

Terms of use for the ARBURG Remote Service / 4. service

Preamble

The ordering party shall assure that the machines/systems are provided with the relevant software and hardware and that trained personnel is available for receiving the ARBURG Remote Service. ARBURG shall ensure the confidentiality of the data of the ordering party.

The contracting parties agree that the responsibility and the decision-making power for the operation of the machines/systems remain with the ordering party. The ARBURG Remote Service cannot substitute regular maintenance work and safety-related inspections of the machine/system.

As the ARBURG Remote Service is a non-standardised service, both parties shall endeavour to find a joint solution by adapting or amending the agreed provisions in case of arising issues which cannot be clearly solved from the following agreements and also due to the rapidly progressing technical developments.

1. Specification of services and costs

1.1 Remote diagnosis

1.1.1 Data comparison / discrepancies

ARBURG analyses the recorded data and processes regarding discrepancies between the actual state and the nominal state.

1.1.2 Search for the cause of the discrepancy

ARBURG analyses the detected discrepancies for their causes.

1.1.3 Network infrastructure

ARBURG establishes the connection to the machine only via the provided VPN hardware.

The ordering party shall ensure that the hardware provided by ARBURG obtains internet access to the ports and websites specified in the „Query of IP data“ form.

No connection shall be established via other VPN clients (FortiClient, Shrewsoft, etc.).

1.2 Remote maintenance and remote repair

If, in the course of the remote diagnosis, ARBURG detects any discrepancies which require measures, ARBURG shall assist the ordering party with the repair and maintenance, in as far as this is possible using the telecommunication means specified under 1.1 of these terms of use and the telephone hotline.

1.3 Other measures and services

1.3.1 Further maintenance and repair measures

If it is not possible to repair the system (completely) by means of the telecommunication measures (remote maintenance and/or remote repair) according to number 1.2, ARBURG shall inform the ordering party thereof.

ARBURG shall suggest further maintenance and repair measures to ensure the proper operation of the system and shall assist the ordering party with the implementation of the suggested measures.

This shall be concluded in a separate agreement, unless otherwise indicated in the range of services of these terms of use. If the parties have concluded any maintenance and service contract (e.g. Check Allround service contract), these provisions shall apply.

1.3.2 Other services

Upon demand of the ordering party, ARBURG may carry out other measures beyond the services stipulated above. For this purpose, a separate agreement shall be concluded, unless these services are already covered in an existing contract (e.g. Check Allround service contract).

1.4 Limitation of services

1.4.1 Exclusion of benefits

If ARBURG finds, regarding the services mentioned under 1.1.1, that the discrepancies are based on external force, other unforeseeable effects, improper handling or ignorance of the conditions of installation and environment stipulated by the manufacturer, ARBURG shall not be obliged to carry out the remote repair according to number 1.2 and to effect services according to number 1.3 of these terms of use. The same shall apply if the ordering party makes modifications to the software or software environment including the hardware. In such cases, both parties shall meet in order to agree upon a common approach and elaborate the necessary steps.

1.4.2 Differentiation to functional warranty/guarantee

ARBURG assumes the individual obligations as they are set out in this contract. This shall neither include any guarantee/warranty that all damages and faults on the machine/system can be diagnosed and rectified by means of the contractual services, nor any guarantee/warranty for the functionality of the machine/system.

1.5 Costs

During the warranty period of the respective machine, the ARBURG Remote Service is free of charge for the ordering party. The service hotline (troubleshooting), as part of the ARBURG Remote Service, is free of charge for the ordering party even after expiry of the warranty period. Future services and consulting services provided through the ARBURG Remote Service after the warranty period shall be invoiced by ARBURG in accordance with a prior agreement between the parties.

2. Data transmission

2.1 Equipment

Each party is responsible for the maintenance and operation of their equipment.

The services are based on the data transmission technologies, particularly the data transmission methods, existing at the time the contract is concluded. These shall be adapted to technical progress as far as necessary. Any costs resulting thereof shall be borne by the ordering party, unless the technological improvements are only of benefit to ARBURG.

2.2 Data transmission methods

The ordering party shall procure a telephone connection/internet access in its own name and for its own account and shall ensure that ARBURG can use this connection for the contractual services. The ordering party shall pay the monthly basic fee for the telephone connection/internet access as well as any costs arising from the individual transmission processes.

When the telephone line or the telephone connection/internet access is disrupted, so that ARBURG cannot receive data or can only receive insufficient data, ARBURG shall be released from the obligations stipulated under number 1.1 and number 1.2 of these terms of use. This shall also apply if it is not possible for ARBURG to perform the services due to quality of the data. In such case, ARBURG shall notify the ordering party of the problems with the telephone connection/internet access.

2.3 Initialisation mode

When required, the ordering party activates the ARBURG Remote Service by actuation of the key switch on the relevant machine. The ordering party shall notify ARBURG of the activated ARBURG Remote Service system. Upon this, ARBURG establishes the connection to the machine/system of the ordering party.

3. Confidentiality and data security

3.1 Assurance for confidential treatment of data of the ordering party

The contracting parties have agreed that all data of the ordering party

exchanged within the scope of the ARBURG Remote Service and all other information of the ordering party on production secrets, relevant product-related data, etc. shall solely be used by ARBURG for the services defined in these terms of use.

Marketing of the information for own account or knowledge transfer to third parties shall not be permitted.

ARBURG shall impose corresponding obligations on all employees dealing with the ARBURG Remote Service. Moreover, ARBURG is obliged to delete all data of the ordering party after the end of the use of the ARBURG Remote Services. The confidentiality obligation shall apply for another two years after termination the use of the ARBURG Remote Services, unless any separate confidentiality agreement concluded between the parties or other legal provisions provide otherwise.

3.2 Protection against malware

The contracting parties shall take adequate, state-of-the art precautions to protect the software of the ordering party against malicious software. If, however, one of the contracting parties finds malware which could impair the ARBURG Remote Service or which could be transferred to systems of the other contracting party, the other contracting party must be informed immediately in writing. In case of presence of malware, any claims for damages by one contracting party against the other contracting party due to slight negligence shall be excluded, provided that this does not present a breach of fundamental contractual obligations (so-called cardinal obligation („Kardinalpflicht“), i.e. a duty whose fulfillment is essential for the due and proper implementation of the contract and on whose observance the ordering party can reasonably rely on).

4. Cooperation duties of the ordering party

4.1 Obligation of maintenance for facilities

The specified technical facilities must be provided and maintained in proper functioning order by the ordering party in the same manner as the necessary communication connections.

4.2 Obligation to provide information on technical modifications

Any modifications to the technical environment by the ordering party, which may have an effect on the agreed ARBURG Remote Service, shall be communicated and coordinated upon beforehand.

4.3 Assistance in case of errors

The ordering party shall assure that personnel with adequate technical knowledge and language skills is available for the ARBURG Remote Service. In case of error messages and questions, the ordering party shall submit further information and documents to ARBURG if this is necessary.

4.4 Care for safety / control duty

In cases where the ARBURG Remote Service may endanger persons and property, the ordering party shall deliver a feedback, for reasons of control duty, containing that the intended measures can be accomplished safely (acknowledgement). If it is not possible to acknowledge every machine on site, the ordering party shall realise reliable safeguarding against personal injury and property damage.

The ordering party must assure in particular that no persons are endangered - no matter in what form or process - in conjunction with the accomplishment of the services on their premises.

5. Period of performance

ARBURG is obliged to provide the agreed services at the following times: Monday to Friday from 8:30 h to 17:00 h, except on public holidays.

6. Liability

6.1 Maximum limits or exclusion of liability

ARBURG shall rectify all damages free of charge which ARBURG or the staff acting on their behalf culpably cause to the machines they are in charge of. The obligation to indemnify is limited to the agreed annual lump sum.

Further claims by the ordering party shall only be valid

- a) in case of intent,
 - b) in case of gross negligence by the owner/executive body or an executive employee,
 - c) in case of culpable injury to life, body and health,
 - d) in case of defects that have been maliciously concealed or whose absence was expressly guaranteed,
 - e) in cases where liability exists under the Product Liability Act for personal injury or property damage to objects used in a private context.
- In the case of culpable breach of fundamental contractual obligations (so-called cardinal obligation („Kardinalpflicht“), i.e. a duty whose fulfillment is essential for the due and proper implementation of the contract and on whose observance the ordering party can reasonably rely on), ARBURG shall also be liable in the event of gross negligence by non-executive employees and slight negligence, in the latter case limited to typical contractual damage which could have reasonably been foreseen. The ordering party shall not be entitled to any further claims for compensation against ARBURG, in particular, claims for damages including claims for non-contractual acts or other rights for any disadvantages associated with the services in addition to the claims granted by these provisions, regardless of the legal ground. This applies in particular to losses caused by loss or damage of data.

6.2 Statute of limitations

All claims of the ordering party - for whatever legal means - shall become time-barred twelve months after termination of the respective service. The statutory provisions shall apply to all claims according to number .6.1 subparagraph 2 a)-e).

The period of limitation shall be extended by the time required to remedy any damages.

7. Transferability and delegation of the work to third parties

ARBURG shall not be permitted to transfer rights and obligations under this contract to third parties, unless the ordering party has explicitly agreed on this. Component suppliers of the system delivered by ARBURG are not rated among third parties in the aforementioned sense.

8. Term and termination

The ARBURG Remote Service shall run for the duration of the warranty period of the respective machine and, unless otherwise agreed in writing, shall be extended automatically by one year in each case as long as the respective machine/system is in operation at the ordering party. The ARBURG Remote Service may be terminated by the ordering party or ARBURG after expiry of the warranty period by giving three months' notice to the end of the year. Termination for good cause shall remain unaffected. Any termination requires the written form.