



# DELIVERY TERMS AND CONDITIONS OF AUDIA AKUSTIK GMBH

## Section 1 General Provisions

1. These delivery terms and conditions apply to all deliveries and services of AUDIA AKUSTIK GMBH (AUDIA). General terms and conditions of business of the Customer apply only to the extent that AUDIA has expressly consented to them in writing. Subsidiary agreements must be in written form.
2. Partial deliveries are permissible if they are reasonable for the Customer.

## Section 2 Prices, Payment Terms and Risk Transfer

1. Unless otherwise agreed, AUDIA list prices valid at the time of the order shall prevail. A flat rate for packaging, transportation and transport insurance is calculated for each delivery based on the current price list. The value-added tax valid on the day of delivery shall be invoiced separately.
2. The payment terms printed on the invoice shall apply. In the event of overdue invoice amounts, €2.50 per dunning stage and default interest of 8 % above the base interest rate shall be charged from the 2nd reminder. The Customer can only offset claims which are undisputed or legally binding. We reserve the right to assign overdue invoice amounts to a collection agency of our choice.
3. Delivery is at AUDIA's own risk. Upon delivery to the Customer, the risk is transferred to the same. The delivery method is at the discretion of AUDIA. AUDIA shall insure the consignment against damage in transit and loss. For the purpose of safeguarding any claims against the transport insurer, AUDIA must be notified of damage and losses, including a damage report from the transport company, up to two days after acceptance of the consignment.

## Section 3 Retention of Title

1. The subjects of the deliveries (reserved goods) shall remain AUDIA's property until fulfillment of all claims to which it is entitled against the Customer from the business relationship. Insofar as the value of all liens to which AUDIA is entitled exceed the amount of all secured claims by over 20 %, AUDIA shall, at the Customer's request, release a corresponding portion of the liens.
2. During the existence of the retention of title, the Customer is prohibited from pledging or chattel mortgaging and resale is permissible solely to resellers in the ordinary course of business and only on the condition that the reseller receives payment from his customer or establishes the condition that the property is transferable to the Customer only once he has met his payment obligations.
3. In the event of seizures or other orders or interventions by third parties, the Customer must notify AUDIA immediately.



4. Should the Customer breach his obligations, and specifically pay late, AUDIA is entitled to rescind and withdraw from the contract; the Customer must surrender the goods. If the retention of title is withdrawn or asserted, AUDIA need not rescind the contract; these acts or the seizure of the reserved goods by AUDIA do not entail the rescission of the contract, unless AUDIA has expressly stated this.

## Section 4 Guarantee

AUDIA shall grant the end user a three-month manufacturer's guarantee (calculated from the date of delivery to the end user) on the custom-made earmolds delivered by it and issued by an authorized dealer to an end user, as well as a six-month guarantee on hearing protecting plastics. For hearing aids, technical components and accessories, AUDIA shall grant the end user a 12-month manufacturer's guarantee.

The guarantee is granted on the basis of the following conditions:

1. Guarantee claims are excluded in the event of improper handling or standard wear and tear, or if repairs have been made by third parties who should remedy the defect claimed under the guarantee.
2. The AUDIA guarantee is valid only if an authorized dealer has completely filled in the warranty card at the time of sale.
3. The AUDIA guarantee does not affect any legal or contractual warranty claims.

## Section 5 Right of Return

Rescission after the start of production or the exchange of faultless deliveries is excluded in custom-made production and is a matter of goodwill in each individual case. An exception to this rule is the return of goods in their original packaging, which has been agreed upon in writing beforehand. In such cases, AUDIA is entitled to charge a handling fee of 10 % of the invoice amount.

## Section 6 Material Defects

1. If the delivery object is defective or missing warranted characteristics at the time of risk transfer, AUDIA AKUSTIK GMBH shall issue a guarantee for the brand new products supplied by it. Claims for defects are excluded in the event of a slight deviation from the agreed quality, non-reproducible software errors and natural wear and tear. Under the guarantee, AUDIA shall repair or replace the products which exhibit material and manufacturing defects at the time of the risk transfer, at its discretion and free of charge. AUDIA must always be granted supplementary performance.
2. Guarantee rights presuppose that the Customer has properly complied with his obligations to examine and notify goods as per section 377 of the German Commercial Code (Handelsgesetzbuch - HGB). Reported defects must include a plausible reason for a defect and presuppose proper treatment and care. Visible defects must be reported to AUDIA in writing without delay, but no later than eight days after delivery.



The defective delivery items must be kept to hand by an authorized AUDIA representative for inspection in the condition in which they were at the time of the discovery of the defect. Any breach of this obligation excludes warranty claims against AUDIA.

3. The limitation period for warranty claims is 12 months from the date of risk transfer.

## **Section 7 Defects of Title**

1. The delivery must be provided free of third-party property rights (hereinafter referred to as “Property Rights”) in Germany only. If a third party asserts justified claims based on Property Rights against the Customer in connection with the delivery, AUDIA is liable within the period specified in section 6 (3), by virtue of the fact that AUDIA obtains a right of use at its discretion and own expense, or changes the delivered products or replaces them by means of Property Rights. If AUDIA is not able to do so on reasonable terms, the Customer is entitled to the statutory rights of rescission or reduction. In addition, claims for damage by the Customer are based on section 9.

2. The above obligations exist only if the claims of the third party are made on the basis of the supplied products themselves, the Customer informs AUDIA in writing of any third-party claims immediately after they are made and does not acknowledge them. In the event of any other defects of title, section 6 shall apply mutatis mutandis. Any further or other claims of the Customer due to a defect of title are excluded.

## **Section 8 Right of Recourse**

1. If the end customer claims a defect, the Customer shall refer the end customer to AUDIA’s manufacturer guarantee and immediately send the device to AUDIA to assess whether a defect actually exists.

2. Instead of the right to claim for reimbursement pursuant to section 478 (2) of the German Civil Code (Bürgerliches Gesetzbuch - BGB), AUDIA grants the Customer the right to demand that AUDIA carries out the supplementary performance itself. The supplementary performance is free of charge, thus the Customer will not incur any expenses. In the event of subsequent performance by means of subsequent delivery, AUDIA reserves the right to claim compensation for the actual uses derived.

3. Claims by the Customer based on the expenses required for subsequent performance, in particular transport, road, work or material costs, are excluded insofar as expenses are increased because the object of the delivery has subsequently been transferred to a place other than the place of performance, unless the shipment corresponds to its intended use.

4. A right of recourse exists only insofar as the Customer has not concluded any agreements with his buyer which go beyond the statutory claims for defects.



## Section 9 Other Claims for Damage

1. Further claims for damage and reimbursement by the Customer (hereinafter referred to as “Claims for Damage”), irrespective of the legal basis, in particular for any breach of obligations arising from the contractual relationship and unlawful action, are excluded.
2. This does not apply, where liability is mandatory, e.g. under the Product Liability Act (Produkthaftungsgesetz - ProdHaftG), in cases of intent, gross negligence, injury to life, body or limb, or the violation of fundamental contractual obligations. However, Claims for Damage due to the infringement of fundamental contractual obligations are limited to the foreseeable damage which is typical of the contract, except in the case of intent or gross negligence or injury to life, body or limb. A change of the burden of proof to the detriment of the Customer is not connected to the above regulations.
3. Insofar as the Customer is entitled to Claims for Damage under this provision, such claims shall lapse based on the time period applicable to the material defect claims (section 6 (3)).

## Section 10 Software

1. If we make software available with our products, the Customer and the operator authorized by the Customer shall be granted the unlimited, non-exclusive and non-transferable right to use this software on the products with which it was delivered in unchanged form and for the purposes stated in the product description.
2. Software and the accompanying documentation must not be passed on to third parties – except for operators authorized by the Customer. The Customer may not reverse engineer or translate programs or remove any program parts.
3. The usage fee for the software provided with AUDIA's products is included in the purchase price, unless otherwise agreed. Extensions to the performance of products delivered to the Customer by means of software shall entail a charge. If the Customer has third-party service work on the products carried out himself or on his behalf, AUDIA's rights to use the service software require a license agreement beforehand in return for ongoing payment.

## Section 11 Repair Terms and Conditions (Outside the Scope: Guarantee or Warranty)

1. If a cost estimate is not expressly requested, the repair shall be carried out against payment of the AUDIA cost estimate valid on the day the order is placed. If the repair order does not come about due to a requested cost estimate, AUDIA shall charge for the handling costs incurred. The costs for the submission and return of repair equipment as well as the packaging costs must be borne by the Customer.
2. Repair defects must be reported to AUDIA in writing and are permitted only up to eight days after the arrival of the goods at the destination.



3. Unless time limits are specified in the product information, AUDIA shall provide replacement parts for wear parts and frequently required parts (spare parts) for repair purposes, for a reasonable period, unless our reference source fails in particular cases. As spare parts, we can also offer tested spare parts or other function-retaining solutions.

## **Section 12 Place of Jurisdiction and Applicable Law**

1. The place of performance and place of jurisdiction for all disputes arising from the contractual relationship is the headquarters of AUDIA, if the Customer is a registered trader.
2. German substantive law applies to the legal relations in connection with this contract, with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

## **Section 13 Binding Nature of the Contract**

The contract shall remain binding even if individual provisions are legally invalid in its remaining parts.

## **AUDIA AKUSTIK GMBH**