

General Terms and Conditions for Deliveries and Services of Axivion GmbH

as of July 2016

1. Scope of Application

- 1.1 In the absence of a separate agreement, all offers and orders concerning deliveries and services of Axivion GmbH ("Axivion") shall be based on the present *General Terms and Conditions for Deliveries and Services* of Axivion (GTC). This applies even in the event that, in the context of ongoing business relations, no express reference is made to these GTC at a later point in time. Terms and conditions of the customer that are contrary to or deviate from the present GTC apply only if Axivion recognizes their applicability expressly in writing.
- 1.2 These GTC apply only in relation to entrepreneurs within the meaning of § 14 BGB (German Civil Code) and only if the contract relates to the operation of the enterprise, as well as in relation to legal persons under public law and special public funds within the meaning of § 310 para. 1 BGB.
- 1.3 To the extent referred to in the confirmation of the order by Axivion or in these GTC, further General Terms and Conditions may be applicable in addition to these present GTC, especially the *General Terms and Conditions for Software Licenses* (GLT) and the *General Terms and Conditions for the Maintenance of Software* (GMT) of Axivion. Within the limits of their respective scope of application, said General Terms and Conditions shall take precedence over the provisions of these GTC.
- 1.4 This shall be without prejudice to any rights to which Axivion is entitled pursuant to the statutory provisions or under other agreements and which go beyond the GTC, the GLT and the GMT.

2. Offers, Conclusion of Contract

- 2.1 All offers submitted by Axivion are subject to confirmation. Orders shall not be deemed accepted until confirmed by Axivion in writing or in text form. The term of the contract begins with the date of the confirmation of the order by Axivion or the date expressly stated in the order of the confirmation by Axivion. Oral collateral agreements must in all cases be confirmed by Axivion in writing in order to be effective.

- 2.2 Axivion reserves all rights without limitation in respect of all service and product descriptions, drawings, test programs, and other documentation supplied to the customer within the framework of the offer. This documentation may be made available to third parties only with the prior consent of Axivion. All product descriptions and technical data contained in such documentation as well as in brochures, advertisements, and other informative and advertising materials are compiled with due care; they do not, however, constitute guaranties in respect of quality, or other guarantees, unless expressly identified as such.
- 2.3 Axivion reserves the right to modifications due to technical reasons even after conclusion of the contract, provided that the modifications do not materially affect the agreed functionality of the delivery item or the object of the service.
- 2.4 Axivion's silence in response to offers, orders, requests or other declarations by the customer shall be deemed to constitute agreement only if this was previously agreed, in writing.

3. Prices, Terms of Payment

- 3.1 The prices stated in the offer and in the order confirmation from Axivion are stated exclusive of VAT which shall be added at the statutory rate. Any travel costs and expenses will be billed separately.
- 3.2 Invoices of Axivion are payable immediately upon receipt, without deduction. If the customer fails to effect payment upon receipt of a reminder that has been issued after the due date, the customer will be in default with payment. Even without the issue of a reminder, the customer will be in default with payment 30 days after the due date and receipt of the invoice. In the event of default, Axivion shall be entitled to default interest in the statutory amount from the beginning of default. Axivion reserves the right to furnish evidence of greater damage caused by delay.
- 3.3 Should the customer be in default with payment, Axivion is entitled – without prejudice to any other statutory rights – to exercise without prior notice a right of retention over all outstanding deliveries and services or to request advance payment and/or provision of security with respect to all outstanding deliveries and services. The same shall apply in the event that, after accepting the order, Axivion obtains knowledge of facts that give rise to justified doubts about the customer's ability to pay.
- 3.4 The customer may offset against claims of Axivion only such counterclaims that are undisputed or have been finally determined by a competent Court. The customer is entitled to exercise a retention right only insofar as the counterclaim is based on the same contractual relationship.

4. Passing of Risk, Delivery and Performance Dates

- 4.1 In the case of deliveries, the risk of accidental destruction and accidental deterioration passes to the customer as soon as the delivery item leaves the warehouse of Axivion; if the delivery item is collected by the customer, the risk passes with the notification of readiness for collection. In the case of Software downloaded by the customer itself via the Internet from the download area made available by Axivion, the risk shall pass to the customer upon completion of the download.
- 4.2 No. 4.1 also applies if installation of the delivery item at the customer has been agreed upon unless an obligation of delivery or installation in the framework of a contract for work and services (*Werkvertrag*) is concerned; in this case the risk does not pass to the customer until acceptance of the work. If acceptance is delayed due to circumstances for which the customer is responsible, the risk shall pass to the customer upon notification of readiness for collection.
- 4.3 Unless expressly agreed otherwise, in writing, the indication of deadlines or time periods for the performance of deliveries and services is not binding. Delivery and service periods firmly agreed upon shall begin no earlier than upon receipt of Axivion's confirmation of the order, however not before the timely and proper fulfillment of the customer's cooperation duties, especially not before the provision of the documentation, approvals, or releases to be furnished by the customer and the receipt of the agreed down-payment, if any. Delivery periods and deadlines shall be deemed to have been observed if, at their expiry, the delivery item has left the warehouse or Axivion has notified the customer of the delivery item being ready for collection and/or dispatch, in the case of Software, readiness for download. The foregoing provision does not apply if, according to the contract, acceptance is required or Axivion is obligated to carry out the installation.
- 4.4 Axivion will endeavor to comply with agreed delivery and service periods. If Axivion is in delay with a delivery or another service, the customer shall be entitled, upon fruitless expiry of an appropriate supplementary period provided to Axivion upon occurrence of delay, to rescind the contract. Rescission requires, however, that Axivion is responsible for the delay. The customer shall be obligated to declare at Axivion's request within a reasonable period of time whether it will rescind the contract after the expiration of this period due to the delay, or whether it will insist upon execution of the delivery or service.
- 4.5 Axivion shall be released from the duty to perform in the event of operational interruption or breakdown (shortage of materials, strikes, illness of named employees) for which Axivion is not responsible and other events of force majeure, as well as late delivery of supplies to Axivion itself, for the period during which the impediment continues to exist. This shall also apply if these circumstances occur to suppliers of Axivion. To the extent that Axivion is released from the duty to perform, Axivion shall

grant back advance performances, if any, made by the customer. Further reaching claims for damages of the customer shall be excluded.

4.6 Partial deliveries and services shall be permissible to a reasonable extent.

5. Copyrights, License Conditions for Software

5.1 The customer shall be obligated to observe such copyrights and other intellectual property rights as exist in respect of the delivered item or the work created in the context of performance, especially rights in respect of computer programs ("Software").

5.2 Additionally to these GTC, the use of standard Software supplied by Axivion shall be subject to the GLT of Axivion.

6. Retention of Title

6.1 As regards deliveries, Axivion retains title to the items supplied until all claims arising from the business relationship with the customer have been discharged in full, regardless of the cause in law. With respect to current accounts, the title retained is regarded as security for the offset balance of Axivion at any time given.

6.2 In the event of a conduct on the part of the customer that is contrary to the terms of the contract, especially in the event of a delay with payment, an impending cessation of payment, in the event of dissatisfying information about the solvency or financial situation of the customer, in the event of execution or protest of a bill against the customer as well as in the event of a filing for insolvency against the customer's assets, Axivion shall be entitled to take back the delivered items. The customer is obligated to return the delivered items. Axivion is not required to rescind the contract in order to be able to take back the delivered items and/or assert its retention of title. These acts, as well as the attachment of the delivered items by Axivion, do not constitute a rescission of the contract unless Axivion has expressly declared so in writing. After taking back the delivered goods, Axivion shall be entitled to sell or otherwise dispose of the same. The proceeds from such sale or other disposition, less reasonable costs thereof, shall be credited towards the customer's liabilities.

7. Liability for Defects as to the Quality

7.1 In the case of deliveries (including the supply of Software on a permanent basis), the customer shall carefully examine the delivery item without undue delay upon receipt

and complain vis-à-vis Axivion about defects, if any, promptly and in writing, however no later than seven working days upon delivery of the item or – in the case of hidden defects – within seven working days after the defects are discernible. Works must be accepted by the customer without undue delay upon performance; acceptance may not be refused due to insignificant defects.

- 7.2 In the event of defects of the delivery item that are objected to in a timely manner or defects that the customer has not detected when accepting the works, the customer primarily has, at Axivion's choice, a claim for subsequent performance within an appropriate time period to be set by the customer. Axivion shall decide on the nature of the subsequent performance (rectification of defects or new delivery/performance). The expenses necessary for this purpose, such as wage, material, transport, and travel costs, will be borne by Axivion only to the extent that such expenses are not increased due to the fact that the delivery item or the object of the works has subsequently been brought to a place other than the agreed place of delivery or performance, unless such relocation is in accordance with the agreed use of the respective delivery item or object of the respective works. If a complaint is made without justification, Axivion shall be entitled to demand reimbursement of any costs incurred by Axivion in connection with the complaint, unless the customer is not responsible for the unjustified complaint.
- 7.3 As far as Axivion does not succeed in remedying the defect pursuant to Section 7.2 at the second attempt, the customer is entitled, at its own choice and without prejudice to possible claims for damages or for reimbursement of expenses according to no. 10 below, to demand a reduction of the agreed remuneration for the delivery or service concerned (*Minderung*) or – if the violation of duty on the part of Axivion is not only insignificant – to rescind the contract.
- 7.4 Claims of the customer based on defects do not exist to the extent that a defect is based on the delivery item or object of the works having been modified by the customer without authorization, especially through the installation of alien parts or, in the case of Software, through subsequent programming or reprogramming not authorized or carried out by Axivion.
- 7.5 Axivion shall not assume any guarantee, in particular it shall not assume any guarantees as to quality or durability, unless expressly agreed otherwise, in writing, in individual cases.
- 7.6 The statute of limitations for customer claims based on defects is one year from delivery (in the case of deliveries) or, as the case may be, from acceptance (in the case of performance of work). The restriction of the statute of limitation to one year shall also apply to claims in tort, based on a defect in the item supplied or the service rendered. The restriction of the statute of limitations to one year shall not apply to **Axivion's unlimited liability for damage caused by the breach of a guarantee or based on damage to life, limb or health, for willful misconduct or gross negligence and for mandatory product liability, or if Axivion has explicitly assumed a procurement risk.**

8. Supplementary Provisions for the Licensing and Programming of Software

- 8.1 The object of the agreement is Software generally corresponding to the information contained in the respective program description. Subject to a possible express guarantee given by Axivion, the information contained in the program description and the program documentation shall not constitute guarantees as to quality within the meaning of §§ 443 and 639 BGB (*Beschaffheitsgarantie*).
- 8.2 A Software defect is deemed to exist if the Software does not fulfill the functions set forth in the program description, if it furnishes results deviating from the description in the program description, interrupts its run in an uncontrolled manner, or otherwise fails to work according to its functions so that the use of the Software is prevented or considerably impaired. Imperfections of the Software that do not frustrate or considerably impair the purpose of its use are not covered by the warranty obligation.
- 8.3 Axivion does not warrant for defects of the Software
- that have been caused by faulty application on the part of the customer and that could have been prevented in the event of careful consultation of the program documentation; this applies also in the event of non-existent or insufficient backup measures;
 - due to virus infestation or other external influences such as fire, accidents, power outage, etc. for which Axivion is not responsible;
 - that are due to defects in the hardware, the operating system, or other computer programs used by the customer in connection with the Software;
 - that are due to the Software having been modified by the customer or a third party of its own accord.
- 8.4 Axivion shall furthermore not assume any warranty or guarantee for components or modules manufactured by other producers (third-party software) and supplied free of charge, in particular Open Source Software that can be used in connection with the Software provided by Axivion.
- 8.5 In the event that defects within the meaning of no. 8.2 above occur, the customer shall be obligated to furnish Axivion with all information necessary for the error analysis and repair, and to grant Axivion and/or the persons commissioned by Axivion unrestricted access to the Software and the system of the customer on which the Software is installed. Notifications of defects must contain information on the type of defect, the application during which the defect has occurred, as well as the work that has been carried out for purposes of removing the defect. The defect must be described such that it can be reproduced. If Axivion carries out an error analysis at the customer's request and the analysis shows that there is no defect Axivion is obligated to remove, Axivion

may invoice the customer for the corresponding expenditure on the basis of the hourly rates of Axivion as applicable from time to time.

- 8.6 With respect to the purchase of Software (permanent licenses), the warranty covers only such defects as exist already at the delivery of the Software. With respect to the rental of Software (licenses for a definite period of time), the liability without fault for damages based on initial defects according to § 536 a BGB is excluded.

9. Third-Party Rights

- 9.1 Axivion warrants within the limits of the following provisions that the items delivered or the works performed by Axivion do not infringe any third-party rights that prevent the customer's use of such items or work results as agreed.
- 9.2 In the event that such rights are asserted by third parties, the customer shall inform Axivion without undue delay of the assertion of such third-party rights and grant Axivion any and all powers and authorities necessary for purposes of defending the customer against the asserted rights of third parties.
- 9.3 In the event of an infringement of third-party rights by the Software, Axivion will be entitled, at its choice,
- to remove the third-party rights that affect the agreed use of the items delivered or work results by taking suitable measures; or
 - to modify or replace the items delivered or work results such that they no longer infringe third-party rights, if and to the extent that such modification or replacement does not affect the warranted functions of the items delivered or work results.
- 9.4 To the extent that Axivion also fails at the second attempt to take the measures according to no. 9.3 above within a reasonable period of time to be fixed by the customer, the customer may at its choice, without prejudice to possible claims for damages or for reimbursement of expenses according to no. 10 below, demand a reduction of the agreed remuneration for the delivery or work concerned (Minderung) or – if the restrictions originating from the third party rights are significant – to rescind the contract (in the case of Software purchase permanent license) or to terminate the contract (in the case of Software rental temporary license).
- 9.5 With regard to the statute of limitation for claims based on defects in title in the case of Software purchase (permanent license), no. 7.6 above shall apply correspondingly.

10. Liability for Damages and Reimbursement of Expenses

- 10.1 Axivion shall be liable within the limits of the statutory provisions if the customer asserts claims for damages or for reimbursement of expenses that are based on willful misconduct, gross negligence or non-compliance with written guarantees (including the assumption of a procurement risk), as well as in the case of a violation of life, body, or health.
- 10.2 In the case of simple negligence, Axivion shall be liable only for the breach of material contractual duties. Material contractual duties are such duties that arise from the nature of the contract and which are of particular importance to the attainment of the contractual purpose. In the case of the breach of material contractual duties through simple negligence, Axivion's liability shall be limited to foreseeable, typical damage. In this case, the statute of limitation for claims for damages and for reimbursement of expenses shall be twelve months. The provisions of no. 7.6 shall remain unaffected.
- 10.3 In the case of data loss, Axivion shall be liable for no more than the expense accruing for the reconstruction of data with proper data storage by the customer.
- 10.4 Any further liability for damages or for reimbursement of expenses beyond the scope provided for in these GTC shall be excluded, regardless of the legal nature of the asserted claim. The imperative provisions of the German Product Liability Act (*Produkthaftungsgesetz*) shall remain unaffected.
- 10.5 To the extent that liability on the part of Axivion is excluded according to these GTC, this shall likewise apply to the liability of the representatives of Axivion as well as the persons employed for the fulfillment of its obligations and its vicarious agents, especially staff members.

11. Protection of Confidential Information

- 11.1 The parties undertake to maintain strict confidentiality with respect to all information pertaining to the other party to which they become privy in connection with the performance of the contract and which is designated confidential or evidently constitutes business or trade secrets based on the circumstances and – unless necessary for the attainment of the contractual purpose – neither to record, share or otherwise use such information. The confidentiality obligation shall last for the duration of five years commencing with knowledge, but no later than with the last delivery or provision of the last service.
- 11.2 The confidentiality obligation shall cease to apply if the information was demonstrably known to the receiving party prior to commencement of the contractual relationship, was generally known or publicly accessible or becomes generally known or publicly

accessible through no fault on the part of the receiving party. The receiving party shall bear the burden of proof.

- 11.3 The parties shall allow employees, representatives and other agents access to such information only insofar as this is necessary for the purposes of the contract in each case, and shall ensure by way of appropriate contractual agreements that such persons are also required to maintain strict confidentiality.

12. Cross-border Deliveries, Export Control Obligations

- 12.1 In the case of cross-border deliveries, the customer must in good time submit to the competent authorities all declarations and take all actions necessary for the export from Germany and import into the destination state, in particular to procure the documentation required for customs clearance and to comply with the requirements of any export controls or other restrictions on marketability. Upon request of Axivion, the customer has to furnish an end-use certificate (*Endverbleibserklärung*) that complies with the requirements of the applicable regulations in each case.
- 12.2 Cross-border deliveries are subject to the requirement that the fulfillment is not impeded by any hindrances based on national or international provisions, in particular export control regulations, as well as embargos or other sanctions.
- 12.3 Delays beyond the control of Axivion based on export controls shall render any agreed delivery or service periods invalid.

13. Mentioning as Reference Customer

- 13.1 Axivion shall be entitled to mention the customer vis-à-vis other customers and publicly (particularly on the internet and in brochures) as reference customer and to advertise with this statement.
- 13.2 The customer may object being mentioned by Axivion at any time by written notice to Axivion.

14. Applicable Law, Place of Performance, and Place of Jurisdiction

- 14.1 The legal relations between Axivion and its customers shall be governed exclusively by the laws of the Federal Republic of Germany, to the exclusion of the provision of Private

International Law and the United Nations Convention on Contracts for the International Sale of Goods.

- 14.2 The exclusive place of performance for both parties to the contract shall be Stuttgart/Germany. The exclusive place of jurisdiction is also Stuttgart/Germany. However, Axivion shall be entitled to sue the customer also at its general place of jurisdiction.

15. Final clause

- 15.1 If certain provisions of these GTC and/or the respective contract are invalid or inexecutable, or if these GTC or the contract shows a gap, the effectiveness of the other provisions of these GTC and the whole contract remains unaffected. This does not apply if the adherence to the contract would be an undue hardship for one contracting party.
- 15.2 The contracting parties are obligated to replace the invalid or inexecutable provision by a valid and/or executable provision which comes as close as possible to the invalid or inexecutable provision in terms of its commercial meaning.

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