

# General Terms and Conditions of Purchase

VINCI Energies - Geschäftsbereich ICT\* -

// June 2019

\* valid for the following entities:

Axians IT Solutions GmbH, Axians eWaste GmbH, Axians Industrial Applications & Services, Axians NEO Solutions & Technology GmbH, Axians Digital Acceleration GmbH, Axians IT Security GmbH

## 1. Scope; Conclusion of the Contract

- 1.1 These General Terms and Conditions of Purchase apply in addition to, and subordinate to, the individual contracts concluded between one under \* defined companies ("Axians") and the supplier regarding delivery of goods and provision of services of supplier. Other General Terms and Conditions of Business, in particular General Terms and Conditions of Delivery of the suppliers shall not apply, even if they have not been expressly rejected in individual cases, or even if the services ordered have been accepted unreservedly.
- 1.2 These Terms and Conditions of Purchase are applicable, in particular, to IT services. IT services can be any kind of goods or services relating to the use of information technology, in particular the purchase of soft-ware and hardware as well as cloud and hosting products, the development of software programmes, as well as every form of consultancy, concept creation and training. Axians is an ISO 27001-certified company with high security standards. The IT goods or services provided by suppliers must comply with the IT security guidelines of Axians, to which reference is made in the corresponding section of these Terms and Condi-tions of Purchase.
- 1.3 The acceptance of the order constitutes a concluded contract. Ordering and acceptance must always be in written form in order to be binding. Similarly, a contract shall be regarded to have been concluded when the supplier begins performing the service following receipt of the order.
- 1.4 Verbal agreements of every kind must be confirmed in writing by Axians in order to become valid.
- 1.5 If the supplier fails to accept the order within two weeks of receipt, Axians shall be entitled to withdraw it, without incurring costs.
- 1.6 The contract consists of the components, listed in the following order
  - Order from Axians,
  - General Terms and Conditions of Purchase of Axians in the respective valid form.In addition, all the laws, guidelines and standards, particularly regarding IT security, occupational health and safety and environmental protection are to be observed.

## 2. Compliance with the principles of the United Nations Global Compact and the VINCI Ethic Charter

**2.1** By joining the Global Compact of the United Nations, Axians as an affiliate of VINCI commits itself and its suppliers to comply with the Global Compact. The VINCI Code of Ethics and the Code of Conduct against Corruption establish additional rules of conduct, which must also be observed by suppliers and subcontractors. The VINCI Manifesto, Code of Ethics and Code of Conduct on Corruption are available on the VINCI website.

**2.2** VINCI is committed to comply with the international standards set out below, and also its suppliers and subcontractors:

- The Universal Declaration of Human Rights
- The United Nations Principles on Business and Human Rights
- The Convention of the International Labour Organisation (ILO)
- The OECD Guidelines for Multinational Enterprises
- The International Covenant on Civil and Political Rights (ICCPR)
- International Covenant on Economic, Social and Cultural Rights (IPwskR)

**2.3** Compliance with the principles of the Global Compact and the VINCI Code of Ethics includes in particular,

- respect for human rights
- ensuring the safety of each individual employee
- ensuring adequate working conditions (abolition of forced labour, child labour and discrimination of any kind)
- prudent management of the environment (promotion, development and dissemination of environmentally friendly technologies)
- the fight against all forms of corruption
- compliance with the legal standards of the countries in which VINCI operates

**2.4** The supplier undertakes to inform Axians immediately of any infringements of the above principles occurring in his business area.

**2.5** Violations of the conditions and obligations set forth in §§ 2.1 – 2.4 above by suppliers shall be deemed to be a breach of material contractual obligations and shall entitle Axians to terminate existing contracts for good cause or to rescind them for breach of duty.

### **3. Performance; Consequences of Exceeding Deadlines**

**3.1** The services are to be performed in compliance with the specifications agreed in the contract. Partial performance is not permitted without the approval of Axians. The supplier shall regularly inform Axians of the progress of the services to be performed.

**3.2** Agreed deadlines are binding. Circumstances which prohibit or delay their observance are to be reported im-mediately to Axians. Decisive for the observance of the performance deadline shall be

the performance or provision of the service at the place of performance specified in the order. If no place of performance is specified, the service is to be provided at the respective business address of the Axians office placing the order.

- 3.3** The Supplier shall be obliged to ensure that the goods or spare parts supplied can be delivered to Axians on reasonable terms for a period of 10 years after the last delivery. If, during or after this period, the Supplier intends to discontinue the delivery of such goods or spare parts, it shall immediately notify Axians thereof in writing and give Axians the opportunity to place final orders.
- 3.4** For the event of a delay in performing the agreed services, Axians shall – unless otherwise expressly agreed – be entitled to contract penalties amounting to 0.5 %, max. 5 % of the overall order value for each full week of overrun. Furthermore, Axians shall also be entitled to the statutory rights. The unreserved acceptance of the delayed performance does not constitute a waiver of rights of any kind.

#### **4. Prices; Payment Terms; Transfer of Risk**

- 4.1** If no special agreement has been made, the prices shall be understood as fixed prices and "DDP delivery address" (according to INCOTERMS 2010) including insurance and packaging without value added tax.
- 4.2** Invoices can only be processed when they – in keeping with the stipulations in the order – show the order number and other references indicated therein; the supplier shall be responsible for any consequences arising from the non-observance of this obligation, unless he can prove that he cannot be held liable.
- 4.3** Unless otherwise agreed, following performance or acceptance of a service, Axians shall settle verifiable in-invoices within 14 days of receipt with 3% discount, or within 30 days with 2 % discount, or within 90 days net. Payment does not signify acceptance of performance.

#### **5. Dispatch in the Case of Delivery of Goods**

- 5.1** Notification of the dispatch of goods is to be provided, at the latest, at the time of departure of the goods from the supplier's plant. Notifications of dispatch, bills of lading and packet addresses must show the address for shipment and the order number, including the item number. Dispatches for which Axians is to bear the freight costs either partially or in full, are to be sent at the most economical freight rates or in accordance with the shipping instructions of Axians. The shipping instructions, in particular the place at which delivery is to ensue, are to be shown on the order.
- 5.2** In order to avoid transport damage resulting from the absence or inadequacy of load securing, the supplier must have the load secured by the collecting forwarder.

#### **6. Packaging**

- 6.1** The supplier undertakes to dispatch the goods only in such packaging as is eco-friendly in terms of type, form and size and complies with the German Packaging Regulation in its respectively valid version as well as with all regulations regarding the packaging of its goods.

**6.2** Regardless of whether the packaging concerned is transport packaging, sales packaging or outer packaging, the supplier agrees to take it back after use, free of charge, and to pass it on for renewed use or material recycling outside of the public waste disposal system.

## **7. Acceptance**

**7.1** The supplier shall make the service available for acceptance to Axians following contract-compliant completion. Software programmes will be supplied with due documentation.

**7.2** Axians will issue acceptance of the service when the service complies with the contractually-agreed technical specifications. To this end, Axians will inspect the service in accordance with the agreed acceptance criteria. Faults which become apparent during this acceptance procedure shall be immediately rectified by the supplier.

**7.3** If Axians refuses acceptance on the grounds of non-compliance with the acceptance criteria, the supplier shall repair the service immediately in such a way as to ensure that it complies with the specifications of the contractual services. The acceptance process shall be repeated after the repair.

**7.4** Acceptance shall be provided through the signing of an acceptance protocol by both parties.

## **8. Liability for Defects**

**8.1** The supplier shall be liable for ensuring that the service is free of material defects and defects of title. Prior to its delivery or installation on a system belonging to Axians or a system belonging to the final customer, as well as during the entire period of short-term provision on systems belonging to the supplier, the supplier shall test the goods or services for viruses, Trojans and other malware using state-of-the-art inspection and analysis processes, in order to warrant freedom from malware. The supplier shall inform Axians immediately of incidents of every kind

**8.2** The supplier must begin with the rectification of faults immediately. If the supplier delays in so doing, Axians can eliminate the fault itself, or have it eliminated by third parties.

**8.3** Furthermore, Axians shall be entitled to the full statutory rights to claim damage for defects, unless otherwise agreed.

**8.4** If claims are made against Axians by third parties as a result of third party rights being infringed in the context of the services performed, or goods supplied, by the supplier, the supplier shall be obliged to indemnify Axians from these claims upon first request. The supplier's indemnity obligation relates to all expenses arising for Axians out of, or in relation to, the claims asserted by a third party. In a case of infringement, the supplier shall be obliged to obtain for Axians, free of charge, the right to use the goods or services as agreed in the Contract or to alter the goods or services so that they provide the contractually agreed performance without infringing third party rights.

**8.5** Unless otherwise agreed, rights to claim damage for defects become time-barred – except in cases of fraudulent intent - in 36 months counted from the transfer of risk. If the supplier meets his

supplementary performance obligation by way of replacement delivery, the period of limitation commences anew with de-livery of the replacement goods.

- 8.6** The provisions of §§445a and 445b BGB as well as the mandatory provisions of delivery recourse shall remain unaffected.

## **9. Property Rights of Axians**

- 9.1** Axians shall remain the owner of all the documents and items placed at the disposal of the supplier, in particular programmes and licences. Duplications may only be made for the purpose of providing the contractually-agreed goods or services. They must be stored with all due care and returned to Axians upon completion of the contract.
- 9.2** Programmes and licenses may only be used in compliance with the terms of use of the sub-supplier or Axians.
- 9.3** If, through processing, transformation or similar actions pursuant to § 950 BGB, the supplier acquires ownership of the newly-created item, Axians can demand restoration of the former status or compensation for the losses incurred as a result of the loss of ownership.

## **10. Rights of Use**

- 10.1** Axians shall acquire the exclusive, irrevocable usage rights to all performance outcomes achieved for Axians, in particular individual software which is part of the scope of delivery, including its documentation, without restriction as regards time, territory or content.
- 10.2** This right shall include the complete or partial use of the performance outcomes in its own or third-party premises in accordance with all types of use, including such use still unknown today.
- 10.3** The supplier shall retain the right to continue using the standard programmes for third parties, as well as the expertise deployed in achieving the performance outcomes. However, a duplication of the performance outcomes achieved, or parts thereof, is not permitted.

## **11. Change Request**

- 11.1** Even following conclusion of the contract, Axians may demand alterations to the agreed goods or service unless this is unreasonable for the supplier from a technical or financial perspective and the supplier refuses the request to make changes within five working days of receipt of the request.
- 11.2** In the case of objection, the supplier must submit a new offer to Axians within 10 working days, which ultimately gives consideration to the technical and financial consequences.
- 11.3** Axians shall examine the new offer within an appropriate period. If Axians accepts this offer, the supplier shall execute the services in accordance with the new offer.

## **12. Employees of the Supplier, Subcontractors**

- 12.1** If the supplier performs the work in the premises of Axians, the supplier must observe the security regulations valid there, in particular the information security guidelines, which Axians will place at

his disposal on re-request. Similarly, the supplier must observe these guidelines without fail in carrying out the work.

**12.2** In executing the contractually agreed work, the supplier may deploy subcontractors only with the prior written consent of Axians. The supplier may not unreasonably refuse his consent. In the event of the provision of consent, the supplier shall be obliged to grant the subcontractor the same rights and subject him to the same obligations as apply to the supplier vis-a-vis Axians.

**12.3** The supplier shall instruct the employees and subcontractors deployed for the provision of the service in accordance with the security regulations made available pursuant to § 15 of this T&Cs and ensure that these are aware of the necessity to observe the security regulations. He will ensure that neither his employees nor his sub-contractors procure access extending beyond the normal approval process and bind them according to un-failing observance.

**12.4** If the provision of the service ends for whatever reason, the supplier shall ensure that all access possibilities to the systems, buildings and premises obtained are returned or cancelled.

### **13. Confidentiality**

**13.1** The supplier is obliged to treat trade secrets of Axians as confidential for an unlimited period and to refrain from imparting them to any third party. Trade secrets shall be taken to mean all information obtained within the framework of the execution of the contract. In this context, employees may only be granted access to trade secrets to the extent necessary for the execution of the contract. Employees authorised in this way are to be bound to maintaining confidentiality in accordance with these conditions.

**13.2** The above obligations shall not apply for trade secrets, which

- (i) were already known to the other party prior to their disclosure,
- (ii) became known to the other party without fault following their disclosure,
- (iii) were developed by the other party independently and without exploitation of the trade secrets,
- (iv) the other party must disclose by law, official order or court decree, provided the party was granted sufficient time to ward off these measures.

**13.3** Following complete execution and acceptance of the work, the supplier must destroy all trade secrets acquired, as well as all data carriers or other physical documentation, in full, without being specifically requested to do so, and confirm their destruction in writing.

**13.4** If Axians or a third party commissioned by same must access storage media of the customer in the context of the execution of the contract, the customer shall ensure that access to personal data is prevented or restricted to the greatest possible extent. Axians shall bind its vicarious agents charged with the execution of the contract to observing the data protection regulations. Should the access exceed the extent described above as an incidental consequence of the execution of the contract, the customer shall conclude a contract data processing agreement with Axians.

### **14. Data Protection Act**

The supplier shall be obliged to observe the terms of the Data Protection Law in the respective valid version. He may only deploy such persons for the performance of the work as have been correspondingly instructed and obligated with regard to data secrecy.

He will also observe the technical and organisational measures agreed with Axians IT Solutions GmbH and, on request, issue corresponding proof and declarations to Axians.

Axians shall be entitled to audit the supplier in his business premises with regard to the observance of the Federal Data Protection Act. The supplier shall grant Axians IT Solutions GmbH the necessary access, documentation and information.

## **15. Information Security**

The supplier is aware of the special necessity of comprehensive protection of information and data. He shall secure the data and information of Axians and its customers in accordance with the state of the art against every form of unauthorised access, alteration, destruction or loss, unauthorized transmission, pro-cessing and other misuse. The securing shall be undertaken by means of precautionary and other measures corresponding to the state of the art and the security guidelines of Axians ("information security measures"), available under

<https://www.axians.de/wp-content/uploads/sites/3/2019/05/Informationssicherheitsrichtlinie-für-Lieferanten.pdf>

## **16. Duty to Supply Information, Audits**

**16.1** The supplier shall be obliged to inform Axians immediately of every incident relating to information security measures, as well as every suspicion of a possible incident and/or breach. By arrangement with Axians, the supplier shall take measures to prevent negative consequences for those affected and to prevent further incidents and breaches in the future. The same shall apply for incidents and breaches which become apparent during the performance of the work. On request, the supplier is obliged to provide information on the observance of the information security measures.

**16.2** Axians shall be entitled to inspect the measures for the observance of the confidentiality, data protection and information security provisions of these Terms and Conditions of Purchase during the usual working hours in the premises of the supplier, or to have them inspected by a third party. To this end, the supplier shall afford Axians discovery, access and information rights regarding all the necessary documentation, financial reports, systems and other material which are of relevance to the business operations of the supplier.

## **17. Quality assurance**

The supplier shall provide the performance in compliance with suitable quality assurance systems, e.g. DIN EN ISO 9001 ff, 14001 ff, or equivalent. Axians is entitled to demand proof of this quality assurance and to satisfy itself of the manner in which it is carried out by means of on-site inspections and controls.



## **18. Insolvency of the Supplier**

If the supplier discontinues his payments or if the supplier or one of his creditors instigates insolvency proceedings regarding his assets or applies for comparable proceedings for debt clearing, Axians shall be entitled, notwithstanding other statutory or contractual rights, at his discretion, to terminate the contract with immediate effect, to withdraw from the contract and/or to enter into the supplier's contracts with his subcontractors.

## **19. Compliance/Export Control**

**19.1** The supplier undertakes to take no action, or to desist from action, which could lead to criminal liability for fraud and breach of trust, offences under competition law or comparable offenses on the part of the supplier.

**19.2** For the event of unlawful conduct on the part of a supplier, Axians shall have an extraordinary right to withdraw from or terminate all contracts existing with the supplier.

**19.3** Upon request, the Supplier shall be obliged to submit Supplier Declarations which meet the requirements of Regulation (EC) 1207/2001. He shall make these available in good time, at the latest upon acceptance of the order. If long-term supplier's declarations are used, the supplier must inform us of any changes in the origin of the goods by accepting the order without being requested to do so. The actual country of origin must always be stated in the delivery documents, even if there is no entitlement to preference.

**19.4** Upon request, the supplier is obliged to inform Axians in writing of all further foreign trade data relating to the goods and their components and to inform us immediately in writing of any changes to the data specified in § 19.3 of this T&Cs.

## **20. Termination of the Contract on the Grounds of Breach of Duty**

**20.1** Axians shall be entitled to withdraw from an order, or in the case of continuing obligation, to terminate it if a supplier infringes his obligations arising from the order and fails to make good within a period of grace granted by Axians.

**20.2** In the event of termination due to a breach of duty by the supplier, the services rendered shall only be remunerated to the extent that Axians can use them as intended.

## **21. Contract Penalty**

Each infringement of the obligations assumed under §§ 13, 14, 15, 16 and 17 of this T&Cs shall be subject to a contract penalty to the amount of EUR 25,000. Further compensation claims of Axians against the supplier remain unaffected. The contract penalty will be set off against the compensation claim.

## **22. General Terms and Conditions**

**22.1** The assignment of claims is precluded without the express written approval of Axians.



- 22.2** The Contract shall be subject to the laws of the Federal Republic of Germany. The application of the UN Convention on Contracts for the International Sale of Goods is precluded.
- 22.3** Court of jurisdiction shall be the court responsible at the official business address of Axians. However, Axians shall be entitled to take action against the supplier at the general court of jurisdiction of same.
- 22.4** Should individual provisions of these General Terms and Conditions of Purchase be or become invalid, either partially or in full, the validity of the remaining provision shall not be affected. The invalid provision shall be replaced by a provision which comes closest in economic intent to the invalid provision.