

Terms of delivery and payment

The following terms and conditions apply to contractual relationships with merchants within the scope of their business operations and with legal entities under public law, including special funds under public law.

§ 1 Validity of the conditions

1. Our deliveries, services and offers are exclusively based on these terms and conditions (hereinafter also referred to as "GTC"). These are therefore also valid for all future business relations in the version valid at the time of the order from the contractual partner, or in any case in the version last communicated to the contractual partner in text form as a framework agreement, without us having to refer to them again in each individual case.
2. At the latest with the receipt of the goods or services, these General Terms and Conditions shall be deemed accepted. The validity of business conditions of the contractual partner is contradicted. This shall also apply if the contractual partner refers to its terms and conditions of business or purchase by means of counter-confirmations or in any other way.
3. Individual agreements made with the contractual partner in individual cases (including subsidiary agreements, supplements and amendments) shall in any case take precedence over these GTC. Subject to proof to the contrary, a written contract or our written confirmation shall be decisive for the content of such agreements.
4. These terms and conditions replace all previous terms and conditions.

§ 2 Offer and conclusion of contract

1. Our offers are subject to change and non-binding.
2. This shall also apply if we have provided the contractual partner with drawings, illustrations, dimensions, weights or other performance descriptions or documents – also in electronic form – for which we reserve ownership and copyrights.
3. The orders from the buyer are considered to be binding contract offers.

§ 3 Prices

1. Prices are subject to change. All orders are only accepted on the basis of the prices valid at the time of the order. Our prices are exclusive of value added tax EXW (INCOTERMS 2020) ex works of the seller.
2. In the case of successive delivery contracts and all orders on call, we shall charge the prices valid on the day of delivery. The same applies to all other orders, provided that delivery is made later than four months after the order has been placed.

§ 4 Shipping and transfer of risk

1. Delivery is ex warehouse, which is also the place of performance for the delivery and any subsequent performance. At the request and expense of the contractual partner, the goods will be sent to another destination (sale to destination).
2. Unless a special mode of shipment has been agreed upon, the mode of shipment shall be selected at our discretion without obligation for the most favorable shipment rate. Freight costs shall be reimbursed to us.
3. The risk of accidental loss and accidental deterioration of the goods shall pass to the contractual partner at the latest upon delivery. In the case of sale by delivery to a place other than the place of performance, the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay shall pass upon delivery of the goods to the forwarding agent, the carrier or any other person designated to carry out the shipment. If acceptance has been agreed, this is decisive for the transfer of risk. The statutory provisions of the law on contracts for work and services also apply accordingly to an agreed acceptance.
4. If the contractual partner is in default of acceptance, this shall be deemed equivalent to handover or acceptance.

§ 5 Excess and short deliveries, partial deliveries

1. Excess or short deliveries of up to 10 % and usual minor dimensional tolerances are permissible and do not constitute a defect in the delivery.
2. Partial deliveries are permitted, provided they are reasonable for the contractual partner and will be invoiced separately.

§ 6 Order on call

In the case of orders on call or similar, our contractual partner is obliged to accept the ordered goods within a reasonable period of time, at the latest within 6 months from the date of order, unless otherwise agreed in individual cases.

§7 Payment

1. Unless otherwise agreed, our invoices are payable within 10 days of the invoice date and delivery or acceptance of the goods without deduction.
2. We are entitled to offset payments of the contractual partner against its older debts first and will inform the contractual partner about the type of offsetting that has taken place. If costs and interest have already been incurred, we shall be entitled to set off the payment first against the costs, then against the interest and finally against the principal claim.
3. The receipt of the payment by us is decisive for the payment. Upon expiry of the above payment period, the contractual partner shall be in default. During the period of default, the purchase price shall be subject to interest at the statutory interest rate applicable at that time. We reserve the right to assert further damages caused by delay. Our entitlement to the commercial interest on maturity (§ 353 HGB) remains unaffected vis-à-vis merchants.
4. If, after the conclusion of the contract, we become aware of circumstances which are likely to substantially reduce the creditworthiness of the contractual partner and as a result of which the payment of outstanding claims by our contractual partner is jeopardized, we shall be entitled to make or provide outstanding deliveries or services only against advance payment or provision of security.
5. The contractual partner shall only be entitled to offset and retention if the counterclaims have been legally established or are undisputed. In the event of defects in the delivery, the counter-rights of our contractual partner, in particular in accordance with § 9 of these General Terms and Conditions, shall remain unaffected.

§ 8 Delivery and acceptance obligations

1. The delivery period is agreed individually or is specified by us when the order is accepted. The delivery dates for EXW deliveries refer to the provision in our factory. If shipment has been agreed, delivery periods and delivery dates refer to the time of handover to the forwarding agent, carrier or other third party commissioned with the transport.
2. Our delivery times are given to the best of our knowledge and are always approximate, unless a fixed deadline or date has been expressly agreed.
3. We shall not be responsible for delays in delivery and performance due to force majeure and due to events which make delivery difficult or impossible for us – these include in particular strikes, lock-outs, official orders, etc., even if they occur at our suppliers or their sub-suppliers – even if binding deadlines and dates have been agreed. They entitle us to postpone the delivery or service by the duration of the hindrance plus a reasonable start-up time or to withdraw from the contract in whole or in part due to the unfulfilled service. If the non-availability of the service lasts longer than three months, the contractual partner is entitled to withdraw from the contract with regard to the not yet fulfilled service after setting an appropriate grace period. If the delivery time is extended or if we are released from our obligation, the contractual partner may not derive any claims for damages from this.
4. The occurrence of our delay in delivery shall be determined in accordance with the statutory provisions. In any case, a reminder from the contractual partner is required. If we are in default of delivery, our contractual partner may demand lump-sum compensation for its damage caused by the delay. The lump-sum compensation shall amount to 0.5% of the net price (delivery value) for each completed calendar week of the delay, but in total no more than 5% of the delivery value of the goods delivered late. We reserve the right to prove that our contractual partner has not incurred any damage at all or only a considerably lower damage than the above lump sum.
5. If the contractual partner is in default of acceptance, if it fails to cooperate or if our delivery is delayed for other reasons for which our contractual partner is responsible, we are entitled to demand compensation for the expenses incurred by us.

§ 9 Warranty

1. With regard to the contractual partner's obligations to examine and give notice of defects, the provision of § 377 HGB (German Commercial Code) shall always apply to our deliveries.
2. We shall not be liable if the products are modified, parts are replaced or consumables are used which do not comply with the original specifications or if our products are used for purposes other than those for which they are intended. Any use which contradicts our technical specifications of our online product information service (please refer to the product information at www.akustik-plus.com, menu item "Products") shall be deemed to be improper in any case.
3. At our request, the contractual partner shall make the rejected goods available to us for the purpose of inspection.
4. In case of a justified notice of defect, we are obliged to supplementary performance in the form of rectification of the delivered goods or, at our discretion, replacement delivery. Our right to refuse subsequent performance in accordance with the statutory requirements remains unaffected.
5. Subsequent performance does not include the removal of the defective item or the reinstallation if we were not originally obliged to install it.

6. The expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labor and material costs (not: dismantling and installation costs) shall be borne by us if a defect actually exists. However, if the purchased goods are taken to a place other than the agreed place of delivery, our contractual partner may not demand compensation for the associated expenses in the course of subsequent performance. If a demand for rectification of defects by the contractual partner subsequently proves to be unjustified, we shall be entitled to demand reimbursement of the costs incurred by us from the contractual partner.
7. Construction-related crosspieces and/or fastening areas can lead to color deviations of the decorative surface. This is due to production and material (especially in the case of real wood veneers, e.g. oak) and does not constitute a defect.
8. If the supplementary performance fails or if a reasonable period to be set by our contractual partner for the supplementary performance has expired unsuccessfully or is dispensable according to the legal requirements, our contractual partner may, at his discretion, reduce the purchase price or withdraw from the purchase contract. In the case of an insignificant defect, however, there is no right of withdrawal.
9. Liability for normal wear and tear is excluded.
10. Only the direct contractual partner is entitled to warranty claims against us and these are not transferable to third parties.
11. Claims of the contractual partner for damages or compensation for futile expenditure shall only exist in accordance with § 10, even in the case of defects, and shall otherwise be excluded.

§ 10 Limitation of liability

1. Unless otherwise provided for in these General Terms and Conditions, we shall be liable in accordance with statutory provisions in the event of a breach of contractual and non-contractual obligations.
2. We shall be liable for damages – regardless of the legal grounds – within the scope of liability for culpability in the case of intent and gross negligence. In the event of simple negligence we shall only be liable
 - for damages resulting from injury to life, body or health,
 - for damages resulting from the breach of an essential contractual obligation (obligation whose fulfillment is essential for the proper execution of the contract and on whose compliance the contractual partner regularly relies and may rely); in this case, however, our liability is limited to the compensation of the foreseeable, typically occurring damage.
3. The limitations of liability resulting from § 10 para. 2 of these General Terms and Conditions shall also apply to breaches of duty by or in favor of persons whose fault we are responsible for according to the statutory provisions.
4. The limitations of liability resulting from § 10 para. 2 of these General Terms and Conditions shall not apply if we have fraudulently concealed a defect or have assumed a guarantee for the quality of the goods and for claims under the Product Liability Act.

§ 11 Limitation period

1. Notwithstanding § 438 para. 1 no. 3 BGB, the general limitation period for claims arising from material defects and defects of title is one year from delivery. Insofar as acceptance has been agreed, the limitation period shall commence upon acceptance.
2. If, however, the goods are a building or an object that has been used for a building in accordance with its usual purpose and has caused its defectiveness (building material), the limitation period shall be five (5) years from delivery in accordance with the statutory provisions (§ 438 para. 1 no. 2 BGB). Other statutory special regulations on the statute of limitations (in particular § 438 para. 1 no. 1, para. 3, §§ 444, 445b BGB) shall also remain unaffected.
3. The aforementioned limitation periods of the law on the sale of goods shall also apply to contractual and non-contractual claims for damages of our contractual partner which are based on a defect of the goods, unless the application of the regular statutory limitation period (§§ 195, 199 BGB) would lead to a shorter limitation period in individual cases. Claims for damages of our contractual partner according to [please insert] as well as according to the Product Liability Act shall, however, become statute-barred exclusively according to the statutory periods of limitation.

§ 12 Retention of title, securities

1. We shall retain title to the goods sold until all our claims (including all balance claims from current account) to which we are entitled against the contractual partner now or in the future for any legal reason have been settled. The goods subject to retention of title (hereinafter also referred to as "reserved goods") may not be pledged to third parties or transferred by way of security before full payment of the secured claims. Our contractual partner must inform us immediately in writing if an application for the opening of insolvency proceedings is filed or if third parties have access (e.g. seizure) to the goods in our ownership.

2. In the event of conduct in breach of contract on the part of our contractual partner, in particular non-payment of the purchase price due, we shall be entitled to withdraw from the contract in accordance with the statutory provisions and/or to demand the return of the goods on the basis of the reservation of title. The demand for return does not at the same time include the declaration of withdrawal; we are rather entitled to demand only the return of the goods and to reserve the right of withdrawal. If our contractual partner does not pay the due purchase price, we may only assert these rights if we have previously set a reasonable deadline for payment without success or if such setting of a deadline is dispensable according to the statutory provisions.
3. Our contract partner is entitled until revocation to process and sell the reserved goods in the ordinary course of business. Our contractual partner hereby assigns to us in full the claims arising from the resale of the reserved goods or products by way of security. We accept the assignment.
4. The retention of title extends to the full value of the products resulting from the processing, mixing or combination of our goods, whereby we are considered the manufacturer. If, in the event of processing, mixing or combining with goods of third parties, their right of ownership remains, we shall acquire co-ownership in the ratio of the invoice values of the processed, mixed or combined goods. Otherwise, the same applies to the resulting product as to the goods delivered under reservation of title.
5. Our contractual partner remains authorized to collect the claim in addition to us. We undertake not to collect the claim as long as our contractual partner meets its payment obligations to us, there is no defect in its ability to pay and we do not assert the reservation of title by exercising a right in accordance with § 12 Para. 2
6. In the event of access by third parties to the reserved goods, our contract partner shall point out our ownership and inform us immediately.
7. At our request, our contractual partner shall be obliged to provide us with an exact list of the claims transferred to us in accordance with this provision, including the names and addresses of the customers, and to provide us with all information necessary for the assertion of the assigned claims.
8. All costs arising from the repossession of the delivery item shall be borne by the contractual partner. We are entitled to freely dispose of the returned delivery item.
9. If the realizable value of the securities exceeds our claims by more than 10%, we will release securities of our choice at the request of the contractual partner.

§ 13 Design modifications

We reserve the right to make design modifications at any time. However, we are not obliged to make such modifications to products already delivered.

§ 14 Confidentiality, no reverse engineering

1. Unless expressly agreed otherwise, the information submitted to us in connection with orders shall not be considered confidential.
2. On cost estimates, drawings. We reserve our ownership of and other rights to documents and other confidential information that we provide to our contractual partner. Confidential information is information that is marked as confidential or whose treatment as confidential can be expected from an objective point of view.
3. Confidential information may not be used for purposes other than those specified by us or made available to third parties and must be returned to us upon request after termination of the contractual relationship.
4. Our contractual partner may not obtain trade secrets and/or confidential information from us by observing, examining, dismantling or testing the deliveries, goods or objects, unless we have expressly agreed to this beforehand.

§ 15 Third-party rights

5. We shall only be liable for the rights of third parties (industrial property rights, patents, copyrights, trademarks, etc.) if the property right exists under the law of the country in which our contractual partner has its billing address. Liability for freedom from the rights of third parties under the laws of other states shall only be assumed if this has been expressly agreed.
6. The liability according to paragraph 1 shall not apply if the delivery items are manufactured according to drawings, drafts, models or other equivalent descriptions or information provided by the contractual partner. In this case, the contractual partner shall indemnify and hold us harmless from all claims of third parties arising from an alleged or actual infringement of rights.
7. Our contractual partner is obliged to inform us immediately in writing of any claims asserted or alleged by a third party. Without our consent, our contractual partner is not entitled to acknowledge an infringement, and it will reserve the right to all defensive measures and settlement negotiations for us. If our contractual partner ceases to use the products, the partner is obliged to point out to the third party that the cessation of use does not imply any acknowledgment of an infringement of property rights. Our contractual partner will provide us with all necessary information and other appropriate support.
8. Otherwise, §§ 9 and 10 of these terms of delivery and payment shall apply. The contractual partner shall be obliged to give notice of any rights of third parties in analogous application of the provisions of § 9 para. 1 sentence 3.

§ 16 Return of goods

In the event that the goods are taken back by mutual agreement or returned in the event of insolvency, we will credit the current value, taking into account the condition of the goods, provided that they can be used for other purposes. A return of goods is only possible with our express consent.

§ 17 Applicable law, place of performance, jurisdiction, partial invalidity

1. These General Terms and Conditions and the entire legal relationship between us and the contractual partner shall be governed by German law to the exclusion of international uniform law, in particular the UN Sales Convention.
2. The place of performance for all mutual obligations is the location of our supplying plant.
3. Insofar as the contractual partner is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, the exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is the court that is responsible for the headquarters of akustik plus Behringen GmbH & Co KG.
4. Should a provision in these terms and conditions or a provision within the framework of other agreements be or become invalid, the validity of all other provisions or agreements shall not be affected.