

**AXXO IM- & EXPORT GMBH**  
**GENERAL TERMS OF SALE AND DELIVERY**  
**VERSION: 09/2020**

## **1 Scope of Application**

1.1 All sales, deliveries and services (hereinafter collectively the "Services") of AXXO Im- & Export GmbH ("AXXO") are exclusively subject to the following General Terms of Sale and Delivery. Customers' general terms and conditions of business which deviate from these General Terms of Sale and Delivery or from the law will not be accepted, and they will also not become part of a contract if AXXO accepts or executes orders from the customer in awareness of the customer's opposing or deviating terms and conditions of business.

## **2 Subject Matter and Scope of Services (Offers, Samples, Guarantees, Conclusion of Contracts)**

2.1 All offers of AXXO are nonbinding and without engagement unless specifically agreed otherwise. Contracts shall be deemed concluded only after AXXO has issued a written order confirmation, effected delivery of the goods ordered or performed the Service.

AXXO shall be generally under no obligation to verify the correctness of the information provided by the customer upon which AXXO's offer or order confirmation is based, and AXXO shall also not be obligated to investigate if the execution of the customer's order based on such information infringes any third-party property rights. The customer will be advised of all risks which are identified by AXXO.

2.2 The data and information included in brochures and other promotional and information material of AXXO serve solely as a guideline and become a binding part of a contract only upon the express written consent of AXXO.

2.3 Characteristics and properties of samples and specimens are only binding if expressly so agreed.

2.4 Information about the quality, condition and (shelf-)life of products shall be deemed to be guarantees only if expressly designated as such. The same applies to the assumption of a procurement risk.

2.5 Technical changes which are required for manufacturing reasons, or which are necessary due to legislative changes, or which serve the product update and maintenance, shall be admissible if they are reasonable for the customer.

## **3 Delivery, Delivery Periods, Packaging, Passing of the Risk**

3.1 The type and scope of AXXO's Services and the delivery periods are determined by the written order confirmation of AXXO. AXXO shall be entitled to the partial performance of Services if this is reasonable for the customer.

3.2 The delivery period commences to run only after all issues which are essential for the performance of the contract have been clarified with the customer and after the customer has performed all essential acts incumbent on him which are required for the performance of the contract by AXXO. In particular, the delivery period does not commence to run until AXXO has received all information from the customer which is required to effect delivery, or until the customer has furnished proof that, if required, he has opened a letter of credit, effected prepayment or provided a security, as agreed in the contract. The delivery period will be interrupted by subsequent changes requested by the customer. After agreement about the desired changes has been achieved, the delivery period re-commences to run.

### **3.3 Force Majeure (according to ICC FORCE MAJEURE CLAUSE)**

3.3.1 Definition. "Force Majeure" means the occurrence of an event or circumstance ("Force Majeure Event") that prevents or impedes a party from performing one or more of its contractual obligations under the contract, if and to the extent that the party affected by the impediment ("the Affected Party") proves:

- a) that such impediment is beyond its reasonable control; and
- b) that it could not reasonably have been foreseen at the time of the conclusion of the contract; and
- c) that the effects of the impediment could not reasonably have been avoided or overcome by the Affected Party.

3.3.2 Non-performance by third parties. Where a contracting party fails to perform one or more of its contractual obligations because of default by a third party whom it has engaged to perform the whole or part of the contract, the contracting party may invoke Force Majeure only to the extent that the requirements under paragraph 3.3.1 of this Clause are established both for the contracting party and for the third party.

3.3.3 Presumed Force Majeure Events. In the absence of proof to the contrary, the following events affecting a party shall be presumed to fulfil conditions (a) and (b) under paragraph 3.3.1 of this Clause, and the Affected Party only needs to prove that condition (c) of paragraph 3.3.1 is satisfied:

- a) war (whether declared or not), hostilities, invasion, act of foreign enemies, extensive military mobilisation;
  - b) civil war, riot, rebellion and revolution, military or usurped power, insurrection, act of terrorism, sabotage or piracy;
  - c) currency and trade restriction, embargo, sanction;
  - d) act of authority whether lawful or unlawful, compliance with any law or governmental order, expropriation, seizure of works, requisition, nationalisation;
  - e) plague, epidemic, natural disaster or extreme natural event;
  - f) explosion, fire, destruction of equipment, prolonged break-down of transport, telecommunication, information system or energy;
  - g) general labour disturbance such as boycott, strike and lock-out, go-slow, occupation of factories and premises.
- 3.3.4 Notification. The Affected Party shall give notice of the event without delay to the other party.

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3.3.5 Consequences of Force Majeure. A party successfully invoking this Clause is relieved from its duty to perform its obligations under the Contract and from any liability in damages or from any other contractual remedy for breach of contract, from the time at which the impediment causes inability to perform, provided that the notice thereof is given without delay. If notice thereof is not given without delay, the relief is effective from the time at which notice thereof reaches the other party. The other party may suspend the performance of its obligations, if applicable, from the date of the notice.

3.3.6. Temporary impediment. Where the effect of the impediment or event invoked is temporary, the consequences set out under paragraph 3.3.5 above shall apply only as long as the impediment invoked prevents performance by the Affected Party of its contractual obligations. The Affected Party must notify the other party as soon as the impediment ceases to impede performance of its contractual obligations.

3.3.7 Duty to mitigate. The Affected Party is under an obligation to take all reasonable measures to limit the effect of the event invoked upon performance of the contract.

3.3.8 Contract termination. Where the duration of the impediment invoked has the effect of substantially depriving the contracting parties of what they were reasonably entitled to expect under the contract, either party has the right to terminate the contract by notification within a reasonable period to the other party. Unless otherwise agreed, the parties expressly agree that the contract may be terminated by either party if the duration of the impediment exceeds 120 days.

3.3.9 Unjust enrichment. Where paragraph 3.3.8 above applies and where either contracting party has, by reason of anything done by another contracting party in the performance of the contract, derived a benefit before the termination of the contract, the party deriving such a benefit shall pay to the other party a sum of money equivalent to the value of such benefit.

3.4 The products of AXXO are generally packed exportworthy. If the customer desires a different packaging, the costs will be borne by the customer.

3.5 AXXO delivers generally on basis of the latest version of INCOTERMS 2020, if applicable.

#### **4 Prices, Payment, Default**

4.1 The prices quoted by AXXO are exclusive of the statutory value-added tax. Price calculation is based on the outgoing weight. In case public charges are raised and/or newly established or an increase in freight charges takes place AXXO is entitled to adapt purchase price.

4.2 Invoices are due for payment immediately upon receipt and without any deductions. Cheques will not be accepted. The customer agrees to the electronic transmission of the invoice.

4.3 AXXO charges interest for default in payment at the rate of eight (8) percentage points above the applicable base rate p.a. (Section 247 of the German Civil Code (BGB)). The right to furnish proof of a higher or further damage caused by default remains reserved.

4.4 AXXO shall not be obligated to perform the contract for so long as the customer fails to perform his own obligations according to contract, including his obligations from other contracts with AXXO and, in particular, if the customer defaults in the timely payment of invoices due.

4.5 The customer may offset counterclaims or withhold payment based on such counterclaims only if such counterclaims are uncontested in writing or non-appealable.

4.6 If the customer is in default of payment or if there are circumstances which, when applying customary banking standards, justify doubts about the customer's ability to pay, AXXO will be entitled to perform outstanding Services only against payment in advance or subject to the provision of a security. In such case, AXXO will be permitted to declare all of its claims against the customer immediately due for payment, irrespective of the term of any bills of exchange, and demand securities.

#### **5 Warranty, Duties of the Customer regarding Claims for Defects by his own Customers; Liability and Damages**

5.1 General information on the use of a product or examples for the application of a product given by AXXO in product brochures or other advertising media do not release the customer from a careful inspection of the delivered product for its fitness for the customer's particular purpose of use. The customer's special requests regarding the particular use of a product shall only be authoritative if AXXO has confirmed to the customer in writing at the time of conclusion of the contract that the product delivered is fit for the customer's intended purpose of use.

5.2 The customer shall notify AXXO without delay of all claims for defects which are asserted by his own customers and which relate to Services of AXXO, otherwise the customer's claims for defects against AXXO will be excluded. In addition, the customer shall preserve evidence in the requisite form and provide such evidence to AXXO. AXXO may reclaim from the customer a product complained of as defective (including any existing supporting documents, samples and packing slips) for investigation of the defect. The customer's failure to comply with this reasonable request will result in the exclusion of the customer's claims for defects or incompleteness of Service. The same applies to any claims for defects which are asserted against the customer by his own customers and which relate to Services of AXXO.

5.3 For defects in a product, AXXO's obligation to perform the contract shall, at its choice, consist of subsequent performance by remedy of the defect or delivery of a faultfree product. The customer will be entitled to cancel the contract or to reduce the purchase price in accordance with the statutory provisions only if the subsequent

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performance by AXXO has failed twice or is unreasonable and the defect complained of is not merely a minor defect. Claims for damages are governed by the provisions in clause 5.6 hereof.

5.4 The compensation of any loss or damage is excluded if and to the extent that such loss or damage is caused by the improper use, modification, assembly, installation and/or operation of the products of AXXO, or by defective instructions of the customer, and not by a fault on the part of AXXO.

5.5 Any claims for material defects and defects of title become barred by the statute of limitations after twelve (12) months from the passing of the risk.

5.6 Claims for damages are only permissible against AXXO, if AXXO acted at least with gross negligence. Consequential damages are excluded. In any case AXXO's responsibility for damages is limited to the purchase price for that part for which our delivery was delayed, unperformed resp. defective.

5.7 The foregoing limitations of liability apply on the merits and in terms of amount also to AXXO's legal representatives, agents and employees and/or other persons in AXXO's services.

## **6 Reservation of Title**

6.1 AXXO retains title to all products delivered until the customer has fully satisfied all of his payment obligations from the business relationship with AXXO. This applies also if payments are made in satisfaction of specially designated claims, including claims from bills of exchange, from open bills or current account.

6.2 The customer shall have the right to resell, process, mix, blend or combine the goods subject to reservation of title with other items during his ordinary course of business until revocation by AXXO, which revocation may be declared at any time and without giving reasons. A resale of the goods subject to reservation of title within the meaning herein defined extends also to the installation of such goods in ground and buildings, or their installation in facilities connected to buildings, or their use for the performance of other contracts.

6.3 The processing or transformation of the goods subject to reservation of title is made for AXXO as the manufacturer within the meaning defined in Section 950 of the German Civil Code (BGB) without resulting in any obligation on the part of AXXO. The processed or transformed goods shall constitute goods subject to the reservation of title within the meaning of these General Terms of Sale and Delivery. If the goods subject to reservation of title are processed or inseparably blended/combined with other items which are not owned by AXXO, AXXO acquires a co-ownership of the resulting new item in the ratio of the invoice value of the goods subject to reservation of title and the replacement value of the other items used at the time of such processing or blending/combining. If the goods subject to reservation of title are combined or inseparably blended with other items not owned by AXXO into a uniform item which is to be regarded as main item, the customer hereby assigns to AXXO a share of co-ownership which is proportionate to the customer's ownership of the main item. AXXO hereby accepts this assignment. The customer will hold the property so created on behalf of AXXO free of charge.

6.4 The customer shall insure the goods subject to reservation of title at his own cost against all standard risks, in particular against fire, burglary and water hazards, handle these goods with care and store them properly.

6.5 In the event of a resale of the goods subject to reservation of title by the customer, the customer hereby immediately assigns to AXXO the purchase price claims against his own customers arising from such resale. If the customer resells the goods subject to reservation of title together with other items not delivered by AXXO, the foregoing assignment applies only in the amount of the value of the goods subject to reservation of title which is specified in the invoice of AXXO. In the case of a resale of items in which AXXO has a co-ownership pursuant to clause 6.3, such assignment applies in the amount of AXXO's co-ownership. The assigned claims serve as security in the same scope as the goods subject to reservation of title. If an assigned claim is included in a current account, the customer hereby immediately assigns to AXXO a balance which corresponds to such claim from current account. AXXO hereby accepts the said assignment of claims.

6.6 The customer shall have the right to collect, within his ordinary course of business, the claims assigned to him by AXXO until revocation by AXXO, which revocation may be declared at any time and for no specific reason; this collection right becomes automatically extinct without revocation as soon as the customer defaults in any of his payments to AXXO. If payment is made by direct debiting, the customer will ensure by prior agreement with his bank that the amounts received are exempt from the bank's lien and that he is at all times able to meet his obligation to transfer his proceeds to AXXO. At the request of AXXO, the customer will inform his own customers of the assignment of future claims to AXXO and provide AXXO with any and all information and documentation which is required for the assertion of these claims.

6.7 If the aggregate value of the securities existing for AXXO exceeds the claims of AXXO by more than 10%, AXXO will release additional securities of its own choice at the request of the customer.

6.8 Above and beyond the foregoing, the customer is not entitled to make any dispositions in respect of the goods subject to reservation of title (liens, pledging of security interests) or other assignments in respect of the claims specified in clause 6.5. In the event of an attachment or seizure of the goods subject to reservation of title, the customer will point out that these goods are the property of AXXO and will notify AXXO of such attachment or seizure without delay, also in writing.

6.9 If the customer is in default of payment and a grace period fixed by AXXO has elapsed without payment being effected, AXXO is entitled to take back the goods subject to reservation of title also if AXXO has not rescinded the contract.

**7 Choice of Law, Place of Performance, Place of Jurisdiction**

7.1 These General Terms of Delivery and any agreement between AXXO and the customer shall be governed by and construed in accordance with the law of Germany, without giving effect to its conflict of law provisions and without giving effect to the UN Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG).

7.2 The place of performance for the Services of AXXO and the place of performance for the customer's payments is AXXO's registered place of business.

7.3 The place of jurisdiction, also for actions on bills of exchange, is the registered place of business of AXXO. However, AXXO shall be entitled to recourse in any court having jurisdiction as to the respective legal action under the laws of Germany or under the laws of the country in which the customer has his registered place of business.