

AMDT Terms and Conditions ("Terms")

1. Applicability

In all contractual relationships between us (AUVESY GmbH, hereinafter referred to as "AMDT") and you (hereinafter referred to as "Customer") in which AMDT provides products and/or services, these GTC include the generally applicable statutory provisions, unless otherwise contractually agreed. Together with the applicable order form as well as the service specific terms and further documents as referenced and incorporated in the Order Form, they constitute the contractual agreement between AMDT and the Customer (hereinafter collectively referred to as the "Agreement"). These Terms apply accordingly to pre-contractual relationships.

2. Deliverables/Additional services

AMDT will provide certain products and services (hereinafter referred to as "Deliverables") to the Customer under the Terms described in the Agreement and specified in more detail in the Order Form with regard to functionalities, term and Price. Additional products and/or services may be provided at an additional cost by written agreement of the Parties, as specified in the Specific Terms.

3. Payment/Invoicing/Due Date/Late Payments

Upon conclusion of the Agreement, which takes place immediately upon resubmission of the signed Order Form to AMDT, the Fees will be invoiced to the Customer in accordance with the payment terms set out in the Agreement, in particular in the Order Form (hereinafter referred to as the "Price"). The Price is exclusive of the statutory value added tax, if this is incurred. In the event of an increase of the Price due to modification of a change in the scope agreed in writing by the Parties, the increased amount will be calculated on a pro-rata basis for the remaining term of the current interval. Unless otherwise agreed in writing, payments are due without any deduction within thirty (30) calendar days of invoicing. The bank details for the payment will be provided in the respective invoice. AMDT will invoice the Customer by email to the address provided to AMDT. The customer waives receipt of an e-invoice. If the Customer requires an Order Number to remit the Compensation, it is the Customer's sole responsibility to provide AMDT with such an Order Number. AMDT will display the order number provided by the customer on the invoices. If AMDT incurs fees for an order number portal, AMDT will charge the Customer for these fees. If the Customer does not provide AMDT with an Order Number, the Customer warrants that an Order Number is not required for the transfer of the Remuneration. If the Customer is in default of payment, AMDT will notify the Customer in writing (text form is sufficient). For any amounts due hereunder that are not paid by their due date, interest will accrue at the applicable statutory interest rate (nine percentage points p.a. above the current base interest rate pursuant to Secs. 247, 288 Subsec. 2 of the German Civil Code (*Bürgerliches Gesetzbuch*), and the Customer must bear all costs of collection, including reasonable attorney fees. This shall not affect any other rights. The

customer may only offset these against undisputed or legally established counterclaims and establish a right of retention only with undisputed or legally established claims.

If the Customer is still in default of payment after a reasonable grace period set by AMDT, which AMDT may grant or withhold in its sole discretion, AMDT may immediately suspend the Customer's use of the Deliverables until payment has been made. AMDT shall provide the Customer with advance notice prior to any such suspension.

4. Term and Termination/Renewal

The Contract Commencement and duration (hereinafter referred to as the "Initial Term") are set forth in the Order Form. Unless otherwise agreed in the Order Form, the Agreement will automatically renew for one (1) year at a time thereafter (each referred to as the "Additional Term") unless either Party notifies in writing at least ninety (90) days prior to the expiration of the original duration or any additional duration that the renewal will not be taking place. Both the "Initial Term" and the "Additional Term" are referred to from time to time as the "Term".

The right to extraordinary termination without notice for good cause remains unaffected. Good cause exists if one party to the contract has breached the Agreement in a way that, taking into account all relevant circumstances, is serious enough to make the continuation of the contractual relationship unreasonable for the other party. An important reason that entitles AMDT to terminate the Agreement, shall be deemed to exist in particular if the Customer violates AMDT's rights by using the Deliverables beyond the scope permitted according to the Agreement and if the Customer does not remedy the infringement within a reasonable period of time after warning by AMDT; or the Customer is insolvent.

Both the ordinary termination of the Agreement and the extraordinary termination without notice for good cause must be in writing.

In the event that the Customer has lawfully terminated the Agreement for good cause within a billing interval, AMDT will refund any Price already paid for the relevant billing interval on a pro rata basis. Purchased delivery items cannot be cancelled or refunded before the end of the term after the order has been placed. AMDT shall be entitled to charge the Customer the full compensation under the Agreement, even if the Customer terminates the use of the Deliverables at an earlier date.

5. Adjustment of Price

The agreed Price shall apply for the duration of the Term unless AMDT modifies the Price in its equitable and bona fide discretion with effect from the beginning of an Additional Term. The Customer shall be notified by written declaration with a notice period of two months. The adjustment of the remuneration is a "may" and not a "must" and is generally negotiated between the Parties individually. Such an Adjustment of Price is subject to the following conditions:

- (a) Scope of adjustment: AMDT may change the Price in percentage at most to the extent to which the reference index mentioned below has changed. Regarding the initial

adjustment of Price, the index development between the level last published at the time of signing the Agreement and the last published level at the time of the adjustment declaration determines the extent of the adjustment. If an adjustment of Price has already been made, the extent of the adjustment shall be determined according to the index development between the index level last published at the time of the last adjustment declaration and the last published index level at the time of the actual adjustment declaration. In the event of cost reductions, AMDT will reduce prices, insofar as these cost reductions are fully or partially offset by increases in other areas. AMDT reserves the right to adjust the Price to an extend the index in justified cases only, e.g. in the event of significant product and service expansion;

- (b) Reference index: The index of gross monthly salaries of full-time employees in Germany in the field of information technology services is to be used as the basis for determining the extent of the adjustment (currently published quarterly by the German Federal Statistics Office in the GENESIS online database with the key 62361-0016: Index der durchschnittlichen Bruttomonatsverdienste (Quartale) and the code WZ08-62 Dienstleistungen der Informationstechnologie) shall be used as the basis for determining the scope of adjustment. If this index is no longer published, the index published by the Federal Statistical Office shall be used to determine the extent of the adjustment, which most closely reflects the development of average gross monthly earnings in the said economic sector;
- (c) Special right of termination: Unless the Customer terminates the Agreement with effect from the end of the respective contract term by written notice at least one month before the end of the contract term (extraordinary right of termination), the adjusted price for the extended period shall be deemed to have been agreed upon if the contract is automatically renewed. AMDT will point this out in the adjustment declaration.

6. Intellectual Property Rights/Rights of Use

The Customer acknowledges and agrees that the Deliverables are the property of AMDT and its licensors, including, but not limited to, patents of any kind or other title or rights in any invention, copyright, trademark, design, know-how, or other industrial right, including any rights of exploitation or use (hereinafter collectively referred to as "IP Rights") or in Confidential Information (as defined herein), and that, except for the rights and licenses expressly granted to the Customer under the Agreement, AMDT shall exclusively retain all IP Rights and rights in and to Confidential Information, including, but not limited to, the instances where such rights were used or created in connection with the Deliverables to fulfill a requirement of the Customer or were created in collaboration with the Customer. To the extent contractually agreed, AMDT grants the Customer a limited, revocable, non-exclusive license to use the Deliverables only in accordance with the Agreement and only to the extent defined therein. This limited, revocable, non-exclusive license is valid only for the term of the Agreement until it expires or is otherwise terminated.

7. Confidentiality

"Confidential Information" means any information of the Parties which is subject to technical and organizational confidentiality measures and which is marked as confidential or which is reasonably to be regarded as confidential by the circumstances of the disclosure to the other Party or by its content, and which the Parties disclose to each other at the time of initiating, performing or terminating the contractual relationship. In particular, but not limited to, customer data, products, manufacturing processes, know-how, inventions, business relationships (including this contractual relationship and its content and conditions), business strategies, business plans, financial planning, personnel matters, information about research and development information, product offerings, pricing and availability of the service, analyses and benchmarks, software, documentation, programs, tools, data and any other material provided to AMDT to Customer prior to or pursuant to the Agreement, as well as the Agreement itself, shall be considered Confidential Information. Confidential Information is not (or no longer) available if the information in question:

- (a) was known or generally available to the public prior to disclosure by the other party, or became so after disclosure without breach of any duty of confidentiality;
- (b) was demonstrably known to the receiving party prior to disclosure by the other party;
- (c) was obtained independently of the receiving party without recourse to the disclosing party's Confidential Information;
- (d) was delivered or made available to the receiving party by an authorised third party without breach of any obligation of confidentiality; or
- (e) has been expressly released from confidentiality by the disclosing party.

The Parties undertake to protect all Confidential Information of the other Party obtained before and during the performance of the Agreement for an indefinite period of time in the same way as their own comparable Confidential Information, but at least to treat it confidentially with reasonable care. The Parties bind their employees, external staff and subcontractors to maintain confidentiality by means of suitable contractual regulations that comply with these T&Cs. The rights to Confidential Information shall remain with the disclosing party. The receiving party has no right to retain Confidential Information of the disclosing party.

Confidential Information of the other Party may only be used to fulfil the purposes, rights and obligations under the Agreement and to comply with legal obligations. In addition, AMDT may include the Customer's name and company name, as well as a brief description of the services provided, in a reference list for promotional purposes regarding the products or services. The use of Confidential Information for any other purpose is not permitted without the prior written consent of the other party. In particular, the Parties are prohibited from commercially exploiting or imitating Confidential Information of the other party in any way (in particular by means of so-called "reverse engineering") or having it exploited or imitated by third parties.

Confidential Information of the other Party may not be disclosed, directly or indirectly, to any third party, e.g., as a description or summary, without the prior written consent of the other party. This does not apply to the extent that the disclosure

- (a) is to the Party's own employees, affiliates and/or advisors for the purposes immediately described above and on a need-to-know basis, and such recipients are subject to comparable statutory or contractual confidentiality obligations;
- (b) is ordered by a competent court or competent authority in the context of judicial or administrative proceedings; or
- (c) to other third parties is absolutely necessary for the fulfilment of a legal obligation.

In the case of sentence (a), the further handling of the Confidential Information by the third party is attributable to the discloser. In the cases referred to in sentences (b) and (c), to the extent permitted by applicable law, the other party shall be promptly notified of the order or legal obligation so that it may attempt to prevent disclosure by taking legal action if necessary. In the event that such legal action is not taken by the other party, the disclosing party will disclose only the portion of the Confidential Information specifically ordered or required by law and will use its best efforts to ensure that the third party maintains the confidentiality of such Confidential Information. In the event of a court order for the disclosure of Confidential Information, the Parties will work to ensure that the provisions of Section 16 et seq. of the German [Act on the Protection of Trade Secrets \(Gesetz zum Schutz von Geschäftsgeheimnissen – GeschGehG\)](#) are used. The Parties make it clear in the context of the disclosure that this is Confidential Information.

8. Limitation of Liability and Indemnity

AMDT shall be liable under the terms of this Agreement only in accordance with the following provisions under (a) – (e):

- (a) AMDT is liable without limitation for damages caused intentionally or by gross negligence by AMDT, its legal representatives or executives, as well as for damages caused intentionally by other vicarious agents.
- (b) AMDT is fully liable for death, damages resulting from injury to life, limb or health caused by intent or negligence on the part of AMDT, its legal representatives or vicarious agents.
- (c) AMDT is liable for damages resulting from the lack of warranted properties up to the amount covered by the purpose of the warranty that was foreseeable by AMDT at the time the warranty was issued.
- (d) AMDT is liable in the event of product liability under the Product Liability Act.
- (e) AMDT is liable for damages caused by the breach of its Main Duties by AMDT, its legal representatives or vicarious agents. **Main Duties** are those basic duties that form the essence of the Agreement, that were decisive for the conclusion of the Agreement and on the fulfilment of which the Customer may rely. If AMDT breaches its principal obligations, the resulting liability shall be limited to the amount foreseeable by AMDT at the time the relevant service was provided.

Further liability on the part of AMDT is excluded on the merits.

AMDT is only liable for data loss up to the amount of the typical recovery costs that would have been incurred if the data had been backed up properly and regularly. AMDT will only be liable for attorneys' fees up to the amount of the typical, foreseeable and reasonable costs of litigation.

AMDT's liability for all claims arising out of this Agreement shall be limited to 150 percent of the amount of the net payments received by AMDT for its services under this Agreement during the twelve (12) months preceding the date on which the liability arose.

9. Data Exchange/Remote Access

The Parties shall cooperate in exchanging such data, documents and information as are necessary for the performance of their obligations under the Agreement and as necessary to comply with any applicable state and federal regulatory, reporting or other requirements. The Customer grants AMDT the right and opportunity to use the Customer's systems and data and, to the extent necessary for AMDT's performance of the Deliverables and to the extent there are no important reasons to the contrary, to provide remote access to such data on the Customer's network.

The Customer shall further provide AMDT with direct and remote access to the Deliverables and IT systems at the Customer's expense for the provision of services under the Agreement, including, but not limited to, fault diagnosis and elimination.

If and to the extent that AMDT is not enabled by the Customer to perform the services on the Customer's IT systems remotely, the Customer shall reimburse AMDT for the additional expenses incurred for the defect rectification measures on site (travel time and additional costs for the elimination of defects and errors). The respective expenses will be billed according to the price list in effect at AMDT at the time of the support event and on an hourly basis.

10. Compliance and other Obligations of the Parties

The Parties shall at all times comply with all local, state and federal laws, rules and regulations applicable in accordance with the choice of applicable law as specified in Section 18 of these Terms with respect to the provision of Deliverables under the Agreement, including but not limited to maintaining all necessary licenses, permits and certifications.

The Customer is obliged to carefully insure the delivery item for an indefinite period of time in order to prevent possible misuse.

After termination of the Agreement or after expiry of the agreed term, the Customer must stop using the delivery items and, if applicable, delete them from their systems.

The Customer shall provide, free of charge, all cooperation measures required by AMDT in connection with the performance of the Agreement, including, but not limited to, personnel, work area, IT systems, data, and telecommunications facilities.

11. Reverse engineering and modifications of Deliverables

The Customer may not modify or derive, reverse engineer, decompile or disassemble the Deliverables or attempt to create or redesign the Deliverables, unless and only to the extent expressly permitted by applicable law (cf. Sec. 69e of the German Act on *Copyright and Related Rights* (*Gesetz über Urheberrecht und verwandte Schutzrechte* — UrhG -- [Act on Copyright and Related Rights \(Urheberrechtsgesetz – UrhG\)](#))) notwithstanding), without prejudice to this restriction.

12. Insurance

Each Party shall maintain at its own expense at all times a comprehensive general liability insurance policy of a commercially reasonable amount against claims and losses that may arise from the performance of Deliverables under the Agreement.

13. Assignment of rights or obligations

The Parties must be independent contractors, and the Agreement shall not create a joint venture, partnership, employment relationship, or other relationship to the contrary. The Agreement shall be binding on and inure to the benefit of the Parties and their respective successors in title. An assignment of rights or obligations under the Agreement as well as the entire contractual relationship is only permissible with the prior written consent of the other contracting party, unless otherwise permitted by law. No assignment or delegation shall relieve Customer of any of its obligations under the Agreement. Notwithstanding anything to the contrary, in cases where this is necessary for the purpose of corporate restructuring, AMDT shall be entitled to provide prior notice to the Customer and then assign the Agreement, rights or obligations, and the entire contractual relationship to affiliates within the same group of companies.

14. Information Security and Data Protection

AMDT takes technical and organizational measures to ensure appropriate data security for Customer Data that is transferred to AMDT for the purposes contemplated by the Agreement. The state of the art, the implementation costs, the type, scope and purposes of the customer's processed data as well as the probability of occurrence and the severity of both the information security risk for the Customer and the data protection risk for the data subjects are taken into account.

The Parties' Obligations under data protection law with regard to possible commissioned data processing are set out in a separate Personal Data Processing Agreement.

15. Audit rights

Subsequent to further rights and obligations set forth in the Specific Terms of Service, AMDT may, if there is a legitimate reason, conduct an audit of the extent of the Customer's use of the Deliverables at any time, otherwise once a year. Except in justified cases of urgency, the review will be announced in writing with a notice period of two (2) weeks. The audit is carried out by an employee of the AMDT or an expert commissioned by AMDT. The customer must provide the auditor with the information necessary to clarify

the actual scope of use and let the auditor inspect relevant documents and records as well as the software and hardware environment used. The customer's confidentiality interests and the protection of his business operations from unreasonable interference are taken into account.

Furthermore, the Customer is obliged to provide information about the license usage (usage data) outside of the normal annual audit. The Customer will be notified separately for this in good time.

16. Third-party claims

Each Party undertakes to inform the other Party without undue delay if a third party asserts a claim against it for a breach of duty in connection with the obligations of the other Party in the provision or use of the Deliverables. The party concerned may only take legal action against the third party or authorise the other contractual partner to conduct the dispute after consultation with the other party responsible for the breach of duty.

The Parties undertake to mutually indemnify each other against any liability for claims by third parties, including reasonable costs of legal defense, arising from a breach of duty in the area of responsibility of the other party in the provision or use of the Deliverables.

17. Export and Import Restrictions

To the extent that the Deliverables and/or other Software products/programs are subject to export and import restrictions (including, but not limited to, licensing/permission/authorization obligations, sanction regulations or foreign restrictions on the use of the Software or related technologies), the Customer shall comply with applicable export and import control regulations and all other applicable regulations. The fulfilment of the Agreement by AMDT is subject to the condition that there are no obstacles to the performance and fulfillment of the Agreement due to national and international export and import laws as well as other legal regulations.

18. Final provisions

Unless otherwise specified, any amendment or adaptation of the Agreement as well as any declaration or notification pursuant to the Agreement (such as the exercise of any rights under the Agreement, termination of the Agreement, reminders (dunning) or setting of deadlines, etc.) shall be made in writing. This also applies to the waiver of the written form requirement itself.

If any provision of the Agreement is or becomes invalid or unenforceable, the validity of the Agreement shall not be affected. The Parties are obliged to replace the invalid or unenforceable provision with a valid or enforceable provision that best achieves the economically desired result. The same applies in the event of a regulatory gap.

The Agreement and all non-contractual obligations arising out of or in connection with this contract are subject exclusively to German law to the exclusion of the UN Convention on Contracts for the International Sale of Goods. The conflict-of-law rules do not apply.

The exclusive place of jurisdiction for all disputes arising from and in connection with the Agreement is the registered office of AMDT or its respective affiliated companies, provided that the Customer is a merchant within the meaning of the German Commercial Code (HGB), a legal entity under public law or a special fund under public law.

The Agreement constitutes the entire agreement and understanding of the Parties with respect to the subject matter hereof and supersedes all oral or written proposals and all other prior communications between the Parties with respect to such subject matter. The order of precedence of the documents forming the Agreement is as follows: (1) Individual contract (order form), (2) Service specific Terms, (3) GTC.

Any different terms and conditions proposed by the Customer shall not be binding for AMDT and are hereby expressly rejected unless expressly authorized by AMDT in writing.

19. Additional Definitions

The following terms used in these Terms shall have the meanings ascribed to them below, unless the context otherwise requires:

AMDT	AUVESY GmbH, Fichtenstraße 38 B, 76829 Landau in der Pfalz, Germany; Company Register at Landau District Court, Registration Number HRB 30212.
Basic Flat Rate	The monthly fee for the provision and maintenance of the standard version of the data management solution octo-plant per installation, including the agreed number of BI Users and Devices.
BI User	A person who accesses dashboards or reports using the BI toolset to make business decisions.
Campus	Depending on the individual contractual agreement, either an Instance or a Campus is defined as the productive server environment for which the standard version of the octo-plant data management solution is provided. A campus comprises a contiguous parcel of land that can include multiple buildings. Each Campus requires a minimum of one server license. Multiple licenses of the same type may be operated on one physical server, but each server requires a minimum of one license.
Devices	Industrial Control Systems that we can version and/or compare and/or backup, physical or virtual, used to automate and manage an operating or production environment, such as PLCs, HMIs, Robots, CNCs, VFDs, Cameras, OT Switches. This includes any device that works with an active configuration from a project, configuration file, etc. and that can be managed with octo-plant. Documents (DOC, XLS, PDF, EPLAN) are not considered devices.
Instance	Depending on the individual contractual agreement, either an Instance or a Campus is defined as the productive server

	environment for which the octoplant software is deployed. An instance comprises a maximum of one physical production site. If the physical location is functionally divided (e.g. into production lines or cost centers), independent functional units are considered to be an independent entity.
Job	Claimed rights of use (per instance) per contractually agreed instance.
Party	Either AMDT or the Customer; 'Parties' means both together.
Pricing for Additional Devices	The increased monthly fee for the protection of additional Devices not included in the Basic Flat Rate per installation.
T&Cs/GTCs	General Terms and Conditions of AMDT for the subscription of the data management solution and additionally agreed upon assistance and additional support services in this context.
Volume	The number of Devices and/or BI Users per installation used by Customer during the current calendar quarter.
Volume Band	The billing unit for the Price of additional Devices and/or BI Users per installation not included in the Basic Flat Rate.
Volume Fee BI User	The increased monthly fee for the creation of additional BI Users not included in the Basic Flat Rate per installation.