

# Contract Terms for the Transfer of Software of Audicon GmbH

## *“General Terms and Conditions Software“*

### **I. Scope of Application**

The following Contract Terms of Audicon GmbH („Audicon“) governing the transfer of software („Terms and Conditions of Contract Software“) shall apply to all contract relationships with Customer in connection with the permanent transfer of software programs and shall constitute an integral part of the contract unless otherwise agreed in writing in an individual agreement between Audicon and Customer. The Terms and Conditions of Contract Software supplement the Standard Business Terms of Audicon („General Terms and Conditions“), which constitute an integral part of the contract in addition to the General Terms and Conditions Software.

### **II. Services to be performed by Audicon**

2.1 Audicon shall transfer to Customer the software program described in the order confirmation („Contract Software“) in a machine-readable form (object code), together with a printed and/or electronic user manual as well as – where existing – other documentation (e.g. operating instructions, help files, other technical information and documents). The transfer of the Contract Software shall be effected - according to the possibilities or as requested by the Customer – on a data carrier or by data telecommunication (e.g. „download“ from the Internet). The General Terms and Conditions Software shall apply mutatis mutandis to the transfer of new program versions of the Contract Software (e.g. patches, bugfixes, updates, upgrades, etc.)

2.2 If Audicon transfers the Contract Software to Customer by means of data telecommunication, Audicon shall endeavor to ensure the availability of the Contract Software on a server for downloading by Customer during the normal business hours of Audicon..

2.3 The user manual or other documentation of the Contract Software describes in detail what functions and services can be performed by the Contract Software when used in accordance with the contract („Performance Description“). Solely the respective Performance Description shall, to such extent, be binding for the quality of the Contract Software and its intended application. Statements in public, recommendations or advertising shall not constitute a description of the quality of the Contract Software.

2.4 The services of Audicon performed within the framework of the transfer of the Contract Software do not include the delivery of new program versions of the Contract Software, customizing, training or other advisory or company services beyond the transfer of the Software programs. In particular, Audicon shall not support Customer if Customer, by using the interfaces that may be contained in the Contract Software, wishes to connect the Contract Software with other software for the purpose of exchange of data. Both the creation of this connection as well as the afore-mentioned services shall be performed by Audicon only in return for an additional payment under a separate agreement with Customer.

### **III. Obligations of Customer to Cooperate**

3.1 The hardware and software environment (minimum cycle frequency of the processor, memory, operating system, etc.) for a proper and trouble-free operation of the Contract Software is to be described with binding effect in the contract confirmation of Audicon or in the respective user manual. It is the responsibility of Customer to obtain an appropriate hardware and software environment in a timely manner. If this is not the case and the delivered Contract Software cannot be used solely for this reason, then Customer shall bear the responsibility for it alone.

3.2 Customer shall be bound, prior to commencement of operation of the Contract Software, to test all functions of the Contract Software under the hardware and software environment of Customer. Customer shall also be required to check the faultlessness of the data medium, user manual and other documents upon handover. If defects are detected by the Customer, they shall be notified to Audicon within the period stated in subsection 7.4. Defects not detectable during such examination shall be notified to Audicon after their detection within the period stated in subsection 7.4.

3.3 Customer shall be obligated to prevent unauthorized access to the Contract Software as well as the user manual or other documentation by taking appropriate measures. Customer shall store the delivered original data medium in a safe place to prevent unauthorized access of third parties.

3.4 The Customer shall, at the request of Audicon, provide information if and to what extent the Contract Software is used pursuant to the Software Transfer Contract (e.g. information about the amount of dongles retained or the number of licenses installed) or if the Customer complies with the scope of use (e.g. in respect of the number of licenses installed) as well as with the terms of use as defined in section

IV. – Granting of Rights, subsection 4.2. To check the information provided by the Customer, Audicon shall be entitled to perform an examination at the customer's facilities once in a calendar year. Audicon shall, prior to such examination, inform the Customer in writing and at least ten (10) working days in advance of such examination as regards its beginning and cause, or of the scope of the examination respectively. The Customer shall grant Audicon or its authorized examiner access to its premises and facilities during normal business hours as well as access with administration rights to the hard- and software on which the Contract Software has been installed, and to such an extent as is necessary to check the use of the Contract Software in compliance with the terms of the contract. Audicon undertakes to treat as confidential any knowledge about the Customer's firm, which has not yet been made public and which may become known to Audicon in connection with the examination. Following a prior announcement in writing by Audicon, Audicon is furthermore entitled to check compliance with these obligations by the Customer in situ (while entering into an adequate non-disclosure agreement). The costs of such examination shall be borne by the Customer in the event that a major violation of duties is established.

### **IV. Granting of Rights**

4.1 Audicon shall grant Customer a non-exclusive and non-transferable right to use the Contract Software for an unlimited time period pursuant to the provisions of these Terms and Conditions of Contract Software. This right of use is subject to the condition of complete payment for the Contract Software.

4.2 Customer shall be entitled to install and use the Contract Software on only one computer at one location at a prescribed time. The term „computer“ refers to hardware, in the case that this is a single computer system, or to the computer system with which the hardware operates in the event that the hardware is a computer system component. Customer may use the Contract Software on all hardware at its disposal. If Customer changes the hardware, then it must delete the Software from the previously used hardware. A simultaneous storing, holding in stock or use on more than one piece of hardware shall not be permitted. The use of the Contract Software within a network or any other multi-station computer system shall be permitted unless provision is thereby made for a possible simultaneous multiple use of the program. Any diverging provision with regard to the number as well as to the kind of the rights of use (per user or per work station) may result from the contract confirmation of Audicon.

4.3 Customer may reproduce the Contract Software provided that the respective reproduction is necessary for the use of the Contract Software. Included herein is the installation of Contract Software from the original data medium to the mass memory of the used hardware as well as the loading of the Contract Software into the main memory. In addition, Customer shall be entitled to prepare a backup copy which shall be so labeled. It may be used exclusively for archiving purposes and must not be transferred to third parties. The simultaneous use of the original and the backup copy shall not be permitted. No additional reproductions shall be prepared. Included herein are also the reproductions by printing of the program code. Only one printout or one copy may be made of the user manual or the other documentation. Any other reproduction of the Contract Software as well as the user manual or other documentation by Customer shall be permitted only with the express approval of Audicon.

4.4 Customer shall be entitled to transfer the Contract Software in the original condition and as a whole to a third party provided that such third party declares its agreement with the terms of use of the General Terms and Conditions Software. With the transfer of the Contract Software, the right of use shall be transferred to the third party which shall, to the exclusion of Customer, be the only one entitled to use the Contract Software pursuant to these Terms and Conditions of Contract Software. In this case, Customer shall immediately delete all copies and partial copies of the Contract Software as well as amended or processed versions and copies and part copies made thereof, or destroy them in another manner. This shall apply also to backup copies. Customer must immediately notify Audicon in writing about the transfer of the Contract Software while disclosing the name and address of such third party.

4.5 The aforementioned provision shall also apply if Customer transfers the Contract Software to a third party merely for a limited time period. Customer shall not be entitled, however, to lease the Contract Software or parts thereof for purchase purposes.

4.6 Audicon shall grant to Customer the rights of use for the new program versions that may have been transferred within the framework

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of a separate maintenance contract or the warranty and within such scope as such rights of use are existing for the Contract Software with which they can be used in accordance with the intended use or by which it is to be replaced. The provisions of this section IV. as well as of section V. shall apply *mutatis mutandis*. The right of use of the Contract Software which is technically replaced by the new program versions shall extinguish within two weeks after the Customer uses the supplied program versions productively, however at the latest one calendar month after receipt, by Customer, of the supplied program versions. The Customer shall be entitled to make one copy each of the technically replaced software programs for archiving purposes.

### V. Limitations on the Right of Use, Overuse

5.1 Customer shall not be entitled to process and/or reproduce the Contract Software beyond the use in accordance with the contract unless this is necessary for purposes of remedying defects and if Audicon is in default with the remedying of defects. In such cases, Customer may have the defect remedied only by a third party that does not have a competitive relationship with Audicon if, by the remedy of the defect, a disclosure of important program functions and work methods is to be feared. Modifications which Customer carries out during the remedying of a defect are to be documented and notified to Audicon.

5.2 Customer is prohibited from analyzing, reassembling, processing or modifying the Contract Software in any manner whatsoever. The retranslation into another code form („Decompilation“) as well as the reverse development of the various manufacturing steps of the Contract Software („Reverse Engineering“) shall not be permitted subject to the following provision: Customer shall only be entitled to decompile the object code to the extent necessary for the production of the interoperability with other software programs, the information required for this purpose has not yet been made accessible to it and Audicon, after a request in writing with a reasonable time limit, has failed to make the required data and/or information available and the decompilation work is limited to those parts of the Contract Software that are needed to establish the interoperability with other software programs.

5.3 Customer shall be prohibited from removing, changing or making illegible the references to ownership and copyright, serial numbers, insurance numbers, labels, tags or marks of Audicon or other manufacturers contained in the Contract Software as well as in the user manual or other documentation.

5.4 The commercial use of the Contract Software for third parties by means of the so-called „Application Service Providing (ASP)“ or „Software as a Service (SaaS)“ shall not be permitted. Furthermore, every use of the Contract Software beyond the contractually stipulated scope, in particular a simultaneous use of software at more work stations than agreed shall constitute a use in breach of the contract. Customer shall be obligated to inform Audicon hereof without delay. For the time period of non-agreed overuse, Customer agrees to pay a remuneration for the Contract Software, based on the actual scope of use, pursuant to the price list of Audicon and immediately after having received the corresponding invoice. A four year straight-line method of depreciation shall be used as the basis for the calculation of the compensation. If the Customer conceals the overuse, a penalty in the amount of three times the price that would have been payable for the legitimate use of the Contract Software pursuant to the price list of Audicon, shall be paid to Audicon. The Customer shall be free to prove that only a minor loss has been caused to Audicon.

### VI. Use of Dongles

6.1 Audicon expressly reserves the right to deliver the Contract Software with a technical protection mechanism (copy protection) e.g. in the form of a hardware dongle or an electronic license control.

6.2 If Audicon delivers the Contract Software with a dongle and this dongle has a functional problem, Customer may demand a replacement dongle being sent by Audicon once the defective dongle has been returned. The replacement delivery shall be at no cost within the warranty period for the Contract Software pursuant to the following subsection VII. hereof. After expiration of the warranty period, a flat rate for costs of EUR 65.00 plus statutory value added tax and shipping costs shall be paid. In the case of theft or any other loss of the dongle, Customer shall not have any right to a replacement delivery.

6.3 The circumvention of technical protection measures infringes the rights of Audicon and is, in addition, a punishable offence under certain circumstances. In particular, the removal and/or circumvention of dongle program routines shall not be permitted. The dongle protection may only be removed or circumvented for the assurance of

operability if the dongle protection affects or hinders the trouble-free program use and Audicon, in spite of a respective notification of Customer with an exact description of the trouble which has occurred, cannot or will not remedy the defect within a reasonable time period.

Customer shall bear the burden of proof with regard to the impairment or prevention of a trouble-free use by the dongle protection.

### VII. Warranty for Material Defects and Defects in Title

7.1 The statutory provisions shall apply to the rights of Customer in case of material defects and defects in title (hereinafter „defects“) of the Contract Software unless otherwise provided for in the following.

7.2 The Contract Software shall have a warranty period of one year.

The one year warranty period shall begin on handover of the Contract Software to the Customer. The statutory warranty period shall apply, however, in the case that Audicon has concealed a defect with malicious intent or assumed a guarantee for the quality of the Contract Software.

7.3 Audicon warrants that the Contract Software, when used in accordance with the contract, complies with its performance description and has no defects which would affect the suitability of the Contract Software for the contractually agreed use in a manner that is more than insignificant. Immaterial deviations from the description of performance shall not be deemed to be defects. Customer is aware that, according to the state of the art, software of the complex type as in the present case cannot be developed absolutely free of defects.

7.4 The Customers shall inspect the supplied Contract Software including the documentation within eight (8) working days after delivery, in particular with regard to the completeness of the data carriers and the user documentations as well as the functional capability of fundamental program functions. Defects which are then detected or are detectable must be notified to Audicon within another eight (8) working days in writing while stating the ordering data and the invoice number. The Customer undertakes to notify any defect to Audicon in writing and without delay. When giving notice of a defect, it is to be stated and described how the defect becomes apparent in the specific case, what its effects are and under what circumstances they occur. Defects which are not detectable during the described proper inspection shall be complained of within eight (8) working days after their detection while complying with the aforementioned requirements for complaint. In case of a violation of the obligation of inspection and complaint, the Contract Software shall be deemed to be approved having regard to the respective defect. Warranty claims shall only exist if the notified defect is capable of being reproduced or can be shown by mechanically created outputs.

7.5 Audicon shall eliminate the defects properly notified by Customer by means of remedy or cure, i.e. by remedy or replacement delivery.

Audicon shall have the first right of choice regarding the type and manner in which a defect shall be remedied. The right of Audicon to refuse the type of chosen remedy according to the statutory prerequisites shall remain unaffected. If acceptable to the Customer, Audicon shall be entitled to transfer to Customer, for the elimination of such defects, a new version of the Contract Software (e.g. „update“, „service release/patch“) which no longer contains the defect complained of, or eliminates same.

7.6 If the remedy/cure fails within a reasonable time period, Customer shall grant Audicon a reasonable extension for remedy/cure provided that such extension is acceptable to the Customer and Audicon does not eventually refuse to carry out such remedy/cure. If Audicon is unable to eliminate the defect within such extended period, the Customer shall be free to withdraw from the contract or to reduce the purchase price and, if applicable, demand payment of damages or reimbursement of expenses paid in vain. After the lapse of the reasonable extension, Customer shall state within a reasonable time period whether it will continue to demand remedy/cure or whether it asserts its claims as stated above. A right of withdrawal shall, however, not exist in the case of immaterial defects. Upon declaration of the cancellation or the reduction, Customer's claim to delivery of defect-free Contract Software shall be cancelled.

7.7 Audicon shall not be required to grant a warranty if the defect of the Contract Software occurs after change of the use and operating conditions, after installation and operation errors unless attributable to errors in the user manual, after interferences with the Contract Software such as changes, adjustments, connections with other software programs and/or after use in contravention of the contract unless Customer proves that the defect existed already upon handover of the Contract Software or has no causal connection with the aforementioned circumstances.

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7.8 In the case of a justified withdrawal, Audicon shall be entitled to demand reasonable compensation for the use made by Customer during the application of the Contract Software in the past up to the date of reversed transaction. This compensation for use shall be determined on the basis of a total time of use of the Contract Software of four years while provision shall be made for a reasonable deduction for the impairment of the Contract Software by the defect which led to the withdrawal.

7.9 If Audicon has been held liable by the Customer because of warranty claims and if it becomes obvious that there is no defect or the defect reported is attributable to a circumstance not obliging Audicon under the warranty, the Customer shall refund to Audicon all expenses caused thereby if the claim on Audicon has been caused at least by negligence.

### **VIII. Gratuitous transfer of software**

8.1 To the extent that Audicon transfers any software programs to customers for gratuitous use (hereinafter „Freeware“), the provisions of this section VIII. shall apply on a supplementary basis. Furthermore, these provisions shall apply mutatis mutandis to the transfer of new program versions of such Freeware (e.g. patches, bugfixes, updates, upgrades, etc.) as well as to any user documentation of the Freeware made available for downloading on Audicon’s homepage.

8.2 Audicon shall transfer the Freeware to the Customer in machine-readable form (Object Code) together with an electronic user manual as well as with other documentation if existing (e.g. operating instructions, help files, other technical information and documentation). The transfer of the Freeware and the pertinent user documentation shall at the discretion of Audicon be realized by data telecommunication („download“) or by transfer of a data carrier

8.3 The user manual or other documentation of the Freeware shall describe in detail what functions and services can be performed by the Freeware when used as stipulated in the Contract („Performance Description“). Solely the respective Performance Description shall, to such extent, be binding for the quality of the Freeware and its intended application. Statements in public, recommendations or advertising shall not constitute any description of the quality of the Freeware.

8.4 Audicon grants the Customer the non-exclusive right, unlimited in time, to use the Freeware supplied in the object code within the scope laid down in the provisions of these Contractual Terms.

8.5 The Customer shall not be entitled, without the prior consent in writing of Audicon, to transfer the copy of the Freeware provided to him and the pertinent user manual and other documentation for use to any third party and to sell, let or lend them to third parties. In particular, the Customer is not allowed to transfer the Freeware to third parties against payment of a charge, e.g. by way of the so-called „Application Service Providing (ASP)“ or „Software as a Service“ (SaaS). Otherwise the above provisions in sections 4.2, 4.3 and V. for using the Contractual Software shall apply mutatis mutandis to the use of Freeware.

8.6 In connection with the transfer of Freeware, Audicon shall be liable only for intent and gross negligence. Any further claims for damage and compensation of expenses of the Customer for whatever legal reason, in particular on the grounds of violation of obligations from the relationship under the law of obligations and from tortious acts shall be excluded.

8.7 Audicon shall be liable for material defects and defects in title of the Freeware only if Audicon has fraudulently concealed a material defect and/or defect in title. Any further liability or warranty for freedom from material defects or defects in title shall be excluded.

8.8 Unless no diverging regulations have been provided for in this section VIII. the provisions of these Standard Business Terms Software Lease shall apply to the lease of Freeware mutatis mutandis.

### **IX. Application of the General Terms and Conditions of Audicon**

The general provisions contained in the General Business Terms of Audicon („General Terms and Conditions“) applying e.g. to the conclusion of contract, delivery, compensation and payment, reservation of ownership and title, liability, period of limitation, place of jurisdiction, etc., shall be applicable mutatis mutandis to contractual relationships for the purposes of transfer of software programs unless any diverging provision has been laid down in these General Terms and Conditions Software..