

Standard Business Terms of Audicon GmbH

("General Terms and Conditions")

I. Scope of application, supplementary terms of contract

1.1 The Standard Business Terms of Audicon GmbH ("General Terms and Conditions") shall apply to all contractual relations with customers in connection with deliveries and performance of Audicon GmbH ("Audicon") and shall be deemed to be an integral part of the contract, unless otherwise agreed in writing in an individual agreement between Audicon and the customer. The General Terms and Conditions also apply to future business relations with the same customer, without Audicon being required to refer to the validity of each individual contract with this customer.

1.2 These General Terms and Conditions shall apply exclusively. Any deviating, contradicting or supplementary general terms and conditions of a customer shall only become an integral part of the contract only if and to the extent that Audicon has agreed to their validity expressly and in writing. This requirement of consent shall apply in every case, particularly if Audicon, being aware of the general terms and conditions of the customer, performs a delivery or service for the customer without reservation.

1.3 Only Audicon managing directors and company officers with full power of representation shall have the right to agree on terms of delivery and performance of any kind differing from these General Terms and Conditions.

1.4 The General Terms and Conditions shall be supplemented by terms of contract for the transfer of software ("General Terms and Conditions Software"), terms of contract for the maintenance of software and support services ("General Terms and Conditions Maintenance") and terms of contract for the performance of consulting and other services ("General Terms and Conditions Services"). The above provisions shall apply *mutatis mutandis*, in particular to the scope of application of these terms of contract.

1.5 The following references to the application of legal provisions are important only for clarification purposes. Therefore, even without such a clarification the legal provisions shall apply as long as they are not directly altered by the following General Terms and Conditions.

II. Offers, conclusion of contract

2.1 Audicon offers shall be subject to change without notice and nonbinding.

This also applies if Audicon has handed over to the customer, prior to the conclusion of the contract, catalogues, product descriptions or technical documentation (e.g. user manuals, calculations, cost calculations), to which Audicon reserves property rights and copyrights.

2.2 Every order of software programs on the part of the customer or order placement by the same involving any other service shall apply as a binding contractual offer unless otherwise specified in the order or order placement or the other agreements. Audicon has the right to accept this contractual offer within four weeks from receipt by Audicon. Acceptance can be declared either in writing (e.g. through order confirmation) or through delivery of the software programs or performance of the other services to the customer.

2.3 In the case of electronic transmission of an order, the regulation of Art. 312 e, para. 1, phrase 1, Nos. 1 to 3 German Civil Code (Obligations in Electronic Transfer) shall be excluded. Audicon shall not be obliged to confirm any orders received by electronic means. Incoming e-mail received by Audicon on working days between 0:00 and 16:00 hours shall be deemed to have been received at 16:00 hours, unless an earlier retrieval can be proved. E-mail received by Audicon between 16:01 and 23:59 hours shall be deemed to have been received on the following working day at 16:00 hours unless an earlier retrieval can be proved.

III. Delivery, dispatch, transfer of risk

3.1 Deliveries of software programs (data media, user manuals, other documentation – if existing) or other goods shall be carried out EXW (Ex Works Audicon) according to the INCOTERMS 2000. At the customer's request, the software programs or other goods shall be sent to a different destination. If collection by the customer or pick-up by third parties is not agreed upon and the customer has not issued any special instructions, Audicon shall have the right to determine the type of shipment (in particular carrier, shipping route, packaging) itself.

3.2 The risk of accidental loss and accidental impairment shall be transferred to the customer at the time of delivery. For delivery it does not matter whether the customer is in delay of acceptance. In the case of shipment the risk of accidental loss and accidental impairment shall already be transferred when the shipment is leaves the works or the warehouse of Audicon respectively, at the latest however upon delivery to the freight forwarding company, carrier or other person or institution appointed to carry out shipment. In the case of transfer of

software programs by means of electronic means of communication, e.g. by internet, the risk shall pass to the customer as soon as the software leaves the sphere of influence of Audicon (e.g. the server operated by Audicon, during downloading). In such case, Audicon shall only be responsible for the proper availability of the software for downloading.

3.3 Delivery dates shall be regarded as agreed with binding effect only if they have been expressly assured to be binding by Audicon in writing. If delivery dates have been agreed upon as binding, Audicon shall not be in delay of performance without a written reminder from the customer.

3.4 Compliance with periods and deadlines for deliveries requires that the customer provides all information necessary for delivery in due time, and in particular performs the obligations to cooperate for which he is responsible. If this requirement is not met, the delivery deadline shall be extended appropriately. This shall not apply if Audicon is responsible for the delay.

3.5 If, despite proper purchasing and for reasons not attributable to Audicon, Audicon does not from a subcontractor supplies or services at all or not correctly or in due time, or if events of force majeure occur, Audicon shall inform the customer in due time in writing or in text form. In such a case, Audicon shall be entitled to postpone the delivery during the period of hindrance or to withdraw from the contract in whole or in part as regards the part of supplies not yet delivered, provided that Audicon has complied with the above-described obligation of information and has not assumed the risk of purchasing. Force majeure is defined as illegal strike and lockout, interventions by public authorities not due to the fault of Audicon, shortness of electric energy and raw materials, transport bottlenecks not caused by Audicon's negligence, restraints on operation, for example by fire, water and mechanical damage, and all other impediments which when looked at objectively were unforeseeable and have not been caused by the fault of Audicon. If a deadline or period of delivery has been agreed with binding effect and the agreed deadline or period of delivery has been exceeded, the customer shall be entitled, after fruitless expiration of an adequate additional period granted, to withdraw from the contract for the part of the contract not yet implemented if he cannot objectively be expected to stick to the contract. No further claims of the customer shall exist in such case. If failure to comply with delivery deadlines is due to force majeure, e.g. war, riot, or to similar events, e.g. strike, lock-out, non timely self-supply by a subcontractor, the delivery deadlines shall be extended appropriately.

3.6 Audicon shall have the right to effect partial deliveries and services. This does not apply if the customer has no interest in the respective partial delivery or performance.

3.7 If Audicon effects delayed delivery, the customer can demand compensation for each complete week of delay in the amount, in each case, of three (3) percent, though no more than a total of fifteen (15) percent, of the net order value of that part of the delivery that was not put into effective operation because of the delay, provided that the customer substantiates that he has incurred a loss as a result thereof. The customer may withdraw from the contract within the framework of the legal provisions only if Audicon is responsible for the delay of delivery. On request by Audicon, the customer shall be required to explain within a reasonable period whether he withdraws from the contract because of the delay of delivery or insists on delivery.

3.8 If delivery is impossible, the customer shall have the right to demand damages, unless Audicon is not responsible for the impossibility of delivery. However, the claim for damages on the part of the customer shall be restricted to twenty-five (25) percent of the net order value of the part that cannot be put into effective operation because of the impossibility. The right of the customer to withdraw from the contract shall remain unaffected by this.

3.9 Claims for damages on the part of the customer because of delay of delivery, because of impossibility of delivery as well as claims for damages instead of the performance, which go beyond the limits specified in subsections 3.7 and 3.8, are excluded in all cases of delayed delivery as well as in cases of impossibility. However, the liability limitations in subsections 3.7 and 3.8 do not apply to the extent that liability is mandatory in cases of intent, gross negligence, violation of a major contractual obligation or because of injury to life, body or health. The limitation of Audicon's liability in the case of negligent violation of a major contractual obligation to the typical contractual, foreseeable damage in accordance with subsection 7.2 shall remain in force in any case, however.

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IV. Remuneration, terms of payment

4.1 Unless fixed prices have been expressly agreed, the amount of the price for the respective delivery or service is based on the Audicon price list valid at the time of the order confirmation. Prices are quoted net, ex warehouse, without any deductions and exclusive of the statutory value added tax.

4.2 Audicon reserves the right to reject checks or bills of exchange.

They are always accepted only as conditional payment. Discount and bill charges shall be assumed by the customer and are due immediately. If the customer pays invoices by remittance from abroad, any expenses related to the receipt of payment shall be for the customer's account.

4.3 Invoices are due and must be paid without any deductions within 4 days from receipt of the invoice unless otherwise agreed. Once this period has elapsed, the customer shall be in default. If the customer is in default of payment, the annual default interest rate shall be eight (8) percentage points above the base rate in accordance with Section 247 f the German Civil Code (BGB).

4.4 If no fixed prices have been agreed, Audicon reserves the right to change prices reasonably if, after conclusion of the contract, cost increases occur as a result of material purchasing or production costs, taxes, wage costs or incidental wage costs as well as costs of energy and costs resulting from environment protection requirements and if there is a period of more than two months between conclusion of the contract and delivery. Any increase along the lines as aforesaid shall be excluded to such extent as the costs for the mentioned factors are compensated by a cost reduction for other than the mentioned factors in relation to the burden of total costs for the supply. This shall be proved by Audicon to the customer at request.

4.5 The customer has a right to set-off only if his counterclaims have been legally established or recognized as ready for decision in a lawsuit or in writing by Audicon. Furthermore, the customer can exercise a right of retention only if his claim, on the basis of which he withholds payment, is based on the same contractual relationship and has either been legally established or recognized as ready for decision in a lawsuit or by Audicon.

4.6 If the customer is in default with payments to a significant amount, Audicon has the right to temporarily discontinue further performance, stemming from the same legal relationship to which Audicon has contracted and to call due all outstanding amounts from this relationship immediately. Any agreed dates or deadlines for the performance of outstanding deliveries and services on the part of Audicon are invalid in this case, without any requirement for Audicon to make special reference thereto.

V. Retention of title and reservation of rights

5.1 Audicon reserves all rights to the deliveries and services until complete payment of all accounts receivable, including future accounts receivable, from a current business relationship. This applies in particular to the title to concrete items delivered (e.g. data media, user manuals, other documentation, etc.) as well as to intellectual property rights (e.g. rights of use to software programs and user manuals by copyright).

5.2 Deliveries and/or services from Audicon may not be pledged to third parties nor transferred to the same as security prior to complete payment of the secured claims. The customer shall be required to notify Audicon promptly by registered letter if and to what extent seizure by third parties takes place.

5.3 In the event of behavior in breach of the contract, in particular in the case of failure to make payment of the fee due, Audicon shall have the right to withdraw from the contract according to the legal provisions and to demand return of any concrete goods delivered (e.g. data media, user manuals, etc.) on the basis of the retention of title and withdrawal as well as to deprive the customer of any granted rights of use to intellectual property (e.g. rights of use to software programs).

5.4 If the customer has the right to resell the deliveries received from Audicon in the ordinary course of business, which may be the case, for example, with sales partners of Audicon, the customer shall assign to Audicon as of now all receivables of the final invoice amount (incl. VAT) of the Audicon claim that are due to the customer from his clients or third parties on the basis of the resale. The customer shall remain authorized to collect this claim even after the assignment. Audicon's power to collect the claim itself shall not be affected by this.

However, Audicon shall agree not to collect the claim as long as the customer complies with his payment commitments, is not in default of payment and, in particular, no application has been made for initiation of insolvency proceedings or has been submitted for suspension of payment. If this is the case, however, Audicon may demand that the

customer informs Audicon of the assigned claims and their debtors, provides all information necessary for collection, hands over the corresponding documents and notifies the debtors of the assignment. Audicon shall undertake to release the existing securities at the request of the customer to the extent that the realizable value of the securities exceeds the receivables to be secured by more than ten (10) percent; Audicon is responsible for selection of the securities to be released.

VI. Complaints, obligations to cooperate on the part of the customer

6.1 The customer shall be required to inspect deliveries and services, within eight (8) working days after receipt of the supply or service, for completeness and obvious defects, in particular for obvious shortages or damage, and to notify Audicon in writing about such shortcomings, at the latest within another eight (8) working days from receipt of the supply or service, while stating the ordering data and the invoice number. In the case of non-evident (hidden) defects, the customer shall be required to notify Audicon about such defects in writing within eight (8) working days after their detection, at the latest within the period of limitation in accordance with section VIII., while complying with the complaint requirements described above. Observance of the deadline shall be regarded as met if the respective complaint is sent off in due time. If the customer fails to send the above-defined complaints, liability for the defects not complained of shall be excluded. The customer shall bear the burden of proof for compliance and punctuality of the required complaint as well as for the existence and time of detection of a defect.

6.2 In order to avoid losses, the customer is required to ensure that his data are backed up and saved on a daily basis according to the state of the art.

6.3 The customer shall meet any necessary obligations to cooperate free of charge within the framework of the performance due from Audicon. This includes in particular that the customer shall transmit all information necessary for Audicon, such as on the goals and requirements of the customer, in due time without being requested to do so. Furthermore, the customer shall provide any facilities that may be necessary for installation or operation of the deliveries or services in due time.

VII. Liability

7.1 The liability of Audicon as well as of the legal representatives or vicarious agents is based on the legal regulations in cases of intent or gross negligence.

7.2 Apart from that, the liability of Audicon as well as of Audicon's legal representatives or vicarious agents for slight negligence shall be excluded except in one of the following cases:

- for damage or loss resulting from injury to life, body or health;
- the violation of obligations within the meaning of Art. 241 para. 2 German Civil Code if the performance cannot reasonably be expected from the customer any longer,
- the assumption of a guarantee for the quality of a service, for the existence of successful performance or for a purchasing risk,
- in the case that the provisions of the Product Liability Act apply;
- malice, initial impossibility as well as other cases of compulsory statutory liability,
- in the event of infringement of a major contractual obligation; in this case, however, Audicon's liability shall be limited to compensation for the foreseeable, typically occurring damage or loss.

"Substantial contractual obligations" are those obligations that protect the contractually relevant legal position of the customer which the contract just is to grant to it pursuant to its contents and objective; also substantial are those contractual obligations the fulfilling of which will only permit a proper execution of the contract and on the compliance of which the customer does and may regularly rely.

Also in cases of gross negligence shall Audicon's liability be limited to the contractually typical, foreseeable damage or loss if none of the above exceptions applies. The above provisions do not entail a change in the burden of proof to the disadvantage of the customer.

7.3 Because of a breach of obligations that is not based on a defect, the customer can only withdraw – provided that the other legal requirements are met – if Audicon is responsible for the breach of obligations. Withdrawal is excluded if the breach of obligations is insignificant.

7.4 Audicon shall not be liable for the loss of data if the loss would not have occurred with proper data backup within the sphere of responsibility of the customer. One can assume proper data backup if the customer has verifiably backed up his data in machine-readable form on a daily basis and thus ensures that these data can be recovered

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with acceptable effort and expenditure. Audicon's liability for data loss – provided it is not due to deliberate or grossly negligent action on the part of Audicon – shall be limited to the typical recovery effort and expenditure that would have arisen in the case of proper data backup.

7.5 In addition, Audicon shall not be liable if software errors have taken place after a change in the operating conditions, after operating errors, after interventions in the software program, such as changes, adaptation, connections to other programs, and/or after use in breach of the contract, unless the customer provides proof that the errors already existed on delivery of the product or performance of the service or are not causally connected to the above mentioned events.

7.6 If Audicon's liability is excluded or limited, this shall also apply to the personal liability of non-executive employees and other vicarious agents of Audicon. The objection of contributory negligence shall remain open.

7.7 If claims for damages according to the above clauses are excluded or limited, this exclusion or limitation shall also extend in each case to damages in addition to performance and damages instead of performance, no matter on what legal grounds, in particular because of concurrent claims based on defects, a breach of obligations based on the contractual relationship, an unlawful act as well as claims for compensation of expenses in accordance with section 284 of the German Civil Code. The provisions stipulated in subsection 3.7 additionally apply to liability for default and the provisions in subsection 3.8 to liability because of impossibility.

VIII. Period of limitation

Claims for damages on the part of the customer – no matter on what legal grounds – shall expire by limitation in one year from the beginning of the warranty period, otherwise from the initiation of the claim. This shall not apply if legal regulations provide for shorter periods. However, the statutory periods of limitation shall apply in the following cases:

- to claims arising from a defect if Audicon has maliciously concealed the defect or has assumed a guarantee for the condition;
- to claims for damages arising from injury to life, body or health;
- to other claims for damages based on a deliberate or grossly negligent breach of obligations;
- to claims for damages arising from a breach of other major contractual obligations;
- to claims under the Product Liability Act.

IX. Setting deadlines, warning of damages, withdrawal from and termination of the contract

9.1 If the customer has the legal right to demand damages instead of performance or compensation of expenses after a deadline set by him has elapsed without effect, such a setting of a deadline must additionally contain an explicit warning of the customer that he will exercise these legal remedies after expiration of the deadline.

9.2 The above subsection shall apply mutatis mutandis if the customer has the legal right to withdraw from the contract with Audicon or to terminate this contract for compelling reasons without notice after a deadline set by him has elapsed without effect.

X. Secrecy, confidentiality

10.1 If the contracting parties exchange confidential information of a commercial or technical nature or if information from the sector of one party which is usually regarded as a trade secret, such as customer data, becomes known to the other party, the parties shall be required to handle this information in a strictly confidential manner and not to make it accessible to third parties without the consent of the other contracting party nor to use it in any way outside the performance of the respective contract. An exception from the reciprocal requirement to maintain secrecy is made for such information that demonstrably a) is generally evident or becomes evident without a contracting party having a hand in the matter; b) becomes known to a contracting party from another source that has no obligation to the other contracting party to maintain secrecy; c) must be disclosed by a contracting party (particularly to courts, criminal prosecution agencies and authorities) on the basis of mandatory legal provisions.

10.2 Each contracting party shall be required to return all confidential information physically communicated by the respective other party at any time after appropriate request to the other contracting party or to destroy such information, according to the choice of the other party, without retaining copies or records. A contracting party's own records, compilations and evaluations that contain confidential information shall be destroyed immediately at the request of the other party; electronically transmitted and/or stored confidential information must be deleted. The completed destruction/deletion shall be confirmed in

writing to the other contracting party on request. However, the above provisions in this clause do not apply to copies that are retained by a contracting party in a confidential file for verification purposes.

10.3 The period of validity of this secrecy requirement shall be five (5) years longer than the term of this contract.

10.4 However, Audicon shall retain the right to transmit research files that may contain trade secrets, such as customer data, to licensors (also OEM franchise partners) in order to answer questions and solve problems of the customer in connection with the software transferred by Audicon. In this case Audicon shall also require the licensor to maintain secrecy.

XI. Miscellaneous provisions

11.1 To the extent that the customer is a businessman within the meaning of the German Commercial Code (HGB), a legal entity under public law or a public trust, Düsseldorf shall be the agreed place of jurisdiction. The same shall also apply in the case that the customer has no general domestic place of jurisdiction. However, Audicon also has the right to file suit at the customer's registered place of business.

11.2 German law shall govern the legal relations between Audicon and the customer to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

11.3 Any amendment or addition to these General Terms and Conditions must be in writing to obtain effect. Electronic documents, such as email, without a qualified electronic signature in accordance with the Signature Act do not adhere to the requirement of written form.

11.4 Even if individual provisions are legally invalid, the contractual relationship between Audicon and the customer shall remain binding in connection with the other provisions. This shall not apply if adherence to the legal relationship would mean an unreasonable hardship for one of the parties.