

General Terms and Conditions

The sale of connectivity services

January 2020 edition

1. Scope

These General Terms and Conditions for the sale of connectivity services apply to the provision of telecommunications services by Axpo WZ-Systems AG. The services to be provided by Axpo WZ-Systems shall be defined in a separate connectivity services contract.

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 (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.

Services means the specific connectivity services that Axpo provides for the customer in accordance with the description in the connectivity services contract concluded between Axpo and the customer (consisting of the 'connectivity services framework agreement' and/or the related individual contracts and annexes).

Customer installation refers to equipment, systems, cables and facilities that are provided by the customer and used together with the data network installation so that the services can be operated.

Data network installation refers to equipment, systems, cables and facilities that are provided by Axpo WZ-Systems free of charge to make the services available to the customer and shall remain the property of Axpo WZ-Systems and/or a third party.

SLA (service level agreement) defines the availability, response time and downtime if and when a fault occurs.

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).

- 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. Subject matter of the contract

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. Duty of the customer to provide information

- 5.1. The customer must make Axpo aware of existing technical or other equipment that could be damaged during setup of the data network installation.

- 5.2. The customer must provide Axpo with all the information it needs to provide the services.

6. Axpo's contractual obligations

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.

7. Service provision, start-up and reporting of defects

- 7.1. Once the service has been installed and started up, Axpo shall release it (approval) and provide the customer with a start-up notification.

- 7.2. The customer is obligated to notify Axpo of any defects in writing and within five working days of receiving the start-up notification. Provided that the defect has been reported on time and in the proper format, the service shall not be considered accepted until the defects have been remedied and the agreed specifications met. However, if the customer fails to report defects on time or in the correct format, the service shall be considered accepted by the release date.

- 7.3. Axpo reserves the right to engage subcontractors.

8. Licences, permits and approvals

- 8.1. The customer is solely responsible for obtaining all the necessary licences, permits or approvals for setting up the customer's installation on their premises.

- 8.2. As part of its power of disposal, the customer shall permit Axpo to use the necessary and obtained licences, permits or approvals insofar as they are necessary for setting up and maintaining the data network installation.

8.3 The customer undertakes to possess on an ongoing basis all the licences, permits or approvals necessary for using the systems connected to or to be connected to the data network installation. Furthermore, the customer undertakes not to use the services in any way that might somehow lead to the infringement of a licence by or through Axpo in connection with the provision of the contractually agreed services.

9. Adjustments and maintenance work

9.1. Axpo is entitled to modify or adjust the services or the data network installation at any time. Where possible, the customer shall be made aware of such modifications one month in advance. Axpo shall notify the customer in writing at least seven days in advance of any maintenance or modification work.

9.2. At the customer's request, Axpo shall endeavour to ensure that the services shall only be interrupted outside of normal business hours (8 am to 5 pm on working days).

10. Network management

Axpo shall operate a service desk for monitoring, maintenance and service support. The service desk shall be staffed during the day from Monday to Friday and shall be available 24 hours a day, seven days a week.

11. Faults and defects

11.1. The customer must contact the service desk in the event of a defect or fault, or if the availability of the services is impaired. Axpo shall strive to remedy the defects as quickly as possible. Where necessary, during normal business hours on working days, a service technician shall arrive at the customer's premises no later than five hours after Axpo receives the report.

11.2. Axpo shall isolate faults at the customer's expense unless the defects can be proven to have been caused by Axpo or its subcontractors.

12. Interruption to the services

The customer shall be informed 30 days in advance if scheduled interruptions to the services are necessary. The customer's interests shall be taken into consideration where possible. The customer is not entitled to compensation for scheduled interruptions.

13. Electrical installation and equipment

13.1. The customer is responsible for the electrical installation. They shall ensure that the electrical installation is complete at least five working days prior to the start-up date.

13.2. If a data network installation needs to be set up on the customer's site for operational reasons, the customer shall make the location and power supply, including a suitable connection point, available free of charge and cover the costs of the operating current.

13.3. The customer is responsible for the ambient conditions in the room in question (i.e. room temperature of between +5°C and +30°C, 10–90% relative humidity, non-condensing).

14. Data network installation

The customer undertakes to house the data network installation in accordance with Axpo's specifications; not to move, modify, convert or otherwise interfere with the installation in a disruptive manner; to only have repairs, maintenance or other work performed on the installation by personnel commissioned by Axpo; and not to remove, modify or deface labels or signs on the installation. The customer must permit Axpo to conduct inspections or tests on the installation at the latter's request.

15. Access

The customer shall grant Axpo access to the premises, the data network installation or the network at all times to facilitate the provision and maintenance of the services. The customer must provide Axpo with the equipment and premises necessary for providing the services free of charge, as well as the electricity required to operate the services.

16. Safety regulations

The customer must at all times ensure that the data network installation complies with the relevant national safety standards and adhere to these at all times. Furthermore, the customer shall ensure that the data network installation is compatible with Axpo's services. Axpo reserves the right to temporarily interrupt the connection to all customer installations if it believes that they could cause death, personal injury or material damage to property belonging to Axpo or a third party, or significantly impair the quality of the connectivity services or the network. If Axpo has to carry out installations on the customer's premises, the customer must notify Axpo of any and all health and occupational hazards and recommend the necessary safety regulations.

17. Prices

The prices and conditions are set down in the annex to the connectivity services contract; they may be modified at the start of every extended contractual term. The customer shall be notified of modifications at least two months before they take effect. Price modifications shall take effect unless the customer terminates the relevant connectivity services contract in good time.

18. Terms of payment

18.1. The obligation to pay for the agreed services shall come into effect when the customer accepts the service. Invoices for the agreed services shall be submitted based on the approaches and conditions set down in the latest version of the annexes to the connectivity services contract. Billing periods that have already started shall be billed on a pro-rata basis.

18.2. Invoices are payable without any deductions within 30 days of the invoice date at the latest. If the customer fails to comply with this obligation, they shall automatically be in default and must pay Axpo default interest on the amount owed at a rate of 5% p.a. for every additional day it is in arrears.

19. Warranty

Axpo guarantees the services' SLA from the release date. However, the customer's warranty rights are limited to subsequent improvement or the replacement of the services if agreed in the SLA.

20. Limitation of liability

The customer is obligated not to use the services or to allow the services to be used unlawfully. They assume all responsibility and liability for the content of the information or data transmitted over the network.

The customer is liable for all damage they cause to the data network installation through intent or negligence. Additionally, the customer is liable for damage caused to Axpo's equipment that is stored on the customer's premises as a result of a failure to maintain the aforementioned ambient conditions or by fire, water, explosions or theft, as well as by intentional or negligent acts (see (13)).

Axpo must be notified in writing at least one working day in advance of work scheduled by the customer such as power cuts, repatching, equipment changes, relocation of end devices, etc., that requires the connection that Axpo proactively monitors to be interrupted. Axpo must be notified immediately of unscheduled service interruptions that are caused by the customer. Axpo reserves the right to charge the customer for any expenses resulting from failure to comply with this provision. Axpo cannot be held liable for damage resulting from delays caused by the denial of access to the customer's premises (see (15)).

Where legally admissible, Axpo accepts no liability for direct, indirect or consequential damage (especially a loss of profits, losses and unrealised savings). This applies to damage that the customer suffers due to errors, faults, interruptions and/or defects in the services and to third-party claims against the customer as a result of such errors, faults, interruptions and/or defects.

If there is evidence that Axpo is not achieving the service quality agreed in the SLA, the affected customer shall be entitled to a reasonable reduction in the connection fee for the period of time in question. The customer shall not be entitled to a reduction if the defect was caused by force majeure or by a culpable act on the part of the customer.

21. Non-disclosure

The parties are obligated to treat all plans, drawings and trade secrets disclosed to them in connection with the contractual relationship as confidential. They undertake not to share such confidential information with third parties without the express written consent of the other contracting party. At the request of one contracting party, all confidential documents that it has provided to the other party must be returned upon termination of the contract; data and information that is stored electronically must be permanently deleted.

22. Use by the customer or third parties

The customer can use the services for their own purposes or grant a licence to third parties with Axpo's prior consent. In any case, the customer is responsible for the lawful use of the services.

23. Novation

The parties are at all times entitled to transfer the contracts associated with these General Terms and Conditions to a third party as long as the latter is able to execute the contract under the same conditions as the contracting parties. The other party must be notified to this effect in good time and their interests must be taken into consideration wherever possible.

24. Premature termination

24.1. Axpo is entitled to terminate the connectivity services contract, to discontinue the services or to suspend the services at any time and until further notice if:

24.1.1. the customer breaches their contractual obligations and fails to remedy the breach of contract within the deadline set by Axpo;

24.1.2. the customer uses services unlawfully or misuses them for illegal activities;

24.1.3. the customer causes faults or impairments in the data network installation or other services or other users;

24.1.4. the customer becomes insolvent; or

24.1.5. regulatory or statutory changes take place.

24.2. If the customer purchases multiple services from Axpo, a written notice of termination must indicate which service is to be terminated.

24.3. Once the connectivity services contract has been terminated, the customer is obligated to grant Axpo the necessary access to the premises so Axpo can remove its data network installation.

24.4. If construction or structural changes have been carried out in connection with Axpo's provision of the services, Axpo shall not be obligated to restore the customer's premises to their original condition.

25. 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.

26. 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)¹.

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.

¹ United Nations Convention on Contracts for the International Sale of Goods