

# General Terms and Conditions of Delivery and Performance

## VINCI Energies – IT Division –

Version September 2024

### valid for the following companies:

Axians Athos GmbH, Axians Cloud & IT-Automation GmbH, Axians Digital Business Solutions GmbH, Axians eWaste GmbH, Axians hamcos GmbH, Axians IKVS GmbH, Axians Industrial Applications & Services GmbH, Axians Infoma GmbH, Axians IT Business Solutions GmbH, Axians IT Security GmbH, Axians Networks & Solutions GmbH, Axians NEO Solutions & Technology GmbH, Axians Public Consulting GmbH, ROHA Software Support GmbH, VESI IT Service GmbH (each "Axians")

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

- 1.1 These terms and conditions shall only apply if they are explicitly referenced by their English title "General Terms and Conditions of Delivery and Performance" (hereinafter "General Terms and Conditions"). In all other cases, the German version titled "Allgemeine Liefer- und Leistungsbedingungen" shall apply (available under <https://www.axians.de/agb/>).
- 1.2 These General Terms and Conditions shall apply in addition to and subordinate to the individual contracts between one of the companies listed above by name and the customer for deliveries and performances of Axians ("Contractual Performance").
- 1.3 We object to any general terms and conditions of business, including the customer's general terms and conditions of purchase.
- 1.4 For Contractual Performances that Axians procures from third parties, in particular manufacturers (hereinafter "manufacturers" or "suppliers"), the licence and terms of use for end customers (hereinafter "end customer terms") of the respective software and/or hardware manufacturers/suppliers shall take precedence over these General Terms and Conditions. The respective end customer terms and conditions of the manufacturers/suppliers shall be communicated to the customer and made available upon request.

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

- 2.1 Unless otherwise stated in the text, Axians' contract proposals ("offers") are a proposal on the basis of which the customer then submits a binding offer. The contract shall be concluded by Axians' subsequent order confirmation.
- 2.2 Prices are subject to the applicable statutory value added tax. All invoices are payable immediately without deduction, unless a different payment term has been agreed.
- 2.3 Axians shall be authorised to use subcontractors. Due to Axians' integration into the group, affiliated companies may be involved in the order.

### 3. Delivery, delivery dates, dispatch

- 3.1 All performance dates specified by Axians shall only be binding if expressly agreed.
- 3.2 In the event of mutually agreed changes to the contract, the performance date shall be postponed by a reasonable period of time. The same shall apply if non-compliance with performance dates - including binding performance dates - is caused by force majeure such as operational disruptions, strike or lockout, pandemic, etc. or is due to other circumstances for which Axians is not responsible.
- 3.3 Performances provided by manufacturers are subject to timely and contractually compliant self-delivery (assuming proper and timely ordering). Delays in performance due to inadequate self-supply shall lead to a corresponding extension of the performance date.
- 3.4 The costs of shipping and transport insurance shall generally be borne by the customer. The delivery date shall be deemed to have been met and the risk shall pass to the customer as soon as Axians, or the manufacturer in the case of direct delivery, hands over the delivery to the carrier for dispatch.
- 3.5 The notice of defects required under sections 377, 381 para 2 of the German Commercial Code (HGB) (duty to inspect and give notice of defects) shall be made in writing immediately upon receipt of the goods at the place of destination, stating the delivery note and invoice number. If Axians loses

claims against the insurance company or the subcontractor due to failure to fulfil this obligation, the customer shall be liable for all costs resulting from this loss of rights.

3.6 Partial deliveries are permissible insofar as this is reasonable for the customer.

#### **4. Involvement and cooperation of the customer**

4.1 The customer shall support Axians to a reasonable extent in the provision of the Contractual Performances. In particular, the customer shall provide the required information and documents in a complete and timely manner. Axians shall not be obliged to verify the completeness and correctness of the information and documents received.

4.2 The customer shall provide Axians with the necessary system access for remote activities and, in the case of on-site activities, provide Axians' employees with workstations and the necessary working environment free of charge. An order agreement contract shall be concluded.

4.3 Responsibility for project planning lies with the customer. The customer shall check the progress of the work and report to the quality assurance department as soon as it sees cause for complaint. The customer is obliged to carry out internal quality assurance before going live.

4.4 The customer is responsible for data backup. The customer must ensure this through regular data backup measures, at least daily, in accordance with the current state of the art.

#### **5. Retention of title**

5.1 The Contractual Performance delivered by Axians shall remain the property of Axians until full payment of all claims arising from the business relationship between Axians and the customer.

5.2 The customer is entitled to resell and/or process the goods subject to retention of title in the normal course of business, unless otherwise stated below and provided that the manufacturer's guidelines and software licence conditions are complied with. However, the customer is not permitted to pledge the goods or assign them as security. This shall not give rise to any further rights.

5.3 The customer hereby assigns to Axians by way of security all claims arising from the resale of the goods subject to retention of title in the amount of the purchase price agreed with Axians. Axians accepts this assignment. Axians shall only agree to a resale if an effective subrogation can take place on the basis of the above declaration of assignment. If the goods subject to retention of title are resold together with other goods, regardless of whether without or after processing, combining, mixing or blending, the assignment in advance agreed above shall only apply to the amount of the invoice value of the goods subject to retention of title that are resold together with the other goods.

5.4 Axians undertakes to release securities to which it is entitled at the customer's request to the extent that the value of the securities exceeds the claims to be secured by more than 20%. Axians shall be entitled to select the securities to be released.

#### **6. Rights of use**

6.1 Axians reserves all property rights and copyrights to software and other results ("Work Results"), in particular Axians shall be entitled to use them commercially at its own discretion.

6.2 For software from manufacturers, the rights of use are determined exclusively by the terms of use of the respective provider. These are generally granted by provisions in end-user licence agreements.

6.3 Upon full payment of the agreed remuneration, the customer shall be granted a simple, non-transferable right to use the software and work results for its internal business purposes. Unless otherwise agreed, the right of use is unlimited in time. The right to use the software does not include the right to lease, lend, sub-licence, distribute, publicly reproduce or otherwise make available to third parties outside the customer's company. The right to reproduce exists insofar as this is necessary for back-up purposes. Subject to other statutory provisions, it is not permitted to edit, decompile or otherwise reverse engineer the software in whole or in part in order to obtain the source code. The software is provided in machine-readable form without source code.

6.4 If the work results contain open source software, the customer shall be granted rights of use exclusively in accordance with the applicable licence terms of the open source software to which Axians refers upon delivery.

- 6.5 The customer recognises that compliance with the terms of use applicable to the respective software is a prerequisite for the granting of rights and that the rights may be withdrawn if these provisions are breached.
- 6.6 In the case of rights of use limited in time, the customer shall return the work results to Axians upon termination of the contract, deleting all copies made.

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

- 7.1 Axians warrants that the Contractual Performance is free from defects. The absence of defects shall be determined in accordance with the applicable performance description, not objective requirements within the meaning of section 434 para 3 of the German Civil Code (BGB). Axians and the customer agree that the statements and descriptions of the hardware and software contained in the performance descriptions and/or in the price list shall not constitute any guarantees or warranties of specific properties.
- 7.2 The warranty period shall be one (1) year and shall commence on the day of delivery or when the access rights to the software are made available. The customer shall immediately notify Axians in writing of any defects occurring during the warranty period. Claims for defects in software shall only exist if the defect is reproducible or otherwise verifiable.
- 7.3 Axians shall provide subsequent fulfilment in the event of material defects at its own discretion by repair or replacement. Axians shall be entitled to three (3) attempts to remedy the same defect. The provision of a work-around shall also be deemed subsequent fulfilment.
- 7.4 Axians shall provide subsequent performance in the event of defects of title at its own discretion by (1) procuring rights of use to the Contractual Performance or (2) delivering a modified Contractual Performance free of defects of title. In the event that subsequent fulfilment is not possible or unreasonable for Axians, the customer shall have the right to rescind the contract after reimbursement of the benefits derived. The warranty that the subject matter of the contract is free from third-party rights shall expressly apply only to Germany.
- 7.5 If third parties assert claims against the customer due to defects of title, Axians shall be informed immediately in writing. The customer authorises Axians and/or the manufacturer to take legal action against third parties in and out of court. Axians and/or the manufacturer shall be entitled, but not obliged, to defend the claims at their own expense. If the customer is sued, it shall consult with Axians and shall only take legal action, in particular acknowledgements and settlements, with Axians' consent.
- 7.6 If the customer has asserted a warranty claim against Axians and it turns out that (1) either there is no defect or (2) the asserted defect does not oblige Axians to provide a warranty, the customer shall reimburse Axians for the expenses incurred.
- 7.7 Warranty claims shall lapse if the customer modifies the Contractual Performance itself or has it modified by third parties without Axians' consent, unless the customer proves that the defects in question were caused neither in whole nor in part by such modifications.
- 7.8 Delivery of the documentation in English is permissible. The same shall apply if the subject matter of the contract is generally only available in English. This shall not constitute a defect.
- 7.9 Axians shall assume warranty for standard software and hardware of manufacturers only to the extent that the manufacturer/supplier assumes such warranty vis-à-vis Axians in accordance with its terms and conditions. The quality shall be governed exclusively by the applicable product descriptions and terms of use of the third party about which the customer has informed itself prior to the conclusion of the contract.

## **8. Termination**

- 8.1 Axians shall be entitled to terminate the contract for good cause (section 314 of the German Civil Code (BGB)). Good cause shall be deemed to exist in particular if alternatively (1) the customer defaults on an act or payment incumbent upon it and fails to perform the act or make the payment within a maximum period of one week despite a reminder, (2) the customer fails to fulfil an omission incumbent upon it within a maximum period of one week despite a reminder.
- 8.2 If the customer suspends its payments or if the customer or one of its creditors files for insolvency proceedings against its assets or comparable proceedings for the settlement of debts, Axians shall

be entitled, without prejudice to statutory or contractual rights, to terminate the contract with immediate effect or to rescind the contract at its own discretion.

- 8.3 If Axians terminates or withdraws from the contract on the basis of the above paragraphs, the customer shall reimburse the remuneration for the performance rendered and the remuneration for the performance not rendered less any expenses saved. Any further claims for damages by Axians shall remain unaffected.
- 8.4 The termination of the contract or its end in any other way shall entitle Axians to demand - to the extent possible - the immediate surrender of the delivery/performance item and/or to prohibit its further use with immediate effect.
- 8.5 Terminations must be made in writing.

## 9. Liability and limitation of liability

Axians shall be liable for damages and the reimbursement of futile expenses in accordance with the following Provisions:

- 9.1 In full,
- a) for culpably caused damages resulting from injury to life, body or health; or
  - b) for damages caused by gross negligence or wilful misconduct; or
  - c) insofar as he has fraudulently concealed a defect or assumed a guarantee for the quality of the item; or
  - d) in the event of mandatory statutory liability such as under the German Product Liability Act (ProdHaftG) or Art. 82 GDPR.
- 9.2 Otherwise, Axians' liability shall be limited to 30% of the remuneration for the performance causing the damage and, in addition, to a maximum of EUR 100,000 per claim, totalling EUR 250,000 per contract concerned. In the case of monthly remuneration, the quarterly remuneration shall be decisive.
- 9.3 The liability of Axians for indirect and consequential damages, such as loss of profit, downtimes, financial loss, data loss or data damage shall be excluded – except in the cases of 9.1 a) – d).
- 9.4 Liability claims shall become time-barred one year after the statutory commencement of the statutory limitation period – except in the cases of 9.1 a) – d).

## 10. Confidentiality and data protection

- 10.1 The contracting parties are obliged to treat all confidential information and documents of the other party that become known to them in connection with the preparation and execution of the contract as strictly confidential, not to disclose them to third parties and to use them only for the purpose of executing the contract. The companies of Axians DACH are not deemed to be third parties insofar as the disclosure of information and documents serves the purpose of processing the contract and confidentiality is ensured (VINCI Energies Deutschland ICT GmbH, VINCI Energies CEE ICT GmbH, and Axians Schweiz AG, including their affiliated companies within the meaning of sections 15 et seq. of the German Stock Corporation Act (AktG) and their other subsidiaries). Axians is also permitted to disclose confidential information to subcontractors, provided that the disclosure is necessary for the provision of services and confidentiality is ensured.
- 10.2 The confidentiality obligation shall not apply to information that (1) was already in the public domain or known to the other contracting party at the time of transmission, (2) became public knowledge after its transmission through no fault of the other contracting party or a third party, (3) was developed independently by the receiving contracting party without using the trade secrets of the other contracting party or (4) must be published in accordance with the law, an official order or a court decision. The respective other contracting party shall be informed immediately and in advance of such a publication obligation and shall be given the opportunity to defend itself against such an order or decision.
- 10.3 Both contracting parties undertake to comply with all relevant data protection provisions. Axians does not intend to process or utilise personal data on behalf of the customer. Rather, a transfer of personal data shall only occur in exceptional cases as a secondary consequence of the Contractual Performances provided by Axians. Personal data shall be handled by Axians in accordance with the provisions of data protection law and a concluded order data processing agreement.

10.4 The customer shall assume the information obligations pursuant to Art. 13, 14 GDPR for those employees and contact persons it designates to Axians. If the customer requires information for this purpose, Axians shall provide it upon request.

### **11. Export restrictions**

In the case of onward delivery of goods abroad by a domestic buyer, the customer shall be responsible for checking whether the goods to be exported are subject to restrictions under the German Foreign Trade and Payments Act, the EU Dual-Use Regulation, the US Foreign Trade and Payments Act or other comparable restrictions.

### **12. No re-export to Russia**

12.1 The customer shall not sell, export or re-export, directly or indirectly, to the Russian Federation or to the Republic of Belarus, for use in these countries, any goods or parts thereof supplied under or in connection with this agreement that fall under the scope of Article 12g of Council Regulation (EU) No 833/2014.

12.2 The customer shall undertake its best efforts to ensure that the purpose of paragraph 12.1 is not frustrated by any third parties further down the commercial chain, including by possible resellers.

12.3 The customer shall set up and maintain an adequate monitoring mechanism to detect conduct by any third parties further down the commercial chain, including by possible resellers, that would frustrate the purpose of paragraph (1).

12.4 Any violation of paragraphs 12.1, 12.2 or 12.3 shall constitute a material breach of an essential element of this agreement, and Axians shall be entitled to seek appropriate remedies, including, but not limited to: (i) termination of this agreement; and (ii) a penalty of 10% of the total value of this agreement or price of the goods exported, whichever is higher.

12.5 The customer shall immediately inform Axians about any problems in applying paragraphs 12.1, 12.2 or 12.3, including any relevant activities by third parties that could frustrate the purpose of paragraph 12.1. The customer shall make available to Axians information concerning compliance with the obligations under paragraph 12.1, 12.2 and 12.3 within two weeks of the simple request of such information.

### **13. Reference customer list**

The customer authorises Axians to include its name in a list of reference customers. Axians may use the name for advertising purposes in speech and writing, including electronically, in limited or publicly accessible media at any time in order to refer to the co-operation. However, Axians may only do so in an appropriate manner that is reasonable for the customer. The same shall apply to the depiction of the company logo / management logo.

### **14. Additional conditions for work performances**

14.1 If acceptance is required or agreed with regard to a Contractual Performance, Axians shall notify the customer of the completion of the performance. The customer shall inspect the performance within a period of two (2) weeks from the notification of completion. Acceptance shall be deemed to have been declared at the latest if the customer has not notified Axians of any material defects and/or puts the Contractual Performance into operation after expiry of this period. Acceptance may not be refused due to insignificant defects. Insignificant defects include, in particular, incomplete documentation.

14.2 If Axians performs a partial performance in a permissible manner, Axians may demand acceptance of the partial performance. The provisions of section 13.1 shall apply accordingly.

14.3 The provisions of clause 7 shall apply accordingly to the warranty.

14.4 In the event of termination pursuant to section 648 of the German Civil Code (BGB), Axians shall retain the right to the agreed remuneration and reimbursement of proven unavoidable costs and expenses.

## **15. Additional conditions for service performances**

- 15.1 If the Contractual Performance consists of a service and Axians culpably fails to perform such service in accordance with the contract, Axians shall be entitled to fulfil the service in accordance with the contract within a reasonable period of time. This shall be subject to the customer having notified Axians thereof in writing without undue delay.
- 15.2 The remuneration to be paid for the service shall be invoiced monthly at the beginning of the following month.
- 15.3 Ordered service quotas must be paid for in advance. They shall be called up and rendered on a monthly basis, unless expressly agreed otherwise. Services used in excess of this service quota shall be invoiced on a time and material basis per quarter of an hour or part thereof in accordance with Axians' current price list.

## **16. Additional conditions for maintenance, servicing, and other long-term contracts**

- 16.1 Axians shall maintain its own software in accordance with the performance description of the individual contract. Axians shall process errors, malfunctions, and defects within a reasonable period of time. A solution shall not be owed.
- In addition to the delivery of hardware and software from manufacturers, Axians shall provide the customer with corresponding maintenance and servicing contracts. The scope of these performances shall be governed by the relevant product description of the respective manufacturer about which the customer has informed itself prior to the conclusion of the contract. Section 7.6 (Errors outside Axians' area of responsibility) shall apply accordingly.
- 16.2 The term of the contracts depends on the individual contract. Maintenance and servicing contracts from manufacturers are automatically extended by the term unless is terminated in due time before the end of the minimum term. Axians will provide information on these termination periods on request.
- 16.3 In the event that the customer terminates the manufacturer maintenance contracts in accordance with the contract, Axians shall reimburse any remuneration paid in advance by the customer only up to the maximum amount of the credits Axians receives from the manufacturer. In this context, Axians may retain any additional expenses and redemption fees incurred. The customer is aware that the reimbursement it receives from Axians will in any case be less than the remuneration paid by him in advance.
- 16.4 Special termination options are only granted in accordance with prior contractual agreement and against a corresponding redemption fee. If nothing further is contractually agreed on the amount, a percentage that increases depending on the length of the fixed term is generally applied, starting with a fixed term of one year at 35% of the remuneration agreed for the terminated part of the contract year in question (without taking into account a discount) per terminated contract year.

## **17. Additional conditions for cloud services**

- 17.1 Axians shall provide the customer with the rights required for a time-limited use of software and online services from various manufacturers that can be accessed via the Internet ("cloud services"). In addition to these General Terms and Conditions, the product description and the licence and terms of use for end customers of the respective cloud suppliers for the respective cloud services shall take precedence over these General Terms and Conditions. The respective end customer terms and conditions of the cloud providers shall be communicated to the customer and made available upon request.
- 17.2 The customer recognises the conditions of the manufacturers as a prerequisite for the granting of rights to use the cloud service without restriction and the customer is aware that these rights may be withdrawn in the event of a breach of these conditions.

## **18. Assignment / offsetting**

- 18.1 The customer may assign its rights arising from its business relationship with Axians only with Axians' written consent.
- 18.2 The customer shall only be entitled to set off counterclaims against the purchase price claim if such counterclaims are recognised or have become res judicata.

18.3 Axians shall be authorised to assign claims for financing purposes.

**19. Governing law and place of jurisdiction**

19.1 The contract shall be governed by the law of the Federal Republic of Germany without the application of its rules on conflicts of laws. The UN Convention on Contracts for the International Sale of Goods (CISG) is not applicable.

19.2 All disputes arising out of or in connection with the contract or its validity shall be decided by the state courts of Stuttgart, Germany.