



# General Terms and Conditions of Delivery and Service (GTC)

Axians Infoma GmbH

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## 1. Validity of the General Terms and Conditions of Delivery and Service

- 1.1** These General Terms and Conditions of Delivery and Service (“GTC”) apply in addition to and are subordinate to the individual agreements between the company indicated above (“Axians”) and the customer with respect to deliveries and services provided by Axians “contractual services”). General Terms and Conditions of the customer are expressly not part of this agreement, even if Axians does not explicitly object to them. In any case, by accepting the contractual service the customer declares their recognition of these GTCs and the waiver of their own GTCs.
- 1.2** These GTCs shall apply exclusively to companies and legal persons under public law.
- 1.3** The relevant conditions of the manufacturer, to which the following text refers, shall apply in addition to and shall take priority for contractual services which Axians purchases from third parties, in particular manufacturers (“manufacturers”).

## 2. Contractual conclusion, payment conditions, and prices

- 2.1** After the customer places an order, the contract comes into effect through an order confirmation or a delivery.
- 2.2** Offers by Axians are non-binding. Prices do not include the respective statutory VAT. All invoices are due for payment immediately without discount, unless the individual agreement grants a payment period.
- 2.3** If the customer falls into default of payment, Axians is entitled to reserve further contractual services.

## 3. Delivery and shipping

- 3.1** All delivery dates Axians provide are only binding if expressly agreed.
- 3.2** Amendments or supplements to the individual order must be approved by Axians. The same applies if failure to adhere to a binding delivery deadline can certifiably be traced back to mobilization, war, rioting, strikes or lockouts, or any other circumstances for which Axians is not responsible.
- 3.3** Services by manufacturers are provided conditional upon correct and contractual self-delivery. Delayed services due to problems with self-delivery shall lead to an appropriate extension of the relevant service deadline.
- 3.4** Costs for shipping and transportation insurance shall generally be borne by the customer. Service deadlines shall be considered fulfilled, and risk shall be transferred to the customer, once Axians or the manufacturer provides the delivery to the transportation company for shipment, in case of direct deliveries.
- 3.5** The inspection and complaint obligations under Sections 377, 381 para. 2 HGB (German Commercial Code) must be fulfilled in writing promptly after goods are received at the destination,



including the delivery slip and/or invoice number. If Axians loses any claims against the insurance company or its sub-suppliers because this obligation is not fulfilled, the customer shall be liable for all costs resulting from this legal loss.

**3.6** Partial deliveries are permitted if this would be reasonable for the customer.

#### **4. Customer cooperation**

**4.1** The customer shall support Axians to a reasonable extent in performing our contractual services.

The customer shall, in particular, provide the necessary information and documents in full and in a timely fashion. Axians is not obligated to check the information and documents received for correctness and completeness.

**4.2** The customer shall provide Axians with the necessary system access for remote work and shall provide work stations for employees for work completed on site, as well as the necessary working environment, free of charge.

**4.3** The customer bears all responsibility for project planning. The customer will review progress of the work and notify us as part of the quality assurance process if they see any reason to make a complaint. The customer is obligated to complete an internal quality assurance process before putting products into operation.

**4.4** The customer is responsible for backing up data. The customer must do so regularly, and at least daily, using data backup measures corresponding to state of the art technology.

#### **5. Retention of Ownership**

**5.1** Goods delivered by Axians shall remain our property until all claims resulting from the business relationship between Axians and the customer are paid in full.

**5.2** The customer is entitled to resell and/or modify the reserved goods as part of its normal business processes, unless otherwise stated in the following, and insofar as the manufacturer guidelines and software licensing conditions are complied with. However, they are not entitled to pledge the goods or use them as a security. This shall not serve as the basis for any other rights.

**5.3** The customer hereby already assigns all claims resulting from resale of the reserved goods to Axians in the amount of the agreed purchase price by way of precaution; Axians hereby accepts this assignment. Axians will only agree to a resale if the above assignment declaration can result in a valid right of subrogation. If the reserved goods are resold along with other goods, no matter whether before or after any modification, combination, mixing, or commingling, the above agreed advance assignment shall only apply in the amount invoiced for the reserved good which is resold along with the other goods.

**5.4** The customer is entitled to collect claims assigned to Axians in advance on Axians' account in its own name until this entitlement is revoked by Axians. The authorization to collect shall expire even without express revocation if the customer does not fulfill its obligations towards Axians or falls into financial difficulties, and in particular if insolvency proceedings are pending, or if there is concern that they will not be able to pay the collected amounts to Axians. In case of advance



payments on wage claims assigned to Axians in part, the customer is obligated to first offset the advance payments against the part of the claim not assigned to Axians. The partial amount not assigned to Axians shall always be considered repaid first by the advance payments collected by the customer between Axians and the customer.

- 5.5** Axians is obligated to release the securities to which Axians is entitled upon request by the customer insofar as the realizable value of Axians' securities exceeds the claims to be secured by more than 20%; Axians is entitled to select the securities to be released.

## **6. Rights of Use**

- 6.1** The following conditions shall apply to all industrial property rights obtained by Axians, in particular to software and other results ("work results"). The "Axians Infoma software licensing terms" shall apply to software, and shall take priority over the following conditions. These are available in the [meine.infoma.de](http://meine.infoma.de) customer portal..
- 6.2** If rights are not expressly granted to the user under these conditions, all rights to work results shall be granted solely to Axians. Axians is entitled to use these commercially at its own discretion.
- 6.3** The customer shall be granted a simple, non-transferable right of use for its own internal business purposes to the work results upon full payment of the agreed compensation. If not otherwise agreed, the right of use shall be granted for an unlimited term. The right of use to work results does not include the right to rent, lend, sub-license, distribute, publicly disclose, or otherwise provide work results to third parties outside of the customer's company. The right to duplication shall exist for the purpose of making back-ups. Conditional upon other legal regulations, editing, decompiling, or otherwise obtaining the source code for work results in the form of software in full or in part is not permitted. Results are transmitted in a machine-readable format without source code.
- 6.4** If work results contain open source software, the customer shall receive rights of use according to the applicable licensing conditions of the open source software.
- 6.5** The customer hereby recognizes that compliance with the terms of use applicable to the respective software is required for rights to be granted, and that the rights may be removed if these conditions are violated.
- 6.6** In case of temporary rights of use, the customer shall return work results to Axians after the end of the agreement and shall delete all copies made.

## **7. Guarantee for Hardware and Software**

- 7.1** Axians guarantees that the contractual services are free from defects. This freedom from defects shall be determined in accordance with the respective applicable online help function within the software. Axians and the customer agree that explanations and descriptions included in the online help function and/or product brochures or offers do not represent guarantees of certain characteristics or warranties for either the hardware or software.



- 7.2** The guarantee term shall be one (1) year and shall begin on the date of delivery or upon provision of access rights to the software. The customer must notify Axians of any defects found during the warranty term promptly and in writing. Software defects must be reported in a reproducible and traceable manner.
- 7.3** Axians shall provide supplementary fulfillment for material defects at its own discretion through reworking or providing a replacement. Axians is entitled to correct a specific defect three (3) times. Supplementary fulfillment shall also include providing a bypass solution.
- 7.4** Axians shall provide supplementary fulfillment for legal defects at its own discretion through (1) obtaining rights of use to the contractual service or (2) delivering an amended contractual service free from legal defects. If Axians is not able to provide supplementary fulfillment, or if this would be unreasonable, the customer has the right to withdraw from the agreement after repaying the use obtained. However, the guarantee that the contractual object is free from third party rights applies only to Germany.
- 7.5** If third parties lodge claims against the customer due to legal defects, Axians must be informed of this promptly and in writing. The customer authorizes Axians or the manufacturer to carry out claims against third parties either within or outside of a court of law on its own accord. Axians or the manufacturer are entitled, but not obligated, to defend against claims at their own cost. If a complaint is brought against the customer, they will coordinate with Axians and only take actions within the litigation, in particular giving confessions or taking settlements, with approval by Axians.
- 7.6** If the customer has made a warranty claim against Axians, and if it becomes clear that there either is no defect or that the asserted defect does not obligate Axians to fulfill the warranty, the customer must reimburse any expenses Axians has incurred.
- 7.7** The warranty shall lapse, in particular, if the customer changes the contractual services independently without the approval of Axians, or allows third parties to make such changes, unless the customer fully certifies that the defects in question were not caused either in whole or in part by such changes.
- 7.8** Documentation may be provided in English. The same is true if the contractual object is generally only available for delivery in an English-language version. This shall not be grounds for any defect complaint.
- 7.9** Axians shall guarantee standard software and hardware from manufacturers only to the extent to which the manufacturer accepts such a guarantee towards Axians under its conditions. Properties are based on the current valid product descriptions and terms of use from the manufacturer, about which the customer has informed itself before concluding the contract.

## **8. Supplementary Conditions for Factory Services**

- 8.1** If acceptance is required or agreed regarding a contractual service, Axians will inform the customer when services are complete. The customer will inspect the services within two (2) weeks from the notification of completion. Acceptance shall be declared at the latest if the customer does not provide notification of any significant defects after this term, and/or begins operations with the



contractual service. Acceptance may not be refused due to insignificant defects. Incomplete documentation, in particular, shall be deemed insignificant.

- 8.2** If Axians provides a partial service in accordance with the agreement, Axians may request acceptance of the partial service. The regulations of clause 8.1 apply accordingly.
- 8.3** The regulations of clause 7 apply accordingly to the guarantee.
- 8.4 (1)** After the conclusion of the contract, the customer may request changes to the scope of services within Axians' abilities, unless these would be unreasonable for Axians. Change requests must be submitted in writing.
- (2)** Axians will review the customer's change request and inform the customer within 10 days whether the change request is reasonable and enforceable. If an extensive review of the change request is required, Axians shall submit a review offer with information on compensation.
- (3)** The customer will accept or reject the implementation or review offer from Axians within the binding offer term. Agreed changes in services will be documented in writing and in a binding manner by making relevant changes to the contract.
- (4)** If the required change in the contractual agreements is not completed within the binding offer period for the implementation offer, work will be continued based on the agreement. The service period shall be extended by the number of business days on which work was interrupted due to the change request or review of the change request. Axians may request the agreed compensation for the duration of the interruption or an appropriate increase in the agreed fixed price unless Axians has used its employees affected by the interruption in some other manner or has maliciously neglected to use them in some other manner.
- 8.5** In case of termination in accordance with Sec. 649 BGB (German Civil Code), Axians shall retain its claim to the agreed compensation, and at least the listed unavoidable costs and expenses.

## **9. Supplementary Conditions for Services**

- 9.1** Axians shall complete contractual services according to the performance specifications defined in the offer or separately. Any consulting services also include selecting and utilizing third party companies. If no right to co-determination was expressly agreed for the client, third parties shall be selected in consideration of the basic principle of maintaining a balance between economic efficiency and the best possible success for the client.
- 9.2 (1)** Above a minimum volume of 10 service days, Axians shall prepare a project plan and agree upon it with the customer based on the contract granted. A joint project controlling document will be prepared for this purpose. Deadlines (milestones) indicated there are considered declared intentions based on current available knowledge. Axians shall prepare project status reports regularly alongside the customer, and at least on a quarterly basis.
- (2)** Services performed shall be recorded in the service report. The customer must review this report for correct content and confirm that it is correct. Service reports shall generally be sent via e-mail. They will be considered approved if the customer does not indicate any objections or requests for changes within two weeks after receiving the service report.



**(3)** Axians shall prepare logs of work and tasks completed on the project, or shall update project controlling documents accordingly. These documents will be submitted to the customer in writing or via e-mail. The customer shall review the logs and project documents for correctness. These shall be considered approved and appropriate if the customer does not indicate any errors or requests for changes within two weeks after receipt. The parties will communicate regularly and inform one another regarding open points during the course of the project. Both parties will work to ensure these are documented and solved.

**9.3** In general, if not otherwise agreed flat rate payments shall be made for services provided on site:

- Duration up to 4 hours: 0.5 daily flat rate
- Duration over 4 hours: 1 daily flat rate
- Duration over 8.5 hours: 1 daily flat rate plus time over 8.5 hours calculated to the quarter hour (at the hourly rate).
- Tätigkeiten für den Kunden im Axians Büro / Backoffice werden viertelstundengenau nach Aufwand zum Stundensatz bereWork for the customer performed in the Axians office / back office shall be invoiced to the quarter hour based on work performed and the hourly rate.

If not otherwise agreed, invoices shall be sent monthly at the start of the following month.

Compensation by hours worked shall be paid after receipt of a proper invoice and the proof of performance (service report) issued by Axians and approved by the customer through counter-signing, unless some other form of proof of performance is agreed upon. The proof of performance / service report will be considered approved if and insofar as the customer does not assert any complaints within 14 days after receiving it.

**9.4** The compensation to be paid for the service does not include travel expenses or per diem rates.

These are paid separately according to Axians' applicable travel expense categories. Per diem rates are charged per day and employee.

**9.5** Any compensation paid in advance or already due will not be reimbursed or credited, even if services are not used within the agreed time period. Ordered service contingents must be paid in advance. These must be called off annually and paid unless some other time period has been agreed upon. Any services used beyond this service contingent shall be invoiced by hours worked or partial 15 minute period worked based on the current valid Axians pricing list.

**9.6** Deadlines agreed upon with the customer must be complied with. If the customer does not allow Axians to complete its work on the agreed date, or does not allow it to work for the entire work day, the agreed compensation must still be paid. If the customer cancels the date at the latest seven days in advance, half of the agreed compensation shall be owed. The customer is entitled to prove that damages were lower.

**9.7** If Axians does not complete the service in accordance with the contract in a culpable manner, it is entitled to fulfill the service according to the contract within a reasonable time period. In order for this to apply, the customer must have submitted a prompt written complaint regarding the issue.



## 10. Supplementary Conditions for Maintenance, Servicing and Other Long-Term Agreements

**10.1** Axians shall service its own software according to the performance specification in the individual agreement. Axians shall correct errors, faults, and defects within an appropriate time period. It is not responsible for providing any solution.

Axians shall provide the customer with appropriate maintenance and servicing agreements, along with its deliveries of hardware and software. The manufacturer's relevant product description applies to the scope of these services, and the customer is responsible for reading said product descriptions before concluding the contract. Clause 7.6 (errors outside of Axians' sphere of responsibility) shall apply accordingly.

**10.2** The term of the agreement shall be determined based on the individual contract. Manufacturer maintenance and servicing agreements are generally automatically extended and their term renewed if they are not terminated promptly before expiration. Axians will inform the customer of these termination deadlines upon request.

**10.3** Axians is entitled to terminate the agreements by way of extraordinary termination for just cause. Just cause shall be considered to exist if the customer (1) does not pay compensation owed two (2) weeks after a warning, (2) culpably violates significant provisions of the individual agreement and/or Axians' terms of use or those of third party suppliers, or (3) if an application for insolvency proceedings is opened against the customer's assets.

**10.4** Terminations must be made in writing.

**10.5** If the individual agreement provides for premature termination, the customer shall pay a cancellation fee plus VAT. The cancellation fee for a fixed contractual term of 24 months shall be 30% of the agreed annual service fee (without considering the discount for advance payment), or for a term of 36 months shall be 35%, for 48 months 40%, and for 60 months 45%. Compensation already paid in advance shall be credited on a percentage basis to the customer in consideration of any cancellation fees.

## 11. Limitation of Liability

Axians shall be liable for claims for damages and for compensating lost expenses under the following conditions:

In full,

- a) In cases of injury to life, body, or health;
- b) Under the Product Liability Act;
- c) If damages are caused intentionally or in case of problems with guaranteed properties;
- d) If damages are caused through gross negligence;

Otherwise, liability shall be limited to 30% of compensation for the service related to the damages, and to a further maximum of 100,000 EUR per incident, or to a total of 250,000 EUR from the relevant agreement.

Axians' liability – except in the cases of a) to c) – for indirect or subsequent damages such as lost profits, downtimes, pecuniary losses, lost data, or damaged data, shall be excluded.



Liability claims – except in the cases of a) to c) – shall expire one year after the start of the statutory expiration period.

## **12. Confidentiality / data privacy**

**12.1** The customer hereby undertakes to treat all data and information from Axians received in conjunction with carrying out individual agreements as confidential for an unlimited term, and to only use it for the purpose of carrying out the individual agreement. The confidentiality obligation shall not apply to information that is (1) already publicly known upon transmission or was known to the customer (2) becomes publicly known after its transmission by the customer or third parties without culpability, (3) is independently developed by the customer without using Axians company secrets, or (4) must be published by law, official disposition, or court decision – if the customer informs Axians of this promptly and supports Axians in defending against such dispositions or decisions.

**12.2** Axians complies with data privacy regulations, in particular if Axians is granted access to a customer's company, hardware, or software. Axians does not intend to process or use personal data on behalf of the customer. On the contrary, personal data is only transferred in exceptional cases and as a side effect of our performance of Axians' contractual services. Axians handles personal data in accordance with data privacy law regulations and contract processing agreements concluded.

**12.3** The customer shall not grant Axians access to personal information of affected parties unless this is necessary to achieve the purpose of the agreement. In such cases, the customer shall encrypt the personal information in such a manner that it cannot be associated with any affected party.

## **13. Export**

If a domestic purchaser delivers the goods internationally, the customer is responsible for reviewing whether the exported goods are subject to restrictions under the German Foreign Trade & Payments Act, the EU Dual Use Ordinance, or US foreign trade law.

## **14. Reference customer list**

The customer grants Axians the right to include its name in a list of reference customers. Axians may use the name for advertising purposes, either verbally or written, including electronically, in restricted or publicly accessible media, at any time, in order to refer to our collaboration. However, Axians may only do so in an appropriate manner reasonable for the customer. The same applies to any images of the company logo / management logo.

## **15. General**

**15.1** The customer may only assign their rights resulting from a business relationship with Axians with Axians' written consent. The customer is only entitled to offset a recognized or legally established





counter-claim against the claim for the purchase price, unless the customer asserts rights due to a defect.

**15.2** In case of differences of opinion and disputes in conjunction with the agreement, the parties will attempt to come to a joint solution.

**15.3** If a provision of this Agreement is or becomes invalid, this shall not affect the legal validity of the remaining clauses. A valid provision coming as close as possible to the economic purpose pursued by the parties will be considered agreed in place of the invalid provision.

**15.4** Conclusion of the agreement and later contractual amendments and supplements shall require the written form to be valid. This also applies to amendments to this clause. No oral ancillary agreements have been made.

**15.5** The exclusive place of jurisdiction shall be Ulm. German law shall apply, with the exclusion of UN sales law (CISG).