

## **Azolver (Switzerland) AG – TERMS OF SERVICE**

### **for mail processing systems (GMS-Systems), equipment**

#### **1. Validity, conclusion, and object of the contract**

- 1.1 These Terms of Service apply exclusively to all deliveries, services, etc. – with the exception of those provided through 'contract leasing' – provided by Azolver (Switzerland) to contractual partners who are either business entities or legal persons.
- 1.2 Offers from AZOLVER are considered a request to the customer to place an order in accordance with the offer, as a binding contractual offer, to which they are bound for ten (10) days. AZOLVER takes on orders by confirming the order or by providing the service.
- 1.3 All agreements, amendments, and additions regarding the services provided by AZOLVER must be recorded in writing in the order documents. This also applies to any changes to this written clause.
- 1.4 AZOLVER only accepts quality or durability warranties if they have been expressly confirmed as such in writing. Public statements by AZOLVER regarding the object of the contract do not determine its properties or condition, except in cases where this has expressly been included in the order by the customer.
- 1.5 Customary deviations from descriptions and written materials in content, technical specifications, and design, as well as changes in models, construction, and materials brought about by technical developments remain reserved within the scope of what is reasonable for the customer. AZOLVER also reserves the right to supply itself in a correct and timely manner.

In the absence of an express agreement, it is the customer's responsibility to ensure that the technical requirements for operating the object of the contract, such as in particular electricity and telephone connections, are met. This also applies to the assembly, setup, or implementation of the object of the contract, or the training of the customer's operating personnel.

- 1.7 For printing systems, the use of original Pitney Bowes inks or inks of comparable quality and properties is a prerequisite for their operation and for their maintenance under equipment service contracts.
- 1.8 Franking systems consist of the franking machine and corresponding ink. For this reason, Pitney-Bowes franking systems have always been tested and certified by Swiss Post using the original Pitney-Bowes ink. Should the customer use a franking machine from Azolver with a different ink, the required printing quality might not be achieved. The franking system would then no longer meet the requirements for approval. Additionally, Swiss Post can refuse carriage in accordance with its terms and conditions if the stamp imprint is not clearly legible due to poor print quality.

#### **2. Liability**

- 2.1 In accordance with the Product Liability Act, AZOLVER is liable for damage if a defective product causes the death or injury of a person or damage to private property. If a warranty is accepted (for the quality or durability of the object of the contract), AZOLVER is also liable within the scope of the warranty.
- 2.2 Apart from that, AZOLVER is only liable for slight negligence for whatever legal reason, and thus also for claims of tort insofar as these compete with contractual claims if an obligation is violated, the observance of which is of particular importance for the achievement of the contract purpose (cardinal obligation). In case of damage to property and financial loss, this liability is limited to foreseeable damage, the occurrence of which must typically be expected. There is no liability for lost profits and savings.
- 2.3 In the event of data loss, AZOLVER is only liable for the effort required of the customer to restore the data with proper data backup at appropriate intervals (i.e. regularly, at least once a day).

#### **3. Terms of payment**

- 3.1 The prices are net prices, plus the statutory VAT applicable at the time of the transaction. Remuneration for permanent or service contracts is due at the beginning of each billing period. Otherwise, the prices are understood to be ex work, with immediate net cash upon invoice or – where such an arrangement has been made – upon delivery.
- 3.2 AZOLVER can change service fees by giving three months' written notice to the end of the year, but by no more than 10% of the rates of the previous contract year. With increases of over 8%, the customer can terminate the service contract in writing with a notice period of three weeks before the beginning of the announced increase period.
- 3.3 The invoices are due immediately upon receipt and payable within 14 days from the invoice date. The date of crediting to the AZOLVER account is decisive. After the due date, the payment will automatically be flagged as late.  
  
The late payment fee in Switzerland is 5% p.a. *pro rata temporis*. AZOLVER reserves the right to claim further damages.
- 3.5 The customer can only offset payment claims from AZOLVER or exercise the right of retention if their counterclaim is undisputed or has been legally established. They cannot exercise any rights of retention which are not based on the current contractual relationship.

#### **4. Transfer of risk, retention of title, delivery and service.**

- 4.1 Deliveries are made by dispatch at the risk and the cost of the customer, except in cases where an installation, acceptance, or other such deviating arrangements have been agreed upon. For other services, the place of execution is the business premises of AZOLVER specified in the contract form.
- 4.2 AZOLVER is entitled to provide partial deliveries and services at any time.
- 4.3 All contract items remain the property of AZOLVER until all claims (including all current account balance claims) against the customer which AZOLVER is entitled to for any legal reason now or in the future, have been settled, in particular until payment of the price in full. Until all of AZOLVER's claims have been met, only the revocable and provisional right to possess and use the reserved goods is granted. The customer hereby expressly gives consent to AZOLVER to have the retention of title entered into the register and will immediately inform AZOLVER of any change of location of the goods which were delivered under the retention of title.
- 4.4 If the customer is late in payment, AZOLVER is entitled, without prejudice to other rights, to revoke the provisional right to possess and use the reserved goods. After the revocation, AZOLVER is entitled to take back the reserved goods immediately at the expense of the customer, and to prohibit their use, especially of software.

#### **5. Service time**

- 5.1 Service times by AZOLVER are non-binding, unless expressly agreed otherwise.
- 5.2 If, in the case of service contracts, AZOLVER fails to perform a service despite a request being made within a reasonable or agreed-upon time, or if the service is not successful, the customer is entitled to have AZOLVER repeat the service endeavour during the contract period. The service is only considered late if a repeat endeavour which was requested in writing within a reasonable time is unsuccessful.
- 5.3 If AZOLVER exceeds an agreed-upon or appropriate service time despite the deadline, the customer will grant AZOLVER an extension period of one (1) week in writing, unless regulated otherwise. Reminders and deadlines for the service or rectification are only permitted once the extension period has expired.

## 6. Obligation of inspection and notification, acceptance / defects

- 6.1 The customer is subject to the commercial obligation to inspect and give notice of defects in the purchase and work delivery, even if these include additional services such as assembly or installation. This applies accordingly to updates, releases, patches or bug fixes which are made available on the basis of a software service contract.
- 6.2 Individual services, e.g. from device service contracts, which include the repair, maintenance, servicing, or other work on devices which have already been delivered, must be accepted in each case.
- 6.3 The customer may only refuse acceptance due to defects which are not insignificant or cannot be repaired; notwithstanding this, if the customer does not declare acceptance, it shall be deemed to have been granted without objection at the end of two (2) weeks after the provision of the service or the acceptance date – if one has been agreed upon.
- 6.4 The customer must report obvious and recognisable defects no later than ten (10) days after the end of the above acceptance date in accordance with section 7.3, if such a period applies, and otherwise after receiving the service from AZOLVER. Defects which could not be discovered within this period even after careful inspection must be reported to AZOLVER in writing within ten (10) days after they are discovered. Belated notifications shall also exclude any claims by the customer in this respect.
- 6.5 In the event of a notification by the customer that products transferred by AZOLVER have a defect, AZOLVER is entitled, at its discretion, to demand that:
- the defective part or the entire product be sent to AZOLVER at its expense for reparation and subsequent return;
  - the customer has the defective product ready and a service technician from AZOLVER be sent to the customer to carry out the repair;
  - the customer installs an update/patch/bug fix provided by AZOLVER in the case of defective software.
- If the customer requests that the rectification work be carried out at a location specified by them, AZOLVER can comply with this request, whereby the resulting additional working time and travel costs are to be paid at AZOLVER's standard rates.
- 6.6 In case of software defects, the customer is also obliged to provide AZOLVER with appropriate assistance in troubleshooting.
- 6.7 Claims for defects by the customer shall not apply if a possible defect occurred due to the fact that the customer or a third party modified, improperly used or repaired the products without consent from AZOLVER or did not install, operate and maintain them in accordance with the AZOLVER guidelines and AZOLVER specifications.
- 6.8 Price reductions will not be applied for insignificant defects. The customer is precluded from rescinding the contract in the event of a breach of duty for which AZOLVER is not responsible. Rescission also further presupposes that a grace period has been set in connection with a warning of refusal. With service contracts, the right of termination will replace the right to rescind.

Claims for defects become time-barred in one (1) year, unless AZOLVER is liable in accordance with section 2.1 ('Warranty period').

## 7. Use of software, licensing, and protective mechanisms

- 7.1 Software as the object of the contract will be delivered as a machine language program and/or executable object code on a standard data carrier, including documentation. The same applies if AZOLVER provides the customer with an access code for downloading the same from the internet. The software is provided with protective mechanisms for the hardware/software (hard or soft locks) as intended.
- 7.2 The customer is granted a provisional and revocable licence to use AZOLVER's proprietary software – until all liabilities have been paid in accordance with sections 4.3 and 4.4. The general licence terms of AZOLVER, which are made available to the customer at any time upon request, apply here; this also applies to software and transferred licenses from other manufacturers.
- 7.3 If the contract partners have agreed that AZOLVER installs the software on the customer's hardware, the following applies:

- AZOLVER will begin the installation works at the time and location specified in the order.
- The customer will grant AZOLVER access to the installation site and provide the necessary information regarding the system environment in good time before the beginning of the installation work.
- The installation is complete when the software is running on the customer's system in accordance with the test run procedure as described in the software documentation. The customer will confirm this in writing after a successful test run (acceptance).

## 8. Property rights of third parties

- 8.1 If a third party asserts claims against the customer based on patents, copyrights, or other commercial property rights (property rights of third persons) due to the contractual item delivered by AZOLVER, AZOLVER shall, at its own expense, provide representation for the customer in relevant legal disputes with the third party and indemnify the customer with regard to such claims. However, this only applies if the customer immediately informs AZOLVER during the warranty period (section 6.9) of the relevant claims by the third party and the details of any legal disputes, and leaves all decisions regarding the further use of the products contested by the third party, the legal defence, and settlement to the discretion of AZOLVER.
- 8.2 Should it transpire that there are relevant claims by third parties on the contractual item from AZOLVER, it shall be considered rectification if AZOLVER grants the customer the right to continue using the contractual item, exchanges it, or alters it in a different way which does not infringe upon the rights of the third party whilst preserving its functionality and the product exchange or alteration is reasonable for the customer, and AZOLVER alters the user guide, the documents, and other included materials accordingly.
- 8.3 Other legal consequences in accordance with these terms and conditions and otherwise, the statutory regulations, remain unaffected.

## 9. Contractual periods of service contracts

Service contracts are indefinite. They can be terminated by means of a written notice and without stating reasons with a notice period of three months before the end of the first contract period (minimum term), or the end of one of the following contract years thereafter. The right to terminate for serious grounds remains unaffected.

## 10. Export / Resale

Responsibility for export, re-export, or other transport from Switzerland lies with the customer. The customer is to observe the export control regulations of Switzerland or trade legislation of other countries.

- 10.2 In the event of resale and export without prior consent from AZOLVER, all customer claims arising from contracts concluded with AZOLVER are automatically considered void.

## 11. Jurisdiction / Choice of law

If the customer is a merchant, a legal person under public law, or a special assets fund under public law, the place for legal disputes in connection with an order is the court which is responsible for Winterthur, where the AZOLVER headquarters are based. Additionally, AZOLVER is entitled to sue the customer at its general place of jurisdiction. Swiss law applies to the exclusion of the International Sales Convention (CISG).