

# Terms and Conditions for Support and Maintenance

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Hereinafter referred to as «Axians»

Classification

C0-PUBLIC

## 1 Subject matter

### 1.1 Initial situation

These contractual terms and conditions govern the relationship between Axians and the customer with regard to support and maintenance for hardware and software as well as subscriptions provided by Axians.

The purchase, installation and delivery of hardware and software is not part of these contractual terms and conditions. The customer has already concluded a separate contract with Axians for this purpose. This work has been carried out in advance and is now complete.

The customer confirms that the system integration by Axians or a third party has been carried out in full and is free of defects.

### 1.2 Content and purpose

The aim is to support the customer in maintaining their hardware and software in a usable condition and to ensure availability. Access to the subscriptions must be guaranteed at all times.

Axians arranges the delivery and installation of hardware and software for manufacturers and provides manufacturer- and product-specific maintenance and support services for and on behalf of the manufacturer, known as Manufacturer Part Services. These services are merely arranged by Axians. The direct contractual partner is always the manufacturer, and the contact person is Axians.

Axians also provides manufacturer- and product-specific maintenance and support services directly to the customer in its own name, known as Axians

Part Services. In this case, Axians is the direct contractual partner and contact person. In addition, the customer obtains support services from Axians, known as General Services. The contractual relationships are shown in Figure 1.

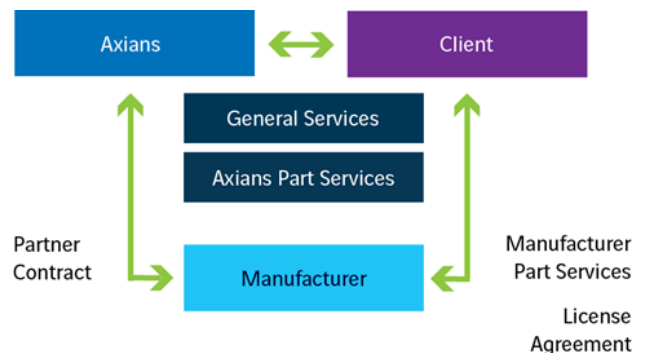


Figure 1 Contractual Relationships

### 1.3 Appendices

The following appendices form an integral part of these contractual terms and conditions. In the event of any conflict, the provisions of the contractual terms and conditions shall take precedence.

#### 1.3.1 Appendix A – Contractual content

Appendix A defines the maintenance content of the support services provided by Axians and the contractual partners responsible for them.

#### 1.3.2 Appendix B – Definitions

Appendix B contains general definitions of all terms used in these contractual terms and conditions and the other appendices.

### 1.3.3 Appendix C – Axians Part Services

Appendix C contains the additions and restrictions to Axians Part Services, as well as the services that Axians provides for manufacturers.

## 2 Content and scope of support and maintenance services

A Part Service and a General Service are agreed for each piece of hardware and software and each subscription. This contract is only valid if the customer has at least one General Service and one Part Service. The scope is recorded in the inventory.

Where possible and at the customer's request, Axians will also remedy faults attributable to circumstances for which the customer or third parties are responsible in return for separate compensation. In this case, however, Axians is not obliged to adhere to the agreed standby, response and intervention times.

### 2.1 Part Services

#### 2.1.1 Services

Part Services include maintenance (preventive maintenance to maintain operational readiness) and repair (restoration of operational readiness) through the repair and replacement of defective parts.

Maintenance includes the provision of new software due to faulty behaviour or to ensure operational readiness. The installation of new software constitutes a change and is charged on a time and material basis.

Spare parts are either new, as good as new or re-conditioned. Replaced and returned parts become the property of Axians or the manufacturer free of charge.

For each piece of hardware, software and subscription, one of the defined Axians Part Services or a Manufacturer Part Service (manufacturer's support option) must be selected. Not every Part Service is available from every manufacturer and for every product. Availability must be checked before the contract is concluded and is determined by the contract with the manufacturer.

#### 2.1.2 Activation

Part Services are activated at the agreed time when the customer places an order. If the customer fails to pay the invoice for a Part Service on time, Axians is entitled to deactivate the relevant Part Service immediately.

### 2.1.3 Terms

Depending on the manufacturer and the product, terms of 1 to 60 months are possible for Part Services. The term of a Part Service begins on the first day of the agreed month and ends on the last day of the agreed month. This is recorded in the inventory. In the case of Manufacturer Part Services, the customer can obtain information about the exact content and terms from the manufacturer.

#### 2.1.4 Cost

The costs for a Part Service depend on the manufacturer, the product, the support service and the term. Axians provides the customer with a binding offer on behalf of Axians or the manufacturer. The costs of a subsequent maintenance period of the same length can vary significantly from the previous maintenance period. The risk of fluctuation can only be minimised by a longer maintenance period.

#### 2.1.5 Extension

Part Services are not automatically renewed and activated after the term has expired. Axians will provide the customer with an offer for renewal before the term of a Part Service expires. If the customer fails to place an order, the corresponding Part Service will lose its validity and be deactivated.

Axians reserves the right to charge the customer additional fees for resuming the service after an interruption.

### 2.2 General Services

#### 2.2.1 Services

Axians provides support services for the hardware, software and subscriptions listed in the inventory. The corresponding services are defined in Appendix A. The condition for a General Service is at least one valid Part Service.

All hardware, software and subscriptions are subject to one of the following four general service categories: Essential, Silver, Gold, Platinum.

Axians has an information system in which customer enquiries are recorded and managed.

#### 2.2.2 Activation

The General Service is activated at the agreed time when the customer places the order. Axians is obliged to provide the corresponding services for the activated General Service and ensures that sufficiently trained technicians are available to satisfy the customer's requests.

If the customer fails to pay the invoice for a General Service on time, Axians has the right to proceed in accordance with Section 6 of these contractual terms and conditions.

### 2.2.3 Terms

For fee-based General Services, terms of 1 to 60 months are generally possible. The term of a General Service begins on the first day of the agreed month and always ends on the last day of the agreed month.

The term of the General Service Essential is determined by the term of the assigned Part Services.

### 2.2.4 Cost

The costs for a General Service depend on the respective inventory, the type and content of the support service and the desired term. The actual amount is bindingly determined in the form of an offer from Axians for the corresponding inventory.

### 2.2.5 Renewal

A chargeable General Service is automatically extended by one year at the end of its term. Both parties have the option of terminating it in writing with one month's notice before the end of the term. In this case, the corresponding General Service loses its validity and the inventory items are assigned to General Service Essential.

Axians reserves the right to charge the customer additional fees for resuming the service after an interruption.

### 2.2.6 Changes to the inventory during the term

Items that are added to an existing inventory during the term can be added at no cost, as long as the inventory changes only insignificantly. If an inventory changes significantly during the term, Axians reserves the right to offer the additional costs for this General Service to the customer and to invoice them proportionally for the remaining term.

Axians is not obliged to reimburse costs if an inventory item changes inventory or is removed from inventory.

## 3 Warranty

The customer has informed themselves about the scope of the services provided by Axians, agrees to them and they meet their expectations. The customer regularly reviews the scope of services they require and immediately informs Axians of any desired changes.

The customer is aware of their obligations to cooperate. Among other things, they bear sole responsi-

bility for the backup, restoration and secure storage of their data. In particular, they shall ensure that their data is backed up before any maintenance is carried out by Axians.

Axians shall provide the support and maintenance services owed under these contractual terms and conditions through trained specialist personnel with the usual care.

Axians does not guarantee that the hardware to be maintained under these contractual terms can be used continuously, without interruption and without errors in all combinations desired by the customer, in particular not in conjunction with third-party systems that are not maintained by Axians.

## 4 Liability

Axians excludes all liability for itself and any subcontractors to the extent permitted by law. Mandatory legal provisions, in particular those relating to liability for intentional or grossly negligent behaviour, remain reserved.

In the event of liability, Axians shall be liable for damages directly attributable to the present contractual relationship, including claims arising from material or legal warranty, non-performance, delay or breach of duty of care, up to a maximum of the remuneration paid by the customer for maintenance in the last 12 months prior to the occurrence of the damage, but not exceeding CHF 50,000.00 per claim.

Axians excludes liability to the extent permitted by law for damages resulting from the customer's failure to fulfil their obligation to cooperate correctly or in a timely manner, for the replacement of system configurations and company data (in particular business-related data) and for indirect or consequential damages (such as additional expenses, unrealised savings, loss of profit or third-party claims).

Axians shall not be liable if it is prevented from fulfilling its obligations under this contract in a timely or proper manner for reasons for which it is not responsible. Any troubleshooting deadlines scheduled for fulfilment shall be extended in accordance with the duration of the circumstances for which Axians is not responsible.

## 5 Confidentiality and data protection

The contracting parties mutually undertake to maintain the confidentiality of all documents and information that are not generally known, which relate to the business sphere of the other party and which become accessible to them during the preparation

and execution of this contract. This also includes the contents of the annexes. The contracting parties shall ensure that their employees and any third parties involved comply with these provisions.

However, Axians may pass on to the respective manufacturer any data necessary for the performance of support and maintenance services without the express consent of the customer.

## 6 Contract term and termination

These contractual terms and conditions shall come into force on the first day of the (commenced) delivery month upon ordering the maintenance and support services and the first delivery (date of the delivery note). Any pre-existing maintenance and support contracts shall be replaced by this contract.

Unless otherwise agreed, these contractual terms and conditions shall remain in force until the expiry of the last Part Service listed in the inventory. The contract shall be automatically terminated as soon as the inventory no longer shows any activated Part Services.

If payment is not received within three months of invoicing for the Part Services or General Services, Axians may immediately suspend all support and maintenance services.

The provisions on liability, confidentiality and data protection shall remain in force even after termination of the contract.

## 7 Final provisions

### 7.1 Contract content

These contractual terms and conditions and the annexes conclusively govern the relationship between the contracting parties and replace the negotiations and correspondence conducted prior to the conclusion of the contract.

### 7.2 Written form

Any amendments and additions to these contractual terms and conditions, as well as all ancillary agreements, must be made in writing and signed by both parties in order to be valid. This formal requirement may only be waived by written agreement.

### 7.3 Notifications

Notifications intended to exercise rights and obligations under these contractual terms and conditions must be sent in writing, i.e. by letter or email fol-

lowed by written confirmation, to "Axians BNC AG, Bahnhofstrasse 5, CH-3322 Urtenen-Schönbühl".

### 7.4 Place of performance

Unless explicitly stated otherwise in the contractual terms and conditions, the place of performance for the support and maintenance services to be provided under this contract refers to the countries of Switzerland and Liechtenstein. The place of performance does not have to correspond to the place of installation.

### 7.5 Invoicing

Axians shall invoice the customer for Part and General Service in accordance with the binding offer.

Services charged on a time and material basis shall be invoiced to the customer on a monthly basis at the agreed hourly rates and flat rates.

### 7.6 Subcontractors

Axians is entitled to use subcontractors to fulfil its obligations under this contract.

### 7.7 Obligations to cooperate

The customer is obliged to create the organisational and technical conditions necessary for Axians to provide the agreed maintenance services.

This includes, in particular

- the customer providing Axians with the required information
- ensuring that the customer is available for callbacks and emails.
- that access to the customer's premises is provided for on-site support.
- that access to the customer's systems is enabled for remote support (remote maintenance) assignments.
- that the customer has properly backed up all data (user data and system data) and can restore it if necessary.

### 7.8 Partial invalidity

Should individual provisions or parts of these contractual terms prove to be void or ineffective, this shall not affect the validity of the rest of the contract. In such a case, the contracting parties shall amend the contract in such a way that the purpose intended by the void or ineffective part is achieved as far as possible.

## 7.9 Assignment and transfer

These contractual terms and conditions or individual rights or obligations arising therefrom may only be assigned or transferred to third parties with the prior written consent of the other contracting party.

## 7.10 Settlement of disputes/place of jurisdiction

In the event of disagreements in connection with these contractual terms and conditions, both contracting parties undertake to seek an amicable settlement in good faith and to find a solution internally. If no agreement can be reached, the contracting parties undertake to hold at least one mediation session with a neutral third party. In addition, an independent expert may be called in as an arbitrator.

If, despite the above efforts, no amicable agreement can be reached, the ordinary court at the registered office of Axians shall have exclusive jurisdiction to decide all disputes arising from or in connection with these contractual terms and conditions.

## 7.11 Applicable law

These Terms and Conditions are subject to Swiss law, to the exclusion of the Vienna Convention on Contracts for the International Sale of Goods.