



akustik plus GmbH & Co. KG  
Industriestrasse 40  
D-63607 Wächtersbach  
www.akustik-plus.com

## **Our Delivery and Payment Conditions**

Our following terms and conditions apply to contractual relations with merchants within their business operations and with legal entities and special asset funds of public law.

### **§ 1 Validity of the Conditions**

1. Our deliveries, services and offers are solely based on these terms and conditions. Thus, they also apply to all future business relations. With the reception of the merchandise or service at the latest, these conditions are deemed accepted. Thus, objection is herewith made to the terms and conditions of the contract partner. This also applies if the business partner refers to his conditions of business or of purchase by counter-confirmations or otherwise.
2. Deviations from these terms and conditions are only valid if they have been confirmed by us in writing.
3. These terms and conditions supersede all prior terms and conditions.

### **§ 2 Proposal and Conclusion of Contract**

1. Our proposals are subject to change and non-binding. Declarations of acceptance and all orders require our written confirmation to be legally valid. The same applies to amendments, changes or side-agreements.
2. Drawings, illustrations, measures, weights or other performance data are only binding if this is explicitly agreed in writing.

### **§ 3 Prices**

1. The prices are without obligation. All orders are only accepted on the basis of the prices valid at the moment of the order. Our prices are indicated without VAT, for deliveries ex works of the seller, loaded free on truck/rail.
2. Potentially granted discounts as well as sales and freight reimbursements are void in case of judicial or out-of-court settlements, insolvency and payment defaults of more than one month.
3. In case of successive delivery contracts and all orders on call, we will bill the prices valid on the day of delivery. The same applies to all other orders, as far as the delivery occurs more than four months after the passing of the order.

### **§ 4 Transfer of Load and Risk**

The dispatch occurs, even in the case of carriage paid, at the risk of the client/purchaser. We do not assume any liability for damages or losses occurring during transport. As far as no special way of transport is agreed, dispatch is executed at our best discretion without any obligation to the cheapest way of transportation. Freight expenses must be reimbursed to us. The risk is transferred to the contract partner as soon as the load has been transferred to the person executing the transport / has left our warehouse for dispatch. If the dispatch is impossible or delayed without our fault, the risk is transferred to the client/purchaser with the notification of our readiness to deliver.

### **§ 5 Excess and Short Deliveries, Partial Deliveries**

Excess or short deliveries up to 10 % and common minor tolerances in quantities are admissible and do not entitle the client/purchaser to a complaint. Partial deliveries of a reasonable scope are admissible and will be invoiced separately.

### **§ 6 Order on Call**

In case of orders on call or similar cases, the client/purchaser is obliged to accept the ordered merchandise within a reasonable delay, at the latest within 6 months from the order date, unless something else has been agreed in writing for the individual case.

### **§ 7 Payment**

1. As far as nothing else is agreed, our invoices are payable within 8 days from the invoice date with 2% cash discount or within 30 days without discount.
2. We are entitled, despite contrary conditions of the client/purchaser, to set off payments first against his older debts, and in this case, we will inform the client/purchaser about the type of compensation occurred. If any costs and interests have already been incurred, we are entitled to set off the payment first against the costs, then against the interest and finally against the main receivable.
3. A payment is deemed executed only when we can dispose of the amount. In the case of checks, the payment is deemed effected only when the check has been irrevocably redeemed. We only accept bills of exchange and checks on account of performance, bills of exchange only after a separate agreement.
4. Starting from the due date, we charge 5% of default interest.
5. If the client/purchaser falls into default, we are entitled to charge interest at the amount of 8% p.a. on the purchase price receivable above the respective base interest rate starting from the date of the default.
6. If we are aware of circumstances putting the creditworthiness of the client/the purchaser into question, in particular if a check is not honoured or the client/purchaser suspends his payments or if other circumstances become known which put into question his creditworthiness, we are entitled to demand immediate payment of the outstanding debt. This also applies if we have accepted checks. In that case, we are also entitled to demand prepayments or guarantees.
7. The client/purchaser is only entitled to set-offs, retention or reductions, even if claims of defects or counterclaims are made, if the counterclaims have been legally confirmed or are undisputed. However, the client/purchaser is entitled to retention due to counterclaims from the same contractual relationship as far as the counterclaims are no claims for payment.

### **§ 8 Obligations of Delivery and Acceptance**

1. The delivery times in our offers are without obligations for us. Delivery deadlines or delays that can be bindingly agreed require the written form. In any case, the delivery times refer to the completion in our factory.

2. Our indication of delivery times is made to the best of our knowledge and is – as far as no fixed dates have been agreed – approximately binding and can deviate from the actual delivery. A delivery time of two weeks after the indicated delivery delay is still deemed punctual.
3. We cannot assume any responsibility for delivery and service delays due to force majeure and due to events that make the delivery difficult or impossible for us – this includes in particular strike, lockout, decrees from authorities etc., even if they are incurred by our suppliers or their sub-suppliers – even in case of bindingly agreed delays and deadlines. They entitle us to postpone the delivery or service for the length of the encumbrance plus an appropriate warm-up period or to wholly or partially withdraw from the contract because of the part not yet fulfilled. If the encumbrance lasts longer than three months, the client/purchaser, after setting an appropriate grace period, is entitled to withdraw from the contract with respect to the part not yet fulfilled. If the delivery time is extended or if we are released from our obligation, the client/purchaser cannot derive any claims for damages from that.
4. Claims for damages for delayed delivery are excluded, unless there is a situation of default at least caused by our gross negligence.
5. The client/purchaser is obliged to accept the merchandise. Claims for defects of the delivered merchandise are not affected by this. There is no obligation of acceptance as far as the delivered quantity exceeds admissible deviations (§ 5); in case of a defect of the merchandise, if it constitutes a substantial breach of contract or if there is a danger of personal injury or property damage because of the quality of the merchandise.
6. If the client/purchaser falls into default of acceptance, we are entitled to demand the reimbursement of the expenses thus incurred by us.
7. As far as a contract obliges us to perform in advance, we can refuse the delivery if, after the conclusion of the contract, we become aware of circumstances putting into question the capacity of the client/purchaser, in particular if the trade credit insurer cancels or substantially reduces the credit limit of the client/purchaser or if the credit limit is reached and if this jeopardises our payment claim. The right to refuse performance is void when the return service has been fulfilled or a security has been provided for it.

### **§ 9 Warranty**

1. The warranty period for the products delivered by us is two years. It starts on the date of delivery. With regard to the inspection and complaint duties of the client/purchaser, the provision of § 377 HGB (Commercial Code) always applies to our deliveries.
2. If the operation and maintenance instructions of the seller are not followed, changes are made to the products, parts are exchanged, consumables are used that do not correspond to the original specifications or the products are used for an improper purpose, there will be no warranty if the client/purchaser does not disprove a sufficiently substantiated assertion that one of these causes has first produced the defect. In any case, a form of use that is contrary to the technical specifications of our online product information service (see product information under [www.akustike-plus.com](http://www.akustike-plus.com), menu item „products“) is deemed inappropriate for the intended purpose.
3. Upon our request, the client/purchaser is obliged to send merchandise subject to complaints back to us in its state of delivery for the purpose of examination.
4. In case of a justified and timely complaint for defects, we are obliged to supplementary performance in the form of a costless correction of the delivered merchandise or, at our discretion, a replacement delivery. If the supplementary performance is not possible or unreasonable, we are also entitled, at our discretion, to credit the reduction in value and take back the merchandise subject to complaint against reimbursement of the purchase price.
5. Design-related non-perforated areas and / or fastening areas can lead to color deviations of the decorative surface. This is due to production and material (in particular in real wood veneers, for example oak) and is no reason for warranty claims.
6. If the supplementary performance / replacement delivery fails after an appropriate delay, the client/purchaser can, at his discretion, require a reduction of the remuneration or a cancellation of the contract.
7. Any liability for normal wear and tear is excluded.
8. Any warranty claims against us can only be made by the immediate client/purchaser, they cannot be assigned to third parties.
9. The paragraphs above and § 14 finally contain the warranty provisions for the products and exclude other warranty claims of any kind, unless we or our agents or aids have acted with gross negligence or intent. The liability from injuries to life, body or health due to our negligence or negligence or intent of our agents or aids remains unaffected. Claims from quality guarantees which are supposed to protect the client/purchaser from the risk of consequential damages from defects, also remain unaffected. In every case, potential claims are limited to the compensation for the damage foreseeable at the moment of the conclusion of the contract.

### **§ 10 Limitation of Liability**

1. Claims for damages from positive breach of duty, fault at conclusion of contract and tortuous act as well as from all other legal bases against us and our agents and aids are excluded, except in the case of intent or gross negligence. This also applies in particular to claims for damages instead of performance, however only as far as the compensation of indirect or consequential damages from defects is claimed, unless the liability is based on a quality guarantee that is supposed to protect the client/purchaser from the risk of such damages. The liability for damages from the injury of life, body or health due to our or our agents' and aids' negligence or intent remains unaffected. Any liability is limited to the damage foreseeable at the moment of the conclusion of the contract.
2. We are not liable for damages that result from an inappropriate use of our products, unless the client/purchaser can disprove a sufficiently substantiated assertion that a use for an inappropriate purpose has produced the damages. In any case, a form of use that is contrary to the technical specifications of our online product information service (see product information under [egger.de](http://egger.de), menu item „products“) is deemed inappropriate for the intended purpose.
3. We are not liable for promotional statements from third parties (e.g. producers within the meaning of § 4 para. 1 and 2 of the Product Liability Act or their agents) about the quality of the purchased item or in the labelling about special properties of the item, unless the ignorance of these promotional statements results from our intent or gross negligence or as far as the promotional statements had been corrected in an equivalent manner at the conclusion of the contract or the promotional statement could not influence the purchasing decision.

**§ 11 Reservation of Title, Guarantees** The following guarantees, which we will release at our discretion upon request, as far as they are not excluded by law (in particular in a substantial claim), by virtue of the contract partner from all legal bases

1. The merchandise remains our property. Processing and transformation are always done for us as the manufacturer, but without obligation for us. If our (co-)ownership expires by combining, it is agreed already now that the (co-)ownership of the whole item by our contract partner is transferred to us in proportion to the respective values (invoice value). The client/purchaser preserves our co-property free of charge. Merchandise in which we are entitled to co-ownership will be hereinafter referred to as reserved goods.
2. The client/purchaser is entitled to process the reserved goods and dispose of them in the ordinary course of business, as long as he is not in default. Pledges or chattel mortgages are inadmissible. The receivables arising out of the resale or any other legal basis (insurance, tort) with respect to the reserved goods (including all current account claims) are herewith already assigned to us in total as guarantee by the client/purchaser. We revocably authorise him to collect the receivables assigned to us for our account in his own name. This collection authorisation can only be revoked if the client/purchaser does not duly fulfil his payment obligations.
3. If the reserved goods are accessed by third parties, the client/purchaser will indicate our ownership and inform us immediately.
4. In case of a breach of contract by the client/purchaser – in particular a default of payment – we are entitled to take back the reserved goods or, if applicable, demand the assignation of the client's/purchaser's claims for return against third parties to us. If we take them back and if we pledge the reserved goods, this does not constitute a withdrawal from the contract - unless the Consumer Credit Law is applicable.
5. Upon our request, the client/purchaser is obliged to provide us with a precise list of the receivables transferred to us according to this provision with the names and addresses of the customers and to give us all information necessary to collect the transferred receivables.
6. All costs arising from the recollection of the delivered item must be borne by the client/purchaser. We are entitled to freely dispose of the delivered and recollected item.

#### **§ 12 Construction Changes**

We reserve the right to make construction changes any time. However, we are not obliged to make such changes to products already delivered.

#### **§ 13 Secrecy**

If nothing else is explicitly agreed in writing, the information provided in the context of orders is not deemed confidential.

#### **§ 14 Third Party Rights**

1. For third party rights (industrial property rights, patents, copyrights, trademarks etc.), we are liable, according to the other provisions of this contract, only if the property right exists according to the legislation of the country in which the client/purchaser has his billing address. A liability for the freedom from third party rights according to the legislation of other countries only exists if this has been explicitly agreed in writing.
2. The liability according to para. 1 does not exist as far as delivered items are manufactured according to drawings, designs, models or other equivalent descriptions or indications of the client/purchaser made available by him. In that case, the client/purchaser must indemnify us and hold us harmless against all third party claims resulting from an alleged or actual breach of law.
3. The client/purchaser is obliged to inform us immediately in writing about the claims asserted or made by a third party. Without our approval, the client/purchaser is not entitled to recognise a breach, and he will reserve all defensive measures and settlement negotiations for us. If the client/purchaser stops the use of the products, he is obliged to notify to the third party that stopping the use does not constitute the recognition of a breach of property rights. The client/purchaser will provide us with all the necessary information and any appropriate support.
4. Apart from that, §§ 9 and 10 of these delivery and payment conditions apply. The client/purchaser must notify third party rights in analogue application of the provisions of § 9 para. 1 sentence 3.

#### **§ 15 Taking Back of Goods**

If goods are taken back by mutual consent or in case of insolvency, we credit the present value taking into account the condition of the goods, as far as another use is possible. A return of the goods is only possible with our express written consent.

#### **§ 16 Governing Law, Place of Performance, Place of Jurisdiction, Partial Invalidity**

1. Only German law applies to these terms and conditions and all legal relations between us and the client/purchaser under the exclusion of the application of the laws on the international purchase of movable items and on the conclusion of contracts on the international purchase of movable items. The German version of these delivery conditions is binding with regard to their contents.
2. The place of performance for all mutual obligations is the place of our delivering factory.
3. As far as the client/purchaser is a general merchant within the meaning of the Commercial Code (HGB), a legal entity or special asset fund of public law, the exclusive place of jurisdiction for all disputes directly or indirectly arising out of the contractual relation is Wächtersbach.
4. If a provision in these terms and conditions or a provision within other agreements should be or become invalid, this does not affect the validity of all remaining provisions or agreements.