

## General Terms and Conditions

### Selling products and components

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#### 1. Scope

These General Terms and Conditions for selling products and components apply to the delivery of products (machines, equipment, components and spare parts) by Axpo WZ-Systems AG.

In connection with product delivery, if Axpo WZ-Systems AG also performs assembly, supervision of assembly, commissioning or repair and servicing, Axpo WZ-Systems AG's General Terms and Conditions for maintenance and assembly services valid at the time the order is carried out shall apply to these services unless agreed otherwise.

#### 2. Definitions

**Axpo or Axpo WZ-Systems AG** defines Axpo WZ-Systems AG in these General Terms and Conditions.

**Customer** defines the party that enters into a written agreement with Axpo for the provision of the delivery described in section 1 in these General Terms and Conditions.

**Force majeure** includes events that Axpo is unable to avert despite exercising the necessary due care, regardless of whether they occur on its premises, on the customer's premises or on a third party's premises. Such events include, for example, epidemics, mobilisation, war, riots, significant operational disruptions, accidents, industrial disputes, delayed or faulty delivery of the necessary raw materials, semi-finished or finished products, the rejection of important workpieces, official measures or omissions, transport obstacles and natural disasters.

The **place of delivery** is the place where the delivery is to be made in accordance with the contractually agreed terms of delivery as per INCOTERMS. If no version of the INCOTERMS has been agreed, the version current at the time of delivery shall apply.

**Contract** describes the written agreement concluded between the contracting parties to provide the deliveries described therein.

The **subject matter of the contract** comprises the deliveries described in the contract or the order.

**Written form or in writing** denotes by means of a document signed by both contracting parties or by means of a letter, a fax, an email or another form agreed by both parties.

#### 3. Conclusion of the contract

3.1. The contract is concluded when the customer receives written confirmation from Axpo indicating that it accepts the order (order confirmation). Quotations that do not contain an acceptance period and are not expressly marked as non-binding are binding for a period of 10 days from the date of dispatch from Axpo's premises.

3.2. These General Terms and Conditions shall apply if they are declared applicable in the quotation or in the order

confirmation issued by Axpo. The customer's contradictory terms and conditions shall only be valid if Axpo has expressly accepted them in writing.

3.3. All agreements and legally relevant declarations made by the contracting parties must be in writing to be valid.

#### 4. Scope of the deliveries

The subject matter of the contract is the deliveries listed in the contract or in the order confirmation, including any enclosures thereto.

Modifications or amendments are only valid if they have been confirmed in writing by both parties.

#### 5. Plans and technical documents

5.1. Brochures and catalogues are not binding unless agreed otherwise. Information contained in technical documents issued by Axpo is only binding if expressly warranted.

5.2. Each contracting party reserves all rights to plans and technical documents that it has handed over to the other party and undertakes to make the plans and technical documents received from the other party accessible to third parties only to the extent necessary for the proper performance of the contract and not to use them except for their intended purpose.

5.3. If the delivery also includes software, the contract grants the customer the non-exclusive and non-transferable right to use the software for the agreed purpose. If these rights granted hereunder are infringed, the customer shall lose the right to further use and shall be liable vis-à-vis Axpo, particularly for any third-party claims arising from such infringement.

#### 6. Regulations and standards

6.1. The customer must draw Axpo's attention to the regulations and standards to be observed that relate to the performance of the deliveries, the use and operation of the deliverable and illness and accident prevention in good time before the order is carried out.

6.2. Unless expressly agreed otherwise in the contract, the deliveries shall comply with the regulations and standards applicable at the customer's registered office, of which the customer has notified Axpo in accordance with section 6.1.

6.3. If reference is not made to the regulations and standards to be observed in accordance with sections 6.1 or 6.2, the deliveries shall comply with the regulations and standards applicable at Axpo's registered office at the time the order is carried out.

#### 7. Axpo's contractual obligations

7.1. Axpo undertakes to carry out the order professionally, on time and with qualified personnel. The customer authorises Axpo to consult third parties selected by Axpo to meet its contractual obligations.

## 8. Prices

- 8.1. Unless agreed otherwise, all prices are from the manufacturer's factory, do not include packaging, are in freely available Swiss francs and do not include any deductions. All ancillary costs (e.g. for freight, insurance, export, transit, import and other permits and certifications) shall be borne by the customer. The customer shall likewise bear the costs of all kinds of taxes, levies, fees, customs duties and the like that are levied in connection with the contract, or provide Axpo with reimbursement for the same against appropriate proof if the latter has become liable to pay the same.

If Axpo has included the costs of packaging, freight, insurance and other ancillary costs in its quotation or delivery price, or if they are shown separately in the quotation or order confirmation, it shall be entitled to adjust its rates accordingly in the event of changes to the tariffs.

- 8.2. Axpo reserves the right to adjust prices if a sliding scale price has been agreed. An appropriate price adjustment shall also be made if the delivery period is subsequently extended for one of the reasons mentioned in section 9.3, or if the nature or scope of the agreed deliveries has been changed or if the documents supplied by the customer did not correspond to the actual circumstances or were incomplete.
- 8.3. The prices do not include value-added tax, which is shown separately at the rates applicable at the time of invoicing.

## 9. Terms of payment

- 9.1. Payments are to be made in accordance with the agreed payment terms at Axpo's place of domicile, exclusive of any deductions of cash discounts, expenses, taxes, levies, fees, customs duties and similar items. The payment obligation shall be deemed to be met if the amount owed is freely available to Axpo at its place of domicile. Letter of credit costs, bank charges and commissions, collection charges and – if payment by bill of exchange has been agreed – bill discount and taxes shall be borne by the customer.
- 9.2. The payment dates must also be complied with if transport, delivery, assembly, commissioning or acceptance of the deliveries is delayed or rendered impossible for reasons that are not attributable to Axpo, or if insignificant parts are missing or reworking that does not render the use of the deliveries impossible proves necessary.
- 9.3. If the advance payment or the collateral to be provided on conclusion of the contract is not provided in accordance with the contract, Axpo shall be entitled to maintain the contract or to withdraw from the contract and, in both cases, to demand compensation. If the customer is in arrears with a further payment for any reason whatsoever, or if Axpo is led to seriously fear that it shall not receive the customer's payments in full or on time due to circumstances that have arisen following conclusion of the contract, Axpo shall be entitled to suspend further performance of the contract without restricting its statutory rights and to retain deliveries that are ready for dispatch until new terms of payment have been agreed and Axpo has received sufficient collateral. If such an agreement cannot be reached within a reasonable period of time, or if Axpo does not receive sufficient collateral, Axpo shall be entitled to withdraw from the contract and demand compensation for damages.

- 9.4. If the customer does not meet the agreed payment dates, they shall pay interest from the agreed due date without any reminders being issued and irrespective of any culpability on their part. This is based on the interest rates customary at the customer's place of domicile, but is at least 4% above the Swiss National Bank's relevant discount rate. The right to compensation for further damage remains reserved.

## 10. Reservation of ownership

Axpo remains the owner of all its deliveries until it has received full payment in accordance with the contract. The customer is obligated to cooperate in measures required to protect Axpo's ownership and to complete, at its own expense, all formalities required to establish and maintain the reservation of ownership. The customer shall maintain and appropriately insure the delivered items at its own expense for the duration of reservation of ownership. Furthermore, they shall take all measures to ensure that Axpo's claim to ownership is neither impaired nor revoked.

## 11. Delivery period, default

- 11.1. The delivery period shall commence as soon as the contract has been concluded, all official formalities such as import, export, transit and payment permits have been obtained, the payments to be made at the time of ordering and any collateral have been provided, and the essential technical points have been settled. The delivery period shall be deemed to have been observed if the notification of readiness for dispatch has been sent to the customer by the end of the delivery period.

- 11.2. The agreed delivery clauses shall be interpreted in accordance with the INCOTERMS applicable at the time the contract was concluded. In the absence of any special delivery clause in the contract, the deliverable shall be deemed to have been delivered 'ex works' (EXW) as soon as Axpo has notified the customer in writing that it is ready to deliver. Partial deliveries are permitted unless agreed otherwise.

- 11.3. The delivery period shall be extended accordingly:

11.3.1. If Axpo does not receive information that it requires for the performance of the contract in good time, or if the customer makes subsequent changes to such information, thereby causing a delay in the deliveries;

11.3.2. In the event of force majeure;

11.3.3. If the customer or third parties are behind schedule with the deliveries to be made by them, or if the customer does not comply with their contractual obligations, particularly the agreed terms of payment.

- 11.4. Compensation for delayed delivery requires a special written agreement. It may only be asserted if the delay was demonstrably caused by Axpo and the customer can prove that the delay caused damage.

If the customer is helped out by means of a replacement delivery, they shall lose their claim to compensation for delayed delivery.

Any compensation for delayed delivery shall not exceed 0.5% for each full week of delay, but shall not exceed 5% in total, calculated on the ex-works sales price (excluding packaging) of the delayed part of the delivery.

Once the maximum amount of compensation for delayed delivery has been reached, the customer must set Axpo a reasonable grace period in writing. If this grace period is not complied with for reasons that are attributable to Axpo, the customer shall be entitled to refuse to accept the delayed part of the delivery if there is no longer a reasonable prospect of performance. If a delay that is attributable to Axpo and that exceeds the grace period leads to an economically unreasonable situation for the customer, the customer shall be entitled to withdraw from the contract and to demand that any payments already made be refunded in return for the customer returning any deliveries that have been made.

- 11.5. If deliveries are delayed for reasons that are solely attributable to Axpo, the customer may not assert any rights and claims other than those expressly mentioned in section 11.4. This restriction does not apply to unlawful intent or gross negligence on the part of Axpo, except in the case of its auxiliary personnel.
- 11.6. If an interruption in accordance with section 11.3 lasts longer than three months, or if it is already foreseeable that it shall be impossible to continue the deliveries still to be provided at the time of such a circumstance occurring, Axpo shall be entitled to withdraw from the contract. In this case, the customer shall owe Axpo the outstanding amount for deliveries already provided but not yet paid for.

## 12. Packaging

The packaging forms part of the sales price and is not taken back, unless it has been agreed that it is to be returned to Axpo. In this case, the customer shall return the packaging to the place of dispatch postage paid.

## 13. Transfer of benefit and risk

- 13.1. The benefit and risk shall pass to the customer at the latest on delivery at the agreed place of delivery.

In the event of an EXW delivery, if Axpo undertakes to send the deliverable to another destination at the customer's request, the risk shall pass at the time when the first carrier takes delivery of the deliverable at the latest.

- 13.2. If dispatch is delayed at the customer's request or for other reasons that are not attributable to Axpo, the risk shall pass to the customer at the time originally envisaged for deliveries ex works. From this time onwards, the deliveries shall be stored and insured at the customer's expense and risk.

## 14. Shipping, transport and insurance

- 14.1. Axpo must be notified in good time of any special requests regarding shipping, transport and insurance. Transport is carried out at the customer's expense and risk. The customer must make complaints in connection with shipping or transport to the last carrier as soon as they receive the deliveries or the freight documents.
- 14.2. The customer is responsible for taking out insurance against any kind of damages. Even if it is to be taken out by Axpo, it shall be deemed to have been taken out on behalf of the customer and at the customer's expense and risk.

## 15. Inspection and acceptance of the deliveries

- 15.1. Unless agreed otherwise, Axpo shall inspect the deliveries prior to dispatch, insofar as doing so is customary. Further inspections, as well as the terms and conditions applicable to the same, are to be specifically agreed and

the costs associated with the same are to be paid by the customer. Where circumstances permit, they shall be carried out in Axpo's workshops, its subcontractors' workshops or at the destination.

- 15.2. The customer must inspect the deliveries within a reasonable period of time following receipt and notify Axpo immediately and in writing of any defects. If they fail to do so, the deliveries shall be deemed to have been accepted and approved. The claims asserted by the customer from warranty and liability for defects according to section 16 remain valid for defects in the deliveries that are not recognisable at this time.
- 15.3. Axpo shall rectify the defects that it is notified of in accordance with section 15.2 as quickly as possible, and the customer must give it the opportunity to do so.
- 15.4. Acceptance shall also be deemed to have taken place if the agreed acceptance test cannot be carried out on the scheduled date for reasons that are not attributable to Axpo, if the customer refuses acceptance without being entitled to do so, if the customer refuses to sign an acceptance report that corresponds to the facts or as soon as the customer uses the deliverable.
- 15.5. The customer's rights with respect to defects in the deliveries under sections 15 and 16 are exclusive.

## 16. Warranty, liability for defects

- 16.1. The warranty period (guarantee period) is 12 months from the date that the customer is notified of readiness for dispatch. Once the warranty period has elapsed, all the customer's warranty claims shall be deemed to be time barred.

The warranty shall expire prematurely if the customer or third parties carry out improper modifications or repairs or, in the event of a defect, if the customer does not immediately take all suitable measures to mitigate the damage and give Axpo the opportunity to remedy the defect. The warranty period for warranty work does not start over again and is limited to the warranty period for the original delivery.

- 16.2. At the customer's written request, Axpo undertakes to repair or replace as quickly as possible, at its discretion, all parts of the deliveries that demonstrably become defective or unusable before the warranty period elapses as a result of poor material, faulty design or defective performance. Replaced parts shall become Axpo's property. Axpo shall bear the costs it incurs for the repair and replacement of the defective parts; if repair on Axpo's premises or at the manufacturer's factory is not possible, or only possible at a disproportionate expense or disadvantage, Axpo shall bear the costs of repair and replacement of the defective parts of its delivery that arise outside its factory and are reasonable under the circumstances. All costs exceeding this shall be borne by the customer. The customer is obligated to carry out proper maintenance of the delivery themselves.
- 16.3. The deliveries' assured properties are only those that have been expressly designated as such in the order confirmation or in the agreed specifications. The assurance is valid at the latest until the warranty period elapses. If an acceptance test has been agreed, the assurance shall be deemed to have been met if proof of the relevant properties has been provided on the occasion of this test. If the assured properties are not met or are only met in part, the customer shall be entitled to demand that Axpo carry out subsequent improvement.

The customer must give Axpo the opportunity to do so and grant it the necessary time.

- 16.4. Axpo's warranty and liability shall exclude all damage that cannot be proven to have been caused by poor materials, faulty design or defective performance of the deliveries (e.g. as a result of natural wear and tear, inadequate maintenance, failure to observe operating instructions, excessive strain, unsuitable operating equipment, chemical or electrolytic influences, construction or assembly work not carried out by Axpo, or as a result of other reasons that are not attributable to Axpo).
- 16.5. For deliveries from subcontractors prescribed by the customer, Axpo shall only provide the warranty to the extent that it is entitled to a warranty claim against these subcontractors.
- 16.6. Due to defects in material, construction or design, as well as due to the absence or non-achievement of assured properties or other possible assurances, the customer has no rights and claims other than those expressly mentioned in sections 16.1 to 16.5.
- 16.7. Axpo shall only be liable for the customer's claims for defective advice and the like or for breach of any secondary obligations in the event of unlawful intent or gross negligence.

#### 17. Improper performance of the contract

- 17.1. In all cases of poor performance or non-performance not expressly set down in these Terms and Conditions, particularly if Axpo, for no reason, starts performance of the deliveries so late that timely completion is no longer foreseeable, if non-contractual performance attributable to culpability on Axpo's part is definitely foreseeable or if deliveries have been performed contrary to the contract due to culpability on Axpo's part, the customer shall be entitled to set Axpo a reasonable grace period for the affected deliveries under threat of withdrawal in the event of non-performance. If this grace period elapses unsuccessfully due to culpability on Axpo's part, the customer may withdraw from the contract with regard to the deliveries that have been performed contrary to the contract or whose performance contrary to the contract is definitely foreseeable, and may demand that the portion of payments already made be returned.
- 17.2. In such a case, the provisions set down in section 19 shall apply with regard to any claim for damages asserted by the customer and the exclusion of further liability, and the claim for damages shall be limited to 10% of the contract price of the deliveries for which the withdrawal is made.

#### 18. Termination of the contract by Axpo

If unforeseen events significantly change the economic significance or the content of the deliveries or have a significant impact on Axpo's work, or if it becomes subsequently impossible to perform the services, the contract shall be adjusted accordingly. If doing so is not economically viable, Axpo has the right to terminate the contract or the affected parts of the contract. If Axpo intends to make use of its right to terminate the contract, it must inform the customer to this effect without delay after becoming aware of the consequences of the event, even if an extension of delivery period has initially been agreed. In the event of termination of the contract, Axpo shall be entitled to remuneration for deliveries already provided. Claims for damages asserted by the customer due to such termination of the contract are excluded.

#### 19. Limitation of liability

Axpo shall not be liable for property damage caused by the deliverable after delivery has taken place if the deliverable is already in the customer's possession. If Axpo is held liable by third parties for damage caused by the deliverable under the preceding sentence, the customer must indemnify and defend Axpo and hold it harmless. If a third party asserts a claim against Axpo as described above, Axpo shall inform the customer to this effect immediately and in writing.

All cases of breach of contract and the legal consequences of the same, as well as all claims asserted by the customer, regardless of the legal grounds on which they are made, are conclusively regulated in these Terms and Conditions; in particular, all claims for damages, reduction, cancellation of the contract or withdrawal from the contract that are not expressly mentioned are excluded.

Under no circumstances shall the customer be entitled to claim compensation for damages that have not occurred on the deliverable itself (such as loss of production, loss of use, loss of orders, loss of profit, as well as other consequential damages caused by a defect, indirect or direct damages).

This limitation of liability shall not apply in the event of gross negligence or unlawful intent, or if otherwise contrary to mandatory law.

#### 20. Final provisions

Any modifications to the contract must be agreed in writing. Should provisions herein prove to be invalid, this shall not affect the validity of the remaining provisions. The parties agree to replace the invalid terms and conditions with new ones that reflect the contract's economic purpose as closely as possible.

#### 21. Applicable law and place of jurisdiction

The contract is subject solely to **Swiss law**, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG)<sup>1</sup>.

**The place of jurisdiction for the customer and Axpo is 5200 Brugg, Switzerland;** the place of debt collection for customers domiciled abroad is also 5200 Brugg, Switzerland. However, Axpo is also entitled to assert its rights at the customer's place of domicile or before any other competent authority, whereby Swiss law remains exclusively applicable.

<sup>1</sup> United Nations Convention on Contracts for the International Sale of Goods