

## **General conditions AxonIQ B.V.**

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## **GENERAL**

### **1.1 Applicability**

**1.1.1** These conditions are applicable to all proposals and/or deliveries made by AxonIQ B.V. \*hereafter AxonIQ) and agreements and/or other legal relationships between AxonIQ, Customer and/or Contractor, the resulting provisions and related activities regardless of whether or not they are based on a verbal, written and/or electronic agreement, unless otherwise agreed upon in writing.

**1.1.2 Purchase conditions or any other conditions used by Customer or Contractor will not be applicable.**

The applicability of purchase conditions or any other conditions from Customer, Contractor or from third parties on behalf of Customer is therefore expressly rejected by AxonIQ, unless explicitly accepted in writing by AxonIQ.

**1.1.3 –**

**1.1.4** Changes in and/or additions to the agreements made between AxonIQ and Customer or Contractor are only valid when agreed to by both parties in writing.

**1.1.5** The headings above the articles of these conditions are only intended to increase the legibility of this document. The content and meaning of an article placed under a particular heading is, therefore, not limited to the meaning and content of the heading.

### **1.2 Definitions**

**1.2.1** In the General Conditions AxonIQ the following words and expressions are used with a capital. Any of the following words and expressions shown in the singular shall have the same meaning when used in the plural and vice-versa.

**1.2.2 Customer:**

Anyone who requests and orders the delivery of Products.

**1.2.3 Contractor:**

Any person and/or company that delivers products and/or services to and/or on behalf of AxonIQ.

**1.2.4 Error:**

Error(s) means a malfunction of the Products that disables the operation of the Products in accordance with the functional specifications set down in writing by AxonIQ and/or the functional specifications expressly agreed upon in writing. An Error explicitly does not include the lack and/or absence of functionality desired by Customer.

**1.2.5 Fixed Price:**

Activities/delivery performed on the basis of a prior agreed upon price.

**1.2.6 AxonIQ:**

AxonIQ B.V. and its rightful successors or affiliated organizations and partners that will enter into an agreement with Customer and has declared the General Conditions AxonIQ applicable.

**1.2.7 AxonIQ Products:**

All products and services provided by AxonIQ and the resulting provisions and related activities, which do not originate from third parties and whose intellectual property rights, industrial property rights, and other rights are held by AxonIQ.

**1.2.8 Maintenance:**

As further described in article 2.3.

**1.2.9 Products:**

All AxonIQ Products and/or Third Party Products provided by AxonIQ, the resulting provisions and related activities.

**1.2.10 Source Code:**

The computer programming code that may be displayed in a form readable and understandable by a programmer of ordinary skill. It includes related Source Code level system documentation, comments and procedural code.

**1.2.11 Time and Material:**

The actual time spent and the costs of the materials used are fully charged.

**1.2.12 Support:**

As further described in article 2.3.

**1.2.13 Third Party General Conditions:**

Third Party General Conditions are amongst others understood as the delivery conditions, license conditions, warranty conditions or other conditions maintained by a third party.

**1.2.14 Third Party Products:**

All products and services provided by AxonIQ, the resulting provisions and related activities, which originate from third parties and whose intellectual property rights, industrial property rights and other rights are not held by AxonIQ.

**1.2.15 Workdays:**

Normal Dutch working hours (8.30-17.30) and days (Monday through Friday) with the exception of bank holidays.

### **1.3 Confirmation/Offers**

**1.3.1** Verbal agreements, assignments or other expressions of whatever nature by employees of AxonIQ are only valid and binding when they have been confirmed in writing by authorized representatives of AxonIQ.

**1.3.2** All offers made are without engagement, unless the offer explicitly indicates otherwise in writing.

### **1.4 Agreements**

**1.4.1** Each party has the right to terminate the agreement wholly or partially without judicial intervention by means of a signed registered letter. This can be done if, after notifying the breaching party in writing of a failure to fulfill their obligations, the breaching party then fails to meet the aforesaid obligations within a reasonable period of time.

**1.4.2** Each party has the right to immediately terminate the agreement wholly or partially without judicial intervention through means of a non-judicial declaration and/or withdraw and/or annul an offer if the other party is a person and becomes deceased, if the other party submits a legal request for debt restructuring, if bankruptcy or suspension of payment has been filed for the other party, if the other party is in a state of bankruptcy or suspension of payment has been granted or if the other party's company is liquidated or ended for any reason other than reconstruction or company merger.

**1.4.3** After the agreement has ended, for any reason, parties can no longer obtain any of the rights provided by the agreement, leaving unhindered the existence of the obligations of both parties which by their nature continue automatically after the conclusion of their agreement,

such as but not limited to, obligations concerning property rights, confidentiality, and non-competition.

## **1.5 Confidentiality/Non-competition**

**1.5.1** AxonIQ, Customer and/or Contractor mutually commit themselves to the confidentiality of all data and information concerning each other's organization, clients, files and Products, of which they become aware while working for each other. Data and information may only be used in order to carry out the agreement between parties, unless agreed upon otherwise in writing.

**1.5.2** During the course of the agreement and for a period of 12 months after the agreement it is prohibited for Contractor, without the written permission of AxonIQ, to perform and/or participate and/or to be involved in any way directly or indirectly, against a fee or for free in activities and/or services, for Contractor's own account or for third parties for Customers of AxonIQ.

**1.5.3** Parties will not enter into any direct or indirect commercial, employment or other such relations with employees from the other party during the agreement and for a period of 12 (twelve) months after termination or dissolution of the agreement, without the written consent of the other party.

**1.5.4** In the event that either party breaches article 1.5.3, the breaching party will be charged, without further notification required, a fine of Euro 50.000,- (fifty thousand) for each breach, undiminished the right of AxonIQ to claim full compensation for damages incurred.

## **1.6 Liability**

**1.6.1** A party's total liability shall be limited, in accordance with article 1.6, to compensation for direct damage and to a maximum of the amount of the price stipulated in the agreement (excluding VAT) to a maximum of Euro 250.000,- (two hundred and fifty thousand), whereby a sequence of events is regarded as one event.

**1.6.2** A party's total liability for damage resulting from death or physical injury will in no event amount to more than Euro 1.000.000,- (one million), whereby a sequence of events is regarded as one event.

**1.6.3** Direct damage is exclusively understood as:

- a) The reasonable costs made in determining the cause and the extent of the damage;
- b) The reasonable costs incurred in prevention or limitation of damage, to the degree that the party suffering the damage can demonstrate that these costs have led to the limitation of the damage.

**1.6.4** Neither party shall be liable for indirect damage, including consequential damage, loss of profit, loss of savings, mutilated and/or lost data, delays, losses, damage through corporate inactivity and/or claims from third parties against the other party.

**1.6.5** With the exception of the cases named in article 1.6.1 and 1.6.2, Parties have no liability for damage compensation regardless of what an action towards compensation could be based upon.

**1.6.6** The breaching party's liability exists solely when the non-breaching party immediately and appropriately notifies the breaching party of the deficiency in writing, proposing therein a reasonable time period for

correction of the deficiency and the breaching party then culpably fails to meet the aforesaid obligations. The notification of deficiency ought to be as detailed a description of the deficiency as possible so that the breaching party is able to react adequately.

**1.6.7** The condition for the existence of any right to compensation is always that the non-breaching party notifies the breaching party in writing within 60 (sixty) days after the damage came into existence, by registered mail, and takes the necessary measures to limit the damage as much as possible.

**1.6.8** Customer indemnifies AxonIQ from all liability regarding third parties due to allegations as a consequence of deficiency in a product, system or service provided by Customer to third parties that consisted of a delivery made by AxonIQ.

**1.6.9** AxonIQ does not accept any liability for damage regardless of its nature caused by Third Party Products which AxonIQ has delivered to Customer. If possible AxonIQ will transfer its rights for damage compensation from the supplier of the Third Party Product in question to Customer.

## **1.7 Force Majeure**

**1.7.1** A party is not obligated to fulfill any obligation if such party is prevented from doing so as a result of circumstances, which can be considered beyond its fault, and by law, legal act, or generally accepted practices cannot be held accountable for. The aforementioned circumstances include circumstances that are beyond a party's power as well as business risks of a party, these include but are not limited to failure to perform by a supplier, the late or nonavailability of required information and specifications and/or changes in such information, incorrect functional specification of Third Party Products and/or products delivered by a third party, bad weather conditions, fire, explosions, electricity failures, network failures, floods, illness, lack of staff, strike or other employment conflicts, accidents, actions by the government, not being able to obtain required licenses and/or permits, lack of materials, theft, traffic disruptions and/or transportation problems.

**1.7.2** When force majeure is of a temporary nature, the party claiming force majeure has the right to suspend its commitments until force majeure has ceased to exist without being obliged to any form of damage compensation.

**1.7.3** AxonIQ reserves the right, in the case of force majeure, to collect payment for obligations already fulfilled before force majeure was known.

**1.7.4** In the event that force majeure of either party surpasses a 3 (three) month period, either party has the right to terminate the agreement without being obliged to any form of damage compensation regarding such termination.

## **1.8 Applicable Law and Dispute Mechanism**

**1.8.1** All agreements made between AxonIQ and Customer are governed by the laws of The Netherlands, unless otherwise agreed upon in writing. Parties explicitly agree that the United Nations Convention on Contracts for the International Sale of Goods (CISG) is not applicable.

**1.8.2** Any disagreement between parties because of any

agreement will be solved through arbitration of the Stichting Geschillenoplossing Organisatie en Automatisering (SGOA) (The Dutch arbitration court (foundation) for ICT related matters), in accordance with the SGOA's regulations for arbitration. With the mutual agreement of both parties, prior to arbitration, parties may try to solve their disagreement through other provisions offered by the SGOA for the settlement of disputes.

**1.8.3** If the SGOA declares itself unauthorized or if parties mutually agree to such, disagreements will be placed before a qualified court in Amsterdam, The Netherlands.

**1.8.4** Either party also may, without waiving any remedy under the agreement, seek from any court having jurisdiction any interim or provisional relief that is necessary to protect the rights or property of that party, pending the establishment of the SGOA arbitral tribunal (or pending the arbitral tribunal's determination of the merits of the controversy).

## **2. AXONIQ PRODUCTS**

### **2.1 Product Development**

**2.1.1** All development work carried out by AxoniQ is billed on the basis of Time and Material or if explicitly agreed upon in writing on the basis of Fixed Price.

**2.1.2** Parties shall specify in writing what shall be developed and how this shall be done prior to each development phase. Customer agrees that no preset development phases will be followed by AxoniQ. Development shall be a joint effort of both parties and may be subject to alteration as a result of requirements made by Customer.

**2.1.3** AxoniQ will carry out the AxoniQ Product development activities with due care on the basis of information provided by Customer, for which information Customer ensures the accuracy, completeness and consistency.

**2.1.4** AxoniQ is authorized, but not obliged, to investigate the correctness, completeness and/or consistency of the data or specifications provided to AxoniQ and, in case it is determined that there is inaccuracy, incompleteness or inconsistency, to suspend activities until such time as Customer has remedied the deficiencies, undiminished the obligation of Customer to compensate AxoniQ for the reasonable resource costs made and/or to be made.

**2.1.5** A deviation of 10% in the Fixed Prices agreed to will be deemed to be accepted by Customer and will not require further notification to and/or approval by Customer.

### **2.2 User Rights**

**2.2.1** Customer is granted the non-exclusive right to use the Products and corresponding documentation. In the event the intellectual property rights, industrial property and/or other rights are transferred to Customer as set out in article 6.1.3, Customer shall have the exclusive rights to use the Products.

**2.2.2** After all payments have been made AxoniQ shall provide Customer with the source codes of the AxoniQ Products. Customer is free to copy and make changes and additions to the AxoniQ Products. Customer is fully responsible and liable for any changes and/or additions made by Customer and/or made on behalf of Customer by third parties.

### **2.3 Maintenance and Support**

**2.3.1** No warranty whatsoever is provided on the Products. AxoniQ offers Customer the option of acquiring Maintenance and Support from the moment of delivery.

**2.3.2** Maintenance and Support on the Products is provided on the basis of Time and Material and against further to be specified terms and conditions in a fully customizable Maintenance and Support agreement/Service Level Agreement. Where these further to be specified terms and conditions do not deviate article 2.3 will be applicable.

**2.3.3** Support consists of providing verbal (telephonic) and written (e-mail) advice concerning the use and operation of Products.

**2.3.4** Maintenance includes providing updates and documentation of the licensed Products delivered to Customer, which either contain a qualitative (e.g. Error fix) or a functional improvement of the Product that has been made available.

### **2.4 Activities**

**2.4.1** Any activities, Maintenance, Support and other services will take place without interruption on Workdays and under normal working conditions, unless agreed upon otherwise in writing.

**2.4.2** Activities that are performed outside of Workdays are considered as overtime and will be provided against the than applicable rate.

**2.4.3** AxoniQ is entitled, without the explicit consent of Customer, to make use of third parties when performing activities.

## **3. THIRD-PARTY PRODUCTS**

### **3.1 Third Party Products**

**3.1.1** AxoniQ has the right to deliver Third Party Products or make use of Third Party Products in fulfilling its obligations that may flow forth from the agreement. AxoniQ is not responsible for Third Party Products, unless agreed upon otherwise in writing.

**3.1.2** If AxoniQ delivers Third Party Products to Customer the Third Party General Conditions will be applicable to the agreement in addition to these General Conditions AxoniQ.

**3.1.3** AxoniQ will deliver rights regarding Third Party Products under the same conditions as given in the Third Party General Conditions.

### **3.2 Third Party General Conditions**

**3.2.1** Third Party General Conditions that are declared applicable in these General Conditions AxoniQ shall, when available to AxoniQ, be provided on request. Third Party General Conditions will be delivered in the same format and language as received by AxoniQ.

**3.2.2** The General Conditions AxoniQ have priority over Third Party General Conditions unless indicated otherwise. When there is conflict between the General Conditions AxoniQ and Third Party General Conditions, AxoniQ has the right to declare the conflicting terms of the Third Party General Conditions non-applicable or applicable.

**3.2.3** Customer is aware that the rights granted in the Third Party General Conditions may be changed by the rightful owner. AxoniQ is not responsible and/or liable for the consequences of such changes. Where AxoniQ becomes aware of such changes it shall inform Customer. At the request of Customer and at Customer's expense AxoniQ will assist Customer in finding a solution where necessary, if such changes have an adverse effect on the use of the Products in question.

## **4. DELIVERY**

### **4.1 (Delivery) Dates**

**4.1.1** All (delivery) dates which may be named by and may be applicable to AxoniQ are determined to the best of AxoniQ's knowledge on the basis of information made known to AxoniQ and will be taken into consideration as much as possible. If parties wish to agree to a fixed date, parties will explicitly indicate this date as such in writing.

**4.1.2** (Delivery) dates shall therefore not be considered to be absolute (delivery) dates within which must be delivered, but a time period within which AxoniQ shall strive with best efforts to deliver the agreed upon items.

**4.1.3** If it is not possible to keep to the (delivery) date, then AxoniQ and Customer will consult with each other to agree on a substitute (delivery) date.

**4.1.4** Exceeding a given (delivery) date which may be applicable never constitutes an attributable shortcoming by AxoniQ, unless parties explicitly agreed to a fixed date as set out in article 4.1.1. AxoniQ does not accept liability under any circumstances in cases where the (delivery) date may be exceeded.

### **4.2 Replacement Performance**

**4.2.1** AxoniQ is permitted to deliver alternative Products than those Products ordered by Customer if the performance and operation of such alternative Products is essentially no different from the Products ordered.

**4.2.2** If the agreement is closed with the objective of having activities carried out by a particular individual, AxoniQ will be entitled to replace this person with another person with the same qualifications.

## **5. PRICES/PAYMENTS**

### **5.1 Prices and Payments**

**5.1.1** All prices exclude VAT and other levies imposed by the government. The amounts invoiced to Customer will include applicable VAT and other levies possibly imposed by the government. All activities by AxoniQ are carried out on the basis of Time and Material unless explicitly agreed upon otherwise in writing.

**5.1.2** AxoniQ will invoice the amount, appropriately itemized, owed by Customer on a monthly basis to Customer at the end of the month or prior to such month if agreed to. Customer will pay all amounts indebted within 15 fifteen

days of the invoice date. These payments will not be subject to compensation or deduction other than when permitted by law.

**5.1.3** Should Customer fail to fulfill any payment obligation, Customer is in breach without any further notification of breach being required. AxoniQ reserves the right to charge all incurred costs to Customer, including judicial and extra-judicial expenses, with regard to the collection of debts from Customer. In any case Customer will be charged interest on a monthly basis, at the legal percentage rate, on all outstanding debts starting from the date of failure to pay.

**5.1.4** Until full payment has been made, AxoniQ has the right to suspend all services and obligations to Customer. The Customer's obligation to meet Customer's commitments remains unchanged.

## **6. INTELLECTUAL PROPERTY RIGHTS**

### **6.1 Rights of Customer and AxoniQ**

**6.1.1** Except where Third Party Products are concerned, all intellectual property rights, industrial property rights and other rights resulting from all activities carried out by AxoniQ, regardless of where and when carried out and regardless of whether it concerns the delivery of an existing Product or a still-to-be-developed Product, reside with AxoniQ.

**6.1.2** Customer acknowledges that all present and future intellectual property rights, industrial property rights, other rights and the registration and/or application of the foregoing rights and/or similar rights for the whole term thereof and all renewals or extensions thereof, now or at any time in the future worldwide at all times shall be and are hereby assigned or will be transferred to AxoniQ.

**6.1.3** The intellectual property rights, industrial property rights or other rights of a AxoniQ Product, or a part thereof, to the extent that AxoniQ has these rights, can be transferred to Customer, if AxoniQ has these rights, by means of a written deed if agreed to in advance prior to execution of the work. Any transfer of the foregoing rights shall be subject to an additional Fixed Price as set by AxoniQ.

**6.1.4** In any event AxoniQ has the right to freely reuse the knowledge, experience, thoughts, solution construction and/or components it has obtained/developed during the project. AxoniQ shall have the right to reuse any source codes except in the case where the intellectual property rights, industrial property rights or other rights are transferred to Customer as set out in article 6.1.3.

### **6.2 Indemnification**

**6.2.1** AxoniQ shall protect Customer from any allegation to the effect that the AxoniQ Products violate a copyright valid in European Union. AxoniQ shall pay the damages, expenses, and court costs that Customer is ordered to pay by the final court ruling, provided that Customer:

a) notifies AxoniQ immediately, but no later than within 10 (ten) days, after Customer becomes aware of the infringement or could have become aware of the infringement, in writing of the existence of the allegation of infringement; and

b) gives the case completely over to AxonIQ, including all negotiations and arrangements that might lead to a settlement.

In case of any such allegation or possible allegation, AxonIQ reserves the right to obtain a license or sub-license on the AxonIQ Product in question or to change or replace the AxonIQ Product in such a way that the AxonIQ Product will no longer infringe a copyright valid in the European Union. If, at AxonIQ's sole judgment, the foregoing remedies are not a reasonable option, AxonIQ has the right to take the delivered AxonIQ Product back against reimbursement of payments made for the AxonIQ Product in question, minus a reasonable compensation for having made use of the AxonIQ Product.

**6.2.2** AxonIQ shall not indemnify Customer against an action in the event that:

a) such is based on the fact that the Third Party Products provided to Customer violate an intellectual property right, industrial property right or other right;

b) what has been provided by Customer is part of or

is delivered in conjunction with a Product and this combination results in a violation of an intellectual property right, industrial property right or other right;

c) Customer has made a change in or to the Product.