

General Delivery Conditions (Rev. 12-2005)

Appendix to offer / confirmation of offer

I. General Information

1. All products and services are subject to these conditions as well as any separate contractual agreements. Deviant purchase conditions of the customer are not subject matter of contract even by acceptance of the order. A contract is settled – in the absence of separate agreements – by the written confirmation of order by the supplier.
2. The supplier retains the proprietary rights and copyright to prototypes, cost estimates, diagrams and other material or immaterial information – even in electronic form – they may not be made available to third parties. The supplier is obliged to make information and documentation which is designated as confidential by the purchaser available to third parties only with the purchaser's consent.

II. Offer

The documentation belonging to this offer such as illustrations, diagrams, size and weight specifications are only approximately definitive, as long as they are not explicitly designated as binding. The supplier retains the proprietary rights and copyright to cost estimates, diagrams and other documentation; they may not be made available to third parties. The supplier is obliged to make plans which are designated as confidential by the purchaser available to third parties only with the purchaser's consent.

III. Scope of Delivery

For the scope of delivery a written confirmation of order by the supplier is binding, in the case of an offer by the supplier with temporal obligation and acceptance within the time limit it is the offer as long as no duly confirmation of order is available. Additional clauses and changes require the written confirmation of the supplier.

IV. Prices and Payment

1. The prices are valid – in the absence of separate agreements – ex works including loading in the works, but excluding packaging and unloading. The respective legal value added tax is added to the prices.
2. In the absence of separate agreement the payment is to be made strictly net to the account of the supplier in the following partitions: 1/3 down payment following receipt of the confirmation of order, 1/3 as soon as the purchaser has been informed that the main parts are ready for shipment. The remainder within a month of the transfer of liability.
3. The purchaser is entitled the right to withhold payments or to charge up against counter-claims only if the counter-claims have been deemed undisputed or legally binding.

V. Delivery, Delay of Delivery

1. The delivery date is set by the agreements of the contract parties. A meeting of the delivery date by the supplier implies that all financial and technical questions have been cleared between the contract parties and the purchaser has fulfilled all his obligations such as submittal of necessary official certificates or authorisations or making the down payment. Should this not be the case then the delivery date is appropriately delayed. This is not valid though when the supplier is responsible for the delay.
2. Meeting the delivery is subject to the reservation of correct and timely self-delivery.
3. The delivery date is met when the object of delivery has left the supplier's works on time or the readiness for shipment has been communicated. Should an acceptance of delivery be mandatory, then – justifiable refusal of acceptance aside – the acceptance date is decisive, otherwise the notification of the readiness for acceptance.

4. If the shipment or the acceptance of the delivery object is delayed due to reasons that are the responsibility of the purchaser, then the purchaser is charged with the costs resulting from the delay, beginning one month following the notification of readiness for shipment or acceptance.
5. In case the delivery delay is caused by force majeure, labour disputes or other events beyond the control of the supplier then the delivery time is extended appropriately. The supplier will notify the purchaser as soon as possible about the beginning and end of such conditions.
6. The purchaser may terminate the contract without setting a term in case it is ultimately impossible for the supplier to fulfil the contract before the transfer of liability. The purchaser may furthermore terminate the contract, in case partial fulfilment of the delivery becomes impossible upon order and the purchaser has a justifiable interest in the rejection of the partial delivery. If this is not the case, then the purchaser has to pay the contract price that concerns the partial delivery. The same is valid when the supplier is incapable. Apart from that section IX.2 is valid.

In case the impossibility or the incapability occur during the acceptance delay or the purchaser is wholly or predominantly responsible for these circumstances, he remains liable for consideration.

7. Should the supplier default causing damage to the purchaser then the purchaser is entitled to demand a blanket compensation for default. It amounts to 0.5% of the total for every full week of the delay but no more than 5% of the value of that part of the total delivery that could not be used on time or not be used as specified in the contract because of the delay.
If the purchaser grants the defaulting supplier – while observing legal exceptions – an appropriate notice for fulfilment and the term is exceeded, then the purchaser is entitled to terminate the contract within legal regulations.
Further claims due to delivery default are determined exclusively by section IX.2 of these conditions.

VI. Transfer of Liability, Acceptance of Deliveries

1. The risk is transferred ex works (Incoterms 2000) and this even then when partial deliveries are made or the supplier covers further services such as shipment costs or delivery and installation. In so far as an acceptance of deliveries is to be made this is decisive for the transfer of liability. It has to be made immediately upon the acceptance date, otherwise following the notification of the readiness for acceptance. The purchaser may not refuse the acceptance when insubstantial faults exist.
2. Should the shipment or the acceptance be delayed or stopped due to circumstances that the supplier cannot be held accountable for then the risk is transferred to the purchaser on the day of the notification of readiness for shipment or acceptance. The supplier is obliged to arrange for insurance at the purchaser's cost that he requests.
3. Partial deliveries are permissible as long as they are reasonable for the purchaser.

VII. Retention of Title

1. The goods delivered by us (retention of title goods) shall remain the property of the supplier until all obligations stemming from this contract are settled.
2. The purchaser is obliged to sufficiently insure the retention of title goods at his own costs against theft, breaking, fire, water and other damage.
3. Any curtailments by third parties, in particular by compulsory enforcements such as garnishments, have to be notified by the purchaser to the supplier in writing without delay; in case of garnishments with the inclusion of the bailiff's return. If an application for insolvency proceedings on the assets of the purchaser is made, the purchaser has to inform the supplier immediately on the matter.
4. The purchaser is obliged to preserve the retention of title goods property of the supplier even if the supplied retention of title goods is not destined for the purchaser but rather for third parties. He is obligated to explicitly inform third parties about Axima's extended property rights of the retention of title goods.
5. The retention of title goods may be processed, blended, combined or resold only in the due course of proper business operations. Any other dispositions, in particular assignments or pawning are not permitted.

6. If the retention of title goods are wholly or partially combined (947 BGB) or blended (948 BGB) with moveable components not belonging to the supplier, then the supplier gains co-possession of the object in the ratio of the value of the combined or blended object to the value of the other object at the time of the combination or blending. If the object of the purchaser is to be deemed as the principal thing, then the purchaser has to transfer co-possession to the supplier.
7. A processing (paragraph 950 BGB) of the retention of title goods by the purchaser is done for the supplier. If the retention of title goods are processed with other moveable components not belonging to the supplier, then the supplier gains co-possession of the new object in the ratio of the value of the supplied object to the value of the other co-processed object at the time of the processing.
8. The purchaser hereby cedes to the supplier claims against third parties from underlying obligations of the resale, combination, blending, processing of the retention of title goods including all ancillary rights. This is appropriately valid for any company rights that arise for the opposite side because as a member of a business partnership the opposite side provides the retention of title goods as a service to contractual partners of the company. Axima accepts this assignments. The assignments is done to the amount of a partial value that is 120% of the total purchase price from the supplier contracts designated under point 1 (subtracting previously paid payments by the opposite side). The opposite side is empowered to collect the claims. The supplier will not claim the ceded claims as long as the opposite side fulfils its payment obligations from the contract conditions designated in point 1.
9. The purchaser also cedes to the supplier claims for securing the supplier's claims that arise by the combination of the retention of title goods with a piece of land (paragraph 946 BGB) against a third party.
10. In case the purchaser does not fulfil his payment obligations, he is obliged upon request by the supplier to present a detailed list with the claims against the purchaser including the names and addresses of the recipients, amount of the individual claims, invoice dates, etc. and to inform the seller about everything pertaining to the assertion of the ceded claim. Furthermore the purchaser is obliged to inform the supplier without delay on the degree he has already processed the retention of title goods as soon as he has not made the payments due from the contracts designated in pos. 1. The purchaser is further obliged, in the case of non-payment even though due, to immediately inform the supplier on the amount of the value of the retention of title goods that has already been invoiced in instalment or final invoices to third parties and has been paid by the third party.
11. The supplier is obliged to release the securities existing by the retention of title to the amount that the securities exceed the secured claims by 20%.

.VIII. Warranty

Waiving further claims, the supplier gives the following guarantees for material and title defects of the delivery – subject to section IX:

Material defects

1. All those parts are to be repaired or replaced at the discretion of the supplier at no cost that have been deemed defective due to causes stemming from before the transfer of liability. The supplier should be informed in writing, without delay, when defects such as these are discovered. Replaced parts become property of the supplier.
2. In order to perform all the repairs and to deliver replacements as determined required by the supplier, the purchaser - following consultation with the supplier - needs to allow the necessary time and opportunity for this, otherwise the supplier is released from liability for subsequent consequences. Only in urgent cases where the operational safety is at risk or to ward off exceedingly high damages, whereby the supplier is to be notified immediately, the purchaser has the right to repair the defect himself or have it repaired by a third party and to claim compensation from the supplier for the necessary expenditures.
3. The costs incurred by repairs or replacements delivery are carried by the supplier – as long as the notice of defects is deemed justifiable –, costs for replacement parts including shipment, as well as appropriate costs for disassembly and assembly, furthermore the formation of his necessary technicians and helpers inside Germany. Our warranty grants the delivery of spare parts to remove lacks at our delivered equipment for facilities and installations outside Germany (EXW Incoterms 2000). Further claims are excluded outside Germany.

4. The purchaser has the right to terminate the contract within legal regulations when the supplier – while observing legal exceptions – has allowed the appropriate term for the repair or replacement delivery due to material defects to expire in vain. If there is only an insubstantial defect, then the purchaser merely has the right to reduce the contract price. Otherwise the right to reduce the contract price is excluded.
5. No warranty is granted for the following special cases: Unsuitable or improper use, faulty assembly or installation by the purchaser or third parties, natural wear, faulty or negligent operation, incorrect maintenance, unsuitable operating materials, inadequate construction, unsuitable building ground, chemical, electro-chemical or electrical influences – in so far as they are not the responsibility of the supplier. Also not included are wear and natural wear and tear.
6. If the purchaser or a third party carries out modifications incorrectly, then the supplier is not liable for the consequences. The same is valid for changes on the delivery item that are made without previous consent of the supplier.

Title Defects

7. In case use of the delivery item leads to violation of domestic property rights or copyrights, the supplier will at his cost provide the purchaser with the right to continue further use or modify the delivery item in a manner reasonable for the purchaser so that the property rights violation is removed.
Should this not be possible under financially reasonable conditions or within a reasonable term, then the purchaser has the right to terminate the contract. Under the aforementioned conditions the supplier also has the right to terminate the contract.
Furthermore the supplier will exempt the purchaser from undisputed and confirmed legally binding claims of the property rights owners concerned.
8. The obligations of the supplier stated in section VIII.7 are final under the condition set forth in section IX.2 concerning violations of property rights or copyrights.
They only exist if the purchaser immediately notifies the supplier about validated violations of property rights or copyrights, the purchaser supports the supplier to a reasonable extent in warding off validated claims or makes possible the execution of modifications as described in section VIII.7, the supplier reserves all defensive measures including settlements out of court, the title defect is not due to instructions made by the purchaser and the legal violation is not caused by the delivery item being arbitrarily modified by the purchaser or used in a manner contrary to contract specifications by the purchaser.

IX. Liability

1. In case the delivery item cannot be used as contract-specified by fault of the supplier due to withheld or faulty execution of suggestions or consultation made before and after the contract has been signed or by violating other contractual supplementary obligations – especially instructions on the operation and maintenance of the delivery item –, then the respective regulations in sections VIII and IX.2 are valid to the exclusion of further claims by the purchaser.
2. The supplier – for whatever legal reasons – is liable for damages that did not occur on the delivery item itself only in cases of intention, gross negligence of the owner/management or executives, culpable injury to life, limbs or health, faults that were maliciously kept secret or their absence had been guaranteed, defects of the delivery item in so far as there is liability for bodily injuries or material damage to privately used objects according to product liability laws. In cases of culpable violations of significant contractual obligations the supplier is liable also in cases of gross negligence by non-executives and lesser negligence; in the latter case limited to contract-typical damage that is sensibly foreseeable.
3. In case of pure engineering- or planning-orders, liability is not excluded if the work or service planned is realized or executed by us.
4. Further claims are excluded.

X. Liabilities for Supplementary Obligations

In case the delivered item cannot be used by the purchaser as contract-specified by fault of the supplier due to withheld or faulty execution of suggestions or consultation made before and after the contract has been signed or by violating other contractual supplementary obligations – especially instructions on the operation and maintenance of the delivery item –, then the respective

regulations in sections XIII and IX are valid to the exclusion of further claims by the purchaser.

XI. Statute of Limitations

All claims of the purchaser – for whatever legal reasons – lapse after 12 months. The legal limitations are valid for intentional or malicious behaviour as well as for claims based on the product liability law. They are also valid for defects of a structure or delivery items that were used as generally contract-specified for a structure and caused its defectiveness.

XII. Software Usage

In so far as software is a component of the delivery, the purchaser is not granted the exclusive right to use the delivered software along with its documentation. It is provided for use on the delivery item it is intended for. Using the software on more than one system is prohibited. The purchaser may duplicate, edit, translate the software or reverse engineer the object code into source code merely to the legally permissible extent (§§ 69 a ff. UrhG "Copyright law"). The purchaser is obligated not to remove manufacturer specifications – especially copyright notations – or to change them without prior explicit consent of the supplier. All other rights to the software and the documentation including copies remain with the supplier or with the software supplier. Issuing subordinate licences is not permitted.

XIII. Applicable Legislation, Court of Jurisdiction

1. For all legal contacts or contracts between the supplier and the purchaser these conditions and the appropriate German Law is solely valid under the exclusion of UNCITRAL.
2. Court of jurisdiction is the court which is responsible for the supplier's location or the purchaser's location on choice of the supplier.