

TERMS AND CONDITIONS

Effective Date: June 1, 2023

PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY. Unless otherwise stated in writing, each sale with Axolotl LLC, its related manufacturing entities, and its affiliates (together “Axolotl”) is subject to these Terms and Conditions as set forth below, to the exclusion of any other conditions, whether expressed or implied. Your compliance with these Terms and Conditions is a condition to all sales with Axolotl.

1. GENERAL.

1.1 **Parties.** The Parties to these Terms and Conditions (“Terms”) are Axolotl and you, the “client” or “customer”. All references to “we,” “us,” “this website,” or “this site” shall be construed to mean Axolotl.

1.2 **Modification.** We reserve the right to modify these Terms at any time, and without prior notice, by posting an amended Terms that is always accessible through the “Terms” link at the bottom of this site’s pages. You should check these Terms periodically for modifications.

2. QUOTATION REQUIREMENTS, INCLUSIONS, AND EXCLUSIONS.

2.1 **Inclusions.** The quotation is for the application of metals, concrete and/or terracotta coatings (“Goods”) in our offsite factory. No onsite work will be performed. The quotation was created based on the specific quantities, sizes, designs, and finishes you submitted to us. Any subsequent variation in quantity, size, design or finish may require an alteration to the prices quoted and/or delivery times indicated.

2.2. **Exclusions.** The quotation does not include the following:

2.2.1 The installation of Goods.

2.2.2 The cost of any other materials that may be used except for the metals, concrete and/or terracotta coating unless otherwise noted in the quotation.

2.2.3 Any construction, transport or courier costs unless otherwise noted in the quotation.

2.3 **Timing.** The quotation is valid for thirty (30) days.

2.4 **Acceptance.** By signing the quotation, accepting the quotation, and/or instructing Axolotl to proceed verbally, in writing or by email, you acknowledge that every aspect of the quotation is correct and accept these Terms.

3. **SUBSTRATE REQUIREMENTS.**

3.1 Client is responsible for sending all material in the manner described herein. If Axolotl is required to do any of this work on behalf of Client, an extra charge will be incurred on top of the quoted price:

3.1.1 All material must be in a “clean state” unless otherwise specified. A “clean state” means the surface is stripped free of any excess paints, varnishes, rusts, scales, etc.

3.1.2 All rough cut edges must be sanded smooth and all edges on all materials should be supplied arised.

3.1.3 All material must be smooth to the touch. Defects in the surface caused by joints, fixings, holes, cracks, scratch marks, and/or mechanical fixings will show through the finish. Please ensure all defects are filled before coating. Please refer to the Axolotl Data Sheet for suitable fillers for particular substrates. On supply of goods the customer acknowledges that the substrate is free of defects.

3.1.4. All joinery items are to be delivered as ‘flat pack’ unless prior arrangements are made with Axolotl.

3.1.5 If the outward facing surface is to be coated, Client is required to indicate such specification on delivery.

3.2 Other recommendations include the following:

3.2.1 Client should refer to The Data Sheet which provides guides as to suitability of certain substrates. For example, plywood is not recommended externally as ply has a tendency to split. Non-grain substrates are preferred such as masonite, CFC, phenolic resin etc. Axolotl metals, concrete and terracotta cannot be applied to Cedar or Teak. Axolotl recommends using the highest quality substrate at all times. Axolotl may not be able to determine the quality of a product when it is delivered, however, if it is deemed to be of an obviously inferior quality, we will notify the Client prior to commencing work. Axolotl is not responsible if there is any damage due to the Client sending an inferior quality substrate.

4. **ARTWORK.**

4.1 Axolotl requires written approval by both parties of all artwork prior to commencement of any work. By doing so, Customer acknowledges that all specified references in the artwork are true and correct. This includes, but is not limited to, dimensions, coatings, designs, textures and indicated outside face. It is Customer’s responsibility to ensure all artwork is correct before approving the artwork. The specifications detailed on the latest approved artwork supersede any other specifications including but not limited to samples, written or verbal correspondence, quotations, invoices and any other artwork issued. Any corrections or changes to the specifications on issued artwork must be notified in writing. The artwork will then be amended and reissued for approval.

4.2 Artwork supplied by Customer must be in a usable format as per Axolotl's artwork guidelines. If artwork is not in a usable format, and Axolotl is required to render the artwork usable, this will incur additional costs on top of the quoted price.

4.3 Customer agrees that all artwork supplied by Customer shall be the sole responsibility of Customer and that Axolotl is indemnified by Customer against any third-party claims arising in any way whatsoever from Customer's supply or use of the artwork or the reproduction of the artwork in part or in full by Axolotl. In particular, Customer represents and warrants to Axolotl that reproduction of the artwork will not infringe on any copyright, trademark, or other intellectual property rights whatsoever. Axolotl may at its sole discretion require Customer to approve proof(s) of the artwork in writing prior to Axolotl proceeding with an order. Customer accepts full responsibility for any delays arising from the requirement of approval or provision of approval of proof(s). Any Customer approvals signifies an express agreement that any submitted artwork is free and clear of any copyright infringement.

4.4 All artwork and/or drawings supplied and/or issued by Axolotl that contain original Axolotl design work will remain the property of Axolotl and are subject to copyright where the © is displayed. Finished artwork or proposals supplied by Axolotl that contains original design work must not be used for any other purpose without the written approval of Axolotl.

5. **COMMENCEMENT OF WORK.** Work may not commence until Axolotl is in full receipt of both the signed quote and a non-refundable deposit payment of fifty percent (50%) of the total quote (or payment in-full for jobs under \$10,000 USD, excluding applicable taxes). Payment of the balance is due prior to or on the date of collection of the item(s). No items will be released without full payment, unless Axolotl and Customer have agreed in writing to an extended payment plan. Please note, any amendments to the job details once work has commenced will incur additional charges relating to the change.
6. **LEAD TIMES.** The lead time stated in the quotation is estimated from the date the item(s) are received by the factory and the fifty percent (50%) deposit (or payment in full for jobs \$10,000 USD or less, excluding applicable taxes), has been paid. If Axolotl is supplying the substrate, the lead time is estimated from the time a sign-off on the quotation and artwork (if applicable) has been received, and the fifty percent (50%) deposit (or payment in full for jobs \$10,000 USD or less, excluding applicable taxes), has been received. Lead time is subject to change due to the nature of the process and Axolotl's commitment to quality work.

7. **COATING.**

7.1 Unless otherwise requested, all lettering, screens and/or similar items will have a cast texture on all edges. Please note, the application of metal, concrete, and/or terracotta to only one side of a substrate may result in warping. Similarly, dark colours are not recommended on doors facing west or areas where there is strong sunlight exposure as this may cause the door to warp. Axolotl is not liable for any warping.

7.2 Axolotl metals, concrete and terracotta are applied as a wet spray application. It is Customer's responsibility to mask off any and all areas that are NOT to be coated. Overspray may occur on any areas that are not properly masked off. Axolotl can mask upon request for an additional fee.

8. **VARIATIONS.** Axolotl takes pride in creating unique, handmade pieces. Please note that there may be variations or imperfections as part of the final design character.
 - 8.1 Customer must provide a sample swatch of the requested colour to Axolotl at the time of coating. Axolotl will do our best to ensure that the finished product is as close a representation in colour as possible, but variations may still occur.
 - 8.2 Edges of doors and panels are finished to match the texture on the face as best as possible. There may be variations in texture and/or thickness of coating due to our process.
 - 8.3 All artwork is applied by hand. Dimensions in regards to the artwork, are matched to the best of our ability. Minor changes in pattern or position may vary due to the nature of the work or the substrate. Axolotl does exercise creative licences in regards to these minor variations and will contact Client should we feel a consultation is necessary.
 - 8.4 Axolotl will work to the closest of tolerance, but reserves the right to a margin of tolerance of plus or minus three (3) mm on any products and services provided.
 - 8.5 All sheet metals will expand and contract at different rates. This expansion can and will move adhesives over time, and can result in a natural wave to sheet metal materials. This is not a defect but a natural occurrence when working with sheet metal.
9. **PATINAS.** If you have chosen an Axolotl metal with a verdigris patina, please note it may take up to four (4) weeks for the patina to become permanent (any rub off within this time is normal, but should be minimised). Keep away from porous surfaces as some leaching may occur within this period. Since Axolotl Rust may continue to leach after this period, we do not recommend using Axolotl Rust above a porous surface.
10. **FEES AND CHARGES.**
 - 10.1 Any and all on-site touch-ups for remedial work will incur an additional fee.
 - 10.2 Unless otherwise agreed to in writing between Axolotl and Customer, If final payment is not paid within thirty (30) days from notice of completion, a ten percent (10%) late fee will be added to the final quoted price. If payment is not paid within sixty (60) days from notice of completion, an additional ten (10%) will be incurred on top of the quoted price and original late fee. If payment is not paid within ninety (90) days, the debt will be transferred to a collection agency and all associated costs will be incurred by the Client.
 - 10.3 A storage fee will apply to item(s) not collected within seven (7) days of notice of completion. No responsibility will be taken for items which are not collected from Axolotl after thirty (30) days of completion. Refer to 'COLLECTION OF YOUR ORDER' document for fee schedule.
 - 10.4 The Customer must pay to Axolotl all expenses, losses and damages incurred or sustained by Axolotl as a result of, or in relation to Axolotl exercising any of its rights under this clause, including any bank fees from bounced checks.

11. **Acceptance**. Axolotl allows a seven (7) day period of acceptance of goods upon receipt. Any defect in quality of product or other supply issue must be noted in writing within this seven (7) days period.

12. **MARKETING**. Axolotl reserves the right to display images of completed works in their marketing or promotional material through their online website or through other sources including printed material, commercials, advertisements, or any other way it so chooses.

13. **CLEANING**

12.1 Axolotl metals, concrete, and terracotta coatings should only be gently cleaned with warm, soapy water. No solvents, abrasives or cleansers of any kind should be used. Should further instruction be required in regards to maintenance, a maintenance information sheet is available from Axolotl. Client is responsible for following the maintenance instructions to prevent accumulation of normal, expected residue such as dirt, dust, grease and salt residue, and ensure the optimum decorative life of the product is achieved.

12.2 Materials may also be affected where the coating is subject to water pooling, harsh climatic conditions, direct western sunlight, exposure to salt water, water immersion, high pollution levels, and other such conditions. Please note surfaces close to salt water will generally require a more regular cleaning cycle to prevent premature ageing or break down of the top coat.

12.3 Client is solely responsible for any and all maintenance. Defects caused due to the lack of or incorrect maintenance of the coating will not be covered by any warranty provided by Axolotl.

14. **WARRANTY**. Axolotl Applied Surfaces are manufactured from high quality materials to ensure the lasting properties and quality of the finishes. Axolotl Applied Surfaces are warranted against faulty materials or workmanship for a period of five (5) years for applications against peeling or cracking, provided there has been no significant water, impact damage, bending, excessive heat, chemical or abrasives applied to the surface or the substrate. The liability under this Warranty is limited to surface preparation and reapplication of the metal finish.

15. **LIMITATION AND VOIDANCE OF WARRANTY**.

15.1 Client is responsible for ensuring their material is suitable for any requested services and for selecting the appropriate substrate for Client's material. Any improper choices by Client in substrate suitability will not be covered by the warranty. If an unsuitable material is sent in by Client and any cracking, chipping, splitting and/or bowing occurs, Axolotl will not be responsible for any liability and the damage will not be covered under any warranty.

15.2 Items that are materially altered, including items that are cut down, after an Axolotl Applied Surface has been applied will void the warranty, except where we have notified Customer in writing that cutting is acceptable.

15.3 Axolotl will not accept any costs associated with the removal and/or replacement of items that are deemed to be defective after installation has occurred. Axolotl will not replace defective items after installation has occurred.

15.4 Any defects that arise as a result of the lack of proper or timely maintenance and/or cleaning will not be covered by warranty.

15.5 Applied patinas and topcoats are not covered by the warranty.

15.6 Axolotl does not warrant against any defects in the substrates. This includes but is not limited to any splitting or movement.

15.7 Axolotl will only accept responsibility for defects in the Axolotl applied coating that can be viewed from a distance of greater than three (3) metres from the surface of the item.

15.8 Axolotl will not, under any circumstances, accept penalty clauses, liquidated damage claims or retention of payment.

16. **TITLE.**

16.1 The title to the goods will not pass from Axolotl to the customer until the customer has paid the contract price in full and any other outstanding debts to Axolotl in accordance with these conditions. If customer has not paid in full prior to receiving the goods, customer must possess the goods as a trustee, and may not resell or transfer possession of the goods.

16.2 If the customer: (a) Fails to pay the contract price and any outstanding debts in full when due, (b) Pays for the goods by cheque (in whole or in part) and that cheque is not met on presentation, (c) Commits any act of bankruptcy, becomes bankrupt, or is insolvent under Chapter 11 of the Bankruptcy Code, or (d) Has a controller appointed, as defined in section 9 of the Corporations Law, in respect of any of the customer's property, then Axolotl may, at its sole discretion do any of the following, (a) Not release the goods for collection, (b) Enter onto the premises where the goods are situated and repossess the goods, notwithstanding that the goods may have been affixed to any structure by Axolotl or the customer, and if necessary for that purpose, may sever the goods from any structure to which they may have been affected.

16.3 The Customer must also indemnify and keep Axolotl indemnified against, and pay to Axolotl, all expenses, losses and damages incurred or sustained by Axolotl as a result of, or in relation to Axolotl exercising its rights under (a) This clause, (b) Under any other term, express or implied, of these conditions, or (c) Otherwise at law or in equity, and any bank or other costs, charges or expenses incurred by Axolotl resulting from any customer's cheque not being met on presentation.

17. **DELIVERY AND TRANSIT.** Please refer to the "COLLECTION OF YOUR ORDER" document for more information concerning your delivery options. Axolotl provides Goods at our warehouse location in San Diego, California. Axolotl is not responsible for any damage to Goods that may happen while in transit. Customer is responsible for supplying suitable crates for the purposes of freighting. Suitable crates include leaving approximately four (4) inches in every direction to allow for proper packaging materials. Axolotl may also provide shipping crates for an additional cost. Axolotl strongly recommends items be unwrapped immediately upon taking delivery of the items. Axolotl are not responsible for damage which occurs to the coating as a result of the items being kept wrapped for any period of time as the items may 'sweat' under the wrapping.

18. **ARBITRATION.** Except for actions to protect intellectual property rights and to enforce an arbitrator's decision hereunder, all disputes, controversies, or claims arising out of or relating to these Terms or a breach thereof shall be submitted to and finally resolved by arbitration under the rules of the American Arbitration Association ("AAA") then in effect. There shall be one arbitrator, and such arbitrator shall be chosen by mutual agreement of the parties in accordance with AAA rules. The arbitration shall take place in Delaware, and may be conducted by telephone or online. The arbitrator shall apply the laws of the State of Delaware, USA to all issues in dispute. The controversy or claim shall be arbitrated on an individual basis, and shall not be consolidated in any arbitration with any claim or controversy of any other party. The findings of the arbitrator shall be final and binding on the parties, and may be entered in any court of competent jurisdiction for enforcement. Enforcements of any award or judgement shall be governed by the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Should either party file an action contrary to this provision, the other party may recover attorney's fees and costs up to \$1,000.00.
19. **JURISDICTION AND VENUE.** The courts in the State of Delaware and the U.S. District Court for the District of Delaware that Axolotl so chooses, shall be the exclusive jurisdiction and venue for all legal proceedings that are not arbitrated under these Terms.
20. **CONTROLLING LAW.** These Terms shall be construed under the laws of the State of Delaware, excluding rules regarding conflicts of law. The application of the United Nations Convention of Contracts for the International Sale of Goods is expressly excluded.
21. **FORCE MAJEURE.** Axolotl shall not be liable for damages for any delay or failure of delivery arising out of causes beyond their reasonable control and without their fault or negligence, including, but not limited to, Acts of God, acts of civil or military authority, fires, riots, wars, embargoes, internet disruptions, hacker attacks, or communications failures.
22. **ENTIRE AGREEMENT.** These Terms constitute the entire agreement between the parties regarding its subject matter and supersedes all prior communications, negotiations, understandings, agreements or representations, either written or oral, between the parties regarding its subject matter and any other Axolotl documents or terms.
23. **SUCCESSION AND ASSIGNMENT.** These Terms bind and inure to the benefit of the parties and their permitted successors and assigns. Neither party may assign these Terms in whole or in part, or any of its rights, interests, duties or obligations under these Terms, without the prior written approval of the other party.
24. **COUNTERPARTS.** These Terms may be executed in one or more original counterparts, all of which together will constitute one agreement, and facsimile signatures will have the same effect as original signatures.
25. **SEVERABILITY.** If any provision of these Terms are held invalid or unenforceable, the remaining provisions of the Terms will be unimpaired and the invalid or unenforceable provision will be replaced with a provision that is valid and enforceable and that comes closest to the parties' intention underlying the invalid or unenforceable provision.