

# Axxum Group Standard Terms and Conditions (Germany)

## Part I: General Provisions

### §1 Scope

1.1 Except as provided in subsection 1.4, the following Standard Terms and Conditions govern all deliverables and services to be provided by the relevant Axxum Group company under contract (hereinafter: "Contractor") to the exclusion of all other terms and conditions. The Contractor does not recognize any contradictory or differing terms or conditions stipulated by the Customer except where the Contractor has expressly consented to the applicability of such in writing. These Standard Terms and Conditions also govern in the event the Contractor performs the service owed under contract without expressing reservations, even though the Contractor is aware that the Customer has stipulated terms and conditions that contradict or differ from these.

1.2 These Standard Terms and Conditions govern only where the Customer is the operator of a business within the meaning of Sec. 14 of the German Civil Code (*BGB*), a legal entity under public law, or an entity specially funded under public law.

1.3 These Standard Terms and Conditions also govern all future dealings with the Customer.

1.4 The Contractor particularly renders packaging services. In the event the order is supposed to comprise additional shipping, transportation, storage services and/or stevedoring services to be provided by the Contractor for the Customer, this needs to be explicitly stipulated. **In deviation from these Standard Terms and Conditions, the 2017 version of the German Freight Forwarders' Standard Terms and Conditions (ADSp), which the Contractor will supply upon request, shall govern such services. Stevedoring services shall be governed by the ADSp provisions applicable to ordered warehousing. The Contractor hereby advises that no. 23 of the 2017 version of the German Freight Forwarders' Standard Terms and Conditions limits the liability stipulated by law for loss sustained to goods as set out in Sec. 431 of the German Commercial Code (HGB) in the amount of 8.33 special drawing rights (SDR)/kg per loss to EUR 1,250,000 or 2 SDR/kg or, respectively, to EUR 2,500,000 or 2 SDR/kg per occurrence, whichever is greater, and in the case of multi-modal transportation, including transport by sea, generally to 2 SDR/kg.**

### §2 Contract Formation, Documents

2.1 Quotations provided by the Contractor are non-binding. Where the order by the Customer qualifies as a quotation pursuant to Sec. 145 of the German Civil Code, the Contractor can accept such quote within two weeks.

2.2 All agreements made by and between the Contractor and the Customer aimed at the performance of the contract are to be set out in writing in the contract, these Standard Terms and Conditions included. No verbal collateral contracts exist.

2.3 The Contractor reserves all property rights and copyrights to illustrations, sketches, calculations, and other documents. The foregoing also applies to such printed documents as are designated "confidential". Prior to disclosure of such to third parties, the Customer must obtain the express written consent of the Contractor.

### §3 Prices and Payment Terms

3.1 The Contractor's prices are "ex works" in euros. The sales tax (VAT) stipulated by law is not included in the prices; where applicable, it will be identified separately on the invoice in the respective amount required by law.

3.2 In the event that the overall costs for the deliverable or service increase after the contract has been entered into due to unforeseeable circumstances over which the Contractor has no control, such as, for example, new or amended regulations, price increases for source materials, increases in wages under collective bargaining agreements, or unforeseen complications relating to working conditions, the Contractor reserves the right to increase the price commensurately. In the event that the overall costs decrease after the contract has been entered into due to such circumstances, the Contractor shall reduce the price commensurately. The Contractor will inform the Customer in advance in a timely manner of the adjustment in price. Where the agreed price is increased by more than 5% within one year, the Customer has the right to rescind the contract. The Customer must declare within a reasonable period after the notification whether it will avail itself of the right to rescind.

3.3 Unless otherwise stated in the order confirmation, the price for the deliverable or service is due and payable as a net amount (without any deductions) within 14 days of the invoice date. The statutory provisions regarding the consequences of a default in payment apply.

3.4 The provision of cash discounts requires a separate arrangement in writing.

3.5 The Customer has a right to offset debts owed to the Contractor only where the Customer's counterclaims have been upheld by a court, are uncontested and have been acknowledged in writing by the Contractor. This restriction on the ability to offset does not apply to claims by the Customer for defects arising from the same contractual relationship as governs claims by the Contractor.

### §4 Timing of Performance

4.1 Absent any written agreement to the contrary, the written order confirmation by the Contractor is authoritative with respect to the timing of performance.

4.2 The defined period leading up to the deadline for performance does not start until all technical issues have been resolved.

4.3 Furthermore, the Contractor's compliance with the obligation to render performance is contingent on the Customer properly satisfying its obligations in a timely manner. The Contractor reserves the right to invoke non-performance of the contract (Sec. 320 of the German Civil Code) and uncertainty of performance (Sec. 321 of same) as a defense to liability.

4.4 All events of force majeure for which the Contractor is not responsible pursuant to Sec. 276 of the German Civil Code such as, for example, unforeseen business interruptions, strikes, and lawful lockouts, which prevent the obligations under the contract from being satisfied shall release the Contractor from satisfaction of the obligations assumed under the contract for as long as such events persist. The Contractor shall notify the Customer without delay of the occurrence and presumable duration of any such event. Where such an event persists for longer than three months, both parties have the right, upon providing advance notice, to rescind the contract. In such case, any consideration already provided is to be returned immediately.

4.5 Where the Contractor's performance is delayed due to negligence, the Contractor's liability for damages in addition to performance (damages for delay) is limited to 5% of the value of the service to be provided, and for damages in lieu of performance, to 25%. Claims by the Customer beyond this extent are excluded, even after any deadline set for the

Customer's performance has expired. Liability arising culpably from the loss of life and limb, health, or well-being shall remain unaffected. For the performance of contracts comprising the order of shipping, transportation, storage services and/or stevedoring services (subsection 1.4), the Contractor's liability is governed by the 2017 version of the German Freight Forwarders' Standard Terms and Conditions.

4.6 Where the agreed date of performance is postponed for reasons within the Customer's control, any additional costs will be charged to the Customer.

### §5 Liability

5.1 The Contractor is liable in accordance with the statutory provisions insofar as the Customer makes claims for damages arising from willful intent or gross negligence, including the willful intent and gross negligence of the Contractor's representatives or parties assisting the Contractor in performance of the contract, or arising from the culpable breach of a material duty under the contract. Material duties under the contract are those the satisfaction of which is necessary for the achievement of the purpose of the contract and the compliance with which the other party has placed and should be able to place its trust in.

5.2 Insofar as the Contractor is not accused of intentional breach of contract, liability for damages in the situations described in the foregoing is limited to the liability covered by the Contractor's liability insurance policy. Coverage for property damage is

(i) for plant and export packaging per collo for all damage events from a packaging order EUR 2.5 million,

(ii) for coil and parcel packaging EURO 25,000 per collo and for packaging of other industrial serial products EURO 76,694 per collo;

(iii) for assembly services on our own premises EUR 250,000;

(iv) for assembly services on third-party premises EUR 5 million.

The Contractor will make the details available upon request. Insofar as the insurer is not required to make payment (e.g., due to deductible or self-insured retention, related claims, annual maximum, excluded perils), the Contractor itself is responsible for paying damages; in such cases, the Contractor's liability is limited to such loss as is foreseeable and typically likely to occur. If, in individual cases, in the scope of a contract for packaging, the foreseeable damage typically arising from this kind of contract is lower than the aforementioned insurance coverage or if liability under Section 5.1 arises from a contract on the delivery of goods pursuant to Part II or other contracts for works pursuant to Part IV, liability shall be limited to the foreseeable damage typically arising from this kind of contract except for cases of intentional breach.

5.3 The Contractor's liability arising from the culpable loss of life and limb, health, or well-being and liability under the provisions of the German Product Liability Act (*Produkthaftungsgesetz*) that cannot be waived remain unaffected.

5.4 Further liability for damages on the part of the Contractor is excluded, irrespective of the legal nature of the claim asserted. This also applies in particular to damages claims arising from actions in bad faith during contract negotiations, other breaches of duties under the contract, or for claims in tort for compensation for property damage pursuant to Sec. 823 of the German Civil Code. Liability for delayed performance is governed by subsection 4.5.

5.5 The limitations of liability under this clause also apply where the Customer demands compensation for futile expenditures in place of damages in lieu of performance.

5.6 Insofar as liability for damages on the part of the Contractor is excluded or limited, such exclusion or limitation also applies with respect to the personal liability for damages on the part of the Contractor's staff members, employees, workers, representatives, and parties assisting in performance of the contract.

5.7 The Customer shall be free to request a higher insurance coverage than provided for in Section 5.2 in consideration of special risks. If the Contractor is able to take out insurance in a higher amount at the Customer's request, the Customer is obliged to bear the additional premium. In that case the maximum amount of liability increases accordingly to the agreed insurance amount.

5.8 For the performance of contracts comprising the order of shipping, transportation, storage services and stevedoring services (subsection 1.4), the Contractor is liable exclusively pursuant to the 2017 version of the German Freight Forwarders' Standard Terms and Conditions.

### §6 Jurisdiction, Place of Performance

6.1 With respect to businesspersons, legal entities under public law, and entities specially funded under public law, the competent court for the judicial district in which the Contractor has its headquarters shall have exclusive jurisdiction and venue for all disputes arising under or in connection with this agreement. Nevertheless, the Contractor reserves the right to also bring actions against the Customer before the court of competent jurisdiction over the Customer.

6.2 This contract is governed by the law of the Federal Republic of Germany; application of the UN Convention on Contracts for the International Sale of Goods is expressly excluded.

6.3 Unless otherwise stated in the order confirmation, the place of performance is the Contractor's registered seat.

## Part II: Special Provisions for Deliveries of Goods

### §7 Transfer of Risk in the Case of Deliveries of Goods

Unless otherwise stated in the order confirmation, the Contractor's delivery of goods is made "EXW" (ex works) pursuant to the most recent version of Incoterms.

### §8 Retention of Title

8.1 The Contractor retains the proprietary rights to the delivered item(s) until all payments arising from the business relationship with the Customer have been received. Where business between the Customer and the Contractor involves offsetting accounts payable and receivable on an ongoing basis, the retention of title also applies to the balance acknowledged at the time; the same applies insofar as the balance is not acknowledged but instead is asserted based on the sum of the underlying account entries, for instance because the Customer is bankrupt or is in liquidation. In the event of conduct by the Customer in breach of contract, in particular default on payment, the Contractor has the right to rescind the contract and repossess delivered item(s), provided the statutory requirements have been satisfied.

8.2 The Customer has the right to resell the purchased items in the ordinary course of business; however, it assigns to the Contractor here and now all receivables accruing from its purchasers or third parties due to resale, in the amount of the grand total (including sales tax) of the Contractor's accounts receivable, irrespective of whether or not the purchased item(s) underwent further processing prior to resale. The Contractor retains the right to collect on these accounts receivable even after the assignment. The Contractor's authority to collect the receivables itself is not affected thereby. However, the Contractor shall not collect the accounts receivable where the Customer duly satisfies its payment obligations from the proceeds received. Where this is not the case, the Contractor may demand that the Customer inform the Contractor of the assigned receivables and the debtors that owe them, provide all particulars required for collection, hand over the relevant records, and notify the debtors (third parties) of the assignment.

8.3 Processing or reworking of the purchased item(s) by the Customer is always undertaken on behalf of the Contractor.

Should the purchased item(s) be processed together with other objects not belonging to the Contractor, such action shall cause the Contractor to acquire co-ownership of the new item(s) equivalent to the ratio of the value of the purchased item(s) (invoice grand total including sales tax) to the other processed objects at the time of the processing. In other respects, the same terms as apply to purchased item(s) delivered subject to retention of title shall apply to the item(s) resulting from the processing.

8.4 Should the purchased item(s) be inseparably integrated with other objects not belonging to the Contractor, such action shall cause the Contractor to acquire co-ownership of the new item(s) equivalent to the ratio of the value of the purchased item(s) (invoice grand total including sales tax) to the other integrated objects at the time of the integration. Should the integration occur such that the Customer's item(s) can be viewed as the principal item(s), it shall be deemed stipulated that the Customer is to transfer proportional co-ownership to the Contractor. The Customer is to preserve for the Contractor the ensuing sole or co-ownership.

8.5 Where the retention of title or assignment is not valid pursuant to the law applicable to the goods, the form of security interest analogous to the retention of title or assignment as applies under such law shall be deemed stipulated. Where the Customer's cooperation is required for such rights to accrue, upon request by the Contractor, the Customer shall be required to take all reasonable measures at the Customer's expense as are necessary to establish and preserve such rights.

8.6 The Contractor shall relinquish the security interests it is entitled to upon request by the Customer to the extent that the realizable value of such security interests exceeds the Contractor's secured receivables by more than 10%; the Contractor has the right to select which security interests are to be relinquished.

8.7 In the event of attachments or other third-party interventions, the Customer must inform the Contractor immediately in writing so that the Contractor can bring an action pursuant to Sec. 771 of the Code of Civil Procedure (ZPO). Where the third party is not able to reimburse the Contractor for the costs arising from court or out-of-court actions associated with averting such intervention, the Customer shall be liable for the loss sustained by the Contractor.

#### **§9 Liability for Defects in the Case of Deliveries of Goods**

9.1 For defect claims made by the Customer to be considered, the Customer must have duly satisfied its obligations under the law – in particular without delay and in their entirety – to inspect goods and report complaints. The defects must be reported in writing.

9.2 Should there be a defect in the purchased item(s), the Contractor is entitled to cure the defect, at its choice, by means of remedying the defect or delivering new items free from defects. Where the cure fails, the Contractor refuses to cure the defects, or the cure is unreasonable, the Customer has the right to rescind the contract or to reduce the purchase price, at the Customer's option. Claims can be made for damages only in accordance with the terms of Section 5.

9.3 The period of limitation for all warranty claims made against the Contractor is one year starting from the date of delivery of the item(s) purchased. The first sentence notwithstanding, damages claims for loss of life and limb, health, or well-being, or other loss arising from willful intent or gross negligence are time-barred pursuant to the statute of limitations.

9.4 The statutory provisions on limitation concerning recourse against suppliers remain unaffected.

### **Part III: Special Provisions for Packaging Services**

#### **§10 Customer's Obligations**

10.1 Proper performance of a packaging services order requires that the item to be packaged be provided to the Contractor in a timely manner, prepared and in suitable condition for fulfillment of the order. Unless otherwise stipulated in writing, parts that are particularly susceptible to corrosion are to be cleaned and treated with appropriate contact corrosion inhibitors prior to handoff. Additionally, the Customer must have provided to the Contractor in writing the correct weight data and other properties particular to the item no later than when the item is handed off. In particular, such properties are to include information on the center of gravity, and for crane and forklift work, the lifting points, as well as all risks and requirements associated with transportation (storage, loading, route and type of transportation and, as applicable, post-transit storage), which should also include information on the climatic zones the transportation route runs through. Hazardous materials are to be declared in writing with all of the required information (DIN [German Institute for Standardization] data sheet).

10.2 Furthermore, the Customer must advise the Contractor in writing of particular risks as may arise from the demands of the particular transportation route, the loading equipment and means of transportation (e.g., bulk carrier), due to excessive strain on containers and packaging, and also with regard to general stresses on the environment in the event of any potential post-transit storage planned.

10.3 Unless otherwise stipulated in writing, the Customer is responsible for any translation of freight lists into other languages.

10.4 Unless otherwise stipulated, the packaging is performed at the Contractor's premises. The Customer is responsible for transporting the items to and from the packaging site in a timely manner. In the event a packaging services order is to be fulfilled away from the Contractor's premises, the Customer must ensure that the wood packaging and other packaging materials are unloaded without charge and must provide, without charge, sufficient space, power, and the necessary lifting equipment – including, at the Contractor's

request, the personnel required to operate such equipment as necessary – as well as securing and lifting equipment as may be required for the rapid and professional fulfillment of the packaging services order. The work hours and packaging location are to be set out in writing by the Customer and the Contractor prior to the start of work on the order.

10.5 The information required for labeling purposes is to be provided to the Contractor in writing in a timely manner in electronic form prior to the packaging work.

10.6 Irrespective of the Contractor's liability insurance, the Customer must provide for adequate insurance of the items to be packaged (e.g., goods in transit, storage, and fire insurance). This also applies in particular in the event of any post-transit storage of the items.

#### **§11 Transfer of Risk in the Case of Packaging Services; Post-Storage**

11.1 The risk of accidental destruction or accidental deterioration transfers to the Customer as of the point at which the outbound vehicle is loaded, however no later than at the point at which the Customer receives the packaged item. The transfer of risk as set out by law in the event of delay in acceptance remains unaffected subject to Section 11.2 below.

11.2 If the Contractor stores the packaged goods until collection for the Customer, the provisions of the ADSp 2017 for ordered warehousing shall apply to storage from the time of completion of the packaging service. The provisions will be made available on request.

#### **§12 Scope of Work and Liability for Defects in the Case of Packaging Services**

12.1 The intended purpose stated in the contract is authoritative with regard to assessing the scope of work required of the Contractor.

12.2 Unless otherwise stipulated, the Contractor performs packaging services in accordance with the packaging guidelines laid down by the German packaging association *Bundesverband Holzpackmittel Paletten und Exportverpackung (HPE) e.V.* as well as, in case of packaging for sea and land carriage, in compliance with the requirements of the respective applicable CTU-packing guidelines and the International Convention for Safe Containers (CSC).

12.3 The Contractor is required to take measures to protect against corrosion only where this has been expressly agreed by the parties. Where the parties have stipulated anti-corrosion measures, the service has been duly procured where such measures are undertaken in accordance with the packaging guidelines laid down by the German packaging association *Bundesverband Holzpackmittel Paletten und Exportverpackung (HPE) e.V.* and last for the entire period of protection, starting from the date of the packaging work. Unless another such period of protection is stipulated in writing, the protection is to be designed to last for six months. The Contractor is not liable for incidents of corrosion after the stipulated period of protection has expired. In the case of used items being packaged, liability for loss from corrosion is excluded.

12.4 Upon receipt of the packaged item at the site where the item is handed over, the Customer must examine the packaging for obvious and noticeable defects. Insofar as such examination reveals defects, in order to safeguard its claims for damages, the Customer must immediately submit a written complaint and provide the Contractor with an opportunity to compile its own incident report.

12.5 Proof that the root cause of the reported defect is a breach of a duty by the Contractor prior to the transfer of risk is a prerequisite to liability for material defects. This applies in particular to slat crates and separate component packaging as well as, for example, to so-called packaging on skids without crates, crate bottoms, and pallets, and also, in the case of protective packaging, where such packaging is opened or damaged as the result of governmental measures (e.g., customs inspection or security inspection pursuant to the German Air Security Act (*LuftSiG*)). In the event the properties of the packaging are impacted by improper stacking, transloading, storage, or due to alteration, opening, or other interference, even if this involves damaged packaging provided by third parties, and where the Customer's goods are damaged as a result, this does not constitute a defect in the work owed by the Contractor. Where the Customer's order requires the Contractor to package items already pre-packaged by the Customer or a third party, the Contractor is liable for loss sustained to the packaged item only insofar as the Customer proves that the loss is attributable to a defect in the packaging work performed by the Contractor. The Contractor is not liable for loss the cause of which lies in defective packaging by the Customer or a third party. The Contractor is not required to examine the packaged item upon receipt for signs of existing damage.

12.6 In the event of defective packaging services, the Customer is entitled to the warranty rights afforded by law, with the caveat that damages claims and claims for reimbursement of expenses can be made only in the scope identified in Section 5.

12.7 The period of limitation for all warranty claims made against the Contractor due to defective packaging services is one year starting from the date of acceptance (receipt) by the Customer of the packaged item. The first sentence notwithstanding, damages claims for loss of life and limb, health, or well-being, or other loss arising from willful intent or gross negligence are time-barred pursuant to the statute of limitations.

#### **§ 13 Standard ISPM 15**

If the order includes the delivery or packaging using wood packaging material, which is supposed to comply with the IPPC-Standard ISPM 15, the Contractor shall be obliged to carefully select the supplier of the material and make sure, that the supplier is certified according to IPPC/ISPM 15. Furthermore the Contractor shall be obliged to obtain a confirmation from the supplier that the delivered material was subject to a heat treatment pursuant to ISPM 15. This shall be verified by the Contractor by checking the respective information on the delivery note. If the Contractor complies with its aforementioned obligations, claims for compensation of damages or expenses, which might arise from a possible insect infestation, shall be excluded, unless the Contractor knew or did not know due to gross negligence, that the heat treatment was not carried out or not carried out properly or carried out without success.

The Customer undertakes not to include any third-party wood in the packaging of the Contractor. The Contractor does not assume any liability for additional wood packaging material which the Customer procured from third parties. The Customer shall reimburse the Contractor for any damages and expenses resulting from a violation of the aforementioned obligation, unless he proves that he is not responsible for the violation.

#### **Part IV: Special Provisions for other services (particularly installation or dismantling as well as soldering, gluing or welding operations)**

To contracts on other services (such as in particular installation or dismantling as well as soldering, gluing or welding operations) the following provisions shall additionally apply:

#### **§ 14 Cooperation duties of the Customer**

14.1 The Customer undertakes

- a) to grant the Contractor unrestricted and safe access to the place and object of performance and to make sure that there is sufficient space available for the Contractor to render the services;
- b) to send any data and information required for the performance of services to the Contractor correctly, completely and in due time;
- c) to ensure the necessary power supply (400V 32A/16A 50 Hz and 240V 16A 50 Hz) to ensure adequate lighting and the supply of compressed air and water during the performance of the work;
- d) to provide any work equipment to be provided under the contract in due time and to the extent as agreed;
- e) to provide suitable recreation rooms and sanitary facilities for the Contractor's assigned staff;
- f) to carry out any necessary preparatory work (particularly any foundation or steel construction work) completely and properly;
- g) to provide machines (machine parts) to be assembled in a clean, degreased condition and to ensure that all operating materials have been drained off before the work begins;
- h) to provide dry and lockable rooms for the storage of the contractor's materials and tools
- i) to provide a suitable interpreter at the contractor's request and at its own expense in the event of performance of services abroad.

14.2 The dimensioning, design and provision of any supply lines required for assembly is the sole responsibility of the Customer. The Contractor shall only use the supply connections provided by the Customer.

14.3 Delays resulting from the untimely or improper fulfilment of the above obligations to cooperate shall be borne by the customer. In this case, the rules in section 4.3 and section 4.6 shall apply. Further legal claims and rights of the Contractor remain unaffected.

#### **§ 15 Safety requirements**

The Customer shall inform the Contractor about the safety requirements applicable at the place of performance and to take any required measure in order to protect the Contractor's employees from risks to safety and health during the performance of services.

#### **§ 16 Acceptance, Performance record**

16.1 The Customer is obliged to accept the works after completion. The works shall also be deemed accepted if the Contractor has fixed a reasonable deadline for acceptance and the Customer has not refused acceptance by reference to a defect. In addition, the work shall also be deemed accepted if the Customer has not refused acceptance within three (3) working days after notification of completion, substantiating a defect.

16.2 The Customer is obliged to certify to the Contractor that the services have been rendered by countersigning corresponding activity records, at the latest after completion of the work.

#### **§ 17 Warranty**

17.1 In the event of a defect of services the Customer shall be entitled to the statutory warranty claims subject to the following provisions:

a) The warranty period shall be one year from acceptance. In deviation from this provision claims for damages due to a violation of life, body or health as well as claims for damages due to intent or gross negligence the statutory warranty claims of two years from acceptance shall apply. Section 634a (1) no. 2 of the German Civil Code shall remain unaffected.

b) Claims for damages shall be subject to the general provision on liability pursuant to Section 5 of these Standard Terms and Conditions.

17.2 In the event that assembly services are commissioned, the service owed by the Contractor shall be limited to the proper assembly. The Contractor shall not assume any further warranty for the freedom from defects and functionality of the machine installed by him.

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