

GENERAL TERMS AND CONDITIONS OF BUSINESS OF ABTIS GMBH

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§ 1 Scope of application

(1) These General Terms and Conditions of Business (hereinafter referred to as "GTC") apply to all contracts which abtis GmbH (hereinafter referred to as "abtis"), Wilhelm-Becker-Straße 11b, 75179 Pforzheim, Germany, concludes with entrepreneurs (§ 14 BGB), legal entities under public law and special funds under public law (hereinafter referred to as "customer").

(2) Conflicting terms and conditions of abtis' customers are only valid if abtis expressly agrees to their validity in writing.

(3) Amendments to the General Terms and Conditions as well as the introduction of additional terms and conditions shall be communicated to the customer by post or by e-mail at least 6 weeks before the proposed date of their coming into effect. The customer shall be deemed to have given his consent if he has not given notice of his rejection before the proposed date on which the amendments are to take effect. abtis will point out this approval effect to the customer separately.

§ 2 Conclusion of contract

(1) The offers of abtis are subject to change. Offers of the customer are accepted if abtis confirms them in writing. Orders of the customer represent binding offers for the conclusion of a contract with abtis and can be accepted by abtis within a period of 2 weeks.

(2) The customer shall carefully check offers from abtis for correctness and suitability. This applies in particular to offers that are based on certain assumptions. The customer shall inform abtis if assumptions do not apply.

(3) abtis is entitled to commission third parties with the fulfilment of a contract without requiring the customer's separate consent.

§ 3 Quality

(1) The goods and services offered by abtis are exclusively intended for use by businesses.

(2) The information contained in public statements, catalogues, brochures, circulars, advertisements, illustrations, advertising and price lists about the properties of abtis goods or services do not represent quality specifications, as long as they have not become part of the contract. The same applies to public statements of a third party manufacturer.

(3) abtis reserves the right to make changes to the information provided by abtis on the object of the delivery or service (e.g. weights, dimensions, utility values, load-bearing capacity, tolerances, technical data or product designations) as well as their representations (e.g. drawings and illustrations), insofar as the object of the contract is not significantly changed or its quality improved as a result and the changes or deviations are acceptable to the customer.

(4) Information on the quality or durability of a good or service does not contain a guarantee (assurance) in the sense of § 276 (1) BGB and no guarantee in the sense of § 443 BGB, if abtis has not expressly assumed such a guarantee.

§ 4 Special conditions for software

(1) Unless expressly agreed otherwise, the subject matter of the contract is standard software of third party manufacturers which has not been individually produced for the needs of the customer.

(2) For standard software of third party manufacturers, the separate terms of use of the manufacturer shall apply, from which the properties of the software, the permissible scope of use by the customer and further terms of use result. Unless otherwise agreed, the manufacturer's terms and conditions of use shall be the subject of a contract concluded between the customer and the manufacturer, the conclusion of which abtis shall mediate if necessary. These terms and conditions of use shall be made available to the customer upon request, even before the conclusion of the contract.

(3) Unless otherwise agreed in the manufacturer's terms of use, the customer may only use the software within the scope of what is legally permissible. Accordingly, the customer is in particular not entitled to grant third parties rights to use the software, to remove or change copyright notices.

(4) If abtis has undertaken to deliver software, the object code is generally handed over on a data carrier or made available by download. The customer does not have a claim to delivery of the source code.

(5) If an installation on the customer's hardware is required for the use of the software, abtis shall only provide support and instructions if this has been agreed between the customer and abtis. The customer is responsible for ensuring that the communicated requirements for hardware and environment are available for an installation.

(6) In principle, abtis is not obliged to maintain the software, unless the parties have agreed otherwise separately.

§ 5 Special conditions for consulting

(1) Consulting services by abtis require an order from the customer stating the duration, the period of implementation and the subject of the consulting activities. For acceptance by abtis, § 2 applies.

(2) abtis provides consulting services within the framework of a service contract. A certain success is not promised by abtis.

(3) A consulting day corresponds to eight hours between 8.00 a.m. and 6.00 p.m. on a working day. For overtime as well as work on legal Sundays and public holidays at the abtis headquarters, a surcharge of 100 % shall be invoiced. Driving and travelling times shall be invoiced separately. Travel and accommodation costs shall be invoiced according to expenditure.

(4) The following conditions apply to cancellations and/or postponements by the customer:

a) If the cancellation and/or postponement is received by abtis at least 12 working days ("working days" means all calendar days that are not Sundays or public holidays in Germany) before the start of the consulting, no fees will be charged.

b) If the cancellation and/or postponement is received by abtis at least 6 working days before the start of the consulting, 50% of the agreed fee plus statutory VAT shall be due.

c) If the cancellation and/or postponement is received by abtis later than 6 working days before the start of the consulting, the agreed fee shall be due in full.

(5) For support services of abtis, the "abtis Support Conditions" defined in the separate document apply in their current version.

§ 6 Special Conditions for security services

(1) abtis provides security services only after commissioning by the customer.

(2) The remuneration for services in the area of security incidents is generally based on the agreed daily/hourly rate from an abtis Services contract plus a surcharge of 30%, whereby the billed hourly/daily rate is limited to our currently valid list price for security incidents. In the absence of an abtis Services contract, the remuneration shall be based on our currently valid list price.

§ 7 Prices and payment, changes in prices

(1) The prices for the services and deliveries of abtis are in euros ex works, plus shipping, insurance and packaging costs as well as value added tax at the statutory rate. The customer agrees that invoices may also be sent to him electronically. The invoice shall be sent to the generally known postal or electronic address, unless the parties agree otherwise.

(2) The remuneration is due without any deductions on receipt of the invoice. abtis is entitled, irrespective of other claims for compensation, to postpone its own contractual obligations in the case of payment arrears for which abtis is not responsible, until the arrears have been paid. As soon as the payment arrear lasts longer than 60 calendar days, abtis is entitled to declare the remaining monthly instalments of the agreed term due immediately. This applies irrespective of whether the agreed service has already been provided.

(3) Offsetting with counterclaims of the customer or the retention of payments due to such claims is only permissible insofar as the counterclaims are undisputed or have been legally established.

(4) abtis is entitled to make or provide outstanding deliveries or services only against advance payment or provision of security if, after the conclusion of the contract, circumstances become known to abtis which are likely to significantly reduce the creditworthiness of the customer and which jeopardise the payment of abtis' outstanding claims by the customer from the respective contractual relationship.

(5) abtis is entitled to offset payments against the oldest due invoice, even if the customer has a contrary redemption provision.

(6) abtis will adjust an ongoing or usage-dependent remuneration at its reasonable discretion (§ 315 BGB) to the development of the costs that are decisive for the price calculation. A price increase shall be considered and a price reduction shall be made if

a) the consumer price index for Germany published by the Federal Statistical Office of Germany has risen or fallen by more than 5 percentage points since the last price adjustment

or

b) the costs required for the performance of the contract have changed, in particular if the costs of performance components (such as the procurement of licenses from suppliers, [e.g. price increases at Microsoft], etc.) or other resources required for the performance of the service by abtis (such as energy) increase or decrease or other changes in, for example, the energy industry, regulatory or legal framework conditions lead to a changed cost situation (e.g. also due to an increase in statutory ancillary wage costs). Such cost increases may only be used for a price increase to the extent that they are not offset by any declining costs in other areas, such as sales costs. In the event of cost reductions, for example in license procurement costs, abtis shall reduce the prices to the extent that these cost reductions are not fully or partially offset by increases in other areas (e.g. energy costs). When exercising its reasonable discretion, abtis shall select the respective points in time of a price change in such a way that cost reductions are not taken into account according to standards that are less favorable for the customer than cost increases, i.e. cost reductions shall have at least the same effect on prices as cost increases.

(7) Price changes according to § 6 (6) are possible on the first day of each month. abtis will notify the customer of the change in text form at least 6 weeks before the planned effective date; the notification can also be transmitted via the my.abtis customer portal. If the customer does not agree with the price change and if, due to the price change, the price for the services owed by abtis under this contract has increased by a total of more than 10% within the last 12 months, assuming a comparable scope of services, the customer has 4 weeks from receipt of the notification of the price change to make use of a special right of termination without notice. If the customer does not terminate the contract or does not do so in due time, the contract shall be continued with the adjusted prices – subject to a next price adjustment – for the term of the contract. Orders already placed that were not affected by the price change shall remain unaffected by the termination and shall be carried out. Otherwise, § 315 BGB and, in particular, the customer's right under § 315 (3) BGB to bring about a judicial review of the price determination shall remain unaffected.

§ 8 Terms of delivery

(1) Delivery of goods shall be ex abtis warehouse. This is the place of performance. At the customer's request, the goods shall be sent to another destination at the customer's expense (sale by delivery to a place other than the place of performance). abtis is entitled to determine the type of shipment.

(2) Delivery dates and delivery periods are only binding if they have been confirmed in writing by abtis. Since abtis procures hardware and/or software from suppliers, abtis' delivery obligation is subject to timely and correct self-delivery. If shipment has been agreed, delivery periods and delivery dates refer to the point in time at which the subject matter of the contract leaves the warehouse of abtis or at which abtis has notified the customer that it is ready for shipment.

(3) Compliance with delivery and performance deadlines by abtis requires that the customer has fulfilled all obligations incumbent upon him. If this is not the case, the delivery or service period shall be extended appropriately. This does not apply if abtis is responsible for the delay.

(4) abtis shall not be liable for impossibility or delay of delivery or performance, if such impossibility or delay is caused by force majeure (e.g. natural disasters, war, civil unrest) or other events which were not foreseeable at the time of conclusion of the contract (e.g. operational disruptions of any kind, transport delays, strikes, lawful lockouts, lack of labour, energy or raw materials, difficulties in obtaining necessary official permits, official measures or the failure of suppliers to deliver, to deliver correctly or on time) and for which abtis is not responsible. If such events make delivery or performance considerably more difficult or impossible for abtis and the hindrance is not only of temporary duration, abtis is entitled to withdraw from the contract. In the case of hindrances of temporary duration, the delivery or service deadlines shall be extended or the delivery or service deadlines shall be postponed by the period of the hindrance plus a reasonable start-up period. Insofar as the customer cannot be expected to accept the delivery or service as a result of the delay, he may withdraw from the contract by immediate written declaration to abtis.

§ 9 Transfer of risk, retention of title

(1) The risk of accidental loss or accidental deterioration of the goods shall pass to the customer upon handover to the transport person (whereby the beginning of the loading process shall be decisive). This applies irrespective of who bears the shipping costs and also if the transport is carried out by the customer's own employees. If the dispatch or the acceptance is delayed for reasons for which the customer is responsible, the risk shall pass to the customer from the day on which the delivery item is ready for dispatch and abtis has notified the customer of this.

(2) If the delivery is returned as undeliverable, abtis shall not be obliged to keep the delivery for the customer, unless the customer is not responsible for the delivery delay. abtis shall be entitled to destroy or otherwise dispose of the delivery after checking the correctness of the dispatch, notifying the customer and expiry of a reasonable period for collection. The claim for remuneration by abtis remains unaffected by this, unless the delivery can be utilised otherwise. Temporary storage shall be at the user's risk.

(3) abtis retains ownership of the delivered goods until complete fulfilment of all claims of abtis from the entire business relationship with the customer, in particular until the customer has settled the balance (current account reservation).

(4) The customer is obliged to carefully store, maintain and repair the goods delivered under retention of title at his own expense and to insure them against fire, water damage, burglary and theft. The customer is obliged to notify abtis immediately of any damage to the reserved property. At the request of abtis, the insurance policy must be provided to abtis for inspection. The customer shall assign to abtis in advance all claims against the insurance company arising from the insurance contract. The assignment is accepted by abtis. If the customer has not sufficiently insured the delivery item, abtis shall be entitled, but not obliged, to insure the delivery item at the customer's expense.

§ 10 Taking Delivery

(1) If the parties have concluded a contract for work and services and the customer is obliged to accept the work and services, this must take place immediately on the acceptance date, or alternatively within two weeks of notification of readiness for acceptance by abtis. The customer may not refuse acceptance in the event of a non-essential defect. § 640 (2) sentence 1 BGB shall remain unaffected.

(2) If no acceptance is requested and the customer has used the service or part of the service, acceptance shall be deemed to have taken place after the expiry of 7 working days after the start of use, unless otherwise agreed in writing.

(3) At the request of abtis, partial acceptances shall be carried out for definable parts of the service which can be used independently or for parts of the service on which further services are based, if the parts of the service to be accepted can be tested separately. If all parts of the service have been accepted, the last partial acceptance shall also be the final acceptance

§ 11 Warranty

(1) Claims for defects on the part of the customer do not exist in the case of only insignificant deviation from the agreed quality and in the case of only insignificant impairment of usability.

(2) The customer's obligation to immediately inspect the goods and give notice of defects in accordance with §§ 377 and 381 (2) of the German Commercial Code (HGB) shall remain unaffected.

(3) If abtis' deliveries or services prove to be defective, abtis is obliged to remedy the defects at its own discretion by eliminating the defect or by making a replacement delivery. In the case of a replacement delivery, the customer shall return the defective item to abtis in accordance with the statutory provisions. The expenses necessary for the purpose of subsequent performance, in particular transport, labour and material costs, shall be borne by abtis; this shall not apply insofar as the costs increase because the delivery item is located at a place other than the place of intended use.

(4) If the supplementary performance fails, the customer can reduce the price (min-dern) or withdraw from the contract. However, there is no right of withdrawal in the case of an insignificant defect. In addition, the customer may claim damages in accordance with § 12. Further claims for defects are excluded.

(5) The limitation period for claims for material defects and defects of title is – except in the case of fraudulent intent and subject to the provisions of § 12 – 12 months, calculated from the date of delivery of the goods to the customer or from the date of acceptance if acceptance is required or agreed.

(6) Ordinary wear and tear is excluded from the warranty.

§ 12 Liability

(1) abtis shall only pay damages or compensation for futile expenses, irrespective of the legal grounds (e.g. from legal transactions and obligations similar to legal transactions, breach of duty and tort), to the following extent:

a) Liability in the case of intent, gross negligence and under guarantee is unlimited.

b) In case of simple negligent violation of an essential contractual obligation, the fulfilment of which enables the proper execution of the contract in the first place and on the observance of which the customer may regularly rely (so-called cardinal obligation), abtis is liable to the amount of the damage typically foreseeable at the time of conclusion of the contract. Otherwise, liability for simple negligence is excluded.

(2) As far as the liability of abtis is excluded or limited, this also applies to the personal liability of the employees, representatives and vicarious agents of abtis.

(3) Deviating from the above regulations, the legal regulations apply to damages from culpable injury to life, body or health and in the case of claims according to the Product Liability Act.

§ 13 Data protection

Our data protection provisions apply.

§ 14 Final provisions

(1) The legal relationship between abtis and the customer is governed by the law of the Federal Republic of Germany with the exception of the UN Convention on Contracts for the International Sale of Goods.

(2) abtis has the right to transfer the user's registration with the online service as well as all of the user's contracts concluded with the provider in whole or in part to third parties with the user's consent. The user's consent is deemed to have been granted if the user has not objected in writing within one month of notification by the provider to the user. The user shall be informed in advance of the effect of silence. For the above declarations, notification by e-mail shall suffice.

(3) The customer is not entitled to assign claims against abtis to third parties without the latter's consent. This shall not apply within the scope of application of § 354a of the German Commercial Code (HGB).

(4) The place of performance for all contractual obligations is the registered office of abtis.

(5) The place of jurisdiction for all disputes is the registered office of abtis.

(6) Should individual provisions of these GTC or parts thereof be invalid, this shall not affect the validity of the remaining GTC.