

# Terms and Conditions of Axians Amanox AG

## 1 General Terms

### 1.1 Scope of Application and Validity

#### 1.1.1 Scope

These General Terms and Conditions (GTC) govern the conclusion, content and performance of contracts between customers (hereinafter referred to as "Customers") and Axians Amanox AG for the procurement, installation and maintenance of hardware and software and the provision of other IT services.

#### 1.1.2 Scope

These GTC form an integral part of all offers and contracts between the Customer and Axians Amanox AG. Any deviations from these GTC and/or additions, as well as amendments and additions to concluded contracts, must be made in writing.

### 1.2 Prices and Terms of Payment

#### 1.2.1 Currency

Unless otherwise specified, all prices are quoted in Swiss currency, excluding VAT.

#### 1.2.2 Terms of payment

Invoices from Axians Amanox AG are payable net without discount within 30 days of the invoice date.

#### 1.2.3 Recurring charges

Recurring fees are invoiced in advance.

#### 1.2.4 Interest on late payment

Payment dates are fixed dates; therefore, if they are exceeded without a reminder, interest on arrears of 5% is payable.

#### 1.2.5 Retention of title

Until the purchase price has been paid in full, products remain the property of Axians Amanox AG and may not be pledged or transferred as security.

## 2 Procurement of hardware and software

### 2.1 Conclusion of contract

#### 2.1.1 Validity period of the quotation

Unless otherwise specified in the quotation, Axians Amanox AG is bound by the quotation for 30 days from the date of issue.

#### 2.1.2 Conclusion of the contract

The contract is concluded upon written acceptance of the quotation or by signing a separate contract.

#### 2.1.3 Costs arising from contract amendments

If subsequent changes to the order or contract result in additional costs for Axians Amanox AG, these costs shall be borne by the customer in accordance with Axians Amanox AG's current price list.

#### 2.1.4 Premature termination of the contract

If an order is terminated prematurely by the customer, the hours actually worked will be invoiced, regardless of the result achieved.

### 2.2 Delivery

#### 2.2.1 Delivery date

Deadlines specified by Axians Amanox AG, in particular delivery dates, are only binding if they have been confirmed in writing as binding.

#### 2.2.2 Delivery delay

Operational disruptions, delayed delivery or, in particular, non-delivery by contractual partners of Axians Amanox AG, as well as events of force majeure, strikes and other hindering circumstances, entitle Axians Amanox AG to extend delivery deadlines and/or cancel the delivery obligation, to the exclusion of any claims for damages by the customer.

### 2.2.3 Damage

Damaged consignments must be reported to the carrier immediately upon receipt of the goods. Complaints regarding the delivery must be submitted in writing to Axians Amanox AG within 5 days of receipt of the goods; otherwise, the delivery shall be deemed to have been accepted.

### 2.2.4 Changes to the order

Changes to the order shall result in the cancellation of agreed dates and deadlines, unless otherwise agreed.

## 2.3 Inspection and obligation to give notice

### 2.3.1 Obligation to inspect

The customer is obliged to test delivered software or parts of software for errors immediately upon receipt and to report any identifiable errors to Axians Amanox AG without delay.

### 2.3.2 Use of third parties

Axians Amanox AG is entitled to have services it is obliged to provide performed by third parties. It is also entitled to make partial deliveries and provide partial services.

### 2.3.3 Acceptance of custom software

Acceptance of custom software shall be deemed to have taken place at the latest if the customer has not raised any objections within 30 days of the installation or handover of the programmes or parts thereof.

## 3 Services

### 3.1 Remuneration based on time and materials

#### 3.1.1 Services on a time and materials basis

Axians Amanox AG shall provide the agreed services on a time and materials basis at the hourly rates agreed in the order. The price and time estimates are approximate and do not constitute fixed-price offers

#### 3.1.2 Travel time

Travel time counts as working time.

## 3.2 Fixed price

### 3.2.1 Basis of the fixed price

Where a fixed price has been expressly agreed for the services, this is based on the terms known at the time of conclusion of the contract. Should these change subsequently or have been unforeseeable for Axians Amanox AG, the necessary contractual adjustments must be agreed with the customer.

## 3.3 Surcharges

### 3.3.1 Working hours without surcharges

No surcharges will be invoiced for normal working hours on weekdays between 08:00 and 18:00.

### 3.3.2 Surcharges for night, weekend and public holiday work

On weekdays between 18:00 and 08:00 (night work), as well as on Saturdays and on cantonal and regional public holidays, a surcharge of +50% on the standard hourly rate will be applied.

### 3.3.3 Surcharges on Sundays and federal public holidays

On Sundays and federal public holidays, a surcharge of +100% on top of the standard hourly rate will be charged.

## 4 Warranty and liability

### 4.1 Warranty

#### 4.1.1 Limitations on the error-free nature of software

The customer is aware that, given the wide range of possible applications and in view of its complexity, software may not be delivered or installed without errors under certain circumstances. Given the current state of the art, it is generally not possible to guarantee that software will be completely free of errors.

#### 4.1.2 Dependence on external factors

The functionality of the software supplied by Axians Amanox AG is also dependent on various factors over which Axians Amanox AG has no control (the customer's hardware and software, operation, data transmission, power failure, updates, bug fixes, interventions by the customer or third parties, etc.).

#### **4.1.3 Exclusion of guarantees of functionality and availability**

Furthermore, Axians Amanox AG cannot guarantee that the hardware/software can be used continuously, without interruption and error-free in all combinations desired by the customer, nor that the correction of a program error will prevent the occurrence of other program errors.

#### **4.1.4 Exclusion of warranty for third-party software**

Axians Amanox AG excludes any warranty for third-party software, even if such software is integrated into Axians Amanox AG's programmes.

### **4.2 Liability**

#### **4.2.1 Principle of liability**

Axians Amanox AG shall be liable to the customer for any damage incurred only to the extent that Axians Amanox AG is guilty of wilful misconduct or gross negligence. Liability for direct damage is limited to one third of the agreed (periodic) price for the service causing the damage, which is incurred by the customer in connection with the contractually agreed performance of the service.

#### **4.2.2 Limitation of liability for direct damages**

Axians Amanox AG shall not be liable for indirect or consequential damages, such as loss of profit, additional expenses, personnel costs, unrealised savings, third-party claims, data loss or other such damages.

#### **4.2.3 Exclusion of warranty in the event of breach of the duty to inspect and give notice of defects**

The warranty is excluded if the customer fails to comply with the aforementioned duty to inspect and give notice of defects.

#### **4.2.4 Exclusion of warranty in the event of modifications**

If the customer or third parties make modifications to the delivered software and/or hardware, the warranty claim shall lapse, unless the customer can prove that the defect is not attributable to the modifications.

## **5 Final provisions**

### **5.1 Confidentiality**

#### **5.1.1 Confidential information**

The contracting parties shall treat as confidential all information that is neither obvious nor generally accessible.

#### **5.1.2 Handling of cases of doubt**

In cases of doubt, information shall be treated as confidential and there is a mutual obligation to consult.

#### **5.1.3 Duration of the duty of confidentiality**

This duty of confidentiality shall apply even prior to the conclusion of the contract and shall continue after the termination of the contractual relationship.

### **5.2 Assignment, transfer and pledging**

Rights and obligations arising from the contractual relationship, as well as the contract as a whole, may not be assigned, transferred or pledged to third parties, either in whole or in part, without the prior written consent of the other party.

### **5.3 Applicable law**

This legal relationship is governed exclusively by Swiss law. The place of jurisdiction is Bern.

*Axians Amanox AG, October 2020*

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