

# SALES AND DELIVERY CONDITIONS

## 1. GENERAL

All sales, deliveries and services of the AXENT International AG (hereinafter referred to as "AXENT") are effected exclusively on the basis of the following International Sales and Delivery Conditions. General terms and conditions of the buyer are hereby contradicted and are deemed to remain contradicted throughout the entire relationship between AXENT and the buyer, even in case AXENT does not expressly contradict them again after their receipt. These International Sales and Delivery Conditions are considered to have been accepted by the buyer at the latest upon receipt of the order confirmation from AXENT.

All contracts, orders and agreements - particularly those purporting to change the conditions set out herein - shall only become binding if expressly accepted by AXENT in writing.

## 2. CONCLUSION OF CONTRACT – WRITTEN FORM

The offers of AXENT are non-binding, unless otherwise agreed in writing. An order is only accepted by AXENT when it has been confirmed in writing and the order confirmation has been sent to the buyer. All agreements, declarations and other information are required to be in writing in order to become effective.

## 3. CONDITIONS OF DELIVERY – TRANSFER OF RISKS

The delivery of goods shall be made "Free on board" AXENT's respective work or warehouse (EXW - INCOTERMS 2010) unless otherwise agreed and stated on the order confirmation.

Any duties, charges, taxes etc. imposed in connection with the sale, delivery and import of the goods shall be borne by buyer.

The risk of loss - including accidental loss - or accidental deterioration of the goods is transferred to the buyer when the goods are handed over to the commissioned freight forwarder or carrier but no later than the time of leaving the respective work or warehouse of AXENT, unless otherwise provided for in the corresponding order confirmation.

Delivery of goods notified as ready for dispatch must be requested immediately, otherwise, at its own discretion, AXENT shall be entitled to store them at the expense and risk of the buyer and invoice them as delivered ex works. If dispatch is delayed for reasons for which AXENT is not responsible, then instead of the point in time according to Section above the particular date of indication of readiness for dispatch applies. AXENT may arrange, upon buyer's request, for insurance at buyer's cost against damage arising in connection with the storage, delivery or shipment of goods ordered by buyer.

## 4. DELIVERY PERIOD, DELAYS IN DELIVERY

The stated delivery period is non-binding, unless it is specifically agreed in writing to be binding.

The delivery period begins with the sending of the order confirmation to the buyer. It has been met when, by its expiry, the object of the delivery has left AXENT's particular works or the buyer has been informed of the order's readiness for dispatch.

In the event of the occurrence of unforeseeable or inevitable events (force majeure) and in the case of operational stoppages of any kind, in particular damage to machinery, strikes and employment disputes, delayed supplies to us of important operating media and input materials or administrative measures, AXENT is entitled to withdraw from the contract of sale either wholly or in part or to extend the delivery period appropriately, taking into consideration a start-up period. AXENT shall inform the buyer about any such event in writing.

In cases of delay of delivery the buyer can, following the abortive expiry of an appropriate final deadline, withdraw from the contract; in cases where the performance is impossible, he has this right even without the setting of a final deadline. All claims of the buyer for compensation for damages resulting from a delay of delivery, including but not limited to any consequential damages, are - with reservation of the regulation in the below section - excluded; the same applies to the buyer's claim for the reimbursement of expenses.

The exclusion of liability regulated in section above does not apply in the case of damages caused by wilful intent or gross negligence on AXENT's part. Subject to mandatory law, AXENT's liability shall in any case be limited to the contractually typical, foreseeable damage and shall never exceed the amount of the respective order.

Unless otherwise agreed in writing, AXENT is entitled to make partial deliveries.

## 5. PRICES, PAYMENT, DEFAULT

AXENT's prices are based on the respective price lists for one piece valid at the date of the order confirmation.

Unless other credit terms have been agreed between AXENT and the buyer, goods must be paid for immediately upon receipt of the order confirmation from AXENT and before delivery. The order confirmation will contain the applicable foreign exchange rate between the currency agreed with the buyer (in general, CHF, EUR or USD). If any payment is overdue, interest on the outstanding amount shall be payable at the applicable commercial bank rates but not less than 6 percent p.a.

Bills of exchange and cheques are accepted by AXENT only on account of performance and not as performance. Payments made by bills of exchange or cheques do not constitute fulfilment until the amount in question has been irrevocably credited to AXENT's bank account. Taxes and expenses for bills of exchange are borne exclusively by the buyer.

In the case of buyer's payment default, insolvency or the debts being jeopardized through deterioration of the buyer's credit worthiness, AXENT shall be entitled to demand immediate settlement of all debts falling due at the time and in the future or the provision of sufficient collateral. AXENT shall also be entitled to only make outstanding deliveries if they are paid for in advance or sufficient collateral is provided. If this cannot be established by buyer within a reasonable period of time, AXENT has the right (but not the obligation) to withdraw from the contract of sale.

## 6. DELAY IN CALLING GOODS

If the specified quantities of goods ordered by buyer are not called for delivery within the agreed time frame, AXENT is entitled (but not obligated) to withdraw from the sale with immediate effect, and/or to adjust the prices accordingly. Buyer is prohibited from claiming any damages.

## 7. PACKAGING

Unless otherwise agreed, the goods shall be delivered in standard packaging. The buyer will be charged for any special packaging agreed.

## 8. STORAGE OF GOODS

The buyer undertakes to store the goods professionally and properly. In particular, electronic components must be protected from dust and humidity and stored in dry storage rooms (max. relative humidity of 65% at temperatures between 10 to 25 degrees Celsius).

## 9. DEFECTIVE GOODS (WARRANTY)

Buyer must inspect the goods immediately upon receipt. Any defects recognisable in the course of a customary examination must be notified to AXENT in writing within ten (10) days after receipt. Otherwise, the goods purchased are deemed to have been accepted and any defect claims against AXENT are waived and excluded.

To the extent there are defects involved which were not recognizable in the course of a customary examination, written notification of such defects must be given immediately upon their discovery. Otherwise, the goods purchased are deemed to have been accepted with respect to such defects and any defect claims against AXENT are waived and excluded.

Buyer undertakes to make the defective goods or the defective part of the goods available to AXENT for a reasonable time immediately after discovery of the defect, in unaltered condition, so that the defect can be checked. This obligation does not, however, release the buyer from his burden of substantiation and proof of the presence of a defect.

Provided the goods that have been professionally and duly stored, maintained and used by the buyer, are proven defective and buyer has notified the defects as set out here in above, AXENT, at its own choice and discretion, shall be entitled to subsequently fulfil its obligations by repairing the defective goods or by supplying replacements free of cost. Should one or both of these types of subsequent fulfilment turn out to be impossible or not reasonable, AXENT is entitled to decline them. AXENT can also decline subsequent fulfilment for as long as the buyer does not, or not entirely, fulfil his payment obligations.

Should the subsequent fulfilment according to section above be declined by AXENT or not have been successful, the buyer has the choice either of demanding a corresponding, adequate reduction of the purchase price (price reduction) or of withdrawing from the contract in accordance with the applicable legal provisions (withdrawal).

Defect claims are subject to a period of limitation of one (1) year after delivery of the goods to the buyer.

Defect claims are conditioned upon buyer's prior performance of any and all of buyer's own obligations. Any claims based on defects of the goods are subject to the limitations of liability named in section 10.

The above provisions apply as well if other goods or smaller quantities are delivered instead of those agreed.

## 10. LIABILITY OF AXENT

Unless otherwise specified and agreed, any claims of the buyer against AXENT for whatever legal reason, in particular claims arising from infringement of principal and subsidiary contractual obligations, the reimbursement of expenses or tort are excluded. In particular, the exclusion includes claims for damages other than to the purchased goods, claims for loss of profit and claims which do not result from a defect of the delivered goods.

The exclusion of liability in the section above does not apply to damage resulting from culpable injury of life, body or health, from wilful intent or gross negligence. It also

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does not apply in cases where mandatory liability exists in accordance with product liability laws for products supplied for private use. Subject to mandatory law, in other cases as set out in above section AXENT's liability shall in any case be limited to the contractually typical, foreseeable damage and shall never exceed the amount of the respective order.

## 11. RETENTION OF TITLE, COLLATERAL

AXENT shall retain ownership of the goods supplied until full payment of the agreed purchase price and the fulfilment of all other outstanding debts owed by the buyer to AXENT has been effected (hereinafter "Retained Goods"). Buyer shall take all necessary measures for the protection of the ownership rights of AXENT.

The buyer processes the Retained Goods for AXENT as manufacturer but without any obligation on the latter's part. The processed Goods are still deemed to be Retained Goods.

Should the buyer process, combine and mix the Retained Goods with other goods, AXENT shall become part owner of the new product in the proportion of the invoice value of the Retained Goods to the invoice value of the other goods used. Should AXENT's ownership cease as a result of combination or mixing, the buyer hereby agrees to transfer its ownership of the new product in

the amount of the invoice value of the Retained Goods to AXENT. AXENT's part ownership shall be deemed to be Retained Goods.

The buyer is only entitled to resell the Retained Goods in the normal course of business and subject to his standard terms and conditions.

At the time of the conclusion of the sales contract with AXENT, the buyer assigns to AXENT all claims which base or will base on the resale of the Retained Goods. The assigned claims shall be deemed to be collateral for the Retained Goods. The buyer shall not be entitled to otherwise assign the claims. Insofar as a continuous account relationship is agreed between the buyer and his customers, the assignment refers to the balance at the time. The buyer is still entitled to collect these resale claims from his customers or third parties after they have been assigned; AXENT's authority to collect the claims remains unaffected by this. AXENT is entitled to request that the buyer informs AXENT about the as-signed claims and their debtors, gives AXENT all information in writing which is necessary for collection, surrenders to AXENT the relevant documents and informs the debtors in writing about the assignment of the claims. However, AXENT does undertake not to collect the claims or request the above-mentioned information as long as the cases specified in section 5 do not occur.

In the cases specified in section 5 and if the buyer fails to meet the obligations of section 11 AXENT shall also be entitled to forbid the processing and the resale of the Retained Goods with immediate effect. A declaration of withdrawal from the contract by AXENT is also deemed to be a withdrawal of the authorization to resell and to collect the resale claims. In these cases, AXENT shall also be entitled to demand the immediate return of the Retained Goods at the expense of the buyer and with exclusion of a right of retention. In the above-mentioned cases, the buyer hereby authorizes AXENT or its agent presenting written authorization to enter its business premises on foot or in vehicles in order to repossess the Retained Goods.

To the extent that retention of title cannot be agreed with the buyer in accordance with the applicable law, a lien on the goods or on the processed goods or on the purchase price claims of the buyer resulting from the resale of the goods shall be deemed to be agreed. A lien means that the goods serve as a collateral for AXENT until the purchase price is paid entirely and that the buyer is therefore entitled to process or resell the goods only with the agreement of AXENT.

If the value of the collateral due to AXENT exceeds the claims to be secured by more than 20%, AXENT is obliged, upon request of the buyer, to proportionally release the collateral of AXENT's choice which exceeds the above-mentioned excess cover.

## 12. RE-EXPORT

AXENT explicitly draws attention to the fact that AXENT products are protected by various intellectual property rights in other countries. Buyer has therefore to seek advice from AXENT prior to planned exports.

The onward delivery of the goods and any product documentation, including but not limited to the product descriptions and the installation guidelines, to the USA or Canada is expressly prohibited and requires the prior written permission of AXENT.

## 13. PROHIBITION OF ASSIGNMENT AND OFFSETTING

The buyer shall only be entitled to assign rights and debts arising from contracts of sale to third parties with the prior written consent from AXENT.

The buyer is not entitled to offset counter-claims against the purchase price claim, unless in the case of an undisputed or legally (in a final judgement) established claim.

The buyer is not entitled to retain the purchase price on the basis of any counter-claims which do not result from the delivery contract concerned.

## 14. PLACE OF PERFORMANCE, JURISDICTION

Place of performance for all obligations resulting from the sales contract shall be the principal place of business of AXENT in Jona, Switzerland.

Place of jurisdiction for any dispute arising in connection with the contract of sale shall be the Commercial Court of the Canton of St. Gallen, Switzerland.

The sales contract is subject to the applicable laws of Switzerland, in particular the Swiss Code of Obligations. The application of the UN Convention for the International Sale of Goods ("Vienna Sales Convention") is expressly excluded.

## 15. SEVERABILITY

The invalidity or unenforceability of any provisions of the conditions above shall not affect the validity or enforceability of any other provision of these conditions.

November 2020