

Terms and conditions of sale and delivery ("Terms") of tado° GmbH ("tado°")

Between

tado GmbH

Incorporated in Germany, with registered offices in Lindwurmstr. 76, 80337 Munich, Germany
(hereinafter "**tado°**")

and

(hereinafter the "**Reseller**")

1. Acceptance

- 1.1 Any Contract for the sale of goods between tado° and Reseller ("Contract") shall incorporate these terms. No terms or conditions endorsed upon, delivered with or contained in the Reseller's purchase order, confirmation of order, or other document will form part of any Contract. No order may be cancelled or rescheduled except with the express written consent of tado°.
- 1.2 Terms and conditions of the Reseller shall only apply insofar as they are consistent with these General Conditions of Sale and Delivery; otherwise follow the terms and conditions of the customer shall not apply even if tado° does not expressly contradict them.
- 1.3 Deviations from these General Conditions of Sale and Delivery shall only be effective if tado° confirmed in writing.
- 1.4 Reseller and tado enter into the Contract by electronic means. The parties agree that the obligations in respect of electronic business according to Section 312 i (I) s. 1 no. 1 – 3 German Civil Code ("BGB") shall not apply.

2. Appointment of Reseller to Provide Trade Resale

- 2.1 On a non-exclusive basis for the term of this Agreement, and subject to all of the terms and conditions hereof, tado° hereby appoints Reseller as an Authorized Reseller that may procure Products from tado° and conduct Trade Resale.
- 2.2 Reseller agrees not to sell Product to third parties for resale by the third party unless such third party is an Authorised Distributor or Authorised Reseller in tado°'s network.
- 2.3 Reseller will not offer a product with a tado° trademark that Reseller obtained from a source other than tado° or an Authorised Distributor or Authorised Reseller.

3. Terms of Agreement

- 3.1 This agreement shall be effective on its Commencement Date (Commencement Date is the day on which the Reseller agrees to this Contract by electronic means) and shall remain in effect as otherwise provided for a period of 12 months. This agreement shall continue for additional terms of 12 months each after the expiration of the initial term unless terminated by either party, with or without cause, upon 30 days prior written notice.
- 3.2 Tado° may terminate the Agreement without notice if the Reseller ceases to satisfy the Reseller Obligations described in Paragraph 5.
- 3.3 Any obligation previously incurred shall survive termination or expiration of this Agreement.

4. Independent Contractors

- 4.1 Tado° and Reseller are independent contractors and neither is an agent or principal of the other. Reseller shall not describe itself as tado°'s agent.
- 4.2 This Agreement, and its rights and obligations, shall not be assigned or transferred by either party without written authorization of the other party; provided that tado° may assign this Agreement without consent in the event of a change of ownership or a sale of all or substantially all of its assets.

5. Reseller Obligations

5.1 Trade resale

- 5.1.1 Reseller shall use all reasonable endeavours to:
- a. display, promote, demonstrate, sell and install the Product with all due care and diligence;
 - b. provide the end-user with a high-quality customer experience including pre-sale product information, Product supply and Installation Service and post-installation customer service;
 - c. inform tado° promptly of any complaint or after-sales enquiry, including any safety-related complaints, concerning the Products received by Reseller;
 - d. preserve and enhance the reputation and goodwill of tado° and the Products and avoid any illegal or unethical actions
 - e. not give customers or prospective customers any technical information or data on the tado° Products that is inaccurate or in contradiction with the information published or authorized by tado°.

5.2 Installation operations

- 5.2.1 Where tado° is installed by the Reseller, the Reseller will perform the Installation Services in a good workmanlike manner.
- 5.2.2 Reseller shall:
- a. provide the Installation Services with all due skill, care and diligence
 - b. have and maintain a workforce of properly trained and qualified installers with broad in-home electrical and heating expertise. Reseller must take steps to ensure that installers only work on jobs for which they are properly certified under all applicable national, regional and local regulations
 - c. ensure that each Installer has completed training relating to the Installation Services and is up to date with any new product and installation requirements
 - d. use its reasonable endeavours to ensure that all customer facing staff have the ability to deal with basic queries from customers for the Installation Services
- 5.2.3 Reseller is entirely responsible for the delivery and provision of the Installation Services to end users and tado° shall have no liability for the same. For the avoidance of doubt, sales of Products by Reseller to end-users and the supply of Installation Services to end-users shall constitute contractual relationships between Reseller and the end users and shall not give rise to any contractual relationship between tado° and such end-users.
- 5.2.4 Reseller shall conduct and maintain at all times its operation in accordance with all applicable laws of the jurisdiction(s) in which it operates. Reseller acknowledges and agrees that tado° does not screen Resellers (installers) for the legally mandated regulations, training, skills and certifications required to install tado° products in every jurisdiction.

5.3 Insurance

- 5.3.1 Reseller shall cause and maintain such insurances as are necessary to cover any liabilities to customers under this Agreement.

5.4 Equipment

- 5.4.1 Reseller shall provide the required equipment to be used for the Installation Services of the Product. Reseller will ensure that any equipment used in the performance of the Installation Services will be properly kept and maintained.

5.5 Subcontracting

- 5.5.1 Reseller shall not have the right to sub-contract any of its rights or obligations hereunder without the prior written consent of tado°.

5.6 Resellers duty to give timely notice of tado°'s breach

- 5.6.1 Reseller agrees to notify tado° in writing within thirty (30) days of Resellers discovery of any defective performance, failed performance or other breach of this agreement by tado°. Failure of Reseller to provide such notice to tado° within this specified period shall constitute a waiver of the defective or failed performance or other application breach by tado°.

6. Program and Purchase Terms

6.1 Prices

- 6.1.1 All prices, offers and professional rebates are subject to change and are non-binding
- 6.1.2 Prices are exclusive of Value Added Tax (VAT), all local taxes, fees or any other government charges now in force or enacted in the future. If the Reseller amends the quantity or delivery date from that specified in the order, tado° reserves the right to increase prices to reflect such variations. tado° reserves the right to amend accidental errors or omissions. Unless otherwise agreed by tado° in writing the price for the goods shall be the price set out in the tado°'s price list published on the date of delivery.

6.2 Modifications

- 6.2.1 tado° has the right to make modifications to the specifications of the goods provided that such modifications do not affect form, fit or function.

6.3 Delivery

- 6.3.1 All invoices and quotes will be subject to a delivery charge, unless otherwise specified on the invoice. The time of delivery is the time the goods to be delivered are tendered to the carrier or to the Reseller if such goods are to be collected by the Reseller. The agreement of binding delivery dates or periods shall be in writing.
- 6.3.2 From the time of delivery the Reseller will be responsible to and bear the entire risk of loss or damage to the goods.
- 6.3.3 Any dates specified by tado° for delivery of the goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are specified delivery will be within a reasonable time.
- 6.3.4 If for any reason the Reseller will not accept delivery of the goods the risk in the goods will pass to the Reseller, the goods will be deemed to have been delivered and tado° will store the goods until delivery whereupon the Reseller will be liable for all related costs and expenses.
- 6.3.5 If for any reason tado° has been unable to deliver the goods on time because the Reseller has not provided appropriate instructions, documents, licences or authorisations, the risk in the goods will pass to the Reseller (including for loss or damage caused by the Company's negligence); the goods will be deemed to have been delivered; and tado° may store the goods until delivery whereupon the Reseller will be liable for all related costs and expenses (including without limitation storage and insurance).

6.4 Shipment

- 6.4.1 In the absence of specific shipping instructions, tado° will ship by the method it deems most advantageous.
- 6.4.2 Transportation charges will be collected at the destination or, if prepaid, will be invoiced to the Reseller. Unless otherwise indicated, Reseller is obligated to obtain insurance against damage and theft, to the goods being shipped. Unless otherwise specified, the goods will be shipped in tado°'s

standard packaging. When the Reseller requests special packaging, the cost of the same if not set forth on the invoice, will be billed separately to the Reseller. Reseller agrees to pay the invoice and accept all responsibility and risk for such packaging. tado°'s standard packaging will not be altered by the Reseller without tado°'s written consent.

6.5 Terms of payment

- 6.5.1 Time for payment shall be of the essence. Unless otherwise agreed, all invoices of the tado° are to be paid no later than 14 days after date of invoice and delivery.
- 6.5.2 Unless otherwise specified on the invoice, terms are cleared funds in advance of shipment, accounts past due will be subject to a monthly charge at the rate of eight percent (8%) per year to cover the costs of servicing these accounts.
- 6.5.3 All orders on terms are subject to the prior approval of tado°'s Credit Department.
- 6.5.4 Orders from customers with past due invoices may be declined or, at tado°'s sole discretion, may be accepted only on a cash in advance basis until credit is re-established to tado°'s satisfaction.
- 6.5.5 The Reseller shall be in default of payment without reminder. In the event of non-payment tado° reserves the right to alter terms of payment, suspend credit and delay shipment or pursue any remedies available at law or under agreement. The acceptance by tado° of any payment after the specified due date will not constitute a waiver of the buyer's obligations to make future payments on the specified dates.

6.6 Returns

- 6.6.1 Please understand that we cannot exchange or take back goods that have been delivered in accordance with the terms of the Contract.
- 6.6.2 In the event that a goodwill gesture is established to deviate from this principle, the following must be observed: Goods must only be sent once you have received written agreement and consent from us regarding the return or exchange. Only at this point can the goods be sent, with freight charges prepaid, and at your own risk, to one of our designated warehouses. Please take all necessary precautions to ensure that the goods arrive at the return destination in perfect condition - for used, broken, defective, previously installed or goods constructed from outdated materials we are in no way responsible, and accept no liability for. A processing fee of 15% of the value of the exchanged or returned goods will be levied from the customer reimbursement amount, if no other amount has been separately agreed upon in writing.
- 6.6.3 Defective Product Returns Policy – Process
 - 6.6.3.1 tado° will accept return of a tado° product from resellers and installers (each a "Returning Party") that have been sold to end customers (i.e., not unsold product in inventory) for credit under the terms and conditions below. This Defective Product Returns Policy is subject to modification or termination by tado° in its sole and absolute discretion at any time.

a. Return Deadline

tado° will only accept product returns from Returning Party within 30 days of the later of the: (i) date of original purchase by the end customer, or (ii) date of activation, in each case provided Returning Party requests an RMA (as described below) within 15 days of end customer return. For product returns after this deadline, Returning Party should refer the end customer to the tado° via <https://support.tado.com/>

b. RMA

Sellers products can only be returned with a Return Merchandise Authorization (RMA) number obtained from the tado° in advance of returning the product. A RMA number will only cover specified items and quantities authorized for return by the tado°. A RMA number will expire 30 days after issuance. Any returns that vary from the authorized items or quantity or are delivered after expiration date of a RMA number may not be eligible for credit, as determined by the tado° in its sole discretion.

c. Return Contents

Sellers products must be returned to the address provided by the tado° and must be accompanied by a RMA number and a description of the specific defect (i.e., reason for return) for the sellers product being returned.

- 6.6.4 Defective Product Returns Policy – Product condition and eligibility

- 6.6.4.1 A tado° product must be returned in its original packaging with all documentation and accessories.
- 6.6.4.2 Upon receipt, tado° will assess the condition of a tado° product and determine if: (i) a defect exists in the materials or workmanship of the product, (ii) a defect resulted from the act or omission of Returning Party, or (iii) no trouble found with the product.
- 6.6.4.3 Tado° will in its sole discretion assess the condition of the product and determine whether the product is eligible for credit.

6.7 Credit

6.7.1 Credit Issuance

- 6.7.1.1 tado° will issue a credit for an approved return within 30 days of receipt of the returned product by the Reseller. No cash will be refunded.

6.7.2 Credit Amount

- 6.7.2.1 tado° will calculate the credit amount for a tado° product based on the lower of the: (i) then-current list price for the product, or (ii) net price actually paid.

6.8 Retention of title

- 6.8.1 Ownership of the goods will not pass to Reseller until seller has received in full (in cash or cleared funds), notwithstanding delivery and that risk on the goods has passed to the Reseller, all sums due to it in respect of:
 - a. the goods; and
 - b. all other sums which are or become due to tado° from Reseller on any account until ownership passes. Reseller holds the goods on trust for tado° and will store the goods separately from all other goods of Reseller or any third party in such a way as that they remain easily identifiable. Reseller will not destroy, deface or obscure any identifying mark or packaging on or relating to the goods. Reseller will maintain the goods in a satisfactory condition and will insure the goods (for their full value) on seller's behalf against all risks and to the reasonable satisfaction of tado°. Reseller will hold any proceeds of insurance referred to above on trust for tado° and not mix them with any other money.
- 6.8.2 Any processing and adaptation by buyer shall be effected on tado°'s behalf as manufacturer of the goods but without commitment or liability on tado°'s part. If such processing or adaptation is effected with goods which are not tado°'s property or if the reserved goods are inseparably connected in any other way with the other goods, tado° shall acquire the co-ownership of the new or single product in the ratio of the invoice value of the goods or the market value of such other goods in the absence of an invoice value.

7. Intellectual property rights

- 7.1 tado° hereby grants Reseller a non-exclusive, non-sublicensable and non-assignable royalty free licence to use tado°'s Brand in marketing and service literature for the duration of this Agreement. Reseller shall not use tado°'s Brands in such a manner as is likely to or does bring tado° into disrepute.
- 7.2 The license granted in this Section shall automatically terminate upon termination or expiration of this Agreement.
- 7.3 tado° retains all intellectual property rights in and to all designs, engineering details, patents and other data pertaining to any goods sold or any compilation, assembly, combination, method or process in which any such goods are used as components, except where such rights are expressly assigned under written agreement executed by a director of tado°.
- 7.4 Reseller shall not (and shall not permit any third party to) copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Hardware or Software in whole or in part.
- 7.5 Subject to the other provisions of this clause, nothing in this Agreement shall cause the Intellectual Property Rights vested in, licensed to or the property of either party to in any way be transferred to or shared with the other party.

8. Confidentiality

- 8.1 This Agreement (including its terms), as well as any other confidential information disclosed by tado° relating to its products, pricing, supply logistics, intellectual property and business (collectively "tado°

Confidential Information”), are confidential. Such information shall not be used other than for the purposes of this Agreement nor shall it be imparted to any third party.

- 8.2 This obligation of confidentiality shall be in effect from the Commencement Date of this Agreement and shall survive the expiration or termination of this Agreement.
- 8.3 This confidentiality obligation shall not apply to information that is publicly available through no fault of Reseller or that must be disclosed under operation of law.

9. Warranties and liability

9.1 Warranties

- 9.1.1 tado° warrants only (and gives no other warranty of any nature) and to the Reseller only, that the goods will be free from defects in material and workmanship and will perform to seller’s applicable specification for tado°’s specified standard warranty period of 12 months from the date of delivery of the goods to the Reseller. The liability of tado° hereunder shall be limited solely to replacing or crediting the current purchase price of (at tado°’s option) any defective units which are returned during the warranty period properly packaged and returned to tado°. In no case are goods to be returned without first obtaining permission and a return authorisation number from tado°.
- 9.1.2 Goods or parts which have been improperly handled or shipped or which have been subject to abuse, misuse, accident, alterations, neglect, improper or inadequate maintenance, unauthorised repair or improper installation are not covered by this warranty. tado° will make the final determination as to the existence or cause of any alleged defect. No warranty is made with respect to custom equipment or goods produced to Resellers custom Contract for such custom goods.
- 9.1.3 Reseller hereby warrants to tado° that it will comply with all legislation pertaining to the performance of the Installation Services
- 9.1.4 All warranties conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale Of Goods Act 1979) are to the fullest extent permitted by law, excluded from the Contract

9.2 Liability

- 9.2.1 tado° will not be liable for any loss, damage or penalty resulting from delay in delivery when such delay is due to causes beyond the reasonable control of tado°, including but not limited to, supplier delay, force majeure, acts of God, labour, unrest, explosion or earthquake. In any such event the delivery date will be deemed extended for a period equal to the delay.
- 9.2.2 Except as otherwise expressly set forth, tado°’s liability arising out of the Contract and or sale is limited to the purchase price paid by Reseller and in no event will tado° be liable for any costs of procurement of substitute goods or services by the Reseller, or for any special, consequential, incidental or indirect damage, loss or expense (including without limitation loss or profit) relating to or arising out of this agreement, whether the claim is based on contract, negligence, or any other theory of law or equity, under any circumstances whatsoever even if tado° has been advised of the possibility of such damage. Loss or expense without limitation includes any liability that may arise out of third party claims against Reseller. These limitations shall apply notwithstanding any failure or essential purpose of any limited remedy provided under above or under any other term of the Contract.
- 9.2.3 Reseller is entirely responsible for the delivery and provision of the Installation Services to end users and tado° shall have no liability for the same. For the avoidance of doubt, sales of Products by Reseller to end-users and the supply of Installation Services to end-users shall constitute contractual relationships between Reseller and the end users and shall not give rise to any contractual relationship between tado° and such end-users.

9.3 Limitation of liability of seller’s agent or employees

- 9.3.1 Reseller agrees that tado°’s officers, directors, employees and other agents are not, and shall not be personally liable under this Agreement, or upon any claim arising out of the performance or non-performance of this agreement or any part thereof, and the Reseller’s sole recourse with respect to any such claim shall be against tado° subject to the limitations set forth herein.

9.4 Indemnification

- 9.4.1 Reseller shall indemnify, defend and hold harmless tado° and its affiliates, officers, directors, employees, agents, successors and assigns from and against any third party claims, damages, penalties, fines and costs (including reasonable legal fees and costs of settlement) related to any claim arising out of:

- a. negligent execution of installation service or on demand repair post device installation provided via the Reseller to end-users
 - b. occurring as the direct result of Reseller's misuse of or modification to the Products
 - c. occurring as the direct result of Reseller's advertising and marketing activities
 - d. the acts or omissions of Reseller and its employees, representatives, directors, officers, and independent contractors with respect to the Products, and
 - e. any breach under this Agreement.
- 9.4.2 Each party will promptly notify the other party upon learning of any claim, action or proceeding arising out of or relating to a breach subject to this indemnity, provided that tado° delay or failure to do so will not relieve Reseller of any of its obligations under this paragraph.
- 9.4.3 For any claim defended by the Reseller, tado° may choose to be separately represented at its own expense.
- 9.4.4 No settlement may admit liability or bind any Indemnified Party without the Indemnified Party's written consent.

9.5 Force Majeure

- 9.5.1 Neither party shall be liable for any failure to fulfil or delay in fulfilling its obligations under this Agreement where such delay or failure is due to civil commotion, riot, invasion, war, threat or preparation for war, storm, flood, earthquake, subsidence, epidemic or other natural physical disaster (but not including any dispute with employees) (a "Force Majeure Event").

10. Termination

10.1 Notice

- 10.1.1 Either party may terminate this contract at any time, with or without cause, by giving the other party thirty (30) days written notice to terminate.
- 10.1.2 Tado° may terminate the Agreement without notice if the Reseller ceases to satisfy the Reseller Obligations as described in paragraph 5.

10.2 Consequences of termination

- 10.2.1 Any obligation previously incurred shall survive termination or expiration of this Agreement. The provisions of Sections 7 (Intellectual Property Rights), 8 (Confidentiality), 9 (Warranties and Liability) shall survive any expiration or termination of this Agreement.

10.3 Insolvency

- 10.3.1 If Reseller (i) becomes bankrupt or insolvent, (ii) commences or has commenced against it bankruptcy or insolvency proceedings or any other proceedings for the settlement of its debts, (iii) makes an assignment for the benefit of creditors, (iv) commences to be wound up or (v) suffers a receiver to be appointed, tado° will be at liberty by notice in writing to cancel this Contract without judicial intervention or declaration of default of Reseller and without prejudice to any right or remedy which may have accrued or may accrue thereafter to tado° and Reseller's right to possession will terminate immediately.

10.4 Force Majeure

- 10.4.1 Either party may terminate this agreement forthwith upon notice in writing if the other is unable to fulfil its obligations under this Agreement for a period of 15 days or more after a Force Majeure Event.

11. Entire agreement

- 11.1 Unless otherwise agreed to in writing, signed by the authorised representatives of both Reseller and tado°, the terms and conditions set forth herein constitute the entire agreement between Reseller and tado°.
- 11.2 The Contract may not be modified, supplemented, qualified or interpreted by any trade usage or prior course of dealing not expressly set forth herein.
- 11.3 Reseller hereby acknowledges that it has not entered into the Contract in reliance upon any warranty or representation by any person or entity except for such warranties or representations set forth herein.

- 11.4 Reseller's acceptance of any goods delivered pursuant to these Terms shall be conclusive evidence of Reseller's acceptance of these Terms. Such acceptance shall act as a waiver of any terms and conditions included in Reseller's order forms or other documents submitted by Reseller that are not acknowledged by Reseller in writing as part of the Contract.
- 11.5 Any failure by tado° to enforce any provision of the Contract, or to exercise any election or option provided herein, will not in any way be construed as a waiver of such provision election or option.
- 11.6 All drawings, descriptive matter, specifications and advertising issued by tado° and any descriptions or illustration contained in the tado°'s catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the goods described in them. They do not form part of this Contract.
- 11.7 If any of the terms or provisions set forth herein are determined to be invalid or unenforceable, such determination shall not invalidate the remainder of the Contract which shall remain in full force and effect as if such terms and provisions had not been a part of the Contract.

12. Notices

- 12.1 Any notice given under the Contract shall be in writing and shall be served by delivering it personally or sending it by pre-paid recorded delivery or registered post:
- (in the case of communications to tado°) to its registered office or such changed address as shall be notified to the Reseller by tado°; or
 - (in the case of communications to the Reseller) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Reseller set out in any document which forms part of this Contract or such other address as shall be notified to tado° by the Reseller.

13. Exclusion of third party rights

- 13.1 The parties to this Contract do not intend that any term of this Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

14. Counterparts

- 14.1 This Agreement may be executed in any number of counterparts and by the parties to it in separate counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument.

15. Place of jurisdiction

- 15.1 Jurisdiction is Munich, Germany.

16. Concluding provisions

- 16.1 The parties agree that all legal relations under this agreement shall be subject to the law of the Federal Republic of Germany to the exclusion of all material and procedural norms referring to the legal systems of other countries.
- 16.2 Amendments to this agreement require written form to be effective. This also applies to waivers to this requirement.
- 16.3 This Agreement is written in English.
- 16.4 Printing errors, changes and errors excepted.