



# General Terms and Conditions of Business and Delivery

Version: August 28, 2020

## 1 Scope of Application

The following terms and conditions apply to all sales, goods, and other services, except where different terms have been agreed to in writing. They apply even if upon knowledge of conflicting or deviating terms set out by the client, we perform the service for the client without reservation.

## 2 Offer, Offer Documents, and Conclusion of the Contract

2.1 Our offers are valid for one month and non-binding, if not denoted otherwise.

2.2 We reserve ownership rights and copyrights on all documents such as quotations, descriptions, drawings, and test reports transmitted by WindAcoustics UG (haftungsbeschränkt).

2.3 The contract is concluded only with and according to the written order confirmation of WindAcoustics UG (haftungsbeschränkt).

2.4 Advertising folders and advertising messages of any kind, especially figures, drawings, descriptions, output data of any kind, measurements, weights, and consumption data are approximations and can become binding parts of contracts only with explicit written confirmation by WindAcoustics UG (haftungsbeschränkt).

2.5 We are entitled to further develop our products. Deviations of the delivered product from the ordered product are permitted if reasonable. The client's consent is assumed if the client does not contradict in writing within five days from delivery.

## 3 Confidentiality

The parties shall undertake to treat all information made available by the contractual parties in connection with the order as confidential and to only transfer them to third parties with the consent of the disclosing party. This applies in particular to the offer or any part of the offer made by WindAcoustics UG (haftungsbeschränkt). The parties shall also undertake to treat all information and documents provided by the other party as strictly confidential and to not make said latter accessible to any third party for the entire duration of the contract or in the event where the contract is not concluded. Documents can be sent via email unless agreed to otherwise.

## 4 Deadlines, Delivery, and Invoice

4.1 Deadlines are binding only if they have been agreed to in writing. Partial deliveries are permissible and end default of delivery.

4.2 Compliance with the agreed dates is subject to correct and timely self-delivery, and in particular, to the client having fulfilled its obligations to cooperate. Foreseeable delays shall be notified as soon as possible.

4.3 Claims on the basis of non-performance are excluded. Other claims for default of delivery shall be determined exclusively in accordance with section 11.

4.4 The invoice is delivered electronically by email.



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## 5 Fees, Set-Off, Withholding

5.1 The agreed fee is net ex works exclusive of VAT, packaging, freight, insurance, and shipment costs; these will be billed separately. The applicable VAT will be shown separately on the invoice.

5.2 The client is only entitled to carry out withholdings if its claim is based on the same contractual relationship and is undisputed or legally binding.

5.3 In addition, we are also entitled to demand partial payments in advance for services performed in accordance with the terms of the contract.

5.4 The client's right to offset counterclaims are undisputed or have become res judicata.

5.5 The client shall only be authorized to exercise a right of retention in the event where said counterclaim is based on the same contractual relationship and is undisputed or has become res judicata.

5.6 The fees are due for payment without deduction immediately at the invoiced date.

5.7 The client is in default against WindAcoustics UG (haftungsbeschränkt) without explicit demand note immediately when exceeding the due date. In the case of delayed payment, we are entitled to interest on late payments of 5% above base rate and at least 8%, if no higher interest on late payments has been agreed on with the customer. The claim of further damage is not excluded.

5.8 If the client is in default according to these regulations, no period of grace must be granted by WindAcoustics UG (haftungsbeschränkt) in order to withdraw from the contract and/or claim default compensation.

5.9 For server-based software solutions, WindAcoustics UG (haftungsbeschränkt) is entitled to shut down the data server upon delayed payments, after 14-day notice, until the payment is completed. After the payment is completed including late fees, the server will be restored.

## 6 Retention of Title

We reserve ownership and usage rights to the contractual object until settlement of all present and future receivables against the client.

## 7 Copyrights and Rights to Use

All copyrights for programs and algorithms remain at WindAcoustics UG (haftungsbeschränkt). Passing on the copyrights to third party as well as the multiple usage of the programs by the customer is inadmissible.

## 8 Trainings

8.1 **Registration** After registration, you will receive a registration confirmation. As all courses have a participant limit, registrations will be accepted in the order they are received. The protection of your data to third parties is ensured. Your details including the address data is stored at WindAcoustics UG (haftungsbeschränkt) exclusively for internal use. The use of this data, for example for the purpose of advertising, may at any time be objected.



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**8.2 Cancellation** When a withdrawal of an application is placed up to 30 days before the training, no costs will be calculated. In case of a later cancellation, we will charge the full course fee. We reserve the right to cancel the appointment in case of insufficient participation. This information will be sent to you at least five days before the training.

**8.3 Deviations** We reserve the right to make postponements and adapt course content to the respective requirements.

## 9 Warranty

The provisions of the service contract pursuant to § 611 et seq. of the German Civil Code shall be applicable for contracts between WindAcoustics UG (haftungsbeschränkt) and the client. In the event where due to a special agreement, the WindAcoustics UG (haftungsbeschränkt) services are provided under a work performance contract, then work contract rules pursuant to §§ 631 et seq. of the BGB in accordance with paragraphs 9.1 to 9.7 shall be applicable to any deficiencies.

**9.1** We guarantee that our services meet the generally accepted technical standards at the time services are performed.

**9.2** The warranty rights of the client require that said latter notify deficiencies in a timely manner. § 377 of the HGB shall apply mutatis mutandis.

**9.3** The warranty does not cover minor deviations from the agreed quality and no services such as translations of any kind, corrections of any kind, editing of any kind, and the like.

**9.4** Claims by the client for damage caused by the measurement process are also excluded, e.g. due to excitation with speakers or a tapping machine, or by proper commissioning of technical equipment, or those which result from the action of the client or third party for the purposes of the tests.

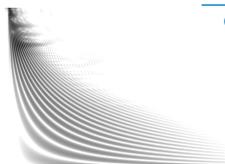
**9.5** We reserve the right to decide to honor the warranty by rectification or replacement. In the event where we are not able or willing to rectify the deficiency or deliver an adequate replacement, or if rectification/replacement is delayed for an unreasonable period of time due to circumstances for which we are responsible, or should rectification/replacement fail to occur for any other reason, then the client is entitled, at its discretion, to demand redhibition (cancellation of the contract) or an appropriate reduction in the purchase price (reduction). The client must, at our request, and within a reasonable period, state whether it will exercise its right of withdrawal. The withdrawal right may only be exercised in the event of a major deficiency. The right of withdrawal expires if the client does not withdraw within 14 days after receipt of notification of the refusal or failure of remedy.

**9.6** We may refuse subsequent performance, in the event where the client does not meet its payment obligations towards us to the extent corresponding to the faultless portion of the performance.

**9.7** Liability for damage claims is stipulated in section 11.

## 10 Warranty for Legal Deficiencies

In the event of a deficiency due to the infringement of intellectual property rights of third parties, we shall be liable only if such rights apply in Germany, if the client uses the service in a manner consistent with the contract, if a court decision based on infringement by the client of third party intellectual property rights is rendered against the client, and if the client has immediately notified WindAcoustics UG (haftungsbeschränkt) in writing of the claims asserted by such third party.



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## 11 Joint Liability

11.1 We are liable without limitation for willful intent and gross negligence, including willful intent or gross negligence by our representatives or agents. Insofar as we are not blamed for willful intent, liability shall be limited to the foreseeable, typically occurring damage.

11.2 We shall also be liable for simple negligence in the event of breach of essential contractual obligations (cardinal obligations). In this case, our liability shall be limited to contract-typical, foreseeable damage. An essential contractual obligation shall be deemed to exist as such if it is an obligation whose fulfillment the client expects and that it should be able to expect as well.

11.3 In the event of liability for simple negligence in breach of one or more essential contractual obligations, our contractual and tort liability for property or pecuniary loss shall be not more than our fees. However, the amount of liability shall be at least EUR 1,000.

11.4 The exclusion or limitation of our liability, the liability of our representatives or agents, shall not apply to liability for willful intent or endanger life, limb or health. Similarly, we are fully liable for deficiencies that involve the absence of expressly promised properties, if the purpose of the warranty was to protect the client against damage that was caused to items other than the object of the performance, as well as if the damage is due to circumstances for which we have assumed a guarantee responsibility. Full liability as used in these terms and conditions means liability up to the limit of our professional liability insurance.

11.5 Insofar as no other agreement differing from the above has been reached, liability, for whatever legal reason, shall be precluded.

11.6 The same applies to claims arising from culpa in contrahendo.

11.7 Sections 11.1 and 11.5 shall apply accordingly, in the event of reimbursement of expenses, with the exception of reimbursement of expenses under §§ 439 II BGB.

11.8 Exclusions and limitations of liability shall also apply to our legal representatives and agents.

11.9 Where data carriers are damaged, the compensation obligation does not cover the actual cost of replacing lost data and information.

11.10 Rather, the responsibility for data loss is limited to the typical recovery effort. This is measured by the damage that would have occurred had reasonable security measures (such as daily backups) been taken. You agree, prior to the application of the goods and services delivered by us, to protect yourself against data loss by means of a precautionary data backup.

11.11 The client is solely responsible for the conventional use, supervision, and consequences of use of all software products. This especially includes the recording of transactions, the production of recovery routines covering software malfunctions, as well as measures of protection against data loss.

11.12 Program errors in delivered software products recognized by the client and disclosed to WindAcoustics UG (haftungsbeschränkt) in writing within six months after the software delivery, will be fixed for free after scheduling a date with the client. It might be necessary to use the client's hardware to fix the error, this use will be allowed by the client without charge. The warranty is terminated if the client modifies the software. Additional warranty claims, e.g. for delay, direct or indirect damage, or third-party damages are excluded. The liability is limited at most to the purchasing price.

11.13 No warranty is granted for the damage resulting from the inability to measure during the shortfall period in case of failure for measurement or analysis devices as well as measurement and analysis software.



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11.14 In case we are hindered to deliver in time by force majeure or other causes which are no fault of our own, as for example changed laws or licenses, inner riots, interruptions of operations, illness, strikes, lockout, delayed or omitted self-delivery, the delivery date will automatically be extended by the time required to overcome the reason for the delay and a reasonable preparatory period. If such circumstances hinder us to deliver at all, the delivery commitment will be terminated. If the delay exceeds two months, we may withdraw from the contract; the same right applies to the client if the delay makes the acceptance unreasonable for the client. We will notify the client as soon as such circumstances arise.

## 12 Prescription

12.1 All claims by the client on whatever legal grounds are subject to prescription after six months from delivery of the contractual object unless otherwise agreed in individual contracts.

12.2 Statutory deadlines are valid for compensation under section 11.4. The same applies to warranty claims where longer periods are imposed by law. Said latter applies to buildings and items used for construction works according to § 438 I BGB No. 2, further recourse claims pursuant to § 479 BGB and claims for construction deficiencies according to § 634a I BGB.

## 13 Severability Clause

If any provision of these Terms and conditions is or becomes invalid, the other provisions shall remain in effect. This does not apply if adherence to the contract would be unreasonable for either party. The parties to the contract shall replace the ineffective provision by an effective one which most effectively represents the legitimate interests of the contractors.

## 14 Performance, Jurisdiction, Applicable Law

14.1 Our registered office shall be the place of performance unless otherwise provided for in the contractual agreement.

14.2 It is agreed that the courts of Munich shall have jurisdiction for contracts with fully qualified merchants and legal entities under public law.

14.3 The contractual relationship is governed exclusively by German law, to the exclusion of the UN Sales Convention (CISG). The German foreign-trade legislation applies to all foreign operations of WindAcoustics UG (haftungsbeschaenkt).