

**GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY
OF AXTONE GMBH**

1. **Scope**
Sales and deliveries by Axtone GmbH shall be made exclusively in accordance with the following General Terms and Conditions of Sale and Delivery, which shall be accepted by Customer by placing an order or the receipt of delivery. They shall also apply to all future transactions of AXTONE with Customer. The application of Customer's conflicting or supplementary terms and conditions shall be excluded, even if such terms and conditions are not expressly objected to by AXTONE.
2. **Conclusion of Contract**
 - 2.1 Offers by AXTONE shall be non-binding. A contract shall not become effective until it has been confirmed by AXTONE in a written confirmation of order and shall be governed exclusively by the contents of the confirmation of order and these Terms of Delivery. Oral agreements or promises are only valid if they have been confirmed by AXTONE in writing.
 - 2.2 AXTONE retains all rights in the sales documentation (in particular pictures, drawings, data on size and weight) and the samples. These items must not be made available to third parties and must be returned to AXTONE without undue delay on demand.
3. **Delivery Periods and Deadlines**
 - 3.1 Delivery deadlines and delivery periods are only binding if they have been confirmed by AXTONE in writing and Customer has provided AXTONE in a timely manner with all of the information or documentation required for the performance of such delivery and Customer has paid any advance payments in the manner and amount as agreed upon by the parties. Delivery periods agreed upon by the parties shall begin on the date of the confirmation of the applicable order. In the event of additional or supplementary contracts, the delivery periods shall be extended accordingly.
 - 3.2 Events which are unforeseeable, unavoidable and lie beyond the sphere of influence of AXTONE and for which AXTONE does not bear responsibility, such as Acts of God, war, natural disasters and labour disputes shall release AXTONE for the duration of such event from its obligation to make timely delivery or perform timely. Periods agreed upon between the parties shall be extended by the length of such disturbance, and Customer shall be informed of the occurrence of such disturbance in a reasonable manner. If the end of such disturbance is not foreseeable, or should it continue for more than two months, each party is entitled to rescind the contract.
 - 3.3 With regard to objects of delivery which AXTONE does not produce itself, the correct and timely self-supply shall be reserved.
 - 3.4 If deliveries by AXTONE are delayed, Customer shall only be entitled to rescind the contract if AXTONE is responsible for the delay and after a reasonable grace period set by Customer has expired unsuccessfully.
 - 3.5 Should Customer be in default of the acceptance of delivery or should it be in breach of any other obligations to cooperate with AXTONE, AXTONE shall be entitled to reasonably place the object of delivery into storage at Customer's risk and expense and without prejudice to its other rights.
 - 3.6 AXTONE may make partial delivery for good reasons only.
4. **Shipment, Passage of Risk, Insurance**
 - 4.1 In the absence of any other instruction by Customer, shipment shall be made using a reasonable method of shipment in the usual manner of packaging.
 - 4.2 The risk shall pass to Customer upon delivery of the object of delivery to the shipment company or delivery of the object of delivery to Customer itself. Should the delivery or shipment be delayed on grounds for which Customer bears responsibility, the risk shall pass to Customer on the date of the notification to Customer of the readiness of the object of delivery for shipment.
 - 4.3 Insurance shall be taken out only upon request and at the expense of Customer.
5. **Prices, Terms of Payment**
 - 5.1 Unless the parties have agreed upon a certain price, the price shall be determined by the price list of AXTONE as applicable at the date of the conclusion of the contract.
 - 5.2 In the event the agreed delivery date is more than four months after the conclusion of the contract and AXTONE has to bear an unforeseeable increase in costs with regard to the object of delivery after the conclusion of the contract, AXTONE may exercise its reasonable discretion to increase the agreed price accordingly.
 - 5.3 With regard to contracts for the performance of continuing obligations such as long-term supply contracts AXTONE shall be entitled to increase its prices reasonably as of January 1 of each calendar year in the same amount as AXTONE had to bear increases in costs with regard to the object of delivery in the preceding year. AXTONE shall inform Customer in writing about the intended price increases at the latest eight weeks prior to their taking effect.
 - 5.4 All prices of AXTONE shall be ex works exclusive of statutory VAT in the respective applicable amount and do not include any shipment and packaging costs, which will be charged separately. Customer shall bear any possible public charges such as customs duties, which may arise in connection with the import of goods.
 - 5.5 Each invoice of AXTONE shall be due for payment without any deductions within 30 days of the date of invoice; if this period for payment lapses unsuccessfully Customer shall be in default. Payments by Customer shall not be deemed to have been made until AXTONE has received such payment. Payments may only be made in the agreed currency.
In the event that Customer is in default, AXTONE shall be entitled to demand default interest in the applicable statutory amount. The assertion of a claim for further damages due to the default shall remain unaffected.
 - 5.7 Employees of AXTONE are only entitled to receive payments of any kind if AXTONE has advised the Customer in writing of such authority of any employee.
 - 5.8 Bills of exchange and checks shall only be taken on account of performance upon special arrangement and without any bank charges or other costs for AXTONE.
 - 5.9 Customer is only entitled to a set off if its counterclaim is uncontested or has been finally adjudicated.
 - 5.10 Customer is only entitled to assert a right of retention to the extent that its counterclaim is based on the same contract and is uncontested or has been finally adjudicated.
 - 5.11 If AXTONE becomes aware of the risk of Customer's inability to perform during the execution of the contract, AXTONE shall be entitled to only make any outstanding deliveries against prepayment or the provision of security. If such prepayments or security have not been rendered even after the expiration of a reasonable grace period granted by AXTONE, AXTONE may, partially or totally rescind individual or all of the contracts. AXTONE shall be entitled to assert any further rights.
6. **Retention of Title**
 - 6.1 The delivered goods shall remain the property of AXTONE until any and all claims of AXTONE arising under its business relationship with Customer have been fully paid.
 - 6.2 In the case of current account this retention of title shall be deemed to be security of the claim for the balance to which AXTONE is entitled.
 - 6.3 Customer shall only be allowed to sell the products subject to retention of title within normal and proper business transactions. Customer is not entitled to pledge the products subject to retention of title, grant chattel mortgages on them or make other dispositions endangering AXTONE title to such products. Customer already now assigns to AXTONE its claim for the proceeds arising from any sale of the products, and AXTONE already now accepts such assignment. Should Customer sell the products subject to retention of title together with other goods, this assignment of receivables shall only be agreed to in the amount of the portion equivalent to the price agreed between AXTONE and Customer plus a safety margin of 10 % of this price. Customer is granted the revocable authorization to collect in trust the receivables assigned to AXTONE in its own name. AXTONE may revoke such authorization and the right to resell the products if Customer is in default of the performance of material obligations such as making payment to AXTONE; in case of such revocation AXTONE is entitled to collect the receivables itself.
 - 6.4 Customer shall provide AXTONE at all times with all desired information concerning the products subject to retention of title or receivables assigned to AXTONE under this contract. Attachments of or claims by third parties to the products subject to retention of title shall be immediately reported to AXTONE by Customer; any relevant documents shall be submitted to AXTONE. Customer shall at the same time advise the third party of AXTONE's retention of title. The costs of a defense against attachments and claims shall be borne by Customer.

- 6.5 Customer is obliged to treat the products subject to retention of title with care for the duration of the retention of title.
- 6.6 Should the realizable value of the securities exceed all of AXTONE's receivables which are to be secured by more than 10 %, Customer shall be entitled to demand a release to such extent.
- 6.7 If Customer is in default of material obligations such as payment to AXTONE, and if AXTONE cancels the contract AXTONE may demand back the products subject to retention of title and otherwise realize them for the purpose of satisfying its due claims against Customer without prejudice to any other rights AXTONE may have. In such case, Customer shall grant AXTONE or AXTONE's agents immediate access to the products subject to retention of title and surrender them.
- 6.8 On AXTONE's demand, Customer is obliged to insure the products subject to the retention of title appropriately, to provide AXTONE with proof of such insurance and to assign the claims arising from such insurance to AXTONE.
- 6.9 In the case of deliveries to other jurisdictions in which the foregoing provisions governing the retention of title do not have the same security effect as in Germany, Customer is required to create equivalent security rights for AXTONE without undue delay. Customer will cooperate in all measures such as registration, publication, etc. which are necessary and beneficial to the validity and enforceability of such security rights.
- 7. Characteristics, Warranty, Duty to Inspect the Goods**
- 7.1 AXTONE warrants that the object of delivery has the agreed characteristics upon the passage of risk; these characteristics shall exclusively be determined by the specific agreements made by the parties in writing with regard to the characteristics and features of the object of delivery.
- 7.2 Statements in catalogues, price lists and other information material as well as good descriptions made available to Customer by AXTONE shall not be understood as a specific guarantee for the characteristics of the object of delivery; such specific guarantees must be expressly agreed upon in writing.
- 7.3 AXTONE reserves its right to change the object of delivery slightly and under no circumstances further than is customary in the industry with regard to its construction, material and/or its finish provided its agreed characteristics are not changed thereby.
- 7.4 Customer's warranty rights shall require that it inspects the goods upon delivery without undue delay and notifies AXTONE of any defects in writing quoting the invoice number and without undue delay, but no later than two weeks following delivery; hidden defects must be notified to AXTONE in writing without undue delay upon their discovery.
- 7.5 In the event of any notification of a defect, AXTONE shall have the right to inspect and test the goods to which objection was made. Customer will grant AXTONE the required period of time and opportunity to exercise such right. AXTONE may also demand from Customer that it returns the object of delivery to which objection was made to AXTONE at AXTONE's expense.
- 7.6 AXTONE shall be entitled to remedy any defects at its option by removing the defect or delivery of a replacement, both free of charge to Customer ("subsequent performance").
- 7.7 Customer shall give AXTONE the necessary reasonable period of time and opportunity for such subsequent performance. Customer shall only have the right upon having notified AXTONE without undue delay to remove the defect by itself or have the defect removed by a third party and demand compensation of its necessary expenses from AXTONE in instances of emergency in which the safety of operations is endangered or in order to avert a disproportionately great damage or if AXTONE is in default concerning removing the defect.
- 7.8 Items which have been replaced by AXTONE must be returned to AXTONE.
- 7.9 AXTONE shall not assume any warranty for damages caused for instance by inappropriate or improper use, in particular also by the non-observance of the operations instructions, incorrect start-up of operation, faulty treatment or incorrect installation by Customer or unsuitable accessories or unsuitable spare parts or inappropriate repair works or by natural wear and tear or by unsuitable materials or defective construction designs prescribed by Customer to AXTONE, provided that AXTONE does not bear the responsibility for such damages.
- 7.10 If the subsequent performance fails or is unreasonable for Customer or if AXTONE refuses it according to section 439 subsec. 3 BGB, Customer may demand, at its option, the rescission of the contract, a reduction of the purchase price and/or damages pursuant to para. 8 or the reimbursement of his futile expenses according to the statutory provisions.
- 7.11 The limitation period for the warranty claims shall be twentyfour months from the hand-over of the object of delivery to Customer.

8. Liability and Damage Compensation

- 8.1 Subject to the provisions in para. 8.2 AXTONE's statutory liability for damages shall be limited as follows:
- (i) AXTONE shall only be liable up to the amount of the typically foreseeable damages at the time of entering into the contract for damages caused by a slightly negligent breach of a material contractual obligation;
 - (ii) AXTONE shall not be liable for damages caused by a slightly negligent breach of a non-material contractual obligation.
- 8.2 The aforesaid limitation of liability shall not apply to any mandatory statutory liability (in particular to liability under the German Product Liability Act), liability for assuming a guarantee or liability for culpably caused personal injuries.
- 8.3 Customer shall take all reasonable measures to mitigate any damages.

9. Product Liability

Should Customer sell the object of delivery, it shall hold AXTONE harmless within the internal relationship between the parties to this contract from product liability claims of third parties, in so far as Customer is responsible for the defect causing such liability.

10. General Provisions

- 10.1 Amendments of and supplements to this Contract and/or these Terms of Delivery and any side agreements must be in writing. The same shall apply to the amendment of this written form requirement.
- 10.2 If a provision of this Contract and/or these Terms of Delivery is fully or partially invalid, the validity of the remaining provisions shall remain thereby unaffected. In such case, the parties undertake to replace the invalid provision by a valid provision coming closest to the commercial purpose of the invalid provision.
- 10.3 Exclusive venue for all disputes arising under the contractual relationship shall be Koblenz. AXTONE is entitled, however, to sue Customer at any other court having statutory jurisdiction.
- 10.4 The laws of the Federal Republic of Germany shall apply with the exception of the UN Convention on Contracts for the International Sale of Goods (CISG).