

# General Terms and Conditions of Delivery and Service

Vinci Energies – Geschäftsbereich ICT\* -

// August 2019

\* valid for the following entities:

Axians IT Solutions GmbH, Axians eWaste GmbH, Axians Industrial Applications & Services, Axians Neo Technology & Solutions GmbH, VESI IT Service GmbH

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

- 1.1 These General Terms and Conditions of Delivery and Service (“T&C”) apply in addition to, and subordinate to, the individual contracts concluded between one under \* defined companies (“Axians”) and the customer regarding delivery of goods and provision of services by Axians (“contractual services”). The customer's General Terms and Conditions of Delivery and Service are excluded expressly even if not expressly rejected by Axians. With acceptance of the contractual services, the customer agrees to these T&Cs, waiving his own T&Cs.
- 1.2 The T&Cs shall apply exclusively to companies and corporate bodies under public law.
- 1.3 In respect of contractual services, which Axians procures from third parties, in particular manufacturers (“third-party suppliers”), the corresponding T&Cs of the third-party supplier, to which reference is made in the following, shall apply in addition and with precedence.

## 2. Conclusion of contract, payment terms and prices

- 2.1 When an order has been placed by the customer, the contract shall be concluded on dispatch of the order confirmation by Axians.
- 2.2 Axians' offers are non-binding. The prices are net of the respective statutory VAT. Unless a payment deadline has been set, all invoices are payable immediately, without deduction.
- 2.3 If the customer is in default of payment, Axians is entitled to withhold further contractual services.

## 3. Delivery and shipping

- 3.1 Any delivery dates issued by Axians are non-binding unless otherwise expressly agreed.
- 3.2 Changes or additions of the individual contracts require the approval of Axians in any case. If Axians agrees, the delivery dates shall be extended accordingly. The same applies if non-compliance with a binding delivery date is proven to be the consequence of mobilisation, war, riot, strike or lockout, or other circumstances for which Axians is not responsible.
- 3.3 Punctual and contractual delivery from third-party suppliers shall be reserved. Delays in performance due to supply which do not conform with the contract by third-party suppliers shall lead to a corresponding extension of the delivery dates.
- 3.4 The costs for shipping and transport insurance shall generally be borne by the customer. The delivery date shall be considered to have been observed and the risk shall pass to the customer

as soon as Axians, resp. the third-party supplier, in the case of direct supply, transfers the shipment to the forwarder for consignment.

- 3.5 The notification of defects defined in §§ 377, 381, sec. 2 HGB (duty of inspection and notification) must be made in writing immediately after receipt of the goods at the destination, stating the delivery note and/or invoice number. If, due to a failure to comply with this obligation, Axians loses its claims against the insurance company or the supplier, the customer shall be liable for all costs resulting from this loss of rights.
- 3.6 Partial deliveries are permitted, unless this is unreasonable for the customer.

#### **4. Cooperation by the customer**

- 4.1 The customer shall support Axians to a reasonable extent with the provision of the contractual work and services. In particular, the customer shall provide the required information and documentation exhaustive and on time. Axians shall not be obliged to verify the completeness and correctness of the information and documents received.
- 4.2 The customer shall make the necessary system access for remote operation available to Axians and provide work places and the necessary working environment, free of charge, to employees of Axians carrying out work on site.
- 4.3 The customer is responsible for the project management. The customer shall check the progress of the work and, within the framework of quality assurance, shall forward any relevant complaints to Axians. The customer shall carry out internal quality assurance before going productive.
- 4.4 The customer is obliged to provide the data backup. The customer must meet this obligation through regular, at least daily, state-of-the-art data security measures.

#### **5. Right of retention**

- 5.1 The contractual services delivered by Axians shall remain in the ownership of Axians until the complete payment arising from the business relationship between Axians and the customer has been provided.
- 5.2 The customer shall be entitled to resell and/or process the goods subject to retention of title in the usual course of business, unless stated otherwise below and providing that the guidelines of the third-party supplier and the software licensing conditions are observed. However, the customer is not permitted to pledge the goods or use same as collateral. No further rights are given.
- 5.3 By way of security, the customer herewith assigns all claims from the resale of goods subject to retention of title to Axians up to an amount of the purchase price agreed with Axians; Axians accepts this assignment. Axians only agrees to a resale if a valid transfer of claims can be ensured on the basis of the above declaration of assignment. If the conditional goods are resold with other goods, whether without or subsequent to processing, combining, mixing or blending, the advance

assignment agreed above shall only apply up to the amount of the purchase price of the reserved goods resold with the other goods.

- 5.4** Axians undertakes to release the securities provided upon customer's request, insofar as the value of the securities exceeds the secured claims by more than 20 %. The securities to be released shall be chosen at the discretion of Axians.

## **6. Rights of use**

- 6.1** Axians reserves all ownership and copyrights of software and other deliverables ("work results"); in particular, Axians shall be entitled to utilise these commercially at its own discretion.
- 6.2** For software from third-party suppliers, the license terms shall be determined exclusively by the terms of use of the respective supplier. In general, these are granted by the terms of the End User License Agreements.
- 6.3** Upon full payment of the agreed remuneration, the customer shall be granted a non-exclusive, non-transferable right to use the software and the work results for his internal business purposes. Unless otherwise agreed, the right to use shall be timely unlimited. The right to use does not include the right of renting, leasing, sublicensing, distribution, making public and other circulation to third parties. The right of duplication is limited to purposes of providing back-ups. Unless provided in the law it is prohibited to treat or partly treat, decompile or otherwise change the software to obtain its sourcecode. The sourcecode of the software shall not be delivered.
- 6.4** If the work results contain open source software, the customer shall receive usage rights in compliance with the respective licence terms of the open source software.
- 6.5** The customer acknowledges that compliance with the license terms of the respective software is a prerequisite condition for the granting of rights and that the rights can be withdrawn in the event of an infringement of these terms.
- 6.6** In the case of temporary usage rights, the customer will return the work results to Axians following termination of the contract, deleting all copies made.

## **7. Warranty of hardware and software**

- 7.1** Axians warrants that the contractual service is free of defects. The freedom from defects shall be determined by the respective specification. Axians and the customer agree that explanations and descriptions of hardware and software contained in the manual and/or price list do not represent warranties or guarantees of specific characteristics.
- 7.2** The period of limitation for all warranties is one (1) year and starts upon delivery resp. provision of access rights to the software. The customer must report defects, which become evident during the warranty period immediately in writing to Axians. Defects in software are to be reported in a reproducible and comprehensible manner.
- 7.3** Axians shall render the remedy of defects in the case of material defects upon its own choice by either rectification or replacement. Axians shall be permitted for three (3) attempts for the same defect. The provision of a workaround shall also be considered as a remedy of defect.

- 7.4** Axians shall render the remedy of defect in the case of defects of title, upon its own choice, by either (1) procurement of license rights for the use of the contractual services, or (2) delivery of a contractual service, free of defects of title. In the case that neither of the forementioned is possible or is deemed an unreasonable burden for Axians the customer may return the contractual services upon the reimbursement for the consumed use of the contractual services. The warranty that the object of the contract is free of third party rights applies exclusively to Germany.
- 7.5** Should third parties take action against the customer for defects of title, Axians shall be notified immediately in writing. The customer authorises Axians, resp. the third party supplier to take control over legal actions from third parties, both before the courts and out of court. Axians, resp. the third-party supplier, is entitled but not obliged to defend against the claims at their own expense. If proceedings are directed against the customer, he shall take steps in proceedings, in particular issue acknowledgements and conclude settlements, only with the consent of Axians.
- 7.6** Should the customer make warranty claims against Axians, and should it turns out that either no fault exists nor the asserted fault does not invoke Axian's warranty obligations, the customer shall be obliged to compensate Axians for the expenses incurred to the extent that he could have recognised that the fault was not caused by Axians.
- 7.7** The warranty shall lapse, in particular, if the customer alters the contractual services himself, or has this done by a third party, without the approval of Axians, unless the customer provides full evidence that the respective defect was not caused entirely or in part by such alterations.
- 7.8** The provision of operation instructions in English is permitted. This shall also apply if the object of the contract is generally only available in an English version. This does not constitute a defect.
- 7.9** Axians assumes the warranty for standard software and hardware of third party suppliers only to the extent that, pursuant to its terms and conditions, the third party supplier assumes same vis-a-vis Axians. The agreed characteristics are based on the respective valid product description and conditions of use of the third party about which the customer obtained information himself prior to conclusion of the contract.

## **8. Additional terms for work performance**

- 8.1** If acceptance of the work is necessary or agreed, Axians shall inform the customer of the completion of the work. The customer shall inspect the work within two (2) weeks of notice of completion. Acceptance shall be considered to have been declared if the customer has not made notification of material defects by the expiry of this deadline and/or put the contractual services into operation. Acceptance may not be refused due to minor defects. Incomplete documentation, in particular, is deemed a minor defect.
- 8.2** If Axians provides partial work and services as agreed, Axians can demand acceptance of the partial work and services. The terms of § 8.1. shall apply in this case.
- 8.3** Besides the aforementioned the terms of § 7 shall apply accordingly.

- 8.4** In the case of termination pursuant to § 649 BGB, Axians shall retain the right to claim the agreed remuneration and the reimbursement of the verifiably unavoidable costs and expenses.

## **9. Additional conditions for services**

- 9.1** If the contractual services consists of a service, and if Axians culpably fails to execute this service in a contract-compliant manner, Axians shall be entitled to provide the service in compliance with the contract within an appropriate period. This requires that the customer shall notify Axians of the same in writing without delay.
- 9.2** Unless otherwise agreed, invoicing for services rendered shall be issued monthly, based on the service performed, at the beginning of the subsequent month.
- 9.3** Ordered Services to be called off (service contingent) must be paid in advance. Service must be called off from the service contingent by customer monthly, unless otherwise agreed. Services not called off in the subsequent month, shall be forfeited. Services beyond the agreed service contingent shall be paid based on time and material per each quarter of an hour according to the actual price list of Axians.

## **10. Additional conditions for maintenance contracts and other continuing obligations**

- 10.1** Axians shall perform the maintenance of its own software pursuant to the specifications of the individual contract. Axians shall process defects, disruptions and faults within an appropriate period. A solution is not part of the contract.
- In addition to supplying hardware and software from third party suppliers, Axians also arranges corresponding service agreements and maintenance contracts for the customer. Regarding the scope of these services, the corresponding product description for the respective third-party supplier applies, about which the customer has obtained information prior to conclusion of the contract. § 7.6 (faults outside of the scope of responsibility of Axians) applies accordingly.
- 10.2** The contract duration depends on the individual contract itself. In general, service agreements and maintenance contracts from third-party suppliers are automatically extended by the same term if they have not been duly terminated prior to the expiry of the minimum term. Axians shall provide details of these notice periods on request.
- 10.3** Axians shall be entitled to terminate the contracts for reason with immediate effect. This is the case when the customer (1) fails to effect payment within two (2) weeks of issue of a reminder, (2) culpably infringes conditions of the individual contract and/or the terms of use of Axians or the third-party supplier, or (3) insolvency proceedings have been instigated regarding the assets of the customer.
- 10.4** In case of contractual termination of third-party supplier-maintenance contracts by customer, Axians shall reimburse advance service payment only up to the maximum of the amount Axians receives from the third-party supplier. Axians might reduce incurred expenses and expenditures from that amount. The customer acknowledges that the reimbursement received from Axians shall be in any case lower than the advances service payment provided.

- 10.5** Special termination rights shall be provided only in the case they are stipulated in a contract and against a respective compensation fee. In the case there is no stipulation regarding the amount of the compensation fee, in general an increasing (dependant on the length of the fixed contract period) percentage of a minimum of 35% of the respective service fee for the respective contract year of the terminated part (without rebates) per terminated year shall be set forth.
- 10.6** Notice of termination must be served in writing.

## **11. Additional terms for cloud service**

- 11.1** Axians shall procure the rights required for temporary use of the software and online services of various third-party suppliers which can be retrieved via internet ("cloud services"). In addition to these T&Cs, the product description and terms of use of the respective third-party supplier shall apply for cloud services; Axians shall inform the customer accordingly on request.
- For cloud services of Microsoft Ireland Operations Limited, Dublin, Ireland ("Microsoft"), the respective valid version of the Microsoft Cloud Agreement (can be viewed under <https://msdn.microsoft.com/de-de/partner-center/agreements#a-nameeeuropeaeuropa>) and the respective valid product descriptions, terms for online services (can be viewed under <http://www.microsoftvolumelicensing.com/DocumentSearch.aspx?Mode=3&DocumentTypeId=46>) and the Service Level Agreement for Microsoft Online Services (can be viewed under <http://www.microsoftvolumelicensing.com/DocumentSearch.aspx?Mode=3&DocumentTypeId=37>) ("Microsoft Agreements") apply.
- The customer unrestrictedly acknowledges the terms of the third-party supplier as a precondition for the granting of a licence to make use of the cloud service, in particular the fact that, in the event of an infringement of these terms, the rights can be withdrawn.
- 11.2** Axians will inform customers of amendments of these terms. Unless the customer objects to this notification within fourteen (14) days, this amendment shall be considered accepted by the customer. Amendments made necessary by legal specifications are not subject to a right of objection.
- 11.3** Within the context of technological progress and for other reasons, the third-party supplier shall be free to amend the functionalities of the cloud service at any time, to provide new versions and to select and change the location of computer centres on which cloud services are offered, provided no negative impact on the existing scope of service can be anticipated.
- 11.4** The amount of the remuneration to be paid for the granting of rights of use to cloud services is defined in the individual contract. In the event of a default of payment, Axians shall be entitled, in particular, following the expiry of a period of grace set by Axians, to revoke the rights granted.
- 11.5** In the case of Microsoft cloud services, in addition to the granting of rights, Axians shall also provide customer support for technical issues of operation and use of the cloud service pursuant to the contractual regulations in the individual contract.

- 11.6** The availability of the cloud services is based on the provisions of the respective agreed Service Level Agreement of the third-party supplier, to which reference is made in § 11.1. This also stipulates exclusions for which no availability on the part of the third-party supplier can be provided. The customer will be informed of same.
- 11.7** The customer shall submit fault notification during the service hours defined in the individual contract. § 7.6 (faults outside of the scope of responsibility of Axians) shall apply accordingly.
- 11.8** Axians shall assume warranties for the cloud service in accordance with the terms of the third-party suppliers, in the case of Microsoft Cloud services, in accordance with the Microsoft agreements. Any service credits will be granted accordingly in compliance with these terms.
- 11.9** If action is taken against the customer by a third party on the basis of his use of Microsoft Cloud services for reasons of an infringement of intellectual property rights, Axians shall assume the legal defence as well the rendering of payments awarded by legal judgement. Precondition for the same is (1) the immediate notification of claims of this kind by the customer, (2) the assignment of sole control of the defence to Axians and (3) the unrestricted support by the customer.
- 11.10** In any case, the customer cannot make claims regarding warranty of title, if (1) the customer has failed to refrain from use of the cloud service despite being requested to do so, (2) the violation of rights was caused by the combination of the cloud service with another product which does not originate from the third-party suppliers or (3) was caused by an unauthorised alteration of the cloud service.
- 11.11** The customer shall indemnify Axians from all claims of third parties, in particular of third-party suppliers, and the costs of the necessary legal defence, which are based on an infringement of the terms of the individual contract, including the terms of third-party suppliers to which reference is made in the individual contract, which have been asserted against Axians.
- 11.12** The contract duration of the cloud service is based on the individual contract and shall be extended without further action by the same period, to the prices and on the terms valid at the time of extension. Termination is possible prior to the expiry of the term with the periods of notice described in the individual contract.
- 11.13** Axians resp. the third-party supplier may deactivate access to the cloud service for reason, in particular in the event of breaches of the contract by the customer.
- 11.14** Axians reserves the right to verify the observance of the provisions listed in § 11.1 by the customer or third-party suppliers on site. To this end, the customer shall grant Axians the right to view the corresponding documentation during usual office hours following appropriate advance notice. Axians, resp. the third-party supplier, shall undertake to keep information thus acquired as confidential.

## **12. Termination**

- 12.1** Axians is entitled to terminate the contract if, alternatively (1) the customer is in default of any act or omission incumbent upon it, (2) the customer is in default of payment, (3) the customer assigns

or has assigned rights and/or obligations under the contract to a third party with full or partial discharging effect, (4) the customer ceases to make payments, (5) the person of the customer is to be dissolved or dissolved or otherwise terminated or to be terminated by virtue of the law, (6) in the case of § 314 BGB (German Civil Code).

- 12.2** If Axians terminates the contract pursuant to 12.1 or withdraws from the contract, the customer shall reimburse Axians for the remuneration for the services performed and for the services not performed, the remuneration less expenses saved. Further claims for damages by Axians remain unaffected.
- 12.3** An application to open insolvency proceedings against the customer, the termination of the contract for work and services or its termination by any other means shall entitle Axians to withdraw from the contract and to demand the immediate return of the delivery item.

### **13. Limitation of liability**

Axians shall be liable for compensation and the reimbursement of futile expenditure in accordance with the following provisions:

In full,

- a) in the event of injury to life, body or health;
- b) in accordance with the Product Liability Act;
- c) in the event of culpable misconduct and in the event of the lack of a characteristic for which a guarantee was agreed;
- d) in the event of gross negligence misconduct.

In all other cases, liability is limited to 30% of the payment defined in the individual contract of the contractual service causing the losses but not more than a maximum of EUR 100,000 per case, and to a total of EUR 250,000 from the relevant contract.

Except in the cases a) – c) Axians liability for indirect and consequential damage such as loss of profit, down time, financial losses, data loss or damage to data is excluded.

Except in the cases a) – c), liability shall become time-barred one year from the commencement of the statutory limitation period.

### **14. Confidentiality/data protection**

- 14.1** The customer shall keep confidential all data and information disclosed by Axians in relation to individual contracts, without restriction with regard to time, and shall only use same for the purposes of implementing the individual contracts. The duty of confidentiality shall not apply to information which (1) was already in the public domain or known at the time of disclosure by the customer, (2) entered the public domain after its disclosure by the customer or a third party without culpability, (3) has been developed by the customer independently without utilisation of the trade secrets of Axians, (4) has to be disclosed according to the law, official order or court ruling - provided that the customer informs Axians of this immediately and supports it in defending against such orders or rulings.



**14.2** Axians complies with data protection requirements, in particular when Axians is granted access to the customer's operations or hardware and software. Axians does not process or use personal data on behalf of the customer. However personal data are only transferred in exceptional cases as an incidental consequence of the contractual work and services of Axians. Personal data are handled by Axians in accordance with data protection conditions and a concluded data processing agreement.

## **15. Export**

If exporting goods abroad through a domestic purchaser, the customer shall be responsible for verifying whether the exported goods are subject to restrictions under the German Export Act, the EU Dual-Use Directive or the US Export Act.

## **16. Reference customer list**

The customer permits Axians to use its name in a list of reference customers. Axians may use the name for advertising purposes in writing, also electronically, in restricted or publicly-available media, at any time, in order to refer to the cooperation. However, Axians may only do so to a reasonable extent and in a manner acceptable to the customer. This also applies to the representation of the company logo / administration logo.

## **17. Miscellaneous**

- 17.1** The customer may only assign its rights from its business relationship with Axians with the written consent of Axians.
- 17.2** The parties shall endeavour to amicably resolve differences of opinion and disputes arising in connection with the contract.
- 17.3** Should a clause be or become invalid, all other clauses remain valid. The invalid clause shall be replaced by a clause which comes as close as possible to the economic intent of the parties.
- 17.4** The conclusion of the contract and subsequent amendments and additions to the contract must be recorded in writing in order to be valid. This also applies to any amendment of this clause. No verbal collateral agreements have been concluded.
- 17.5** Exclusive place of jurisdiction is Ulm. The law of the Federal Republic of Germany shall apply, excluding the provisions of the UN-Purchase Law (CISG) private international law.

**This English version is a translation of the German version “Allgemeine Liefer- und Leistungsbedingungen”. In case of discrepancies the German version shall prevail.**