

## 1. Definitions

1.1 “Affiliate” means, with respect to a party, any entity that controls, is controlled by, or which is under common control with, such party, where “control” means ownership of at least 50% of the outstanding voting shares of the entity.

1.2 “Agreement” means an agreement between the Customer and AxonIQ for the delivery of Software and/or Services.

1.3 “Customer” means any natural or legal person, company, business or any other entity to which AxonIQ sells and/or delivers Software and/or provides Services and includes Resellers.

1.4 “DPA” means the Data Processing Addendum which applies when AxonIQ acts as a data processor for Customer.

1.5 “Maintenance and Support Services” means the applicable maintenance and support services provided under AxonIQ’s standard Maintenance and Support Services policy in effect on the date such services are ordered.

1.6 “Order Form” means the document by which Customer or Reseller orders Software and/or Services.

1.7 “Reseller” means a reseller authorized by AxonIQ who purchases the Software and/or Services for the Customer.

1.8 “Services” means any of the services offered by AxonIQ such as, but not limited to, maintenance and support services, consulting services, training and cloud services.

1.9 “Software” means the computer software programs offered by AxonIQ in object code (machine-readable) form only, including the accompanying documentation and any updates.

## 2. Applicability

2.1 These General Terms and Conditions of AxonIQ (hereinafter “the Terms”) are applicable to all proposals and/or deliveries made by AxonIQ B.V. and/or any subsidiary of AxonIQ B.V. (hereinafter collectively referred to as “AxonIQ”) and Agreements and/or other legal relationships between AxonIQ and Customer.

2.2 No other terms and conditions shall be binding upon AxonIQ unless accepted by AxonIQ in writing. AxonIQ expressly rejects any of the Customer’s purchase terms or other general terms and conditions. Customer may issue a purchase order only for administrative purposes.

2.3 In case of inconsistencies between the terms in the Agreement and these Terms, those contained in the Agreement shall prevail.

2.4 AxonIQ reserves the right to amend these Terms at any time. New or amended Terms shall become effective upon posting on the AxonIQ websites and/or notification to Customer. By continuing to use the Software and/or Services after the effective date of any amendment, Customer agrees to be bound by such amended Terms.

2.5 If a court of competent jurisdiction finds any provision of these Terms or of the Agreement invalid or unenforceable, that provision of these Terms or the Agreement will be amended to achieve as nearly as possible original meaning of such provision, and the remaining terms, provisions, covenants and restrictions shall remain in full force and effect.

### **3. Offers and Agreements**

3.1 All offers of AxonIQ are non-binding and may be revoked at any time, unless AxonIQ has stated otherwise in writing.

3.2 All offers are based on the information and documentation provided by Customer and AxonIQ may rely on the accuracy thereof. Customer warrants the accuracy, completeness and reliability of the information provided.

3.3 Unless agreed otherwise, all Order Forms and Agreements are subject to these Terms. Order Forms are not binding until accepted by AxonIQ. Order Forms are deemed accepted when AxonIQ provides the Services or delivers the Products.

### **4. Delivery Dates**

AxonIQ shall deliver the Software and/or Services in accordance with the Agreement. Delivery dates are merely estimates and AxonIQ will make reasonable efforts to comply with these delivery dates. AxonIQ cannot be held liable for any damages as a result from a delay in delivery of Software and/or Services.

### **5. Prices and Payment, Taxes**

5.1 All prices are exclusive of VAT and any other levies and taxes.

5.2 AxonIQ shall be entitled at all times to modify its prices prior to entering into an Agreement. If the Agreement is of indefinite term and/or a continuing performance contract, prices may be adjusted at any time, unless agreed otherwise. AxonIQ will endeavour to give 30 days' notice in writing of such price changes. If Customer does not accept such modification then Customer shall be entitled to terminate the Agreement in writing, within thirty days following the notification of the adjustment and effective from the date on which the new prices and/or rates would take effect. Unless agreed otherwise, AxonIQ shall be entitled to adjust its prices and fees upon renewal of an Agreement.

5.3 Customer shall, in addition to the other amounts payable under this Agreement, pay all applicable customs, duties, sales, use, value added, withholding, or other taxes, federal, state or otherwise, however designated, which are levied or imposed by reason of the transactions contemplated by this Agreement, excluding only taxes based on AxonIQ's net income. If Customer is compelled to make a deduction or set-off for any such taxes, it will pay to AXONIQ such additional amounts as are necessary to ensure receipt by AxonIQ of the full amount AxonIQ would have received but for the deduction.

5.4 Except as otherwise set forth in the Agreement, Customer will pay all amounts due within 15 days after the date of the applicable invoice. Payment shall be made in the currency in which the prices are stated and in accordance with the terms of the Agreement. Any amount not paid when due will be subject to finance charges equal to 1.5% of the unpaid balance per month or the highest rate permitted by applicable law, whichever is less, determined and compounded daily from the date due until the date paid. Customer will reimburse any costs or expenses (including, but not limited to, reasonable attorneys' fees) incurred by AxonIQ to collect any amount that is not paid when due.

5.5 Upon notice AxonIQ may suspend access to the Products and/or Services for failure to pay any amounts when due. If payment has not been received by AxonIQ within 15 days after notification to that effect then AxonIQ may terminate the Agreement.

5.6 Customer is neither entitled to suspend any payments nor to set off any of the sums due.

5.7 Payments made by Customer shall always be used first to meet all interest and costs owed and subsequently for the settlement of invoices.

5.8 In the event Customer is in default, all amounts due become payable immediately, without any further notice being required.

5.9 Complaints about invoices must be submitted within 14 days after the date of invoice. Such complaint does not suspend the payment period.

5.10 Where applicable, rights and/or goods are granted or delivered to Customer subject to the condition that Customer has paid all sums due under the Agreement.

## **6. Term and Termination**

6.1 If and insofar as the Agreement is a continuing performance contract, the Agreement is entered into for the term stated in the Agreement. A term of one year applies if no specific term has been agreed on.

6.2 Unless otherwise agreed, the Agreement for a fixed period of time shall automatically renew for additional successive periods of equal duration to the initial term of the Agreement, unless Customer or AxonIQ gives the other written notice of non-renewal with a notice period of 30 days prior to the end of the relevant term.

6.3 AxonIQ and Customer shall each have the right to terminate the Agreement immediately upon written notice in the event the other party materially breaches the Agreement and such breach is not cured within thirty days after written notice of such breach. Either party may also terminate the Agreement immediately if the other part (a) terminates or suspends its business; (b) becomes subject to any bankruptcy or insolvency proceeding; (c) becomes insolvent or subject to direct control by a trustee, receiver or similar authority, or (d) has been wound up or liquidated.

## 7. Confidentiality

7.1 Each party shall retain in confidence the non-public information and know-how disclosed or made available by the other party pursuant to this Agreement which is either designated in writing as proprietary and/or confidential, if disclosed in writing, or if disclosed orally, is designated in writing (which may be via email) as confidential within thirty (30) days of the oral disclosure or should reasonably be understood to be confidential by the recipient (“Confidential Information”). Notwithstanding any failure to so designate it, the Services, the Software including the Documentation, the terms and pricing under the Agreement and all intellectual property and trade secrets of AxonIQ are considered AxonIQ’s Confidential Information. Each party shall (a) maintain the confidentiality of the other party’s Confidential Information using at least a reasonable degree of care; (b) refrain from using the other party’s Confidential Information except for the purpose of performing its obligations under the Agreement; and (c) not disclose Confidential Information to any third party except to employees, subcontractors and agents as is reasonably required in connection with this Agreement and who are subject to confidentiality obligations at least as protective as those set forth in this section. Results of any benchmark tests on the Software run by Customer may not be disclosed outside of Customer’s organization without the prior written consent of AxonIQ. Each party shall immediately notify the other party of any unauthorized disclosure or use of any Confidential Information and assist the other party in remedying such unauthorized use or disclosure by taking such steps as are reasonably requested by such other party. The foregoing obligations will not apply to Confidential Information of the other party which (i) is or becomes publicly known without breach of this Agreement; (ii) is discovered or created by the receiving party without use of, or reference to, the Confidential Information of the disclosing party, as shown in records of the receiving party; or (iii) is otherwise known to the receiving party without confidentiality restrictions and through no wrongful conduct of the receiving party. Receiving party may disclose Confidential Information to the extent required by law or court order if the receiving party provides prompt notice and reasonable assistance to the disclosing party to enable the disclosing party to seek a protective order or otherwise prevent or restrict such disclosure (“Permitted Disclosures”).

7.2 Each party acknowledges that any breach or threatened breach of this Section may cause irreparable injury to the other party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, a party shall be entitled to seek injunctive relief against the threatened breach of these Terms or the continuation of any such breach by the other party, without the necessity of proving actual damages or posting any bond, in addition to any other rights or remedies provided by law.

## 8. Data Processing

8.1 Customer is fully responsible for the data it processes when using the Products and Services provided by AxonIQ. Customer warrants that the content, use and/or processing of data is not unlawful and do not infringe any third party’s right. Customer indemnifies AxonIQ against claims by a third party in connection with these data.

8.2 If AxonIQ performs activities for Customer as a data processor under applicable privacy rules then the AxonIQ Data Processing Addendum which may be found [here](#) shall apply.

## 9. Intellectual Property Rights

9.1 AxonIQ or its licensors retain all rights, title and interest in and to all intellectual property rights such as patents, copyrights, trademarks, designs, models, know-how and all proprietary rights and trade secret rights in relation to the Products and/or Services. No transfer or other grant of right is given to Customer, unless explicitly stated in writing.

9.2 If Customer has knowledge that a third party threatens to infringe any of the intellectual property rights of AxonIQ, the Customer is obliged to notify AxonIQ without delay and Customer shall fully cooperate with AxonIQ to investigate the infringement.

## 10. Liability

10.1 In no event will AxonIQ be liable for any indirect, incidental, special, punitive or consequential damages, or damages for loss of profits, business, goodwill, revenue, data or use, incurred by Customer or any third party whether in an action in contract or tort, even if AxonIQ has been advised of the possibility of such damages.

10.2 AxonIQ's liability for damages and expenses whether in an action in contract or in tort or otherwise or whether related to particular Software or Services will be limited to direct damages and will in the aggregate not exceed an amount equal to 25% of the fees paid to AxonIQ under an Agreement in the twelve months period preceding the event giving rise to the claim, or in case of free services, to an amount equal to 100 euro.

10.3 The limitations set out in this section do not apply in case the damage is caused by the willful intent of gross negligence on the part of the management of AxonIQ.

10.4 Customer will indemnify AxonIQ against all damages, costs and expenses resulting from claims from third parties who suffer damage in connection with the use by Customer of the Software and/or Services.

## 11. Force Majeure

Neither party will be responsible to the other for any failure or delay in its performance due to force majeure, such as, but not limited to, Act of God, fire, casualty, flood, earthquake, war, strike, lockout, epidemic, destruction of production facilities, riot, insurrection, material unavailability or any other cause beyond the reasonable control of the party claiming force majeure, provided that such party gives prompt written notice thereof to the other party and uses its diligent efforts to resume performance.

## 12. Third Party Software or Services

If AxonIQ makes Software or Services of third parties available to Customer or grants access to these Software or Services, then the terms of such third parties apply to these Software and/or Services and replace the provisions in these Terms that deviate from those third party terms.

## 13. Licenses

Licenses for Software are granted under the terms of AxonIQ's standard End User License and Support Agreement or any other referenced AxonIQ standard license terms, unless expressly agreed otherwise.

## 14. Maintenance and Support, Service Level Agreement

14.1 When AxonIQ provides Support Services, then the current Maintenance and Support Services policy shall apply.

14.2 If a Service Level Agreement (SLA) is in place, then the remedies included in the SLA are the sole remedies of Customer and any other or further liability is expressly excluded.

## 15. Services

When AxonIQ provides Services relating to consultancy, the following shall apply.

15.1 AxonIQ performs the Services with care to the best of its ability, in accordance with the Agreement. The Services are performed on the basis of a reasonable efforts obligation.

15.2 The Customer shall timely provide all information useful and necessary for the performance of the Services. In the event that the data and information necessary for the performance of the Services are not at AxonIQ's disposal when required, then AxonIQ may suspend the Services and may charge additional costs as a result of the delay.

15.3 Customer shall be solely responsible for the use of the (results of the) Services in its organization.

## 16. Training

16.1 When AxonIQ provides Services consisting of training, the AxonIQ Academy Terms and Conditions apply in addition to these Terms. In case of inconsistency between the AxonIQ Academy Terms and Conditions and these Terms, the AxonIQ Academy Terms and Conditions will prevail.

16.2 The AxonIQ Academy Terms and Conditions can be found at <https://academy.axoniq.io/terms>

## 17. Back-ups

The Customer remains at all times responsible for implementing adequate backup procedures according to his needs. AxonIQ has no other obligations relating to back-ups than have been expressly agreed in writing.

## 18. Applicable Law

All Agreements will be governed by and construed in accordance with the laws of the Netherlands, excluding the U.N. Convention on Contracts for the International Sale of Goods, and regardless of conflict of laws principles. All disputes, claims or controversies arising out of or relating to this Agreement that are not resolved by the parties' good faith attempt to negotiate a resolution will be submitted to the exclusive jurisdiction of the courts in Amsterdam, the Netherlands.

## 19. Export restrictions

Customer shall comply fully with all applicable international and national export laws and regulations, including the U.S Export Administration Regulations and the Office of Foreign Asset Control Regulations, as well as end-use and destination restrictions issued by the U.S and foreign governments to assure that neither the Software nor any direct product thereof are (i) exported, directly or indirectly, in violation of export laws; or (ii) are intended to be used for any purposes prohibited by the export laws.

## 20. Reseller obligations

20.1 When ordering Software and/or Services, Reseller must provide all of the requested information including without limitation, the identity of the end user and the end user's business and e-mail address.

20.2 For each Resale, AxonIQ grants Reseller a one-time, non-exclusive, non-transferable right to resell the Software and/or Services specified on the Order Form to the end user specified in the Order Form, and solely for use by such end user in accordance with the End User License and Support Agreement or any other applicable terms.

20.3 Reseller is responsible for ensuring that each end user enters into the End User License and Support Agreement in a manner that is legally binding upon the end user.

20.4 Reseller is permitted to identify itself as a reseller authorized by AxonIQ solely for the purpose of the resale of the Software and/or Services. Reseller shall act on its own behalf and shall not present itself as an agent or representative of AxonIQ.

## 21. Transfer

21.1 Customer may not assign this Agreement, in whole or in part, without AXONIQ's prior written consent. Any attempt to assign this Agreement without such consent will be null and void. Subject to the foregoing, this Agreement will bind and inure to the benefit of each party's permitted successors and assigns.

21.2 AxonIQ may assign this Agreement at any time to any of its Affiliates, and Customer agrees to such transfer.