

Abox42 GmbH – Standard Terms and Conditions

1. **Abox42 GmbH contact and register data**

Abox42 GmbH (hereinafter "**Abox42**"), domiciled in Karlsruhe, is registered in the company register of the Mannheim Local Court (*Amtsgericht Mannheim*) under HRB 714294. Its address is: Amalienbadstr. 41, 76227 Karlsruhe, Germany.
2. **Scope of these standard terms and conditions /customer's standard terms and conditions**
 - 2.1. These standard terms and conditions (hereinafter "**TCs**") apply to all goods and/or services provided by Abox42 to an Abox42 customer (hereinafter "**Customer**").
 - 2.2. Terms and conditions of the Customer deviating from, contrary to or amending the TCs shall only become part of the relevant contractual relationship entered into between the parties if such terms and conditions have been expressly acknowledged by Abox42 in writing. The fact that Abox42 is aware of the Customer's standard terms and conditions does not make them a constituent part of the contract.
3. **Characteristics of goods and/or services to be provided by Abox42**
 - 3.1. The goods and/or services to be provided by Abox42 only include the elements detailed by Abox42 in its respective specifications (*Leistungsbeschreibung*).
 - 3.2. If any hardware supplied by Abox42 has software installed on it which is not specified in writing in a contractual document concluded with the Customer, the Customer may have to pay the respective pre-supplier a separate fee so as to acquire the right to use such software.
 - 3.3. The type and quality of Abox42's goods and/or services are as set forth in the specific agreements concluded between Abox42 and the Customer in the relevant case.
 - 3.4. To the extent that (i) there are no agreements between Abox42 and the Customer on the characteristics or quality of the goods and/or services to be provided by Abox42 and (ii) Abox42's goods and/or services have to be tailored to the Customer's requirements before being delivered to Abox42's Customer, the characteristics of such goods and/or services shall be specified based on the test scenarios that Abox42 and the Customer have agreed upon for such goods and/or services.
 - 3.5. The point in time at which the contract was concluded shall be deemed to apply with regard to the characteristics and quality of Abox42's goods and/or services; in the cases set forth under section 3.4 said characteristics and quality shall be subject to the point in time when the test is carried out. To avoid any doubt it is noted that subsequent modifications to technical features (including technical protocols and goods or services of third-parties with which the goods and/or services to be provided by Abox42 are contractually required to be compatible) shall not cause any obligation of Abox42 to change its goods and/or services. Separate orders shall be placed for adjusting Abox42's goods and/or services to such subsequent modifications and shall be remunerated separately.
 - 3.6. To avoid any doubt section 3.5 also applies to maintenance work to be rendered by Abox42.
4. **Customer's right of use**
 - 4.1. Unless specifically agreed otherwise, the Customer is granted a non-exclusive non-transferable right to use any copyrights and industrial property rights (i.e. trademarks, patents, utility models and design patents, which have been registered or which are pending) contained in the goods and/or services provided by Abox42 for the purpose of its internal operations.
 - 4.2. The right of use pursuant to section 4.1 is subject to the condition precedent of the Customer having settled in full the amounts owed for the relevant goods and/or services to be provided by Abox42.
5. **Copyright and industrial property rights**
 - 5.1. The Customer shall retain full title to its copyrights and industrial property rights. The Customer shall grant Abox42 the non-exclusive non-transferable right to use said copyrights and industrial property rights to the extent necessary for Abox42 to provide the services to be performed.
 - 5.2. Subject to section 3 Abox42 shall retain full title to its copyrights and industrial property rights.
6. **Partial supply**

Abox42 may effect partial deliveries unless the Customer cannot be reasonably expected to accept partial delivery when objectively taking into account the Customer's legitimate interests.
7. **Reservation based on proper self-supply**

Abox42 shall only be bound to effect correct and prompt delivery subject to correct and prompt delivery by its own suppliers.
8. **Supply of hardware**
 - 8.1. **Transport costs and transfer of risk**

Unless specifically agreed otherwise, Abox42 shall supply hardware EXW according to Incoterms 2010.
- 8.2. **Reservation of title**

The Customer shall not acquire title in hardware bought from Abox42 until the purchase price has been paid in full.
9. **Software supply**
 - 9.1. **Supply of software**
 - 9.1.1. Unless specifically agreed otherwise, Abox42 shall only make software available in the executable object code.
 - 9.1.2. Abox42 shall provide software and accompanying user documentation on data carriers, by download via the internet or by email.
 - 9.2. **Duties of the Customer**

The Customer shall only use software supplied by Abox42 on hardware that meets the specifications agreed upon between Abox42 and the Customer.
10. **Work and services to be rendered by Abox42**
 - 10.1. **Payment and billing**

Unless specifically agreed otherwise, Abox42's work and services shall be paid on time and material basis. Abox42 may invoice work and services, including specific milestones reached, which it has performed in a given month at the end of the respective month. This shall not affect Section 17.
 - 10.2. **Testing and acceptance of work performed**
 - 10.2.1. After completing the work to be performed, Abox42 shall make such available to the Customer for testing. The Customer shall test the work within 14 days. Said tests shall be subject to the test scenarios mutually agreed upon by Abox42 and the Customer.
 - 10.2.2. The Customer shall issue acceptance of the work performed within the 14-day period pursuant to section 10.2.1 in writing or by email. The Customer may not withhold acceptance on the grounds of immaterial defects. If, after expiry of the initial period of 14 days as set forth in section 10.2.1, the Customer again fails to accept the work performed within a reasonable grace period granted by Abox42, acceptance shall be deemed to have been issued at the end of said grace period.
 - 10.2.3. Abox42 may request partial acceptance for specific milestones which have been reached.
 - 10.3. **Documentation**

Abox42 shall provide the Customer with documentation for the work performed as agreed in each individual case. No other documentation shall be required from Abox42 for the work performed.
11. **ASP-/SaaS services rendered by Abox42**
 - 11.1. **Availability**

If Abox42 provides Application Service Providing or Software as a Service (all these services are hereinafter collectively referred to as "**SaaS Services**") and unless specifically agreed otherwise, the SaaS Services shall meet Availability of 97% of the Operating Year at the outbound router of the computer center from which they are provided. For the purpose of these TCs "**Availability**" shall be deemed to mean the actual time available as a proportion of a total Operating Year. For the purpose of these TCs "**Operating Year**" shall be deemed to mean a 12-month period as of which the relevant SaaS Services are made available and any successive 12-month period thereafter. The Operating Year does not include interruptions for maintenance, installation or reconstruction for which Abox42 has given at least four days' advance notice, provided that (i) such interruptions occur only on Sundays between 00:00 and 08:00 hours and (ii) not more than two of such interruptions occur per calendar month.
 - 11.2. **Term**

Unless specifically agreed otherwise, the term of an SaaS Service is indefinite. The SaaS Service may be terminated with three months' notice prior to the end of an Operating Year.
12. **Changes rendered to hardware and software by customer**
 - 12.1. Unless specifically agreed otherwise, the Customer is not authorized to modify hardware or software supplied to it by Abox42, to install additional software on hardware supplied to it by Abox42 or to remove software which was pre-installed on such hardware upon delivery. This provision applies irrespective of whether the hardware or software supplied by Abox42 was developed by Abox42 itself or by third parties.
 - 12.2. Abox42 herewith expressly informs the Customer that any unauthorized modification of the software which Abox42 has supplied to it constitutes an infringement of copyright which may be a criminal offence and which may entitle the copyright owner to assert injunctive relief or damage claims. Therefore, the Customer may in particular not manipulate or remove any Digital Rights Management (DRM) software which is pre-installed on the hardware supplied by Abox42.
 - 12.3. The Customer shall indemnify Abox42 for all third-party claims arising from a breach of the Customer's duties under section 12.1. The Customer shall also reimburse Abox42 for any damages which arise from any such breach of duty. The foregoing two sentences shall not apply to the extent that such breach of duty under section 12.1 is beyond Customer's reasonable control.

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13. Abox42's liability for defects

Abox42 shall be liable for defects in quality and title as provided for by statute but subject to the following provisions.

- 13.1. Unless specifically agreed otherwise, Abox42's liability for defects in title shall be limited to such defects in title which prevent Abox42's goods and/or services being used in the Federal Republic of Germany for the purpose as stated in the contract.
- 13.2. The Customer shall report any defects without undue delay after discovery.
- 13.3. Abox42 shall remedy any defects by subsequent performance within a reasonable period. Abox42 may, at it sees fit, effect said subsequent performance by remedying the defect or by supplying a replacement.
- 13.4. The Customer shall assist Abox42 in remedying the defect, in particular pursuant to section 16 of these TCs.
- 13.5. This contract excludes the Customer's right to remedy the defects or have them remedied and to demand a reimbursement of the necessary expenditure thereby incurred as provided for under § 637 German Civil Code (*Bürgerliches Gesetzbuch*, referred to hereinafter as the "BGB").
- 13.6. In case a service provided by Abox42 is subject to tenancy law and such service contains a defect when such service is made available to the Customer, Abox42 shall, notwithstanding § 536a (1) BGB, only be liable for damages associated with such defect if Abox42 is responsible for such defect. Abox42's liability in the cases detailed under section 14.3 shall remain unaffected.
- 13.7. The Customer may only demand compensation or reimbursement of defect-related wasted expenditure subject to section 14.
- 13.8. The statute of limitation for Customer's claims based on defects is 12 months. The foregoing shall not apply wherever Abox42 has fraudulently concealed a defect or guaranteed specific qualities, nor shall it apply to damages arising out of loss of life, bodily injury or damage to the health of a person or claims under the German Product Liability Act (*Produkthaftungsgesetz*).
- 13.9. To avoid all doubt, Abox42 will not accept liability for defects contained in products provided by the Customer.

14. Abox42's general liability

- 14.1. In the event of intent or gross negligence Abox42 shall be liable for damages or reimbursement of wasted expenditure in all cases of contractual and non-contractual liability as stipulated in the statutory provisions.
- 14.2. In all other cases, unless agreed otherwise in section 14.3, Abox42 shall only be liable for breach of a contractual duty, fulfillment of which is a prerequisite for proper execution of the contract and which the Customer can regularly expect to be fulfilled ("cardinal duty"), with such liability being limited to typical and foreseeable damages.
- 14.3. Abox42's liability for damages (i) arising from loss of life, bodily injury or damage to health, (ii) under the German Product Liability Act or (iii) arising from guarantees regarding the quality or durability of the goods and/or services delivered shall remain unaffected by the limitation of liability pursuant to section 14.2.

15. Duties of the Customer to collaborate

The Customer shall collaborate as required to enable Abox42 to supply the goods and/or services hereunder at its own expense.

16. Facilitating software updates

- 16.1. The Customer shall ensure that Abox42 is in a position to install software updates via the internet on the hardware supplied by Abox42 which is located at the Customer's premises. For this purpose the Customer shall connect the hardware concerned to the Internet and perform the necessary update steps according to Abox42's instructions or ensure that the end-customer performs such update steps accordingly.
- 16.2. Wherever a software update on hardware supplied by Abox42 is not technically possible via the Internet, the Customer shall grant Abox42's staff access to the premises at which the hardware is located during its usual business hours for a software update.
- 16.3. The Customer shall oblige any contractual partners who acquire the Abox42 hardware from the Customer in accordance with sections 16.1 and 16.2 such that Abox42 can install updates on the hardware even after the Customer has resold the hardware. The foregoing shall not apply in case a contractual partner of the Customer acquires the hardware in its capacity as a consumer as defined in § 13 BGB.

17. Remuneration and terms of payment

- 17.1. The remuneration agreed upon between Abox42 and the Customer is subject to respective applicable value-added tax and customs charges.
- 17.2. The Customer may not deduct any withholding tax for which it is liable from the remuneration payable to Abox42. In the event that the Customer has an obligation to pay withholding tax with respect to amounts payable to Abox42, the Customer shall (i) declare and remit such withholding tax in due time to the competent tax office, (ii) provide Abox42 with evidence that such tax has been paid in due time and (iii) pay Abox42 the amount with respect to which

the withholding tax is due in the full amount agreed, i.e. disregarding the withholding tax.

- 17.3. Unless otherwise agreed, Abox42's invoice shall be settled within 14 days of receipt without deductions.
- 17.4. If the costs incurred by Abox42 in providing a service owed to the Customer under a contract for the performance of a continuing obligation increase, Abox42 may accordingly increase the remuneration due for such service with effect from the beginning of the next calendar year subject to three months' prior written notice. Abox42 may not use such increases in remuneration to increase its profit margin.

18. Import and export controls

- 18.1. The Customer shall assume sole responsibility for complying with import or export restrictions which may apply to the acquisition or resale of Abox42's goods and/or services by the Customer.
- 18.2. If the Customer needs an import or export license to acquire or resell goods and/or services provided to it by Abox42, responsibility for obtaining such license in due time lies solely with the Customer.

19. Confidentiality

- 19.1. Wherever Abox42 and the Customer have not entered into a separate confidentiality agreement the following shall apply:
 - 19.1.1. The parties shall treat all confidential information provided by one party to the other confidentially for an indefinite period.
 - 19.1.2. "Confidential Information" shall be deemed to mean any information which is either marked confidential or the confidentiality of which is inherent in the nature of the information, including without limitation business and trade secrets as well as technical documentation for software (other than user manuals) and software interfaces which Abox42 makes available to the Customer.

The term Confidential Information shall be deemed not to include information which (i) was already known to the receiving party before receiving it from the other party, (ii) the receiving party had already developed independently without recourse to the confidential information of the other party, (iii) the receiving party received from a third party which was not subject to any disclosure restrictions, (iv) was or becomes generally known without the fault or involvement of the receiving party or (v) must be disclosed pursuant to mandatory statutory requirements, court or official orders, provided that the receiving party informs the other party in writing of the respective obligation without undue delay and grants such party sufficient opportunity to take legal steps against such disclosure.
- 19.2. As a prerequisite for Customer to use certain goods and/or services delivered by Abox42, Customer might be required to enter into separate confidentiality agreements with specific pre-suppliers. In such case Abox42 will notify the Customer accordingly in advance.

20. Offsetting / right of retention

- 20.1. The Customer may not offset claims against Abox42's, unless such claims are undisputed or have become *res judicata*.
- 20.2. The Customer shall not be entitled to refuse performance or assert a right of retention, unless its claim has been acknowledged in writing by the Customer or has become *res judicata*.

21. Assignment

The Customer may assign its rights under contracts with Abox42 to third parties only subject to Abox42's prior written consent.

22. Form and amendments to agreements

Any agreements entered into by Abox42 and the Customer must be in writing. Any amendment to any such agreement must be in writing; this also applies to any amendment to this requirement on written form.

23. Severability

Should any provision of any agreement the parties have entered into be or become invalid or unenforceable, the validity or enforceability of the other provisions of such agreement shall not be affected thereby.

24. Venue

If the Customer is a merchant, a legal entity under public law or a public-law special fund or if the Customer has its registered office outside the Federal Republic of Germany, the legal venue shall be Karlsruhe, Germany. This shall not affect any diverging exclusive legal venue.

25. Applicable law

The TCs as well as any other agreement entered into between the parties shall be governed by and construed in accordance with the laws of the federal Republic of Germany without regard to the UN Convention on the International Sale of Goods (CISG) or to the principles of conflict of laws.

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