

ISO 9001:2015 D7-29-EN	EBW - General Terms of Purchase for work service	
	Axmann Fördersysteme GmbH 04442 Zwenkau Baumeisterallee 24-26	

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

§ 1 Scope of validity

(1) All services and offers of AXMANN shall be exclusively carried out owing to these General Terms of Purchase for Work Services. These shall be part of all contracts, which AXMANN concludes with its contractor regarding the services offered by them. They shall also apply to all future services or offers to AXMANN, itself if they are not agreed separately once again.

(2) Business terms and conditions of the contractor of AXMANN 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 contractor or a third party or refers to such, this shall not constitute an agreement with the validity of those terms and conditions.

(3) Neither an implied acceptance of the services of the contractor, nor payments of AXMANN shall signify an approval of AXMANN of deviating business terms and conditions of the contractor.

§ 2 Offer and negotiation of offers

(1) If AXMANN requests the contractor to submit an offer ("Enquiry"), the contractor will state a detailed description of the offered services, the time of performance and the prices in its offer.

(2) The offer is binding for the contractor for the duration of at least 4 weeks from the receipt of the offer by AXMANN, insofar as not otherwise agreed in this respect.

(3) Before submitting an offer, the contractor undertakes to examine all facts, which have or may have an influence on the remuneration and its development. None of these facts may be a reason for a subsequent increase in the agreed remuneration.

(4) The contractor undertakes to point out in its offer if the offered delivery does not comply with the recognised rules of technology. If the contractor's offer does not include such a written indication, AXMANN shall be entitled to assume that the service offered complies with the recognised rules of technology.

(5) The drawing up of offers, cost estimates, project studies, etc. is free of charge for AXMANN and does not obligate to place the order. The enquiries of AXMANN shall be non-binding until a binding order is submitted as the acceptance of an offer, which is only valid in a written form. The negotiations between the contractor and AXMANN shall initially serve the better reconnaissance of the offer and shall not establish any claim of the contractor for the conclusion of a contract.

§ 3 Purchase orders and orders, ordinary right of termination

(1) All orders shall require a written or text form in order to be valid. Oral collateral agreements for the order or commissioning shall only be valid if they are confirmed in writing or in text form by an authorised representative of AXMANN.

(2) The contractor will confirm the receipt of an order without delay in writing or in text form. Should the contractor not have sent such a confirmation or have objected to the order by no later than the third workday following the receipt of the order, AXMANN may presume a confirmation with the contents of the order.

(3) All conditions, specifications, standards and other documents, which are listed in the order, shall be deemed as a basis for the contract and an agreement on condition.

(4) AXMANN is entitled to terminate the contract at all times by a written declaration. In this case, the contractor will be remunerated by AXMANN for the partial service provided by it. Insofar as not otherwise agreed or determined between the parties in this respect it is to be presumed that accordingly the contractor will be entitled to 3 per cent of the remuneration agreed on the not yet provided part of the service; the contractor is at liberty to prove a higher remuneration claim in this case.

§ 4 Services of the contractor

(1) The contractor owes the success of the specifically commissioned service.

(2) The contractor shall carry out the services and work assigned to it under its own control and at its own responsibility. Only the contractor is authorised to issue instructions to its employees. The contractor shall ensure that the personnel used by it are not integrated into the business operation of AXMANN.

(3) The contractor is obligated to name a specific contact for AXMANN for all concerns regarding the provision of the service before providing the service. It is obligated to provide a project manager.

(4) In case of services within the permanent establishment of AXMANN the contractor has to comply with the safety regulations applicable there and relevant company regulations, which will be made available by AXMANN upon request. In case of services in permanent establishments of third parties, the contractor has to ensure that it shall comply with the safety regulations that are decisive there and relevant company regulations. The contractor has to make an effort to gain knowledge of such regulations at the third party in time.

(5) In no way is the contractor entitled to representation of AXMANN.

(6) The contractor is obligated to conclude liability insurance with a minimum sum insured of EUR 10 million, which (also) covers the risks in connection with the provision of the contractually owed service towards AXMANN, before the commencement of the provision of the service and to properly maintain this

insurance for the duration of the contract. AXMANN is entitled at all times to request a copy of the insurance policy for inspection and/or to request proof, which documents the maintenance of the insurance as per contract.

§ 5 Provision of security for fulfilment of the contract

(1) Insofar as the parties have not agreed otherwise in this respect in the contract the contractor is obligated to provide security for the provision of the service as per contract in the amount of 10% of the contractually agreed remuneration.

(2) The security can be provided at the choice of AXMANN through (i) payment of a corresponding monetary amount by the contractor to AXMANN before provision of the service or (ii) the furnishing of an absolute, unconditional and unlimited guarantee of a European credit institution, in which the plea of benefit of discussion, the right to contestation and the possibility to deposit are waived binding and which has to be subject to German law; (iii) retention of 10% of the contractually agreed remuneration by AXMANN of the first instalment invoice; if the provision of security is higher than the first instalment, this right for AXMANN shall also cover the following instalment invoice(s).

(3) A claim may only be asserted against the provided security for fulfilment by AXMANN for claims, which were established before the acceptance of the service.

(4) The provided security is to be restituted step-by-step after acceptance against provision of a warranty bond (cf. § 12) from AXMANN to the contractor or in the event of the provision of security pursuant to Par. 2 lit (ii) at the contractor's request to the guarantor.

§ 6 Acts of assistance of AXMANN

(1) AXMANN shall merely owe the acts of assistance, which were agreed in the contract, insofar as not otherwise regulated in this respect below.

(2) AXMANN shall grant the contractor unlimited access to the location at which the service will be provided, insofar as this is necessary for the fulfilment of the contractual obligations by the contractor.

(3) AXMANN shall make the necessary information and documents available to the contractor, which are necessary for the proper provision of the service, insofar as they are available at AXMANN and insofar as the contractor is not obligated to procure these information and documents. If information cannot be procured by AXMANN or cannot be disclosed owing to rights of third parties, this shall not represent any insufficient assistance.

(4) Assistance of AXMANN, which is insufficient from the point of view of the contractor, is to be complained about by the contractor without delay in writing or in a text form. If the contractor fails to do this for reasons, for which it is responsible, it cannot subsequently refer to an improper assistance by AXMANN.

§ 7 Service changes

(1) Service changes and additional services can be agreed between the parties at all times by mutual agreement. The parties must agree on the scope of the change as well as on the remuneration to be paid by AXMANN.

(2) If the parties cannot reach any agreement on the scope of the change or on the remuneration to be paid by AXMANN then AXMANN can unilaterally order the requested change or the additional service. The prerequisite for this is that AXMANN requests the contractor before execution to submit a written addendum offer with a description of the changed/additional service and quantification of the addendum remuneration. The contractor is obligated to create such an addendum offer without delay and to submit it to AXMANN. If the contractor does not satisfy this for reasons, for which it is responsible, AXMANN is entitled to create such an addendum offer itself or to have this created by a third party at the contractor's costs. If the parties cannot reach an agreement on this addendum offer then AXMANN can unilaterally order the execution of the change after the expiry of 30 days. The 30-day deadline shall begin from the request for the creation of the addendum offer to the contractor. The contractor is only obligated to the execution if AXMANN has announced the order in writing or in a text form after the expiry of the 30-day deadline.

(3) If the parties have not reached an agreement on the amount of the addendum remuneration and if AXMANN has unilaterally ordered the execution of the change, the contractor's remuneration claim for the changed/additional service will be assessed according to the actually necessary, reasonable and customary local costs. Alternatively, the contractor can resort to the estimates in an original calculation deposited at AXMANN as agreed before commencement of the provision of the service for the calculation of the remuneration for the addendum.

(4) The contractor's remuneration claim for the services from the addendum shall comply with the general terms of payment, which were agreed between the parties, with regard to the maturity.

§ 8 Prices, terms of payment, invoice details

(1) The remuneration of the services provided by the contractor shall be carried out after the acceptance, insofar as not otherwise agreed in the contract in this respect.

(2) If the parties agree upon partial payments, then partial payments will only be made after the full provision of the respective partial service. Insofar as not otherwise agreed in this respect as per contract the contractor is entitled to 10% of the contractually agreed remuneration after submission of the full construction plans / electrical plans and to a further 20% of the agreed remuneration at the start of assembly.

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(3) The contractor is bound to the agreed remuneration, agreed remuneration components and agreed upper remuneration limits and fixed prices as well as to its estimate of work and expenses carried out before conclusion of the contract.

(4) If a fixed price is agreed for a service then the contractor has to fully provide this service at the agreed price. Additional expenses for the full provision of agreed services shall be for the expense of the contractor. Subsequent claims are excluded.

(5) Insofar as not otherwise agreed, AXMANN shall pay the agreed remuneration within 14 days of receipt of the invoice with 3% cash discount or within 45 days net, irrespective of the right to a subsequent complaint. The receipt of the invoice by AXMANN shall be decisive for the start of the cash discount deadline. The receipt of the transfer order by AXMANN's bank shall be sufficient for the punctuality of the payments owed by AXMANN.

(6) Payments shall generally not mean any recognition of the (partial) performance as being in accordance with the contract.

(7) In case of deficiencies to the provided partial service, AXMANN is entitled to withhold an amount, which corresponds with three to five times the costs of the expected remedy of defects, from the invoice amount.

(8) The contract number, the date of the contract and the planned work (project) are to be stated in all order confirmations, construction documents and invoices. Should one or more of these details be missing and the processing by AXMANN be delayed hereby within the scope of the normal business transactions of AXMANN, the payment deadlines stated in Paragraph 5 shall be extended by the period of time of the delay. At the request of AXMANN the contractor has to re-issue the documents with the requested details. The payment deadline will only begin from receipt of the full documents.

(9) In case of default of payment of AXMANN, AXMANN shall merely owe interest on default in the amount of five percentage points above the respective base lending rate pursuant to Section 247 BGB [German Civil Code].

§ 9 Acceptance and passing of risk

(1) The contractor can only request the acceptance of the owed service when it has proven a full and fault-free completion. It will request AXMANN to acceptance after the existence of these prerequisites.

(2) Insofar as the parties have not agreed otherwise in this respect in the contract partial acceptances are excluded. The payment of invoices shall not constitute an acceptance.

(3) The acceptance of the contractor's service shall be carried out formally. AXMANN can refuse the acceptance in case of a defect. A renewed acceptance can only be requested by the contractor if it has proven the remedy of the defect.

(4) The acceptance will not be replaced by the fact that AXMANN or a third party uses the owed service or a part thereof or has this used (commissioning).

(5) Insofar as the contractually owed service of the contractor is the object of a further service towards a third party, which is liable for acceptance, the contractor will only be entitled to the execution of the acceptance towards AXMANN, when the third party, on the other hand, has declared the acceptance of the further service towards AXMANN. This shall only apply if and as far as this was pointed out to the contractor in the contract.

(6) Even if it is not explicitly mentioned in the acceptance protocol AXMANN shall reserve the right with the acceptance to assert an agreed contractual penalty and/or claims for damages.

(7) With the acceptance the inventory and audit documents of all structural and technical systems are to be handed over to AXMANN by the contractor, which are to be created by the contractor in line with the contractual agreements or the components of which are to be delivered. These shall in particular include (i) all construction and assembly plans, in particular electrical plans; (ii) all test certificates, acceptance certificates, etc. of state or other, especially determined bodies including acceptance certificates of the TÜV testing authority or equivalent authorised institutions for systems or system parts, which require such a certificate; (iii) all proof of properties of building materials as well as other materials and installations; (iv) the protocols of official final acceptance inspections; (v) all operating, service, care instructions and manuals for all technical systems or system parts, which are the object of the contractually owed service of the contractor. AXMANN can also request the hand-over of such documents and documentation before the acceptance already if and insofar as the service owed by the contractor is a part of a further service owed towards a third party and the third party requests the submission of these documents and documentation or renders the acceptance by it dependent on the prior submission.

(8) The contractor shall bear the risk for its contractually owed service until the formal acceptance of the service by AXMANN. If the fully or partially carried out service of the contractor is damaged or destroyed before the acceptance by force majeure, war, riot or other unavoidable circumstances, for which the contractor is not responsible, then the entitlement to the contractually agreed remuneration shall cease to apply.

§10 Interferences to service / default

(1) Contractually agreed dates and deadlines are binding contractual deadlines. An impending non-adherence by the contractor is to be reported to AXMANN without delay.

(2) Only the actual provision of the service owed as per contract at the agreed place of service, at the agreed date is decisive for the punctuality of the services. If the contractor is in default with the service or with delimitable partial services

AXMANN can also rescind the contract after the fruitless expiry of a reasonable final deadline and request damages instead of the service.

(3) (AXMANN is entitled to request a contractual penalty in the amount of 0.2%, a maximum of 5%, of the contractually agreed remuneration if contractual deadlines are exceeded, after a prior written warning towards the contractor for each started calendar day of the default. The contractual penalty is to be offset against the damages due to default that are to be compensated for by the contractor.

(4) Additional expenses caused at AXMANN by the interference to service have to be reimbursed by the contractor, insofar as it is responsible for this. Possible further claims of AXMANN shall remain unaffected hereby.

§ 11 Warranty

(1) The contractor shall guarantee that the service to be provided by it is free of material defects and defects of title.

(2) Insofar as not otherwise agreed in this respect in the contract the statutory regulations of the law governing contracts for work and services in the German Civil Code, respectively extended by the time span of 6 months shall apply with regard to the statute-of-limitations of claims for the remedy of defects of AXMANN.

(3) The statute-of-limitations of warranty claims shall be suspended with the receipt by the contractor of a written or textually transmitted notice of defect by AXMANN until the contractor rejects the asserted claims or declares that the defect is rectified or otherwise refuses the continuation of negotiations regarding AXMANN's claims. In case of a replacement delivery and remedy of a defect the warranty period shall begin to apply once again for replaced and subsequently improved parts, unless the contractor was not legally obliged to such a measure (goodwill). The contractor will inform AXMANN in writing that it is of the opinion to make a delivery without a legal obligation to do so.

§ 12 Security for fault-free provision of service

(1) Insofar as the parties have not otherwise agreed in this respect in the contract the contractor is obligated to provide security for the fault-free provision of service in the amount of 5% of the contractually agreed remuneration.

(2) The security can be provided at the choice of AXMANN through (i) payment of a corresponding monetary amount by the contractor to AXMANN after acceptance has taken place or (ii) the furnishing of an absolute, unconditional and unlimited guarantee of a European credit institution, in which the plea of benefit of discussion, the right to contestation and the possibility to deposit are waived binding and which has to be subject to German law; (iii) retention of 5% of the contractually agreed remuneration by AXMANN of the final invoice.

(3) The provision of security for the fault-free provision of service may only be used by AXMANN for the remedy of defects, determined after acceptance to the contractually owed service.

(4) The provided security is to be restituted from AXMANN after expiry of the warranty period to the contractor or, in the event of the provision of security pursuant to Par. 2 lit. (ii), at the contractor's request to the guarantor, insofar as no defects have occurred.

§ 13 Property rights

(1) The contractor shall assume responsibility according to Paragraph 2 for the fact that no property rights of third parties in countries of the European Union or other countries, in which it provides the services or has these provided, are infringed through services provided by it.

(2) The contractor undertakes to indemnify AXMANN from all claims at first request, which are asserted by third parties against AXMANN owing to the infringement of industrial property rights stated in Paragraph 1, and to reimburse AXMANN all necessary expenses in connection with the assertion of such claims. This claim shall exist irrespective of a fault of the contractor.

(3) Further statutory claims of AXMANN due to defects in title of the services provided to AXMANN shall remain unaffected.

§ 14 Spare parts

(1) The contractor is obliged to keep spare parts for the services rendered to AXMANN available for a period of at least 10 (ten) years after acceptance.

(2) If the contractor intends to discontinue the production of spare parts for the services rendered to AXMANN, it shall notify AXMANN of this in writing immediately after the decision to discontinue the service has been taken. This notification must – subject to Paragraph 1 – at least be carried out 6 (six) months before the discontinuation of the production.

§ 15 Rights to the work

(1) AXMANN shall be exclusively entitled to rights of use established in connection with the execution of the contract to construction drawings, electrical plans, documentation, reports, images, films, data carriers, etc. The contractor is entitled to retain one or, if applicable, several copies of the aforementioned materials as proof of the services provided by it. The contractor is not entitled to further rights, in particular a right to reproduction or distribution, to this material.

(2) AXMANN shall acquire all rights to the contractually owed service, insofar as not otherwise agreed between the parties in this respect in the contract.

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(3) Insofar as the contractually owed service of the contractor is determined for further use towards a third party, the contractor shall ensure that AXMANN is entitled to the unlimited transmission of rights to the third party. § 13 Par. 2 of these terms and conditions shall apply in the event of a breach of this obligation.

§ 16 Subcontractors

(1) The contractor is only entitled to involve subcontractors with the prior written consent of AXMANN.

(2) The contractor shall be liable for the fault of the subcontractors and vicarious agents used by it towards AXMANN as for its own fault.

§ 17 Employees of the contractor

(1) The contractor undertakes to only assign employees to provide the contractually owed services, who maintain an employment relationship with it and whose assignment is permitted by law.

(2) The contractor undertakes, within the scope of the fulfillment of the contract, to comply with all statutory provisions, in particular the law governing the regulation of a general minimum wage (German Minimum Wage Act, MiLoG) and the German Employee Secondment Act (AEntG) in the respective applicable version and shall pay its employees remuneration for the work at least in the amount of the respective statutory minimum wage.

(3) Within the scope of the contract, the contractor shall indemnify AXMANN from all claims in connection with Section 13 MiLoG in conjunction with Section 14 AEntG. This shall also apply to possibly necessary costs, incurred to AXMANN owing to the assertion of claims by the employees or third parties (e.g. social insurance funds). This shall also include lawyer's costs pursuant to the German Lawyers' Compensation Act (RVG) for a possibly necessary out-of-court and in court legal defence with the assertion of a claim.

(4) In order to hedge the claims stated under Par. 3 AXMANN can request that the contractor provides security to a reasonable extent for the fulfillment of its contractual obligations. Deemed as reasonable is a contribution of at least 5% of the contractually agreed remuneration. The security can be provided by means of a guarantee. Insofar as this takes place, an absolute, unlimited and irrevocable guarantee of a credit institution, approved by AXMANN in advance, must be submitted, in which the plea of the benefit of discussion, the right to contestation and the possibility for deposit are waived and which is to be subject to German law. If the contractor does not provide this security within two weeks after a written request by AXMANN, AXMANN may rescind the contract and request damages owing to non-fulfilment.

(5) The security shall exclusively serve to hedge the claims of AXMANN from the obligation of the contractor from Par. 3; a retention owing to other or an offsetting against other claims of AXMANN is not permitted. The security is to be released no later than six months after the full processing of the contract, insofar as no claims have been asserted against AXMANN in connection with this obligation until this time. AXMANN reserves the right to also refuse to release the security also beyond this period of time, if AXMANN presents justified indications until the expiry of the release deadline at the latest, which substantiate a breach of the contractor of the obligations to pay the minimum wage and the risk of a later assertion of a claim. Sections 194 et seqq. BGB shall remain unaffected.

(6) The contractor shall as a rule, prove the payment of the minimum wage as well as the documentation pursuant to Section 17 I MiLoG monthly towards AXMANN, if requested by AXMANN. The contractor shall hereby, at the request of AXMANN, make an anonymised list of personnel assignments available, from which the assigned employees, the hours worked by these and the respectively paid wage can be seen. The contractor will also at the request of AXMANN, make a corresponding list of assigned further personnel (freelancers, apprentices, interns, assisting family members, etc.) available. AXMANN undertakes to treat the documents confidentially and not to grant any unauthorised third parties the right to inspect such documents.

(7) The contractor undertakes, on its part, to ensure that subcontractors commissioned by it as well as leasing companies are likewise obligated as per contract to comply with the MiLoG and to pay the respective minimum wage pursuant to Section 1 II MiLoG regularly and within the deadlines as well as, on their part, to agree upon this obligation as per contract with the use of further subcontractors or leasing companies. Subcontractors must be obligated in the same manner to submit confirmations pursuant to the obligation regulated under Par. 6. AXMANN undertakes to treat the documents confidentially and not to grant any unauthorised third parties the right to inspect such documents.

(8) In the event of a breach of the contractor of the MiLoG and/or of the obligations described under § 16 of these terms and conditions AXMANN is entitled to withhold the contractually agreed remuneration in full or in part. Under the same prerequisites AXMANN is entitled to terminate the contract extraordinarily with immediate effect and to request damages owing to non-fulfilment.

(9) In the event of a breach of an obligation described under § 16 of these terms and conditions the contractor has to pay a contractual penalty to AXMANN. The amount shall correspond with 2.5% of the contractually agreed remuneration. Several infringements shall lead, independently of one another, to the forfeiture of respectively one contractual penalty. The right is reserved to assert higher damages. The contractual penalty is to be offset against the total suffered damage.

§ 18 Confidentiality

(1) The contractor undertakes to maintain secrecy concerning the conditions of the order incl. the prices as well as all information and documents and samples made available for this purpose (with the exception of information accessible to the public) for a period of 3 (three) years after the conclusion of the contract and only to use these in order to execute the order. It will return these to AXMANN

immediately after settlement of enquiries or after the final processing of orders upon request.

(2) The contractor may not refer to the business relationship in advertising material, brochures, etc. and may not advertise services rendered for AXMANN or exhibit comparable services without the prior written consent of AXMANN.

(3) Insofar as requested by AXMANN the contractor undertakes to sign a separate declaration of confidentiality with reference to the business relations and their contents between contractor and AXMANN.

(4) The contractor will obligate its subcontractors in accordance with this § 16.

§ 19 Place of performance, place of jurisdiction, applicable law

(1) The place of performance for both parties is Zwenkau. The exclusive place of jurisdiction for all disputes from the contractual relationship is Leipzig. AXMANN is however also entitled to file legal action against the contractor at its registered seat.

(2) The contracts concluded between AXMANN and the contractor are subject to the law of the Federal Republic of Germany under the exclusion of the Convention on Contracts for the International Sale of Goods (UN-Purchase Right Convention).

(3) Unless otherwise regulated, Sections 631 et seqq. BGB shall apply in addition.

(4) Should one agreement in the contract between AXMANN and the contractor be or become invalid this shall have no effect on the validity of the other regulations. The parties undertake in this case to replace the invalid provision by a legally valid regulation, which shall as far as possible correspond with the commercial intention of the parties regarding this point.