

General Terms and Conditions for Delivery and Services of Abel Mobilfunk GmbH Co. KG

§ 1 - Definitions, Application, General Information

1. The following General Terms and Conditions for Delivery and Services (hereinafter referred to as `AGB`) apply to
 - all supplies and services on the basis of purchase, work and service (*Werkvertrag*) and work supply (*Werklieferungsvertrag*) contracts and
 - offers for the conclusion of such contracts by Abel Mobilfunk GmbH Co. KG to customers defined as entrepreneurs under § 14 German Civil Code.
2. These AGB shall also apply to any future contracts with the customer regarding the subject matter of supplies or services provided by ourselves, without having to make reference to these AGB in every individual contract and without having to expressly agree on these AGB in every individual contract or agreement.
3. Any General Terms and Conditions (GTC) of our customers that differ from, conflict with or complement our AGB shall only become an integral part of the contract, if and to the extent that we have expressly agreed to them in writing.

This requirement of approval shall apply in every case, e.g. also in cases where we, with knowledge of the customer's General Terms and Conditions, execute delivery and services without reservation.

4. We hereby object to any confirmations of orders or counter confirmations by the customer referring to the customer's General Terms and Conditions.
5. References to the validity of statutory regulations shall only serve the purpose of clarification. Statutory regulations shall therefore also apply without such clarification unless they are changed by our AGB.

§ 2 – Conclusion of contract

1. Our offers are without obligation and non-binding unless a binding agreement is expressly concluded in writing. This shall also apply, if we have provided catalogues, product descriptions or technical documentation (e.g. drawings, plans, estimates, calculations) – also in an electronic form – to the customer before conclusion of the contract.
2. The order of goods or services by the customer shall be deemed as a binding contractual offer, unless otherwise stipulated in the order or in other agreements.
3. We are entitled to accept the customer's contractual offer within two weeks upon receipt. Acceptance may be effected in writing (e.g. by confirmation of receipt) or by delivery or rendering of services to the customer.

4. Our employees are not authorized to make statements deviating from the contents of the contract signed with the customer.
5. We reserve ourselves the right to make customary alterations of a technical or optical nature. Such alterations shall not constitute a deviation from the order insofar as they are reasonable for the customer.
6. In case of doubt, products or types stated in our descriptions of services are not binding, they serve as examples and may be replaced by technically corresponding products insofar as this is reasonable for the customer.
7. For their validity, verbal additional agreements and changes of contract shall be subject to written approval.

§ 3 – Customer's obligation to co-operate for performance of our services

1. The documents and information to be provided by the customer required for performance, shall be provided to us free of charge and in time.
2. The customer shall maintain the general order at the construction site and manage the cooperation of different businesses. The customer shall bring about the required permits and authorizations under public law – e.g. under building law, traffic law, water law, commercial law.
3. The customer shall provide to us for use or shared use and free of charge:
 - a) the required storage and work places at the construction site,
 - b) existing access roads and sidings,
 - c) water and electricity in for constructions commonly required quantities.

§ 4 – Delivery and performance, damages, delay

1. In case of doubt, dates for delivery and performance of services shall be considered non-binding.
2. Binding dates for delivery and performance of services shall be subject to written agreement.
3. An adherence to agreed delivery and service deadlines shall be subject to the customer performing all contractual obligations required for this in time and properly; this refers in particular to providing us in time with all the required documents, permits and releases and the timely and proper performance of advance services to be rendered or commissioned by the customer.
4. If this is not done and we incur extra expenses, for example due to prolonged maintenance of a project, the customer shall pay compensation for these to us.
5. Notwithstanding other conditions, we shall not be considered in default, even in the event of

binding agreements on dates of delivery and service, without customer's reminder.

§ 5 – Obstructions, interruptions, force majeure

1. In the event of obstructions or interruptions with regard to deliveries and services rendered by us, which are due to the following:
 - circumstances that fall within the customer's sphere of risk,
 - strike or lockout ordered by the employers' trade association at our company or a company working directly for us or
 - force majeure or other circumstances we cannot avoid,

the agreed dates of delivery and services shall be extended. An extension will be calculated on the basis of the duration of the obstruction or interruption taking into consideration an adequate amount of time for resuming the supplies and services and possible postponement of performance to a less favorable season.

2. The same shall apply to a deadline set by the customer for rendering delivery and/or services, in particular to extensions as defined under §§ 281 sec. 1, 323 sec. 1 German Civil Code.
3. If performance of our delivery or services is interrupted for a period of time that is anticipated to be longer without the performance of our delivery or services becoming permanently impossible, the services rendered shall be calculated according to the contractual prices and expenses compensated that we have already incurred and which are included in the contractual prices for the delivery or services not yet performed.
4. If an interruption persists for more than 3 months, either party may terminate the contract in writing after expiry of this period. Invoicing will be done according to fig. 3.

§ 6 – Place of delivery and passing of risk for deliveries

1. Place of performance and delivery for deliveries shall be EXW (Engelsberg).
2. The risk of accidental loss and accidental deterioration of the goods shall pass to the customer upon handing over the delivery at the place of performance and delivery.
3. If, upon customer's request, we ship the sold goods to a place different from the place of performance and delivery, the risk shall pass to the customer as soon as we pass the matter to the carrier, the freight forwarder or another person or institution determined to perform shipment or, if shipment takes place using our own vehicles, as soon as we have properly loaded the sold goods onto these vehicles for the purpose of shipment.
4. The customer shall inform us in writing and in time before handing over the goods of the person authorized to receive and accept delivered goods. If such a person is not named, the person signing the delivery note on behalf of the customer upon being handed over the goods shall be considered by us to be authorized to accept and confirm the receipt of the goods.

5. We shall be entitled to partial deliveries / partial performance of services unless otherwise expressly agreed.

§ 7 – Passing of risk for services

1. If fully or partially rendered services are damaged or destroyed before acceptance due to force majeure, war, civil unrest or other circumstances that are objectively unavoidable for us or which are beyond our reasonable control, we shall have claims for those parts of the services that have been rendered according to § 5 no. 3 of these AGB.
2. Any services and deliveries directly connected with a construction that have become a part of its substance, regardless of their level of completion, shall be considered a part of fully or partially rendered services.
3. Any materials or components not yet installed and building site facilities and stakeouts shall not be considered a part of fully or partially rendered services. Any temporary building structures, such as scaffolding, shall also not be considered a part of the fully or partially rendered services, even if these have been independently commissioned.

§ 8 – Prices and payment, late payment

General:

1. Unless otherwise stated in the contract our prices are EXW (Engelsberg) according to *Incoterms* 2010 of the International Chamber of Commerce, ICC, without packing, shipment, transport and installation.
2. We reserve ourselves the right to appropriately adjust our prices at our reasonable discretion (§ 315 German Civil Code), if and to the extent that our expenses for the contractual deliveries or services change after conclusion of the contract up until complete fulfillment of the contract, particularly if this is based on collective bargaining agreements or material price changes. If requested, we will provide evidence to the customer of such changes.
3. The legal turnover tax is not included in our prices, unless otherwise expressly agreed.
4. We accept checks in fulfilment only and subject to performance. Any expenses, fees and charges resulting therefrom shall be borne by the customer.
5. The deduction of a discount shall be subject to a separate written agreement.
6. Irrespective of contrary conditions of the customer, we are entitled to first set off payments against older payment obligations subject to informing the customer of this. If the customer owes us default interest, we are entitled to first set off payment against the interest and then against the principal claim.
7. Unless the customer pays no later than within 14 days from due date, he shall be considered in default. The enforcement of maturity interest (§ 353 German Commercial Code) shall remain unaffected.
8. If payment is effected by means of a check/bill of exchange procedure, bill of exchange

debiting procedure, or some other procedure in the course of which we sign a bill of exchange as an issuer or endorser for the purpose of discounting, our claim for payment shall only be considered void if the customer has honored all bills and has released us fully and finally from bill liability.

Special provisions regarding contracts for work and services:

9. If the performance of work and services is the subject matter of the contract, we shall be entitled to partial payments every 14 days in the amount of the value of contractual services as evidenced, including separately stated turnover tax due on this amount.
10. Partial payments shall become due within 10 working days upon customer's receipt of an auditable partial invoice.
11. Final payments shall become due within 14 working days upon customer's acceptance and receipt of an auditable final invoice.

Special provisions regarding sales contracts deliveries:

12. Unless otherwise agreed in writing, the purchase price shall become immediately due upon delivered goods having been handed over and customer's receipt of the invoice.
13. If payment by the customer is delayed, we shall be entitled to make further deliveries dependent on advance payments or provision of securities (even if supplier's credit has been granted), irrespective of our legal rights.
14. If partial payments have been agreed and the customer's payment of an installment is delayed by more than 14 days, the total purchase price shall become immediately due.

§ 9 – Assignment, right retention, set-off

1. The customer's assignment of rights under the contract concluded with us shall be subject to our prior written approval.
2. The customer may only set off amounts against our claims on the basis of claims that have been established as final or uncontested claims.
3. The customer shall have no right of retention and no right to refuse payment against our claims. This shall not apply inasmuch as the customer can base his right to refuse payment or his right of retention on a claim that has been established as final or an uncontested claim or defect rights (*Mängelrechte*).

§ 10 – Reservation of title

1. We reserve the right to the property of delivered goods (reserved goods) until the full payment of all of our current or future claims (including all current account receivables) from the purchase contract.

2. The customer shall have the right to process and sell the goods in proper business transactions unless the customer is in arrears with payment obligations to us.
3. The customer hereby already fully assigns to us the claims arising to the customer from the resale of the goods or on the basis of other legal grounds with regard to the reserved goods as a collateral.
4. Unless the customer is delayed in the performance of contractual obligations, he shall have the right and the obligation to enforce this claim in his own name (direct debit mandate).
5. As soon as the customer is delayed in the performance of his contractual payment obligations, he shall notify us immediately of the assigned claim and the debtor, presenting the details and documents required for collection and to notify the debtor immediately of the assignment.
6. Any processing or transformation of the reserved goods by the customer is always performed on our behalf as manufacturers without resulting in any obligations to us.
7. We continue to reserve our title with regard to newly created movable products by means of processing or transforming the goods.
8. If the reserved goods are combined, mixed, processed or transformed with goods not owned by us, we shall acquire co-ownership of the new goods. The ratio of co-ownership shall be determined according to the value of the goods at the time of combining, mixing, processing or transforming.
9. If the reserved goods are combined or mixed with the customer's movable goods following §§ 947 and/or 948 German Civil Code, and if his goods are considered to constitute the principal good, it is hereby agreed that the customer will grant co-ownership rights to us for the newly created single product. The share of co-ownership shall be determined according to the ratio of the value of the goods at the time of combining or mixing. The customer shall keep safe our thus created joint property, free of charge.
10. If the reserved goods or the newly created product under § 10, sec. 4-6 AGB become a significant part of a third party's real property, the customer hereby assigns any claims including all subsidiary rights arising from this to us.
11. If the reserved goods or the newly created product under § 10, sec. 4-6 AGB are connected with the real property of the customer, this shall take place only for a temporary purpose until full payment of all of our current or future claims against the customer (including all current account receivables) from the purchase contract has been effected so that the reserved goods will only become a non-integral part of the property (§95 German Civil Code).
12. The customer may neither pledge nor assign as collateral reserved goods or the newly created goods following § 10 sec. 4 - 6 AGB.
13. The customer must immediately inform us of any seizure or other access of third parties to the reserved goods or those as defined under § 10 sec. 4 - 6 AGB while informing the third party immediately of our co-ownership position so as to enable us to enforce our ownership rights.

14. Unless the third party is able to reimburse us for any court or outside-of-court expenses, the customer shall be liable for these expenses.
15. We undertake to release upon customer's request the collaterals due to us following the above sections of § 10 at our own discretion, if their value exceeds our claims by more than 10 %.

§ 11 - Claims for defects, statutory limitation

1. We shall not be liable for statements (e.g. advertising statements) by the manufacturer or Third Parties regarding goods supplied by us or used within the scope of our services.
2. In the event of justified complaints we are entitled to determine the type of supplementary performance (delivery of substitutes or rectification) taking into consideration the type of defect and justified interests of the purchaser.
3. The customer shall inform us immediately of any complaints by Third Parties addressed to him or otherwise made known to him to whom the customer has resold the goods we have supplied.
4. The customer's claims for material defects lapse after 12 months starting from the beginning of the statutory limitation period. This shall not apply to
 - a) customer's claims for damages
 - b) customer's claims for material defects if the defect consists in a Third Party's real rights on the strength of which the surrender of the item purchased may be demanded, or in another right registered in the Land Register (§ 438 sec. 1 German Civil Code),
 - c) customer's claims for a defect in a building or item which has been used for a building in accordance with its normal use and which has caused that building to be defective (§ 438 sec. 1, no. 2 German Civil Code),
 - d) customer's claims for a defect in a building or work whose success consists in performing planning or monitoring services for the same (§ 634 a sec. 1 no. 2 German Civil Code),
 - e) customer's claims for fraudulent intent (§ 438 sec. 3, § 634a sec. 3 German Civil Code) and to
 - f) customer's claims for recourse against the supplier in final supply to a customer (§ 479 German Civil Code).
5. Rights of recourse following §§ 478, 479 German Civil Code shall only exist if the consumer's use of them was justified and only according to statutory limits, however not in the case of goodwill settlements not agreed with us.

Moreover, they require fulfillment of the obligations of the party entitled to recourse, particularly obligations to notify defects.

6. Buyer's claims for damages and/or compensation of futile expenses shall exist only subject to the provisions of § 12 of these AGB and shall otherwise be excluded.

§ 12 - Liability, delay

1. Our own or our vicarious agents' liability for damage caused by willful intent or gross negligence shall be governed by the statutory regulations.
2. The same shall apply to cases of damage to life, body and health caused by our own or our vicarious agents' negligence.
3. We shall only be liable for material and financial damage caused by our own or our vicarious agents' negligence in case of essential contractual duties having been breached and the amount shall be limited to damages that were foreseeable and typical for the contract at the time of concluding the contract; essential contractual duties shall be those obligations the satisfaction of which characterize execution of the contract and on which the customer may reasonably rely.
4. The limitations on liability following § 12 shall not apply if we have fraudulently concealed a defect or have assumed a guarantee for the quality of the matter. The same shall apply to customer's claims according to product liability laws or other mandatory liability laws.
5. Within the context of a flat-rate compensation for delay, our liability for a delay negligently caused by us shall be limited to 0.5 % of the contract amount, however not more than a maximum of 5% of the contract amount for every week of delay.

§ 13 - Rescission

1. Customer shall have the right to rescind the contract for breach of duty not consisting in a defect only if we are responsible for the breach of duty. In all other respects the statutory requirements and legal consequences shall apply.
2. Regardless of our statutory rights, we are entitled to rescind the contract if a petition to open insolvency proceedings with regard to the customer's assets has been filed, if the customer has submitted a statutory declaration under § 807 German Civil Procedural Code or if insolvency proceedings have been opened regarding the customer's assets or if the opening of such proceedings has been dismissed for lack of assets.

§ 14 - Rights to documents and data

1. We reserve all rights of use and exploitation to any documents (drawings, calculations, test procedures, plans, documentation and other documents) and data (files and programs) we have provided.
2. The customer may use, copy, change or exploit the documents and data provided by us only upon our express agreement.
3. We will give approval if and to what extent this is necessary for the performance of the contract.

4. Documents and data handed over by us shall remain our sole property. They shall be returned any time upon request unless otherwise expressly agreed.

§ 15 - Confidentiality

1. As a matter of principle, any information, documents and data provided to the customer shall be considered confidential. The customer shall be obliged to treat them confidentially.
2. The obligation of confidentiality shall not apply inasmuch as information, documents or data are available to the public or were already known to the customer without our participation.

§ 16 - Place of jurisdiction, choice of law, severability clause

1. Insofar as an agreement is permitted by law, the exclusive place of jurisdiction shall be Munich.
2. The relations between the contractual parties shall be exclusively governed by the laws of the Federal Republic of Germany under the exclusion of the UN Convention on the International Sale of Goods and any conflicts of law rules.
3. If individual provisions of the contract including these AGB are or become invalid, this does not affect the validity of the remaining provisions. The parties shall replace the respective provision by another provision which is as closely as possible approximate to the economical intentions of the invalid provisions.