

# TERMS AND CONDITIONS (GTC)

CONCERNING THE USE OF ABONA ERP AND IT SERVICE

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## § 1 DEFINITIONS

- 1.1 "Contact person":** Customer authorizes certain groups of people as far as accesses and powers to particular areas of the software. These authorized persons are referred to as "contact persons".
- 1.2 "Customer data":** Any information, work materials or data that the customer makes available to Abona Deutschland GmbH during the term of the contract as part of the use of the ABONA ERP software are referred to as customer data.
- 1.3 "Individual contract":** Individual contracts and order documents that refer to the general terms and conditions of Abona Deutschland GmbH presented here are referred to as individual contracts.
- 1.4 "Perform the service":** Any (working) results, which produces the Abona Germany GmbH in cooperation with or for the customer as agreed in contract should be regarded as a performed service.
- 1.5 "ERP":** Enterprise Resource Planning refers to the control, management and planning of resources (such as capital, labor, materials, information technology, communications and resources).
- 1.6 "Customer":** If a company agrees to this agreement by signing an individual contract or an order document that refers to this agreement, the term "customer" is used in the context of this agreement. This also applies if this legal connection with Abona Deutschland GmbH has arisen in a different way, for example by ticking a check box, which refers to the general terms and conditions of Abona Deutschland GmbH.
- 1.7 "License":** Within the contract period, the customer can book licenses for himself and his employees. A usage license in the form of a user account is activated for each user of the software.
- 1.8 "Modules" / "Module Package":** The software consists of several parts that comprehensively cover the resource planning of certain areas and industries. Depending on requirements, these modules are put together individually for the customer in a module package.
- 1.9 "Software":** The ABONA ERP program is referred to as "software" in this agreement.
- 1.10 "Contract":** In addition to these general terms and conditions, the term "contract" also includes all individual contracts and all order documents that refer to the general terms and conditions of Abona Deutschland GmbH. This also applies to all appendices, supplements and supplements that are attached to the agreements or associated with them.

## § 2 SCOPE

- 2.1 The service and terms of use listed below apply to legal entities under public law, companies or special funds under public law within the meaning of Section 310 Paragraph 1 of the German Civil Code.
- 2.2 Their validity extends to all future transactions with the customer, insofar as this legal transaction is of a comparable type.
- 2.3 Individual contractual agreements always take precedence over the general terms and conditions in accordance with Section 305 b of the German Civil Code. These are agreed in the context of additional individual contracts.
- 2.4 Only these terms and conditions apply. The terms and conditions of the customer shall only apply if the Abona Germany GmbH has agreed to this in writing.

## § 3 SUBJECT OF CONTRACT

- 3.1 The Abona Germany GmbH undertakes to fulfill services, consulting and project services for the customer.  
  
The customer is granted the simple right to use the current version of the Abona ERP software. This also includes all updates and version changes within the contract period (further development of the software).
- 3.2 Abona Deutschland GmbH also provides the following services for a separate fee:  
  
*User support, maintenance of network components, procurement and installation of hardware components, maintenance and optimization of the IT infrastructure, maintenance and documentation, IT consulting, IT security consulting, backup controls.*
- 3.3 Abona Deutschland GmbH provides the services according to the current state of the art and in such a way that they are based on the interests of all software users. The services are provided in relation to the last software version and the software version delivered immediately before by Abona Deutschland GmbH.
- 3.4 The Abona ERP software as well as its evaluations and documentation are subject to copyright protection.

## § 4 CONCLUSION OF CONTRACT

- 4.1 The conclusion of the contract goes hand in hand with the payment of the first usage fee (see 10.1).
- 4.2 Detailed descriptions of the booked module package and the IT services are recorded in separate individual contracts.

## § 5 CONTRACT DURATION AND TERMINATION

- 5.1** The contract period begins at the time the contract is concluded (see § 4) and ends with its effective termination at the end of the respective notice period. Both parties can terminate the contract in writing at any time without giving reasons.
- 5.2** The notice period for the customer is based on the individual contract concluded.  
Abona Deutschland GmbH can terminate the contract with twelve months' notice to the end of the quarter.
- 5.3** Termination for an important reason requires a written statement of the reason for termination and must be threatened with a notice period of at least 14 days beforehand.
- 5.4** If Abona Deutschland GmbH terminates the contract without notice because the customer has acted contrary to the contract, the minimum damage is the amount of the contractual remuneration to which Abona Deutschland GmbH would have been entitled if the contract had been continued. If the customer is not responsible for the breach of duty, this claim for damages does not exist.
- 5.5** All items, programs and copies of the program that have been made available to the customer during the term of the contract and are on the customer's computers and other data carriers must be returned to Abona Deutschland GmbH without being asked and immediately after the termination of the contractual relationship.  
The data itself is the property of the customer.  
Abona Deutschland GmbH may request a written assurance that the customer has deleted or destroyed all copies of the software.
- 5.6** Backup copies that must be kept by the customer for archiving purposes are excluded from the obligation to delete.
- 5.7** Notice of termination must be in writing in accordance with Section 126 of the German Civil Code.
- 5.8** In the event of unauthorized use of the software by the customer or a third party beyond the end of the contract period, the latter is liable to Abona Deutschland GmbH with an amount equal to at least one annual fee.  
The amount of this annual fee is made up of the average value of the usage fees for the previous twelve months (see § 10 - Prices).  
All further claims for damages remain unaffected.
- 5.9** The Abona Germany GmbH will make the customer liable for all damages due to a breach of contract occurred through this.

## § 6 SOPE OF GRANT

**6.1** The customer is granted a non-exclusive right to use the software. The use of the software means that each activated license is assigned to a specific user in the form of a user account, whereupon he can work with the software within the scope of the booked modules.

**6.2** Depending on the module package purchased, the customer has access to certain modules that make up the software.

The customer chooses between the following options / module packages:

**- Starter**

*(Master data management (customers / suppliers / articles), order management, invoice module, import module)*

**- Business**

*(Master data management (customers / suppliers / articles), order management, personnel management (HR), CRM / CRM +, banking, cash register module, business intelligence (BI), import module)*

**- Premium**

*(Master data management (customers / suppliers / articles), order management, personnel management (HR), CRM / CRM +, financial accounting, banking, shipping module, fleet management, warehouse management, SCAN module (OCR, BarCode), cash register module, business intelligence (BI), Import module, webshop integration)*

A current list of all available module packages and their functions can be found on the Abona Deutschland GmbH website:

<https://www.abona-erp.com/de/abona-erp>

**6.3** The customer can book his modules individually, deviating from the standard packages listed in 6.2. This requires an individualized list of costs and modules.

**6.4** The customer has the option at any time to add licenses, to cancel or to switch between the module packages offered by Abona Deutschland GmbH. This is accompanied by a partial right of termination with regard to the module packages.

**6.5** Depending on the effort, Abona Deutschland GmbH can charge a one-off separate fee for changing, adding or deregistering between the modules offered. Any changes to the booked license packages require a corresponding change in the usage fees and a new listing of the related costs and are recorded in an individual contract.

## § 7 DELIVERY AND INSTALLATION

- 7.1** Abona Deutschland GmbH shares an installation file (MSI) with the customer, which enables installation on their server landscape.
- 7.2** As a result, the customer is authorized to use the software within the scope of the booked modules and to use the IT service for a separate charge.

## § 8 USAGE RIGHTS / RESTRICTIONS

- 8.1** As part of the independent processing of own data for his own purposes in his own company, the customer has the right to use the software. This grants him a simple right of use within the term of the contract.
- 8.2** The following usage restrictions are to be observed by the customer:
- (I) All material belonging to the software is protected by copyright. Neither duplication nor distribution is permitted.
  - (II) The customer is not entitled to hand over the software or related written material to third parties or to make it accessible in any other way without the prior written consent of Abona Deutschland GmbH.
  - (III) The publication of screenshots or other visual recordings of the software by the customer and his employees or agents, regardless of the purpose, is expressly prohibited.
  - (IV) The customer is not entitled to reverse engineer or disassemble the software.
  - (V) The software is licensed as a single product. The customer is not entitled to separate the components of the software in order to use them on more than one computer.
  - (VI) The customer is not entitled to rent or lease the software product.

## § 9 IT-SERVICE

- 9.1** The support services and IT services (see 3.2) are considered fulfilled if objections are not raised immediately.
- 9.2** With regard to the problem reports and immigration surveys, the customer must provide Abona Deutschland GmbH with a precise description of the time, place, type and extent of the defect. Abona Deutschland GmbH's customer support is the customer's first point of contact for this.

**IT-Support** (Technical support / installation of hardware / networks):

Monday-Friday from 9:00 a.m. to 5:00 p.m.

Tel: 07251/ 9760-500

[service@abona-erp.com](mailto:service@abona-erp.com)

**Software-Support** (Further developments, special programming, implementations, etc.):

Monday-Friday from 9:00 a.m. to 5:00 p.m.

Tel: 07251 9760-300

[support@abona-erp.com](mailto:support@abona-erp.com)

Any time information from this agreement relates to the time zone in which Abona Deutschland GmbH is located (DE).

- 9.3** As part of an individual contract, the customer has the option of naming contact persons with regard to the problem reports, so that a quick communication channel can be guaranteed.
- 9.4** In the event of repeated problems, Abona Deutschland GmbH has the right and the obligation to make improvements.
- 9.5** Abona Deutschland GmbH is entitled, but not obliged, to update the software and can request an update fee for such updates, which will be requested in the form of a separate invoice.
- 9.6** Abona Deutschland GmbH is under no obligation to deliver software updates to customers who have not installed one or more previous updates or who have not paid the update fee.

## § 10 COSTS / CHANGES IN COSTS

- 10.1** The monthly usage fee depends on the type and number of licenses booked and the user accounts set up. Abona Deutschland GmbH compiles a price list for each module package in order to guarantee the customer a transparent insight into the calculation of the usage costs.
- 10.2** Regardless of the module package and the licenses booked, Abona Deutschland GmbH will invoice the customer for additional support services (see 8.3) if required. These costs are made up as follows:

**IT Support** (Technical support / installation of hardware / networks)

Engineer: **85 €/h**

**Software-Support** (Further developments, special programming, implementations, etc..)

Support:	<b>85,00 €/ h</b>
Junior Developer:	<b>85,00 €/ h</b>
Senior Developer:	<b>125,00 €/ h</b>

**10.3** The costs and other conditions relating to the monthly billing for the booked module package and the IT service can be found on the Abona Deutschland GmbH website.

**10.4** The monthly invoice amount is made up of the usage fees and the support costs, provided that the additional IT services have been used.

The statutory sales tax is not included in the cost statement.

**10.5** Abona Deutschland GmbH can also claim any travel, maintenance, travel and operating costs from the customer. Their remuneration is based on the applicable rates of Abona Deutschland GmbH.

**10.6** Abona Deutschland GmbH reserves the right to change prices. By concluding the contract, the customer agrees that the amount of the total monthly fee depends on the factors described (number of licenses booked, use of IT services) and can vary accordingly.

**10.7** In the event of price changes that do not relate to the factors mentioned here, Abona Deutschland GmbH must inform the customer in a written declaration of adjustment that the remuneration agreed in the individual contract will change. The reason and amount of the price change must be stated. The notice period is two months. The price change then affects the 1.01 of a calendar year.

The basis for determining the change framework is provided by the index values published by the Federal Statistical Office. (*Statistischen Bundesamt, Fachserie 61, Reihe 2.4, Gruppe J62*) When calculating the percentage of the change framework, the change in the average gross monthly earnings of full-time employees according to the J62 industry (provision of services by Information technology/*Erbringung von Dienstleistungen der Informationstechnologie*).

[https://www.destatis.de/DE/Themen/Arbeit/Verdienste/Verdienste-Verdienstunterschiede/Publikationen/Downloads-Verdienste-und-Verdienstunterschiede/arbeitnehmerverdienste-lange-reihe-pdf-2160240.pdf?\\_\\_blob=publicationFile&v=5](https://www.destatis.de/DE/Themen/Arbeit/Verdienste/Verdienste-Verdienstunterschiede/Publikationen/Downloads-Verdienste-und-Verdienstunterschiede/arbeitnehmerverdienste-lange-reihe-pdf-2160240.pdf?__blob=publicationFile&v=5)

**10.8** After receipt of the declaration of adjustment (see 10.7), the customer has a special right of termination with regard to the individual contracts affected by the change. The changed remuneration is considered accepted by the customer if he has not raised any objections within 14 days. Abona Deutschland GmbH must point this out as part of the declaration of adjustment.

## § 11 PAYMENT METHODS/ DATE OF PAYMENT

- 11.1** Abona Germany accepts the following payment methods: invoice, direct debit, PayPal, prepayment.
- If it is a first order, Abona Germany reserves the right to only accept prepayment as a payment method for new customers.
- 11.2** The customer agrees that he will receive the invoice electronically. Electronic invoices are sent in the form of an email. If the customer needs to have the invoice sent by post in printed form, this can be included in a respective individual contract. The customer then accepts that this could result in additional costs (for packaging and shipping the invoice).
- 11.3** Unless otherwise stated on the invoice, payments are due immediately upon receipt of the invoice. The payment deadline is eight working days.
- 11.4** If the customer fails to make payment, Abona Deutschland GmbH initiates a three-stage out-of-court dunning procedure.
- The first reminder is issued immediately after the payment default has occurred. Abona Deutschland GmbH does not charge any reminder fees for this payment reminder.
- If the customer continues not to make a payment as a result, a second reminder follows, which demands a reminder fee of € 5.00.
- The third reminder is the last reminder if payment is still not made. In this context, Abona Deutschland GmbH demands a reminder fee of € 10.00 and threatens a judicial reminder procedure.
- 11.5** Abona Germany reserves the right to use the software until full payment has been made.
- 11.6** If the customer's right of retention is based on another contractual relationship with Abona Deutschland GmbH, he cannot assert this.
- 11.7** Offsetting against claims other than compensation for defects in the software is excluded, unless the claim has been legally established or is undisputed.

## § 12 ERROR CLASSES/ REACTION TIME

Abona Deutschland GmbH reacts to the error classes given below as follows:

Error Classes	Description of Error Classes	Response from Abona Deutschland GmbH
<b>F I</b>	The customer's business operations are prevented; there is no workaround for the problem.	No later than four hours after the error has been reported: start of troubleshooting As far as reasonable, also outside of working hours. Within this processing time, Abona Deutschland GmbH must either provide a solution proposal, an action plan or a workaround.
<b>F II</b>	The customer's business operations are severely hampered. Use with a workaround solution is possible (temporary work with acceptable restrictions or difficulties).	In the case of error messages that occur before 10 a.m., troubleshooting begins on the same day with the aim of suggesting solutions or workarounds to the problem and creating a plan to rectify it. All reports made later will be processed at the beginning of the next working day.
<b>F III</b>	Other Errors	Troubleshooting will begin within a week. The error will be eliminated with the next update, insofar as this is reasonable for the customer.

## § 13 CUSTOMERS OBLIGATION TO COOPERATE

- 13.1** The customer decides independently and on his own responsibility about the scope of the accessible modules. Different modules can be blocked or made accessible for each user account. Abona Deutschland GmbH is not liable for damage resulting from incorrectly allocated Access rights have arisen, but acts exclusively with regard to the respective activation as a service provider bound by customers instructions.

With regard to the activation of the user accounts, Abona Deutschland GmbH acts according to the wishes of the customer.

- 13.2** The customer defines the access rights for the user accounts in writing and notifies Abona Deutschland GmbH of these.
- 13.3** The customer undertakes to ensure that his data is backed up independently. It is recommended to make a daily mobile data backup that corresponds to the current state of the art.
- 13.4** If an error occurs in the software, the customer is obliged to report this in writing to Abona Deutschland GmbH within four weeks.

As part of the written notification of defects, specific information must be given as to the content and aim with which the software should be operated in accordance with the contract, which and how many work steps have been carried out and, if any, with which error messages the software responded.

- 13.5** The customer ensures that all of his employees are informed about the reporting obligation.
- 13.6** It is the customer's duty to be protected as comprehensively as possible against virus attacks and cyber-attacks (e.g. virus protection programs). If necessary, Abona Deutschland GmbH can request proof of this.
- 13.7** It should be noted that if updates are not installed or if the update fees are not paid, this can mean that no more errors can be corrected and the customer can no longer work with the new functions.
- 13.8** Abona Deutschland GmbH recommends that customers take out insurance that adequately covers all damage that may result from cyber-attacks or the like

## § 14 LIABILITY

- 14.1** Abona Deutschland GmbH is not liable for damage, disruptions or data loss caused by missing or inadequate data backup within the meaning of 12.3.
- 14.2** Abona Deutschland GmbH is also not responsible for damage caused to the customer through careless behavior. Failure to report problems on the part of the customer justifies their own fault and thus a related exclusion of liability for Abona Deutschland GmbH
- 14.3** Abona Deutschland GmbH pays damages or reimbursement of wasted expenses to the following extent:
  - (I) Abona Deutschland GmbH is liable for intent, malice, gross negligence and under guarantee in accordance with the statutory provisions.
  - (II) In the case of slight negligence, the amount of the typical and foreseeable damage at the time of the conclusion of the contract is decisive for the liability of Abona Deutschland GmbH, provided that a cardinal obligation has been violated or a case of delay or impossibility exists.
  - (III) If Abona Deutschland GmbH violates a cardinal obligation in a simply negligent manner, this liability is limited to damage that is foreseeable and typical.

This limitation of liability for liability arising from slight negligence also applies in the event of initial inability on the part of Abona Deutschland GmbH.

- (IV) The legal regulations apply without restriction to injury to life, body and health, as well as to claims from the product liability law. This also applies to the lack of warranted properties and defects of title.
- (V) Contributory negligence on the part of the customer must be reasonably taken into account, particularly in the case of insufficient error messages or insufficient data backup.

**14.4** Basically, it is advisable to act cautiously, for example to protect yourself against virus attacks or the like. Damage caused recklessly by the customer or his employees opening unknown or incomprehensible files is the sole responsibility of the customer. He is fully liable for all costs incurred through services that have to be provided in order to restore the condition before the damage occurred, so that the quality of the service provision can be brought back to the previous level.

## § 15 LIMITATION OF CLAIMS

**15.1** In the case of material defects, claims for repayments or reductions, the limitation period is one year. This period begins with the delivery of the software (see § 7). For properly reported defects, the period must not be less than three months after the submission of an effective declaration of reduction.

**15.2** The limitation period for other claims resulting from material defects is one year

**15.3** In the case of claims for damages or reimbursement of wasted expenses that are not based on material or legal defects, the limitation period is two years. This period begins when the customer becomes aware of the circumstances that justify his claim. This also applies if the customer had to obtain this knowledge without gross negligence

**15.4** The maximum periods for the occurrence of statutes of limitations are regulated by § 199 of German Civil Code.

15.1, 15.2 and 15.3 do not apply to damages and reimbursement of expenses due to intent, gross negligence, guarantee and malice as well as in the case of injury to life, body, health and claims under the Product Liability Act.

## § 16 WARRANTIES

**16.1** Abona Deutschland GmbH is free to correct errors within a reasonable period of time with a maximum of three improvements. If you do not succeed in this, the customer can choose to request a reduction in payment or the termination of the contract.

**16.2** Abona Deutschland GmbH would like to point out that, given the current state of technology, it is not possible to create computer software that is completely free of errors

**16.3** The contractual use of the software by the customer does not conflict with any third party rights.

If there are legal defects, Abona Deutschland GmbH guarantees that it will provide the customer with a legally flawless opportunity to use the software according to his choice.

- 16.4** Information in the manual / documentation and / or in advertising material relating to the expansion options of a product or available accessories are non-binding. The products are subject to constant adjustments and the information may relate to future developments.
- 16.5** Abona Deutschland GmbH does not guarantee that the software meets the needs of the customer or that it is compatible with his programs.

## § 17 DATA PROTECTION/ CONFIDENTIALITY

- 17.1** Abona Deutschland GmbH may only use all knowledge of trade secrets and confidential information acquired in the context of the contractual relationship to carry out the respective order. These are to be regarded as confidential for an unlimited period of time.
- Concepts, ideas, know-how and techniques that are related to program creation, as well as data already known to Abona Deutschland GmbH, are not included.
- 17.2** The personal data mentioned in the contract are subject to social data protection and will not be passed on to third parties.
- 17.3** Abona Deutschland GmbH may only process the customer's data in compliance with data protection regulations. Abona Deutschland GmbH may name the customer as a reference customer.
- 17.4** Abona Deutschland GmbH refers to the order processing agreement that it concludes with its customers for the purpose of protecting personal data.

## § 18 ARBITRATION

- 18.1** In the event of disagreements arising from or in connection with the contract, regarding additions to this or other disputes that cannot be resolved, with regard to both contracting parties, please contact the arbitration board of the German Society for Law and Informatics (DGRI).

[www.dgri.de](http://www.dgri.de)

This is intended to provisionally or finally settle the dispute in accordance with the DGRI arbitration rules valid at the time of the arbitration procedure.

- 18.2** With regard to the statute of limitations for existing claims from the disputed real-life situation, it applies that this is to be regarded as suspended until the time of arbitration according to § 203 of German Civil Code.

## § 19 FINAL PROVISIONS

- 19.1** The place of jurisdiction for all disputes arising from this contract is, as far as permissible, Bruchsal.
- 19.2** This contract is governed by the law of the Federal Republic of Germany.
- 19.3** Should parts of this contract become or be ineffective in whole or in part, this does not affect the effectiveness of the remaining agreements and regulations.
- Rather, both parties undertake to replace the ineffective regulations with those that come closest to what is economically intended.
- 19.4** Changes to this contract must be made in writing. The same applies to the cancellation of this written form clause.
- 19.5** The rights and obligations from this contract are transferable with the prior consent of the customer or in the event of any general legal consequences. This contract is also binding for any legal successors of Abona Deutschland GmbH.
- 19.6** Ancillary agreements, changes and additions to this contract are only effective if they are agreed in writing when or after the conclusion of the contract and are expressly designated as ancillary agreements, changes or additions.
- 19.7** Bonus regulations are agreed separately between the parties.