

ISO 9001:2015 <b>D7-32-EN</b>	<b>AGBV - General Business Terms and Conditions for Deliveries and Sales</b>	
	Axmann Fördersysteme GmbH 04442 Zwenkau Baumeisterallee 24-26	

The company Axmann Fördersysteme GmbH is referred to as "AXMANN" in these Terms of Delivery

#### § 1 Scope of validity

(1) All deliveries, services and offers of AXMANN shall be exclusively carried out based on these Terms of Delivery. These are part of all contracts, which AXMANN concludes with its contractual partners (hereinafter also referred to as "Customer") concerning the deliveries offered by AXMANN or thus associated services. They shall also apply to all future deliveries, thus associated services or offers to the Customer, even if they are not agreed separately once again.

(2) These Terms of Delivery shall not apply to assemblies or installations commissioned by the Customer.

(3) Business terms and conditions of the Customer or third parties shall not apply, even if AXMANN has not objected to their validity separately in an individual case. Even if AXMANN makes reference to a letter that contains business terms and conditions of the Customer or a third party or refers to such, this shall not constitute an agreement with the validity of those business terms and conditions.

#### § 2 Offer and conclusion of contract

(1) All offers of AXMANN are without obligation and non-binding, if they have not been explicitly marked as binding or contain a certain acceptance deadline. Purchase orders or orders can be accepted by AXMANN within 4 weeks after receipt.

(2) The contract of purchase concluded in writing shall be solely decisive for the legal relationships between AXMANN and the Customer, consisting of the order and the order confirmation, including these Terms of Delivery. This shall reflect all agreements between the contractual parties regarding the object of contract in full. Oral promises of AXMANN before conclusion of this contract are legally non-binding and oral agreements of the contractual parties will be replaced by the written contract, insofar as it cannot respectively and explicitly be derived from these agreements that they will continue to apply binding.

(3) Supplementations and amendments to the reached agreements including these Terms of Delivery shall at least require a text form in order to be valid. With the exception of managing directors, the technical manager or project managers named in the contract the employees of AXMANN are not entitled to reach agreements that deviate from these.

(4) Details of AXMANN relating to the object of delivery or service (e.g. weights, dimensions, utility values, load-bearing capacity, tolerances and technical data) as well as presentations thereof (e.g. drawings and diagrams) are only approximately decisive, insofar as the usability for the contractually envisaged purpose does not presume a precise correspondence and this is noted in the contract. They are no guaranteed characteristics, but descriptions or markings of the delivery or service. Customary deviations and deviations, which are carried out owing to legal regulations or represent technical improvements as well as the replacement of component parts by equivalent parts, are permitted, insofar as they do not impair the usability for the contractually envisaged purpose.

(5) AXMANN reserves the property or copyright to all offers and cost estimates submitted by AXMANN as well as drawings, diagrams, calculations, brochures, catalogues, models, tools, samples and other documents and aids made available to the Customer. The Customer may neither make these objects as such, nor their contents accessible to third parties, nor announce these, use or reproduce these itself or through third parties without the explicit consent of AXMANN. At the request of AXMANN it has to return these objects to AXMANN in full and to destroy possibly made copies if they are no longer required by it in the proper course of business or if negotiations do not lead to the conclusion of a contract.

#### § 3 Prices and payment

(1) The prices shall apply to the scope of service and delivery as listed in the order confirmation. Additional or special services will be charged separately. The prices are deemed in EURO ex works plus packaging, the applicable rate of value added tax, with export deliveries customs duties as well as fees and other public duties.

(2) Insofar as the agreed prices are based upon the list prices of AXMANN and the delivery is only to be carried out more than four months after the conclusion of the contract, the list prices of AXMANN, which are valid upon delivery, shall apply (respectively minus an agreed percentage or fixed discount).

(3) Invoice amounts are to be paid within 14 days without any deduction, if not otherwise agreed in writing. Decisive for the date of the payment is the receipt by AXMANN. Cheques shall only be deemed as a payment after they have been encashed. If the Customer does not pay upon maturity then interest is to be paid on the outstanding amounts from the day of the maturity at a rate of 5% p. a.; the assertion of higher interest and further damages in the event of default shall remain unaffected.

(4) The offsetting against counterclaims of the Customer or the retention of payments owing to such claims is only permitted insofar as the counterclaims are undisputed or have been declared final and binding.

(5) AXMANN is entitled to only carry out or provide still outstanding deliveries or services against advance payment or provision of security, if circumstances become known after conclusion of the contract, which are suitable for substantially reducing the creditworthiness of the Customer and through which the payment of the outstanding claims of AXMANN by the Customer from the respective contractual relationship (including from other individual orders, for which the same framework contract applies) are jeopardised.

#### § 4 Delivery and delivery time

(1) Deliveries shall be carried out ex works, unless otherwise agreed in writing.

(2) Prospective deadlines and dates given by AXMANN for deliveries and services shall always only apply as approximate, unless a fixed deadline or a fixed date has been explicitly promised or agreed. Insofar as a shipment was agreed delivery deadlines and delivery dates shall refer to the time of the hand-over to the carrier, freight forwarder or other third party commissioned with the transport.

(3) AXMANN can – irrespective of the rights owing to default of the Customer – request from the Customer an extension to delivery and service deadlines or a postponement to delivery and service dates by the period, in which the Customer will not satisfy its contractual obligations towards AXMANN.

(4) AXMANN shall not be liable for impossibility of the delivery or for delays in delivery, insofar as these were caused by force majeure or other events, which were not foreseeable at the time when the contract was concluded, (e.g. interferences to operation of all kinds, difficulties in the material or energy procurement, transport delays, strikes, lawful lock-outs, shortage of workers, energy or raw materials, difficulties with the procurement of necessary official permits, official measures or the omitted, incorrect or late delivery by suppliers), for which AXMANN is not responsible. Insofar as such events render the delivery or service substantially more difficult or impossible for AXMANN and the impediment is not only temporary, AXMANN is entitled to rescission of the contract. In case of impediments of a temporary duration, the delivery or service deadlines shall be extended or the delivery or service dates shall be postponed by the period of time of the impediment plus a reasonable start-up period. Insofar as the acceptance of the delivery or service is not deemed reasonable for the Customer as a result of the delay, it can rescind the contract by a written declaration towards AXMANN without delay.

ISO 9001:2015 <b>D7-32-EN</b>	<b>AGBV - General Business Terms and Conditions for Deliveries and Sales</b>	
	Axmann Fördersysteme GmbH 04442 Zwenkau Baumeisterallee 24-26	

(5) AXMANN is only entitled to partial deliveries, if

- the partial delivery is usable for the Customer within the scope of the intended purpose as per contract,
- the delivery of the remaining ordered goods is ensured and
- no substantial additional work or additional costs are incurred to the Customer hereby (unless AXMANN declares that it is willing to assume these costs).

(6) If AXMANN is in default with a delivery or service, or if a delivery or service becomes impossible for AXMANN, no matter for what reasons, then the liability of AXMANN is limited to damages according to § 8 of these General Business Terms and Conditions.

#### **§ 5 Place of performance, shipment, packaging, passing of risk**

(1) The place of performance for all obligations from the contractual relationship is Zwenkau, insofar as not otherwise determined.

(2) The type of shipment and the packaging are subject to the dutiful discretion of AXMANN.

(3) The risk shall pass to the Customer no later than with the hand-over of the object of delivery (whereby the start of the loading process is decisive) to the carrier, freight forwarder or other third party determined for the execution of the shipment. If the shipment or the hand-over is delayed as a result of a circumstance, the cause of which lies with the Customer, the risk shall pass to the Customer from the day, on which the object of delivery is ready for shipment and AXMANN has reported this to the Customer.

(4) Storage costs shall be borne by the Customer after the passing of the risk. In case of storage by AXMANN the storage costs shall amount to 0.25% of the invoice amount of the objects of delivery that are to be stored per expired week. The right is reserved to assert and prove further or less storage costs.

(5) The shipment will only be insured by AXMANN at the explicit request of the Customer and at its costs against theft, breakage, transport, fire and water damages or other insurable risks.

#### **§ 6 Warranty, material defects**

(1) The warranty period is one year from delivery, insofar as not otherwise agreed in writing in this respect.

(2) The delivered objects are to be inspected carefully without delay after delivery to the Customer or to the third party determined by it. They shall be deemed with regard to obvious defects or other defects, which would have been recognisable with a careful inspection without delay, as approved by the Customer, if AXMANN does not receive a written report of defects within seven workdays after delivery. With regard to other defects the objects of delivery shall be deemed as approved by the Customer if the report of defects is not received by AXMANN within seven workdays after the time, at which the defect was seen; if the defect was not recognisable for the Customer with normal use at an earlier time already, this earlier time is however decisive for the start of the deadline for reporting a complaint. At the request of AXMANN an object of delivery, for which a complaint was made, is to be returned to AXMANN carriage paid. With a justified report of defects AXMANN will remunerate the costs of the most reasonable dispatch route within the Federal Republic of Germany; this shall not apply if the costs are increased, because the object of delivery is located at another location than the place of the use as intended.

(3) In case of material defects to the delivered objects AXMANN is, at the choice of AXMANN that is to be made within a reasonable deadline initially obligated and entitled to subsequent improvement or substitute delivery. In the event of a failure twice, i.e. the impossibility, unreasonableness, refusal or inappropriate

delay in the subsequent improvement or substitute delivery, the Customer can rescind the contract or reduce the purchase price by a reasonable extent.

(4) If a defect is due to the fault of AXMANN, the Customer can request damages under the prerequisites determined in § 8.

(5) In case of defects of component parts of other manufacturers, which AXMANN cannot remedy due to reasons under licence law or for actual reasons, AXMANN will at its choice assert its warranty claims against the manufacturers and suppliers for the account of the Customer or assign these to the Customer. Warranty claims against AXMANN shall only exist with such defects under the other prerequisites and according to these General Business Terms and Conditions if the assertion of the aforementioned claims against the manufacturer and supplier in court was unsuccessful or has no prospects for success, for example owing to an insolvency. For the duration of the lawsuit, the statute-of-limitations of the relevant warranty claims of the Customer against AXMANN shall be inhibited.

(6) The warranty shall cease to apply if the Customer changes the object of delivery, or has it changed by third parties, without the consent of AXMANN and the remedy of the defects becomes impossible hereby or is rendered unreasonably more difficult. In any case, the Customer has to bear the additional costs for the remedy of the defects incurred due to the change.

(7) A delivery of used objects, agreed with the Customer in an individual case, shall be carried out under the exclusion of all warranty for material defects.

#### **§ 7 Property rights**

(1) AXMANN shall be responsible, according to this § 7, for ensuring that the object of delivery is free of industrial property rights or copyrights of third parties. Each contractual partner will notify the respective other contractual partner in writing without delay, if claims are asserted against it owing to the infringement of such rights.

(2) In the event that such the delivery item infringes an industrial property right or copyright of a third party, AXMANN will, at its choice, and at its costs modify or exchange the delivery item to the extent that no rights of third parties are infringed any more, however the delivery item can continue to fulfil the contractually agreed functions, or shall procure the right of use for the Customer by concluding a licence agreement. If AXMANN does not succeed in doing this within a reasonable period of time, the Customer is entitled to rescind the contract or to reduce the purchase price by a reasonable extent. Possible claims for damages of the Customer are subject to the restrictions of § 8 of these General Business Terms and Conditions.

(3) In case of infringements of rights through products of other manufacturers delivered by AXMANN, AXMANN will at the choice of AXMANN assert the claims against the manufacturers and sub-suppliers for the account of the Customer or assign these to the Customer. Claims against AXMANN shall only exist in these cases according to this § 7 if the assertion of the aforementioned claims against the manufacturers and sub-suppliers in court was unsuccessful or has no prospects for success, for example owing to an insolvency.

#### **§ 8 Liability for damages owing to fault**

(1) The liability of AXMANN for damages, no matter for what legal grounds, in particular due to impossibility, default, faulty or false delivery, breach of contract, breach of obligations during contractual negotiations and illicit act is, insofar as it hereby respectively depends on a fault, limited according to this § 8.

(2) AXMANN shall be liable without limitation to the amount of damages for damages, caused by negligence or wilful intent, by AXMANN or the legal representatives or vicarious agents, from the injury to life, body or the health.

ISO 9001:2015 <b>D7-32-EN</b>	<b>AGBV - General Business Terms and Conditions for Deliveries and Sales</b>	
	Axmann Fördersysteme GmbH 04442 Zwenkau Baumeisterallee 24-26	

(3) For other damages, AXMANN will be liable without limitation to the amount of damages also for damages caused by AXMANN or the legal representatives or vicarious agents due to gross negligence or wilful intent.

(4) AXMANN shall only be liable for damages caused by AXMANN or the legal representatives or vicarious agents due to slight negligence or other damages if essential obligations of the contract are affected. A contractual obligation is deemed essential, the fulfilment of which enables the proper execution of the contract at all and on the compliance with which the Customer may, as a rule, rely. Accordingly deemed as essential for the contract is the obligation for the timely delivery of the object of delivery, its absence of defects, which impair its functionality or usability more than only insignificantly, as well as consultancy, protection and safekeeping obligations, which should enable the Customer the use of the object of delivery as per contract or which aim at the protection of the life and limb of personnel of the Customer or the protection of its property against substantial damages.

In the cases of breaches of essential contractual obligations, the liability is limited with respect to the amount to that scope of damages, with the occurrence of which AXMANN typically had to expect upon conclusion of the contract owing to circumstances known to AXMANN at this time. In the event of liability in this case the compensation obligation of AXMANN for material damages and thus resulting further financial losses is however limited to an amount of EUR 250,000.00 per damaging event. AXMANN shall not be liable in the aforementioned cases for indirect damages, consequential damages due to defects or missed profit.

(5) Incidentally, the liability of AXMANN for simple negligence is excluded.

(6) A possible liability of AXMANN according to the German Product Liability Act shall remain unaffected. The aforementioned liability limitation shall furthermore not apply if the Customer asserts claims for damages owing to the absence of a warranted property or missing guaranteed characteristics.

(7) Insofar as AXMANN provides technical information or works in an advisory capacity and this information or advice does not belong to the contractually agreed scope of services owed by AXMANN, this shall take place free of charge and under the exclusion of all liability.

#### **§ 9 Reservation of title**

(1) The reservation of title agreed below serves to secure all respectively existing current and future claims of AXMANN against the Customer from the delivery relationship existing between them (including balance claims from a current account relationship limited to this delivery relationship).

(2) The object of delivery delivered by AXMANN to the Customer shall remain the property of AXMANN until the full payment of all secured claims. The object of delivery as well as the good, which replaces it according to the following provisions, and which is covered by the reservation of title is hereinafter referred to as "reserved goods".

(3) The Customer shall hold the reserved goods in safekeeping free of charge for AXMANN.

(4) The Customer is entitled to process and sell the reserved goods in proper business transactions until the occurrence of the liquidation case (Paragraph 9). Pledges and assignments as collateral are inadmissible.

(5) If the reserved goods are processed by the Customer then it is hereby agreed that the processing shall be carried out in the name and for the account of AXMANN as manufacturer and AXMANN shall directly acquire the property or – if the processing is carried out by using materials of several owners or the value of the processed object is higher than the value of the reserved goods – the co-ownership (fraction of ownership) to the newly created object in the ratio of the value of the reserved goods to the value of the newly created object. For

the event that no such acquisition of property should occur at AXMANN, the Customer shall hereby now already assign its future property or – in the aforementioned ratio – co-ownership to the newly created object as collateral to AXMANN. If the reserved goods are connected or inseparably mixed with other objects to form a standard object and if one of the other objects is to be seen as the main object, then AXMANN, insofar as the main object belongs to AXMANN, shall assign the co-ownership to the Customer pro rata to the standard object in the ratio stated in Sentence 1.

(6) In the event of the resale of the reserved goods the Customer shall hereby now already assign, as a precautionary measure, the claims established from this against the buyer – in case of co-ownership of AXMANN to the reserved goods pro rata in line with the co-ownership share – to AXMANN. The same shall apply to other claims, which replace the reserved goods or which are otherwise established with regard to the reserved goods, such as e.g. insurance claims or claims from illicit act with the loss or destruction. AXMANN revocably authorises the Customer to collect the claims assigned to AXMANN in its own name. AXMANN may only revoke this collection authorisation in a liquidation case.

(7) If third parties access the reserved goods, in particular by attachment, the Customer will notify said parties of the property of AXMANN without delay and inform AXMANN hereof in order to enable AXMANN to assert the property rights. Insofar as the third party is not in the position to reimburse AXMANN the court or out-of-court costs incurred in this context, the Customer will be liable for these costs towards AXMANN.

(8) AXMANN will release the reserved goods as well as the objects or claims, which replace these, insofar as their value exceeds the amount of the secured claims by more than 50%. The selection of the objects, which are to be released accordingly, lies with AXMANN.

(9) If AXMANN rescinds the contract in case of a conduct of the Customer in breach of the contract – in particular default of payment– (liquidation case), AXMANN is entitled to request that the reserved goods are handed over.

#### **§ 10 Final provisions**

(1) If the Customer is a merchant, a legal entity under public law or a special fund under public law or if it has no general place of jurisdiction in the Federal Republic of Germany then the place of jurisdiction for all possible disputes from the business relationship between AXMANN and the Customer, at the choice of AXMANN, is Leipzig or the registered seat of the Customer. For legal actions against AXMANN in these cases, however, Leipzig is the exclusive place of jurisdiction. Mandatory statutory provisions concerning exclusive places of jurisdiction shall remain unaffected by this regulation.

(2) The relationships between AXMANN and the Customer are exclusively subject to the law of the Federal Republic of Germany. The Convention of the United Nations on Contracts for the International Sale of Goods of 11 April 1980 (CISG) shall not apply.

(3) Insofar as the contract or these Terms of Delivery feature loopholes in the regulations, those legally valid regulations shall be deemed as agreed to fill these loopholes, which the contractual partners would have agreed according to the commercial objectives of the contract and the purpose of these General Business Terms and Conditions, if they had been aware of the loophole in the regulations.