


ISO 9001:2015 D7-31-EN	General Business Terms and Conditions for Contracts for Work and Services	
Revision: 0.2	Axmann Fördersysteme GmbH 04442 Zwenkau Baumeisterallee 24-26	Letzte Änderung: 16.09.2019

The company Axmann Fördersysteme GmbH is referred to as "AXMANN" in these General Business Terms and Conditions

§ 1 Scope of validity

(1) All mechanical assemblies, (electrical) installations, commissioning, accompaniments of commissioning that are to be concluded with a specific result, repairs (hereinafter referred to as "assemblies" or "assembly work") and offers for such work from AXMANN shall be exclusively carried out based on these General Assembly Terms and Conditions. These are part of all contracts, which AXMANN concludes with its contractual partners (hereinafter also referred to as "Customer") regarding the assemblies offered by AXMANN. They shall also apply to all future assemblies or offers to the Customer, itself if they are not agreed separately once again.

(2) These assembly terms and conditions shall not apply to deliveries 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 assembly contract 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 assembly terms and conditions. This shall reflect all agreements between the contractual partners 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 partners 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 assembly terms and conditions 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 assembly (e.g. weights, dimensions, utility values, load-bearing capacity, tolerances and technical data) as well as presentations in this respect and regard (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 assembly or the assembly work.

(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

(1) The prices shall apply to the scope of assembly as listed in the order confirmation. Additional or special services will be charged separately. The prices are deemed in EURO plus the applicable rate of value added tax.

(2) Insofar as not otherwise regulated in the decisive contract, the prices or settlement rates will be derived from the price sheet of AXMANN that is valid upon conclusion of the contract.

(3) Included in the assembly costs is the provision of the necessary tool including measuring devices and aids, not however the cost amount for the material that is required for the assembly.

(4) The risk for the transport of the tools shall be borne by the Customer, that is also liable for the loss of or damage to the assembly tool at the place of assembly, unless the loss or the damage was caused by AXMANN.

§ 4 Scope of work, fiction of the service extension

(1) The assembly work to be provided by the employees of AXMANN can be specifically derived from the contract and shall exclusively cover the plants, plant parts and equipment delivered by AXMANN and, if necessary, instructions (initial instructions) of the operating personnel designated by the Customer by name, unless the contractual partners had reached a deviating agreement in this respect in the contract.

(2) Should AXMANN determine at the start or during the execution of the assembly that a substantially more extensive service will be necessary than presumed by the contractual partners upon conclusion of the contract, AXMANN undertakes to inform the Customer hereof without delay by stating the additional expenses and additional costs caused hereby. The additional services shall be deemed as approved by the Customer both with regard to the reported work as well as the thus associated costs, if it does not object hereto towards AXMANN without delay, however no later than by the expiry of a deadline of 10 workdays from receipt of the information. This fiction shall only occur if AXMANN instructs the Customer about the fiction effect within the scope of the information, for which AXMANN is responsible, pursuant to Sentence 1.

§ 5 Obligations of the Customer

(1) The Customer undertakes to support AXMANN with the preparation and execution of the assembly and to carry out and monitor all preparatory work, for which AXMANN is not responsible, and measures associated with the assembly, which are not to be provided by AXMANN, at its costs. The Customer in particular undertakes:


a.) to carry out all preparatory work required for the assembly, such as earthwork, bricklaying, electrical work, locksmith and foundation work, properly and professionally at its own expense;

b.) to make available free of charge the equipment and heavy tools required for the assembly, such as crane systems, hoists, compressors, etc.;

c.) to make available, free of charge, the commodities and materials required for assembly, such as straightening timber, underlays, sealing material, lubricants, water, compressed air, oxygen and electricity;

d.) to provide free of charge or unpaid the suitable assistants, who are required for the assembly, who are subject to the instructions of the assembly manager of AXMANN; the assembly manager is authorised to reject workers who appear unsuitable – these assistants will nevertheless remain in an employment relationship with the Customer;

e.) to hold dry and lockable rooms required for the execution of the assembly for the storage of the tools of the AXMANN employees in reserve and make these available free of charge, furthermore to provide suitable recreation rooms or work

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rooms, in particular fitted with sufficient protection against burglaries or thefts with heating and sufficient lighting, washing facilities, sanitary facilities and first aid;

f.) to provide, if applicable, necessary additional materials and for the undertaking of all other acts at its costs, which are necessary for setting the plant, the plant parts or equipment and for carrying out testing;

g.) to grant AXMANN unimpeded access to the site, insofar as this is necessary for the execution of the assembly;

h.) to name a responsible contact, who is in particular authorised to make binding technical decisions.

(2) The acts of assistance and obligations of the Customer are to be carried out in plenty of time and upheld so that the employees of AXMANN can begin with the assembly immediately after arrival and can complete this without interruption.

§ 6 Occupational safety

(1) AXMANN will comply with the statutory regulations regarding the occupational safety applicable at the assembly location when performing the work. Should the statutory regulations change between conclusion of the contract and execution of the assembly, then AXMANN has an entitlement to reimbursement of additional expenses possibly resulting from this and, insofar as this has implications on these, to an adjustment to contractually agreed completion dates. Additional, non-statutory safety and other comparable regulations at the assembly location are only to be complied with by AXMANN if they were made a content of the contract by the Customer.

(2) The Customer has, on its part, to comply with the statutory, official and trade association regulations and orders existing at the assembly location and, if applicable, to take measures for the prevention of accidents and the protection of persons and objects of AXMANN.

(3) The Customer is responsible for notifying AXMANN in writing about existing safety regulations at the assembly location and for carrying out a safety instruction of the fitters of AXMANN, insofar as necessary, before commencement of the work on site. Insofar as these safety regulations envisage special protective equipment for the employees of AXMANN, this is to be made available by the Customer.

(4) The Customer undertakes to inform AXMANN without delay of breaches of the employees of regulations regarding occupational safety.

(5) Should one or several of the safety requirements, which are to be guaranteed by the Customer at the assembly location not have been fulfilled and if these are not remedied by the Customer within a reasonable final deadline despite a report of AXMANN to the Customer, AXMANN has the right to discontinue the assembly work until the safety deficiencies are remedied. AXMANN is alternatively entitled, however not obligated, instead of the discontinuation of the assembly, to carry out the acts and obligations for which the Customer is responsible in its place and at its costs, insofar as AXMANN would be in the position to do this. Incidentally, this shall have no effect on thus resulting claims of AXMANN.

(6) AXMANN is further entitled to discontinue the assignment of employees or to withdraw employees from the assembly location and/or to terminate the decisive contract with immediate effect, if due to the non-existence of safety requirements, for the compliance with which the Customer is responsible, there is a danger for the life or limb of the assigned employees of AXMANN within the scope of the assembly and the Customer has not remedied the situation either after the setting of a reasonable deadline.

§ 7 Dates, deadlines and delays

(1) The Customer acknowledges and confirms that the duration of the assembly essentially depends on the circumstances at the place of assembly, the support granted by the Customer and in the event of repairs on the scope of repair determined after the disassembly. Insofar as AXMANN has not assured any

binding completion date in the contract all details regarding the expected duration of the assembly will, therefore, constitute non-binding dates.

(2) If and insofar as AXMANN has assured a binding completion date in the contract the following will apply hereto:

a.) The start of the deadline presumes that all commercial and technical aspects were agreed conclusively and without any gaps and the Customer has fulfilled all preliminary work, acts of assistance and obligations, for which it is responsible, properly before the start of the assembly.

b.) If the work is delayed due to omitted or improperly performed preliminary work, acts of assistance and obligations, for which the Customer is responsible, the deadline for the completion will be extended by a reasonable extent. This shall also apply if such circumstances occur, after AXMANN should be in default.

c.) If the non-adherence to the completion date is due to force majeure, such as e.g. natural disasters, epidemics, war, warlike disputes, civil war, revolution, terrorism, sabotage, nuclear /reactor accidents, to industrial disputes or other events, which are beyond the control of AXMANN, AXMANN shall be released from service obligations for which AXMANN is responsible for the duration of the event and the deadline for the completion will be extended accordingly by a reasonable extent. If the duration of such an event exceeds a period of six months, AXMANN is also entitled to terminate the decisive contract.

d.) A completion date shall be deemed as adhered to if the contractually owed assembly has been completed without substantial defects or essential residual services or follow-up work that are to be provided still and the operational capability of the plant is not impaired hereby in the long-term. AXMANN will report the completion time to the Customer (notification of completion), insofar as this is not known to the Customer anyway from the circumstances of the individual case.

(3) If AXMANN exceeds a binding assured completion date for reasons, for which AXMANN is solely responsible, the Customer has to set AXMANN a reasonable deadline for the completion of the assembly combined with the declaration whether the Customer, insofar as the other statutory prerequisites exist for this purpose, intends to rescind the contract after the unsuccessful expiry of the deadline. Otherwise and incidentally the rights of the Customer in this respect shall be exclusively derived from § 12.


§ 8 Proof of work, invoice and payment

(1) The Customer undertakes to control the work of the employees of AXMANN at the place of assembly and to announce possible complaints to the employee as well as AXMANN still before completion of the assembly.

Each employee of AXMANN will carry two assembly certificates with him, which should show the working hours, travel time, waiting time that is not his fault, preparation and processing time. The employee of AXMANN will principally submit these certificates to the Customer daily, no longer however than weekly. The Customer undertakes to check these certificates for completeness and accuracy; the Customer undertakes to return one of these certificates to the employee of AXMANN, countersigned binding for the Customer, on the day of the submission. The Customer has to note times of absence, irregularities, complaints, etc. on the certificates, otherwise the contents hereof shall be deemed as recognised.

If one of the certificates is not returned to the employee by AXMANN or not returned countersigned AXMANN is entitled to calculate the settlement of the work based on this certificate, unless the Customer can sufficiently excuse this within a deadline of one week. In this case the Customer is obligated to lodge possible objections against the content-related accuracy of the certificate towards AXMANN within this deadline.

(2) AXMANN is entitled, with an assembly that lasts for longer than one week, to settle the assembly costs incurred for this purpose weekly. AXMANN is additionally entitled to request the expected costs for the assembly in full or in

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part in advance, if the Customer is in arrears with its payment obligations for longer than 14 days.

(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.

§ 9 Place of performance, passing of risk, acceptance

(1) The place of performance for all obligations from the contractual relationship is the place, at which the assembly has to be carried out.

(2) The risk of an accidental deterioration or the accidental loss shall pass to the Customer with the notification of completion by AXMANN or with the commissioning (Go Live) of the plant by the Customer – depending on which time occurs earlier -, insofar as the assembly is to be provided in the spatial area of the Customer, in all other cases with the acceptance.

(3) AXMANN is entitled to request partial acceptances for delimitable service areas.

(4) Insofar as the contractual partners have not agreed upon any formal acceptance, the service of AXMANN shall be deemed as accepted, if

- the assembly was provided in full, in any case without essential residual services or follow-up work and there are no essential defects, which would impair the operational capability of the plant in the long-term and

- AXMANN has reported this to the Customer with reference to this acceptance fiction (notification of completion) and

- 12 workdays have passed since the receipt of the notification of completion and the Customer has not reported any defects or the Customer has started using the plant and in this case, 6 workdays have passed since receipt of the notification of completion.

(5) The Customer is not entitled to refuse an acceptance owing to insignificant residual services, follow-up work or insignificant defects, which do not impair the operational capability of the plant in the long-term.

§ 10 Warranty, material defects

(1) The warranty period is one year from the occurrence of the acceptance fiction or, insofar as an acceptance is necessary, from the acceptance, insofar as not otherwise agreed in this respect in writing.

(2) With the receipt of the notification of completion by the Customer, the plant is to be maintained by the Customer pursuant to the assembly instruction of AXMANN. Possible claims for warranty and subsequent improvement without proof of maintenance towards AXMANN are excluded, unless the Customer can prove that the defect would also have occurred without the maintenance that is to be carried out.

(3) The Customer undertakes to report determined defects to AXMANN without delay.

(4) In case of material defects with regard to the assembly 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 remuneration by a reasonable extent.

(5) Of the costs directly incurred through the remedy of the defects AXMANN shall – insofar as the defect report proves to be justified – bear the costs of the substitute article including the shipment. AXMANN shall furthermore bear the costs for the dismantling and installation as well as the costs of the provision of the necessary employees of AXMANN, who are possibly necessary for this purpose, including their travelling costs.

(6) The warranty period shall be extended by the period of time, during which an interruption to the operation of the plant occurs as a result of subsequent improvement work that becomes necessary, however limited to the parts of the plant, to which the defect refers.

(7) In case of repairs, the claims of the Customer shall be limited to the qualified execution of the repair. AXMANN is not obligated to examine the plant for other defects, which could impair or revoke its functionality. Damages, which are caused by natural wear and tear or by improper handling of the plant or of plant parts, shall not substantiate any liability for material defects.

(8) The liability for material defects shall cease to apply for AXMANN insofar as the Customer, without the prior written consent of AXMANN, has made changes to the plant or to plant parts itself or has had these carried out by third parties or does not comply with stipulations of AXMANN with preparatory or self-executed work for this purpose or if the Customer, despite the knowledge of a defect does not immediately take suitable measures to minimise the damages, although this was possible and deemed reasonable for it.

(9) The Customer only has, under the prerequisite, that

- AXMANN has allowed a reasonable deadline set to AXMANN by the Customer for the completion or for the remedy of the defects without any excuse and
- a danger to the operational safety of the plant or a sustainable impairment to the operational capability of the plant exists or
- immediate measures are necessary at the Customer for the defence of otherwise occurring disproportionate damages


the right to carry out possibly still necessary residual services or follow-up work or services to remedy defects by way of the substitute execution.

Otherwise, AXMANN does not have to reimburse costs incurred hereby.

(10) If a defect is due to the fault of AXMANN, the Customer can request damages under the prerequisites determined in § 12.

(11) 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 assembly 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.

(12) 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.

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§ 11 Property rights

(1) AXMANN shall be responsible, according to this § 11, for ensuring that the objects that form the object of the assembly, insofar as they are delivered by AXMANN for this purpose, are 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 objects infringe an industrial property right or copyright of a third party, AXMANN will, at its choice, and at its costs modify or exchange these objects to the extent that no rights of third parties are infringed any more, however the objects can continue to fulfil the contractually agreed functions and the assembly can be carried out with the same result, 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 remuneration by a reasonable extent. Possible claims for damages of the Customer are subject to the restrictions of § 12 of these assembly 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 § 11 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.

§ 12 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 § 12.

(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.

(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 assembly of the plant, 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 assembly result 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.

§ 13 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 assembly terms and conditions 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 assembly terms and conditions, if they had been aware of the loophole in the regulations.