of Title, and Axtone may demand the immediate return and/or otherwise satisfy its claims against the Customer from such Goods.
- 8.7. If the Goods are to be delivered outside of Poland to a jurisdiction where the Retention of Title may not be fully enforced, or otherwise may not result in the same commercial effect as provided for hereunder, the Customer undertakes: (i) to notify Axtone accordingly without undue delay, but in any case not later than within 5 (five) working days from the Effective Date, and (ii) to establish, upon Axtone's first request to that effect, a relevant security right in favor of Axtone in place of the Retention of Title. In such case, the Parties shall negotiate in good faith the nature and terms of such substitute security right(s) and Axtone will cooperate in all reasonable measures such as registration, publication, etc. which are necessary to the establishment of such security right(s). Until such security right(s) are negotiated and duly established, Axtone may withhold performance of the Contract and the Delivery Period shall be suspended accordingly.

9. CHARACTERISTICS, WARRANTY, DUTY TO INSPECT THE GOODS

- 9.1. Axtone warrants to the Customer that on the delivery date, the Goods shall be compliant with: (i) technical specifications applicable to the given type of Goods, as delivered by Axtone to the Customer, and, (ii) the requirements and characteristics specifically agreed by the Parties in the Contract, if applicable ("**Warranty**").
- 9.2. For the avoidance of doubt, the Parties confirm that statements in catalogues, price lists and other information materials as well as goods descriptions made available to the Customer by Axtone shall not be understood as a specific guarantee or warranty for the characteristics of the Goods and shall not be incorporated in the Warranty.

- 9.3. Axtone reserves the right to slightly change the characteristics of the Goods with regard to their construction, material and/or finish, but under no circumstances further than is customary in the industry. However, the characteristics specifically agreed upon between the Parties in the Contract shall not be changed thereby.
- 9.4. To the maximum extent permitted under the applicable law, the Warranty granted under these General Conditions and/or Contract is in lieu of any and all warranties or guarantees, either statutory, contractual or otherwise, and the provisions of these General Conditions set forth the exclusive terms and conditions for Axtone's liability towards the Customer and the sole remedy of the Customer against Axtone with respect to Goods, including, in case of the non-conformity of the Goods with the Warranty under the Contract. Axtone's liability under the statutory warranty (*rekojmia*) (art. 556 and subsequent of the Civil Code) is hereby expressly excluded.
- 9.5. Should any physical defect in the Goods appear and be notified by the Customer to Axtone in writing pursuant to these General Conditions not later than on the lapse of 12 (twelve) months following the delivery date ("**Warranty Term**") Axtone's sole liability under the Warranty shall be limited to, at Axtone's discretion, either: (i) the repair of the Goods so that the defect is removed, (ii) the delivery of new, non-defective goods corresponding to the Goods, or (iii) a price reduction, on a pro rata basis, on the defective Goods (should their repair or replacement prove impossible or otherwise futile).
- 9.6. The Customer shall inspect the Goods upon receipt and shall notify Axtone in writing immediately, however not later than within 30 (thirty) days following the delivery, of any and all apparent physical defects and/or shortcomings in the Goods.
- 9.7. Any physical defect, that could not have been spotted during the inspection referred to under Section 9.6 above, that appears in the Goods within the Warranty Term, must be notified to Axtone in writing without undue delay, but in any case (i) not later than within 14 (fourteen) days upon its discovery, and (ii) before the lapse of the Warranty Term. The notification of a defect shall quote the Sale Offer number (or Order number, where applicable).
- 9.8. In the event of any notification of a physical defect under the Warranty, Axtone shall have the right to inspect and test the Goods with respect to which a complaint was made. The Customer will grant Axtone the required period of time, but not less than 14 (fourteen) days, and the opportunity to exercise that right. Axtone may also demand that the Customer returns the Goods (or part of them) with respect to which the complaint was made to Axtone, at Axtone's expense. Axtone shall make best efforts to consider and reply to the Customer's complaint within 1 (one) month following its receipt.

- 9.9. If Axtone accepts the complaint, Axtone shall also notify the Customer on the method of its performance under the Warranty, in all cases free of charge to the Customer (“**Subsequent Performance**”). To this effect, Axtone may, in particular but not exclusively, decide that the Subsequent Performance is to take the form of actions referred to in Section 9.5 above.
- 9.10. Axtone shall have the necessary reasonable period of time (taking into account all circumstances of the case, especially the location of the defective Goods, the necessity to involve other parties e.g. their current users, etc.) for the completion of such Subsequent Performance. In any case, such reasonable period of time shall be not less than 1 (one) month following receipt by the Customer of Axtone notification referred to in Section 9.9 above.
- 9.11. The Customer undertakes to give Axtone all necessary opportunity to perform the Subsequent Performance. To the extent reasonably required by Axtone, the Customer shall cooperate with Axtone in removing the defects, particularly by enabling proper communication with the actual users of the Goods (if different from the Customer), as well as otherwise facilitating and working towards the completion of the necessary actions that lie beyond Axtone’s control. In case of the Customer’s delay, the period of time referred to in Section 9.10 shall be extended accordingly.
- 9.12. All defective Goods which have been replaced by Axtone or with respect to which Axtone reimbursed the whole price under the Warranty must be, unless otherwise instructed by Axtone, returned to Axtone. All new or repaired Goods delivered by Axtone as result of the Subsequent Performance, will benefit from the Warranty on the terms and conditions as set forth in these General Conditions, however, no longer than until the original Warranty Term extended accordingly by the period of time that lapsed from Customer’s complaint until delivery of the repaired or new Goods.
- 9.13. Should the Customer have any defects in the Goods repaired or otherwise removed by itself, or by a third party (irrespective whether professional or not) with no prior written consent of Axtone, Axtone shall be fully released from any and all its obligations and liability under the Warranty provided hereunder.
- 9.14. Axtone shall not assume any liability for damages caused by inappropriate and/or the improper use of the Goods, in particular, but not limited to, by the non-observance of the relevant instructions and/or manuals, incorrect start-up and/or installation by the Customer, faulty treatment, usage of unsuitable accessories or unsuitable spare parts, inappropriate repair works, natural wear and tear, unsuitable materials, modification or alteration to the Goods by any party other than Axtone and/or defective construction designs prescribed by the Customer to Axtone (if applicable).

- 9.15. Axtone shall be released from liability under the Warranty with respect to any defect of which the Customer knew on the Effective Date.
- 9.16. Axtone shall be released from liability under the Warranty, if (i) a given defect in the Goods should have been spotted by the Customer, acting with due care as a reasonable professional, during the due inspection of the Goods in accordance with Section 9.6 above, but was not timely notified to Axtone in accordance with such Section 9.6, or (ii) a given defect in the Goods that appeared in the circumstances set forth in Section 9.7 above, was not timely notified to Axtone in accordance with such Section 9.7.
- 9.17. Notwithstanding any other provisions limiting Axtone's liability, Axtone shall be released from liability under the Warranty to the extent any such liability, damage, cost or expense results from: (i) the Customer's failure to duly cooperate with Axtone pursuant to this Section 9, (ii) the Customer's disposal of the Goods (including, disposal by the Customer of the product in which the Goods were installed or to which the Goods were attached), to a third party after the Customer learnt of the potential defect.
- 9.18. The following provisions: Section 9.5, Sections 9.8-9.14, Section 9.17 and Section 10 apply accordingly to any retrofit actions (and related costs) that might be implemented by Axtone on its own initiative with respect to the Goods delivered to the Customer. Notwithstanding any other provisions of these General Conditions or the Contract, in no case Axtone shall bear any liability in relation to any retrofit actions that have not been expressly pre-agreed with Axtone.

10. LIABILITY AND DAMAGE COMPENSATION

- 10.1. Subject to Section 10.2 below and to the maximum extent permitted under the mandatory provisions of applicable law, Axtone liability for non-performance or improper performance under the Contract (including, for any damage incurred by the Customer as a result of the non-conformity of the Goods with the Warranty), shall (i) in aggregate be limited to the maximum amount equal to the Sale Price actually paid to Axtone by the Customer for the Goods involved, or, if the Goods have never been delivered – to the maximum amount equal to the Sales Price specified in the Contract ("**Cap**") (the cost of any Subsequent Performance provided by Axtone under the given Contract shall accordingly decrease the Cap), (ii) be limited only to liability for real damage actually incurred by the Customer, and in particular, under no circumstances shall Axtone be liable for any loss of profit or indirect or consequential damage, (iii) Axtone shall bear no liability for any damage caused by a breach of an immaterial contractual obligation under the Contract.
- 10.2. The Customer shall take all reasonable measures to mitigate any damages and/or losses.

11. PRODUCT LIABILITY

- 11.1. Should the Customer dispose of the Goods to any third party (including, disposal by the Customer of the product in which the Goods were installed or to which the Goods were attached), it shall indemnify and hold Axtone harmless from and against any product liability claims related to Goods (or to such product in which the Goods were installed or to which the Goods were attached) made by such third party (or other third parties, as the case may be) in so far as the Customer is responsible for the defect causing such liability.

12. RIGHT TO RESCIND CONTRACT

- 12.1. If the Customer fails to make any payment under the Contract (including the Sales Price or the down payment) before the deadline set forth in the Contract, Axtone shall be entitled to rescind the Contract upon a written notice to that effect delivered to the Customer.
- 12.2. If the Customer breached any of its material obligations under the Contract other than specified in Section 12.1, Axtone, notwithstanding any other rights and remedies Axtone may have, shall be entitled to rescind the Contract upon a written notice to that effect delivered to the Customer, provided that (i) it had notified the Customer of the breach setting up to the Customer an additional reasonable period of time to cure such breach not shorter than 7 (seven) days, and (ii) the Customer failed to remedy the breach within such an additional cure period.

13. GENERAL PROVISIONS

- 13.1. Whenever these General Conditions or the Contract provide for an agreement, statement, consent, notice, compliant, or other document (including, for the avoidance of doubt, Orders, Confirmations of Order, Modified Order Confirmations, Sale Offers (save for Electronically Generated Offers) and Sale Offer Acceptances) to be made in writing or in written form, such agreement, statement, consent, notice, complaint or other document, to be valid, shall be executed in writing and signed by authorized representatives of the given Party (or by both Parties, if applicable). If any such documents are signed by proxy, respective original power of attorney shall be delivered to the other Party.
- 13.2. Subject to Section 13.3 and Section 13.4, any notices, consents, complaints, or other documents between the Parties under these General Conditions or the Contract (including, for avoidance of doubt, Orders, Confirmations of Order, Modified Order Confirmations, Sale Offers (save for Electronically Generated Offers) and Sale Offer Acceptances) shall be considered delivered, if the original is delivered in person, by courier or by registered mail, under the respective address of the other Party specified in the Contract or under any new

address that might be notified at any time by each Party in accordance with this Section 13.2 to the other Party (“**Address**”).

- 13.3. If these General Conditions or the Contract do not require given notice (or other document) to be made in writing or in written form, it shall be: (i) considered validly made and delivered also if made and delivered to the other Party by fax or by e-mail under, respectively, appropriate fax number or e-mail address of the other Party, specified in the Contract or under such new fax number or e-mail address as might be notified at any time by each Party in accordance with Section 13.2 above to the other Party (jointly “**E-mail Address**”), and (ii) deemed delivered as of the moment of its dispatch by fax or e-mail unless within 24 hours the sending Party receives an automatic notification to the effect that, respectively, the fax or e-mail was not delivered to the addressee (in that case, the fax or e-mail is deemed undelivered); the fax or e-mail shall also be considered undelivered if the addressee proves, at any time, that it has never actually received it.
- 13.4. Unless the General Conditions or the Contract specifically state otherwise and provided that the receiving Party confirmed the receipt of the following documents by either fax or e-mail to the sending party without undue delay, the Order, Confirmation of Order, Modified Order Confirmation, Sale Offer (save for an Electronically Generated Offer) and Sale Offer Acceptance might be - in addition to delivery pursuant to Section 13.2 above - delivered to the other Party by fax or by e-mail under E-mail Address. In such case, the Order, Confirmation of Order, Modified Order Confirmation, Sale Offer (save for an Electronically Generated Offer) or Sale Offer Acceptance shall be deemed delivered as of the moment of its dispatch by fax or e-mail unless within 24 hours the sending Party receives an automatic notification to the effect that, respectively, the fax or e-mail was not delivered to the addressee (in that case, the fax or e-mail is deemed undelivered); the fax or e-mail shall also be considered undelivered if the addressee proves, at any time, that it has never actually received it. Notwithstanding delivery and receipt of the above documents pursuant to this Section 13.4, Axtone is entitled to suspend the performance of the Contract until it receives the original Order or Sale Offer Acceptance (as applicable) from the Customer, delivered pursuant to Section 13.2; in such case the Delivery Period shall be suspended accordingly.
- 13.5. An Electronically Generated Offer shall be considered validly made and delivered if made in accordance with these General Conditions (including, in particular, Section 3.2 of the General Conditions) and delivered to the Customer by e-mail at the E-mail Address from an e-mail address from one of Axtone’s domains. The Electronically Generated Offer shall be deemed delivered as of the moment of its dispatch unless within 24 hours Axtone receives an automatic notification to the effect that an e-mail was not delivered to the addressee. Sections 13.1-13.4 of the General Conditions shall not apply to the execution and delivery

of the Electronically Generated Offer save for the definitions included therein; within the remaining scope, the respective provisions of these General Conditions shall apply to the Electronically Generated Offer (including, to acceptance thereof).

- 13.6. No modifications or amendments of the Contract shall be valid, unless made in writing. Art. 77(1) of the Polish Civil Code does not apply.
- 13.7. Axtone's obligations and liability set forth herein is towards the Customer only. Without the prior written consent of Axtone, the Customer shall not transfer or assign any rights or obligations under the Contract to any third parties.
- 13.8. If any provision of these General Conditions or the Contract is held to be invalid in whole or in part, the validity of the remaining provisions shall not be affected. In such case, the Parties shall, to the extent possible and/or permitted by applicable law, substitute that invalid provision with a valid provision corresponding to and coming closest to the commercial purpose and effect of the invalid provision.
- 13.9. Events which are unforeseeable, unavoidable and lie beyond the sphere of influence of any Party, and for which such Party does not bear responsibility, such as (in particular, but not limited to) war, state of emergency, natural disasters, lock-out, strike and other labor disputes, shall release such Party for the duration of such event from its obligation to make a timely delivery or perform the Contract on schedule. Periods agreed upon between the Parties shall be extended by the length of such disturbance, and the affected Party shall notify the other Party of the occurrence of such disturbance in a reasonable manner and without undue delay. If the end of such disturbance is not foreseeable, or should it continue for more than two months, each Party may rescind the Contract by a written notice to that effect delivered to the other Party.
- 13.10. These General Conditions, as well as any Contract and all non-contractual obligations arising out of or in connection with it, shall be governed and construed in accordance with the substantive laws of Poland. The United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980 (CISG) shall not apply.
- 13.11. All disputes arising out of or in connection with a given Contract (including a dispute relating to the existence, validity or termination of the Contract or any non-contractual obligation arising out of or in connection with the Contract), shall be submitted to the exclusive jurisdiction of Polish common courts competent for Warsaw (Mokotów).

13.12. The Contract or these General Conditions may be prepared in different language versions. In the event of any discrepancies between the language versions, the English version shall prevail.