



General Terms and Conditions

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1. Area of application

- 1.1 Our general terms and conditions below (“General Terms & Conditions”) only apply in relation to “entrepreneurs” within the definition of Section 14 of the German Civil Code (“BGB”). They apply to all supply contracts and, by analogy, to all other services, especially repairs.
- 1.2 By placing the order, our customer declares that it is in agreement with the General Terms & Conditions. Our General Terms & Conditions apply exclusively; the customer’s contrary or conflicting conditions will not be recognised unless we have expressly agreed to their validity in writing. Our General Terms & Conditions apply even if we effect delivery to the customer unconditionally while aware that the customer’s conditions conflict or are contrary to our General Terms & Conditions.
- 1.3 Our General Terms and Conditions also apply to all future transactions with the customer, even if no express reference thereto is made any longer in connection with later transactions.

2. Offer and entry into contract

- 2.1 Our offers are non-binding, unless expressly declared binding in the offer. A contract is only entered into as a result of our order confirmation (in writing, in text form), unless our offer expressly states that it is binding and the customer has validly accepted that offer.
- 2.2 If the customer’s order is to be classified as an offer within the definition of Section 145 of the BGB, then we may accept it within a period of 4 weeks.
- 2.3 Information such as dimensions, weights, diagrams, assembly sketches in product catalogues and other printed materials are only approximate, but have been determined as well as possible.
- 2.4 We reserve the ownership rights and copyright in images, drawings, calculations and other documents. This applies also to written documents which are labelled as confidential. The party placing the order requires our express written consent before passing them on to third parties.

3. Prices, payment terms, securities

- 3.1 Unless otherwise agreed, our prices are “ex works” prices and do not include packaging and insurance, which will be invoiced for separately.
- 3.2 Unless otherwise stated, we will be bound by the prices contained in our offers which are designated as binding for a period of four weeks from the date of the offer.
- 3.3 Our prices do not include statutory VAT; this will be shown separately in the invoice at the statutory rate applicable on the day of invoicing.
- 3.4 Unless otherwise agreed, the delivery price is payable (without deduction) within 14 days following the date of the invoice.
- 3.5 The punctuality of the payment is determined not by the time we receive it, but rather by the time that it is credited to our account.
- 3.6 We are entitled to set off payments against older debts first; we will notify the customer of the nature of the set-off performed. If costs and interest have already accrued, we shall be entitled to use the payment to firstly satisfy costs, then the accrued interest and finally the principal debt.
- 3.7 The deduction of cash discounts requires a special written agreement. Cash discounts can only be made if the customer is not in default with other liabilities owed to us.
- 3.8 If the customer is in default of payment, we shall be entitled to charge default interest at the rate of 9 percentage points p.a. above the basic interest rate pursuant to Section 247 of the BGB (Section 288 (2) of the BGB). In the event that we are able to demonstrate that we have suffered a greater amount of loss due to the default, we are entitled to claim compensation in respect thereof. The customer remains entitled to prove that we did not sustain any loss as a result of the default, or that the actual loss was less than claimed.
- 3.9 The statutory provisions apply regarding the occurrence of default.
- 3.10 In deviation from Section 195 of the BGB, our claims for payment become time-barred in five years. Section 199 of the BGB applies with the regard to the start of the period of limitations.
- 3.11 The customer is only entitled to set-off rights if its counter-claims are determined in a final and legally-binding manner, are undisputed or have been acknowledged by us. Moreover, it is only entitled to exercise a right of retention insofar as its counter-claim is based on the same contract relationship.
- 3.12 If the delivery is made to a location outside of the Federal Republic of Germany, we are entitled to demand the provision of an irrevocable, confirmed letter of credit issued by a major bank or savings bank approved as a customs and tax guarantor in the Federal Republic of Germany, and to only make the delivery after the letter of credit has been furnished. If INCOTERMS have been expressly agreed, the definitions respectively decided and published by the International Chamber of Commerce in Paris apply.
- 3.13 We are entitled to assign claims against customers located in Germany and European Union countries to abcfinance GmbH, Kamekestraße 2 – 8, 50672 Cologne for the purpose of refinancing. The customer will be notified upon entry into the contract if such an assignment is to take place. In these cases, payments can only be made with discharging effect to abcfinance GmbH. The customer will be notified of its bank account details upon entry into the contract.
- 3.14 The period for the notification of SEPA direct debits is ten calendar days, calculated from the invoice date. Repairs

and time-based wage work are payable immediately. All payments are to be made free from fees.

4. Price changes

- 4.1 The applicable prices are the prices agreed between us and the customer.
- 4.2 If the price at the time of the delivery of the service has increased due to a change in the market price or due to an increase in the fees charged by subcontractors involved in the delivery of the service, the higher price shall apply. If this is 20% or more above the agreed price, the customer is entitled to rescind the contract. This right must be asserted without undue delay following notification of the increased price.
- 4.3 If the delivery is delayed for more than 60 days beyond the scheduled delivery date for reasons for which the customer is responsible, we will be entitled to charge the price applicable on the day of delivery.
- 4.4 Unforeseeable changes to import and export duties and charges, to exchange rates or shipment costs will entitle us to implement a price adjustment.

5. Delivery period

- 5.1 Delivery dates or periods must be confirmed in writing by us in order to be binding.
- 5.2 The delivery period commences upon receipt of the order confirmation. Delivery dates or periods are adhered to if, before these have expired, readiness for shipment has been announced or if the delivery item has left our factory.
- 5.3 Compliance with our obligations of service and delivery is conditional on timely and proper fulfilment by the customer of its own obligations, and on the clarification of all technical issues (especially the delivery of all documents and information, etc. to be supplied by the customer) and on the receipt of the security agreed or requested.
- 5.4 We are entitled to rescind the contract if despite timely covering arrangements we do not receive deliveries ourselves, or do not receive them on time or correctly, and other covering arrangements are unreasonable or have failed. Therefore, we do not bear the acquisition risk in this respect.
- 5.5 The delivery period or delivery date will be extended in the event of any labour disputes, especially strikes or lock-outs, as well as the occurrence of unforeseen impediments outside our control, e.g. operational interruptions, delays to the delivery of essential materials, insofar as such impediments clearly have a significant impact on the delivery of the delivery item. This also applies if such circumstances are experienced by sub-suppliers. The delivery period or the delivery date will likewise be extended in all cases of force majeure. The delivery period will be extended in accordance with the duration of such measures and impediments. We will notify the customer as soon as possible about the start and end of such impediments.
- 5.6 We are entitled to make partial deliveries and render partial services in respect of a complete product within the specified delivery period, provided this does not detrimentally impact the intended use.
- 5.7 If the customer is in default of acceptance or is in breach of performing its other duties of cooperation, then we are entitled to claim compensation for our losses arising therefrom, including reimbursement of any additional costs we have incurred. In such case, the risk of accidental loss or deterioration of the delivery item passes to the customer at the time at which it became in default of acceptance or payment. Other claims are hereby reserved.
- 5.8 If there is a delay with the delivery, or if delivery is rendered impossible due to our fault, the customer will only be entitled to rescind the contract if it first grants us a grace period of at least four weeks in writing, declaring that it will refuse performance after the expiry of that period.

6. Scope of delivery

- 6.1 The scope of the delivery is defined by our written order confirmation.
- 6.2 We hereby reserve the right to make construction or design changes in response to technological improvements or legislative requirements occurring during the delivery period, provided the delivery item is not significantly modified thereby and the changes are reasonable for the customer.

7. Cancellation costs and returns

- 7.1 If the customer cancels a submitted order without justification, irrespective of the possibility of claiming additional damages we are entitled to demand 10% of the sales price as compensation for the costs of processing the order and for the lost profit.
- 7.2 Returns are made at the customer's risk and expense. The customer will bear expenses which we incur as a result of the return and to which we have not agreed. Any necessary refurbishment and/or repackaging needed due to changes or damage not attributable to us may be claimed by us by charging the flat-rate compensation specified in section 7.1 above.
- 7.3 If the customer sends the goods back to us outside the legal or contractual return rights granted to the customer, we reserve the right to charge a €25.00 administrative fee for each unauthorised return. The customer has the right to prove that a lower amount of loss has occurred. This provision does not apply if the customer sends the goods back in the framework of the statutory defect right.

8. Packaging and consignment

- 8.1 Packaging charges will be invoiced for separately. The packaging type will be selected in our best discretion.
- 8.2 We will only take back supplied packaging in accordance with our statutory obligations; packaging may not be returned for deliveries made abroad. The take-back of this material does not include return deliveries and the costs thereby incurred. If the customer is not a private end consumer within the definition of the Packaging Ordinance, the customer will be charged for the costs of disposing of the packaging on the basis of our own costs thereby incurred. If the packaging is not returned to us, we will not contribute to or assume the disposal costs.
- 8.3 If the customer requests transport, this has to be agreed upon separately. The type of shipment takes place in the usual scope, the transport company is instructed in our best discretion. If the customer so requests, special transport insurance can be taken out. The entire costs of the transport are borne by the customer.
- 8.4 If a collection date is agreed between the parties and the customer fails to comply with the collection date without our permission, we will charge it the storage costs.

9. Transfer of risk

- 9.1 Unless something to the contrary arises from the order confirmation, delivery is agreed to be “ex works”. Collection is made by the customer or a forwarder instructed by the customer itself. The risk of accidental loss is transferred to the customer upon notification of readiness for shipment.
- 9.2 If the transport by us is agreed upon, the risk is transferred to the customer upon handover of the goods to the forwarder. Section 447 (1) of the BGB applies.

10. Warranty

- 10.1 The period of limitations for claims and rights due to defects in our services is one year – irrespective of the legal basis. However, this does not apply to the cases defined by Section 438 (1) nr. 1 of the BGB (defective legal title to immovable property), Section 438 (1) nr. 2 of the BGB (buildings and items intended for buildings), Section 445b of the BGB (right of recourse in the delivery chain) or Section 634 a (1) nr. 2 of the BGB (buildings or works based on the delivery of design and supervisory services). The exceptional cases specified in sentence 2 above are subject to the statutory period of limitations.
- 10.2 The limitation periods pursuant to 10.1 hereof also apply to all compensation claims against us where these are connected with the defect – irrespective of the legal basis of the claim.
- 10.3 However, the limitation periods pursuant to 10.1 and 10.2 apply with the following proviso:
- The limitation periods generally do not apply in the event of intentional behaviour or the malicious concealment of a defect or in the event that we have given a guarantee in respect of the quality of the delivery item.
 - The limitation periods for compensation claims do not apply in the case of a grossly-negligent breach of duty, in the case of culpable breach of key contract obligations – not connected with the delivery of a defective article or the delivery of defective works, in cases of a culpably-caused loss of life, personal injury, damage to health, or for claims pursuant to the Product Liability Act. The periods of limitations for compensation claims also apply for the reimbursement of futile expenditure.
- The time-barring of the claims pursuant to a) and b) above is determined in accordance with the statutory provisions.
- 10.4 The period of limitations for all claims starts to run upon the delivery, or upon formal acceptance in the case of the performance of work.
- 10.5 Unless otherwise expressly stated, the statutory provisions regarding the start of the period of limitations, the suspension of the expiry of the period of limitations, the suspension and the recommencement of periods remains unaffected.
- 10.6 The aforementioned provisions apply *mutatis mutandis* to claims for damages not connected with a defect; 10.1 sentence 1 applies for the period of limitations.
- 10.7 The provisions above do not entail any change to the burden of proof which might disadvantage the customer.
- 10.8 Claims for defects are not valid for minor deviations from the contractually agreed quality, or if the fitness-for-purpose is only insignificantly impaired. In no event are we obliged to make a new delivery or to deliver a new product in the framework of subsequent performance. The customer’s demand for subsequent performance must be made in writing. We must be granted a period of at least two weeks for the subsequent performance. The subsequent performance is deemed to have failed following an unsuccessful second attempt at subsequent improvement, and the customer will have the right to reduction in price or – if subject of the warranty does not concern construction works – it may opt to rescind the contract. The statutory cases of the dispensability of an obligation to grant additional time remain unaffected. Sections 445a and 445b of the BGB (entrepreneur’s right of recourse) remain unaffected.

- 10.9 The customer will bear the increased costs necessary for the purpose of the subsequent performance insofar as such increased costs are incurred through our works/services having been relocated to somewhere other than the customer's place of business, unless this relocation is consistent with the intended use. Section 445a of the BGB (entrepreneur's right of recourse) remains unaffected.
Irrespective of our other claims, in the event of an unjustified defect complaint, the customer must reimburse us for the costs of our inspection and – where demanded – the elimination of the defect.
- 10.10 Defects must be reported to us in writing without undue delay after receipt of the goods or discovery of the defect in question. The customer is not entitled to return products to us without prior approval. The customer must select the most cost-efficient method of delivery.
- 10.11 No warranty claims exist insofar as the defects complained about by the customer are attributable to:
- using the product outside or contrary to its intended use, or operating the product outside its specifications
 - failure to observe the instructions on use, maintenance or installation
 - improper handling or neglected maintenance
 - use of non-approved spare parts or accessories
 - product modifications or conversions performed by customer or third parties
 - usual wear and tear or other changes to or deterioration of the product attributable to:
 - * external influences (e.g. knocks, blows, mechanical impacts)
 - * water, fire
 - * improper storage, handling or installation
 - * unusual ambient conditions, especially conditions upon arrival or operating conditions at the installation location or force majeure
 - * calcification or corrosion resulting from neglected maintenance or improper handling
 - * contaminants in the air and water supply
 - * unusual or impermissible chemical or electrical influences
 - * soiling, discolouration or wear and tear on padding

11. Liability/disclaimer

- 11.1 We are liable in accordance with the statutory provisions in cases of intentional behaviour or gross negligence by our representatives or vicarious agents, as well as for culpably-caused loss of life, personal injury or damage to health. Otherwise we are liable only in accordance with the Product Liability Act, for the negligent breach of key contractual obligations whose fulfilment is what makes the proper performance of the contract possible at all and on whose fulfilment the contract partner may usually rely (cardinal obligation), or insofar as we, as the seller, maliciously conceal the existence of a defect, or to the extent that we have given a guarantee regarding the quality of the delivery item. However, the compensation for the breach of cardinal obligations is limited to the foreseeable harm typical for this type of contract, unless one of the other exceptions listed in sentence 1 or sentence 3 of this Section 11.1 also exists.
- 11.2 The provisions in Section 11.1 above apply to all compensation claims (especially for compensation in addition to performance and compensation in lieu of performance), irrespective of the legal basis, especially due to defects, breach of obligations arising from the contractual relationship or tort. They also apply for compensation for futile expenditure. Liability for default is determined pursuant to Section 11.3 of these General Terms & Conditions; liability for impossibility is determined pursuant to Section 11.4 of these General Terms & Conditions.
- 11.3 The provisions in Sections 11.1 to 11.2 above do not entail any change to the burden of proof to the customer's detriment.

12. Retention of title

- 12.1 We deliver exclusively subject to a prolonged retention of title. We retain our title to the purchase item until the customer has fulfilled all our claims against it arising out of the business relationship. The retention of title also applies to claims arising from previous or future legal transactions. If a current account arrangement exists between the customer and us, we retain the title to the purchase item until we have received all payments under the existing current account arrangement; the reservation applies to the acknowledged account balance.
- 12.2 In the event of contract-breaching behaviour by the customer, particularly in the event of default of payment, we are entitled to take the purchase item back. If we retake possession of the purchase item, this constitutes rescission of the contract. After taking the purchase item back, we are entitled to dispose of it; having deducted the reasonable costs of sale, the proceeds of the sale will be set off against the customer's liabilities.
- 12.3 The customer is obliged to treat the purchase item with care; in particular, it is obliged at its own cost to sufficiently insure the item at replacement value against fire damage, water damage and theft losses. In the event that servicing and inspection works are required, the customer must perform these in a timely manner at its own expense. We are entitled but not obliged to insure delivery items against theft, breakage, fire, water or other such damage at the customer's expense where said goods are subject to a retention of title, in the event that customer

has not demonstrably arranged insurance of this kind and assigned its claims under this policy to us. If the customer has already arranged insurance, it hereby assigns to us all rights under the insurance contracts as well as its claims against the insurer. We hereby accept these claims.

- 12.4 The customer must inform us promptly in writing of any third-party attachments or other rights, in order that we can initiate an action pursuant to Section 771 of the German Code of Civil Procedure ("ZPO"). If the third party is not able to reimburse us for the court and out-of-court expenses of a legal action pursuant to Section 771 of the ZPO, the customer is liable to us for the resulting difference.
- 12.5 The customer is entitled to resell the purchase item in the ordinary course of business; however, it hereby assigns, up to an amount equal to our final invoiced total (including VAT), all claims arising for it out of the onward sale against its customer or third party, irrespective of whether or not the purchase item has been resold with or without reprocessing. We hereby accept the assignment of these claims. The customer remains entitled to collect this claim even after the assignment. This does not affect our authority to collect the claim ourselves. However, we hereby undertake not to collect the claim as long as the customer fulfils its payment obligations from the proceeds it receives, and that it is not in default of payment, and in particular that no application is made for the commencement of insolvency proceedings or the criteria for the commencement of insolvency proceedings fulfilled. But if this is the case, we may demand that the customer inform us of its assigned claims and the respective debtors, provide us with all information required for collection, supply us with the appropriate documentation and inform debtors (third parties) of the assignment.
- 12.6 The customer is not permitted to pledge the delivery items or transfer them by way of security. Enforcement officers (bailiffs) and any third party must be informed of our ownership.
- 12.7 Any processing or transformation of the purchase item is always performed by the customer on our behalf. If the purchase item is processed with other articles which do not belong to us, we acquire a co-ownership share in the new object equal to the proportion of the value of the purchase item (final invoiced amount, including VAT) compared to that of the other processed articles at the time of processing. Objects formed through the reprocessing are otherwise subject to the same provisions applicable for the purchase item delivered.
- 12.8 If the purchase item is inextricably combined with other articles which do not belong to us, we acquire a co-ownership share in the new object equal to the proportion of the value of the purchase item (final invoiced item, including VAT) compared to that of the combined articles at the time of processing. If the combination is performed in such a way that the customer's article is to be deemed the main article, it is hereby agreed that the customer assigns us co-ownership proportionally. The customer will, on our behalf, protect the sole or co-ownership established in this way.
- 12.9 In order to secure our claims against it, the customer also assigns to us its claims against any third party which arise by connecting the purchased item to real property. We hereby accept this assignment.
- 12.10 We hereby undertake, upon request by the customer, to release the collateral security to which we are entitled, to the extent that the realisable value of our collateral security exceeds the claims secured by more than 10%; the selection of the securities to be released will be made at our discretion.
- 12.11 If the customer is in breach of its obligations, especially if it is in default of payment, having granted a grace period for compliance we are entitled to demand the surrender of the delivery item or the new article and/or where necessary to rescind the contract, having granted a grace period; the customer is obliged to release the article as demanded. The demand for surrender of the delivery item/new article does not constitute a declaration of rescission on our part.
- 12.12 If the law prevailing at the customer's registered address does not enable rights to be secured by way of a retention of title, the customer is obliged to provide us with a financially equivalent form of security which can be realised under the legal regulations applicable at the customer's registered address and which affords us rights of recourse against the customer's own customers in the event of the former becoming insolvent or unable to service its debts. Irrespective of the validity of the other means of security used, the retention of title or the assignment of the customer's claim is deemed to be agreed in any case.
- 12.13 If the customer is in default of payment or becomes completely or partially insolvent or if it breaches the contract in any other way, we are entitled – having issued a reminder and granted a grace period for payment – to demand the surrender of goods owned by us.
- 12.14 The customer will bear the costs of taking back or commercially realising goods which are subject to retention of title. Reserving our right to claim more extensive loss, we are entitled to demand 10% of the proceeds of the realisation as flat-rate compensation to cover the expenses. The customer is entitled to prove a lower compensation claim.

13. Industrial property rights and copyright

- 13.1 In the event that claims are made against the customer for breach of an industrial property right or copyright because it is using our goods/services, we hereby undertake to procure for it the right to continue said use. This is conditional on the customer promptly notifying us in writing of such third-party claims and reserving all defensive and out-of-court measures to us. If, under these conditions, it is not possible to enable continued use of our goods/services on commercially reasonable terms, it is deemed agreed that we will, at our choice, either modify or replace the goods/services in order to eliminate the defective title or we will take back the goods/services and reimburse the price paid to us, having deducted an amount based on the age of the goods/services.
- 13.2 Claims against us are excluded if any infringement of rights arises because our goods/services are being used in a manner not approved by us, or if there are used in combination with third-party goods/services. The provisions in

Section 11 hereof also apply.

- 13.3 We are not liable for rights infringements caused by goods/services delivered in accordance with the customer's design documents or other specifications.

14. Rights in software

- 14.1 The customer is granted a non-exclusive, temporally-unlimited right of use in software and software modifications, extensions and upgrades as well as accompanying documentation belonging to our scope of delivery or subsequently supplied. These materials are solely for the purpose of running the supplied services within the customer's company. The right of use is extinguished upon loss of the goods (hardware).
- 14.2 The customer is only entitled to transfer the right of use in the software if this is done in connection with the resale of the associated delivered goods (hardware). In this case, the customer must delete the software it still retains along with any back-up copies it has made or it must provide these to its buyer. The buyer will also be provided with the original data carriers and documentation.
- 14.3 The customer is granted no other rights in the software and documentation other than those specified in Section 14.1 hereof. In particular, we or our contractors (firms or individuals) will remain the copyright holder. Unless it has our prior written permission, the customer is not permitted to modify, copy or otherwise reproduce the software, documentation or any subsequently delivered modifications, extensions and upgrades, unless such reproduction is performed for the purpose of making a back-up copy, which is labelled as such.
- 14.4 Decompilation of the delivered programming code into another code form is permitted subject to the prerequisites in Section 69 e of the Copyright Act ("UrhG"), for the purpose of establishing interoperability between the contractual software and independently-procured software. The interface information necessary for interoperability can be obtained in return for a small fee.
- 14.5 It is not permitted to simultaneously load, store or use the software on more than one piece of hardware. If the customer wishes to run the software on more than one hardware configuration simultaneously, it must purchase a corresponding number of programme packages.
- 14.6 The customer is obliged to implement suitable precautions to prevent unauthorised third-party access to the software and the documentation. The supplied original data carriers and the back-up copies are to be kept in a secure location protected against third-party access. The customer will indemnify us from any liability for damage arising from breach of this obligation. The customer's employees must be clearly instructed to comply with these contractual conditions and the provisions of copyright law.

15. Take-back and disposal duty in accordance with the Electrical and Electronic Equipment Act ("ElektroG")

- 15.1 Pursuant to the ElektroG, we are obliged to provide a reasonable facility for the return of old devices from users other than private households and for old devices whose quality and quantity is not comparable with the old devices customarily found in private households, and we are required to dispose of said old devices. This does not apply to equipment put on the market prior to 13.08.2005.
- 15.2 We fulfil this obligation in our capacity as the producer or distributor within the terms of the statutory obligations. The take-back of devices is conditional on the equipment being returned to us (Freiburger Strasse 45, 88400 Biberach an der Riss, Germany) at the customer's expense and risk. The equipment will not be collected, nor will collection points be established. The dismantling of equipment is solely the customer's responsibility. Contaminated equipment must therefore be disinfected by the customer in advance.
- 15.3 The obligations pursuant to 15.1 and 15.2 above do not apply to old devices put on the market as new equipment prior to 13.08.2005.

16. Place of performance

Unless otherwise stated in the order confirmation, the place of performance is our head office (Biberach/Riss).

17. Legal venue

If the customer is a merchant, the legal venue is the location of our head office (Biberach/Riss). However, we are also entitled to sue the customer in the court which has jurisdiction over its domicile.

18. Applicable law

The law of the Federal Republic of Germany applies, excluding the application of the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

19. Saving clause

If a provision is or becomes invalid, the validity of the other provisions will not be affected thereby. The parties hereby undertake to replace any invalid provision with a valid one which comes closest to the purpose of the invalid provision.