

Term & Conditions

Avisoft Bioacoustics e.K.



05. March 2021

I. General

§ 1 Scope, subject matter of the contract

1. These Terms and Conditions apply both to the purchase of hardware and software as well as accessories and spare parts as well as the performance of services by Avisoft Bioacoustics e.K. in accordance with the e.K. and the customer.
2. These General Terms and Conditions apply to legal entities under public law, entrepreneurs and special funds under public law, which are subsequently referred to as customers. It is always assumed that the customer is in a position as an entrepreneur, unless the customer expressly refers to his consumer status at the time of conclusion of the contract.
3. These General Terms and Conditions apply exclusively. The customer does not recognize any of the customer's deviating or conflicting terms and conditions. Should we carry out a delivery without reservation in the knowledge of conflicting or deviating terms and conditions of the customer, our General Terms and Conditions are nevertheless valid.

§ 2 Scope, conclusion of contract, contract documents

1. The order of a customer constitutes a binding offer on its part, which Avisoft Bioacoustics e.K. can accept within one week by sending an order confirmation. Offers submitted in advance of an order on our part are generally subject to change.
2. Avisoft Bioacoustics e.K. reserves the right of ownership and copyright to all graphic illustrations, calculations, illustrations and other documents. Prior to disclosure to third parties, explicit written authorization is required.

§ 3 Delivery

1. The delivery dates and delivery periods specified by Avisoft Bioacoustics e.K. in offers and order confirmations are generally non-binding, unless their liability has been agreed in writing.
2. The delivery period begins on the day of the order confirmation, but not before full clarification of all execution details.
3. The agreed delivery period shall be extended, without prejudice to the rights arising from the customer's delay, to the period by which the customer is in default with his obligations arising from this or any other conclusion. This applies by analogy if a binding delivery date has been agreed.
4. The customer may request to deliver three weeks after exceeding a non-binding delivery date or delivery period. From the time of receipt of the invitation, we shall be in default.
5. In the event of a delay by Avisoft Bioacoustics e.K., the customer is obliged to set Avisoft Bioacoustics e.K. a reasonable grace period. After expiry of this grace period, he may withdraw from the conclusion of the contract if the goods have not been reported to him as ready for dispatch by that date.
6. Claims for damages arising from non-compliance with delivery deadlines or delivery dates are excluded. This exclusion does not apply to the extent that one of the executives or any of the employees of Avisoft Bioacoustics e.K. is responsible for the delay through gross negligence.
7. Events of force majeure entitle Avisoft Bioacoustics e.K. to postpone the delivery for the duration of the hindrance and a reasonable start-up period or to withdraw from the contract because of the part not yet fulfilled. Force majeure is equivalent to strikes, lockouts and other circumstances that make delivery much more difficult or otherwise impossible for Avisoft Bioacoustics e.K. or a sub-supplier.
8. In the event of delays due to non-timely self-delivery by our suppliers, which are not the company responsible for Avisoft Bioacoustics e.K., delivery times shall also be extended to an appropriate extent.
9. The customer may require Avisoft Bioacoustics e.K. to declare whether they wish to withdraw or deliver within a reasonable period of time. If no declaration is made, the customer can withdraw.

§ 4 Prices, Terms of Payment

1. Price information is generally net from the registered office of Avisoft Bioacoustics e.K. plus VAT and shipping costs. The value added tax is shown separately in the invoice on the day of invoicing, as well as the respective shipping costs. In case of shipment abroad, additional customs duties and other duties must be paid.
2. The prices must be paid within 30 days after invoicing plus the statutory VAT without deduction by bank transfer to our account, unless otherwise agreed in writing. The receipt of money is decisive for the timeliness of the payment. After the expiry of the payment period, late payment occurs.
3. A set-off by the customer is only permitted in cases where a counterclaim is expressly declared undisputed or legally established.
4. In the event of default, Avisoft Bioacoustics e.K. is entitled to pay interest of 9% above the current discount rate of the Deutsche Bundesbank, if proof of a higher rate of that of Avisoft Bioacoustics e.K. interest to be paid at their bank, to calculate this interest rate. We reserve the right to charge an additional reminder fee of €40.00 for reminders after the delay has occurred.
5. If a payment date is not met or the customer violates other contractual agreements or Avisoft Bioacoustics e.K. becomes aware of circumstances that are likely to reduce the creditworthiness of the customer, Avisoft Bioacoustics e.K. is entitled to execute outstanding deliveries only against advance payment or security and to

withdraw from the conclusion after setting a reasonable grace period or to claim damages for non-performance. Avisoft Bioacoustics e.K. may also prohibit the resale of the contractual status delivered under reservation of title, the return of which or the transfer of indirect ownership may be required at the expense of the customer.

§ 5 Passage of risk

The shipment of goods is generally insured at the expense and risk of the customer. With the delivery according to Section 3 passes the risk to the customer.

§ 6 Commissioning

Avisoft Bioacoustics e.K. products are installed independently by the user and must be carried out by expert staff.

§ 7 Liability

1. Avisoft Bioacoustics e.K. cannot accept any liability for damage caused by the customer or third parties in the course of improper commissioning and installation of Avisoft Bioacoustics e.K. products. In particular, the safety and use instructions for proper use set out in the instructions for use of the respective products must be observed.
2. Avisoft Bioacoustics e.K. shall not be liable for damages caused by Avisoft Bioacoustics e.K., its legal representative or a vicarious agent of Avisoft Bioacoustics e.K. through simple negligence. This applies regardless of the legal nature of the asserted claim, in particular due to delay, other breach of duty or tort. This limitation of liability does not apply to damages resulting from injury to life, body or health and from the violation of essential contractual obligations.

§ 8 Withdrawal and damages

In the event of the customer's withdrawal from the contract, which is not the company for which Avisoft Bioacoustics e.K. is responsible, Avisoft Bioacoustics e.K. is entitled to claim 10% of the order amount as lump sum compensation.

II. Terms and Conditions for Purchase

In addition to the general terms and conditions set out in I., the following terms and conditions apply to the purchase.

§ 9 Warranty

1. Without prejudice to Sections 478, 479 of the German Civil Code (BGB), the warranty obligation is two years from delivery.
2. Avisoft Bioacoustics e.K. reserves the right to choose between rectification of defects and replacement delivery in the event of a defect.
3. We ask you to make returns of defective goods in consultation with Avisoft Bioacoustics e.K. We reserve the right to charge additional costs (e.B. import duties for returns from abroad) resulting from non-compliance with the agreed return instructions.
4. The customer's claims for defects are governed by Section 437 et seq. of the German Civil Code (BGB), whereby the following special conditions apply to the quality of the contractual status and the defect claims.
5. No guarantee is in place in the event of signs of wear and tear caused by use, as well as the usual wear and tear of the object of the contract.
6. The claim to warranty is excluded in the event of improper use or improper commissioning or assembly of the object of the contract by the customer or third parties.
7. The opening of devices and the use of non-original accessories, as well as handling of the device not in line with the user manual, will result in the termination of the warranty on the device.
8. The warranty applies only to the first-time buyer.

§ 10 Ownership

Avisoft Bioacoustics e.K. retains ownership of the object of the contract supplied by it until the customer has paid the purchase price in full.

§ 11 Rights to use software

1. By purchasing software, the customer is entitled to exercise an unlimited, non-exclusive right of use of the software and thus to use the software on a computer. It is allowed to install the software on an unlimited number of computers. The provided dongle and/or UltraSoundGate hardware that comes with the software license will however always limit its use to one computer at a time.
2. With regard to the right of use, the provisions of the Copyright Act S. 69 et seq. UrhG apply in addition.
3. The installation of the software is governed exclusively by the installation instructions and system requirements contained in the documentation. The customer must provide the necessary system requirements (hardware and software) for a proper installation.
4. It is forbidden to rent the software further.

III. Final Provisions

§ 12 Place of performance, place of jurisdiction and applicable law

1. The contractual place of performance for both contracting parties is Glienicke/Nordbahn.
2. The law of the Federal Republic of Germany applies exclusively. The application of the UN Convention on Contracts for the resale of goods is excluded.
3. As the place of jurisdiction, both contracting parties expressly agree on Glienicke/Nordbahn.

§ 13 Severability clause

Should one or more provisions of this contract be or become invalid, the validity of the remaining provisions shall not be affected. The parties undertake to agree on another provision that comes closest to the economic content of the invalid provision instead of the invalid provision.

§ 14 Writing clause

Oral ancillary agreements to this contract do not exist. Amendments or additions to this Agreement must be made in writing.