

# General Terms and Conditions (GTC) of Amadeus Acoustics GmbH

Status June 2023

## 1. Preamble

- 1.1. **Amadeus Acoustics GmbH**, FN 542927 y, Hamburgerstrasse 10/10, 1050 Vienna, Austria (hereinafter: **Amadeus**, "we", "us"), sells hardware (central processor with interface) with audio software and settings (calibration) after installation under the name "Amadeus Active Acoustics".
- 1.2. Amadeus sells or rents the hardware to natural and legal persons as end customers or intermediaries or system integrators (hereinafter: **customer**).
- 1.3. The audio software itself is pre-installed on the hardware. When purchasing the hardware, this software is not part of the purchase contract. To use the software, a licence agreement must be concluded with Amadeus.
- 1.4. Amadeus shall provide maintenance of the hardware and services to support and assist the customer on the basis of a maintenance agreement concluded between Amadeus and the customer in addition to the purchase or rental agreement.
- 1.5. Software updates, maintenance and other services provided by Amadeus to support and assist the customer shall in any case be paid for separately as agreed between Amadeus and the customer.

## 2. Validity

- 2.1. These terms and conditions apply between **Amadeus**, on the one hand, and natural persons and legal entities (hereinafter referred to as the **customer**), on the other hand, for the legal transaction in question (in particular sales, leasing, material and services and the granting of rights), also for all future transactions, even if no express reference is made to them in individual cases, in particular for **future supplementary or follow-up orders**.
- 2.2. The version of our General Terms and Conditions current at the time of conclusion of the contract, which is available on our **homepage** ([www.amadeus-acoustics.com](http://www.amadeus-acoustics.com)), shall apply in each case and was also transmitted to the customer.
- 2.3. We contract **exclusively** on the basis of our GTC.
- 2.4. The **customer's terms and conditions** or amendments or supplements to our GTC require our express consent - in writing vis-à-vis entrepreneurial customers - in order to be valid.
- 2.5. The customer's terms and conditions shall not be recognised even if we do not expressly **object** to them after receipt.

## 3. Offer/Conclusion of Contract

- 3.1. Our offers are **non-binding** unless a commitment has been stated in the offer.

- 3.2. Promises, assurances and guarantees on our part or agreements deviating from these GTC in connection with the conclusion of the contract shall only become binding vis-à-vis entrepreneurial customers upon our written confirmation.
- 3.3. Information about our products and services given in catalogues, price lists, brochures, advertisements on trade fair stands, circulars, advertising mailings or other media (**information material**) which are not attributable to us shall be disclosed to us by the customer - insofar as the customer bases its decision to place an order on such information. In this case, we may comment on their accuracy. If the customer violates this obligation, such information shall not be binding unless it has been expressly declared in writing to be part of the contract for entrepreneurial customers.

## 4. Prices

- 4.1. Price quotations are in principle **not** to be understood as a **lump sum price**.
- 4.2. For services ordered by the customer which are **not covered by the original order**, the customer shall be entitled to an appropriate fee.
- 4.3. Price quotations are exclusive of the applicable statutory **value added tax** and ex warehouse. Packaging, transport, loading and shipping costs as well as customs duties and insurance shall be borne by the entrepreneurial customer. These costs will only be charged to consumers as customers if this has been negotiated in an individual contract. We are only obliged to take back packaging if this has been expressly agreed.
- 4.4. The customer shall arrange for the professional and environmentally sound disposal of **old material**. If we are separately commissioned to do so, the customer shall additionally pay for this to the extent agreed for this purpose, in the absence of an agreement on remuneration.
- 4.5. Site safety devices, barriers, barrier tapes and other **safety measures** shall be provided by the entrepreneurial customer.
- 4.6. The fee for continuing obligations shall be agreed as **value-assured** according to the VPI 2020 and the fees shall be adjusted accordingly. The month in which the contract was concluded shall be taken as the starting point.

## 5. Equipment, materials, data, etc. provided by the client (contributions)

- 5.1. Provisions made by the customer are not subject to **warranty**.
- 5.2. The **quality and operational readiness** (including agreed file formats) of the materials provided shall be the responsibility of the customer.

plus VAT shall be payable, thereafter 80% of the net fee plus VAT.

## 6. Payment

- 6.1. Unless otherwise agreed, half of the remuneration shall be due upon conclusion of the contract, the other half upon commencement of performance.
- 6.2. The entitlement to a **cash discount deduction** requires an express written agreement vis-à-vis entrepreneurial customers.
- 6.3. If the entrepreneurial customer is in default of payment within the scope of other contractual relationships existing with us, we shall be entitled to **suspend the fulfilment** of our obligations under this contract until the customer has fulfilled them.
- 6.4. We shall then also be entitled to **call due all claims** for services already rendered from the current business relationship with the customer. This only applies to consumers as customers in the event that an overdue service has been due for at least six weeks and we have warned the customer of this consequence by setting a grace period of at least two weeks without success.
- 6.5. The customer shall only be entitled to a **right of set-off** insofar as counterclaims have been established by a court or recognised by us. Consumers as customers are also entitled to a right of set-off insofar as counterclaims are legally connected with the customer's payment obligation, as well as in the event of insolvency of our company.
- 6.6. If the payment deadline is exceeded, any **rebates** granted (discounts, deductions, etc.) shall be forfeited and added to the invoice.
- 6.7. In the event of a delay in payment for which the customer is responsible, the customer undertakes to pay **reminder charges** of € 150.00 per reminder for reminders that are necessary and appropriate for collection, provided that this is in reasonable proportion to the amount owed.
- 6.8. Our claims are independent of the economic success of the event or the customer. In the event of delays or premature termination of the service contract due to conduct for which the customer is responsible, we shall be entitled to charge the **service fee for the entire original contract period**.

## 7. Credit Check

- 7.1. The customer declares his express consent that his data may be transmitted to creditor protection institutions such as the state-preferred **creditor protection associations** Alpenländischer Kreditorenverband (AKV), Österreichischer Verband Creditreform (ÖVC), Insolvenzschutzverband für Arbeitnehmer oder Arbeitnehmerinnen (ISA) und Kreditschutzverband von 1870 (KSV) for the purpose of creditor protection.

## 8. Agreed right of withdrawal/cancellation fee

- 8.1. The client is granted the right to withdraw from the contract in writing without special reason up to four days before the agreed start of the provision of the first service by us (only in the case of rental, material and service provision).
- 8.2. If the withdrawal takes place up to one month before the agreed start of performance, a cancellation fee of 30% of the total net fee agreed between the parties for the project

## 9. Obligations of the customer to cooperate

- 9.1. Our obligation to perform the work shall commence at the earliest as soon as the customer has created all structural, technical and legal **prerequisites** for the performance, including the condition of the ground, accessibility and the provision of suitable personnel, which were rewritten in the contract or in information provided to the customer prior to the conclusion of the contract or which the customer should have known due to relevant expertise or experience.
- 9.2. The customer is obliged to arrange for everything necessary at his own expense so that the work, including agreed preliminary work and **preparatory measures**, can be started in good time and carried out without disruption. This shall be specified by us in specific terms in the contract. For example, we must be given unrestricted access to the event location and/or the construction site for the performance of our services.
- 9.3. Venues, materials provided, constructions, ground conditions, load-bearing capacity, etc. must be **suitable for the performance of the service**. If it subsequently transpires that the aforementioned or the event location has to be adapted, this shall constitute an amendment to the contract and the customer shall additionally compensate for the additional expenditure required as a result.
- 9.4. In particular, prior to the commencement of the performance, the customer shall, without being requested to do so, provide all necessary information on the location of **concealed** electricity, gas, water and similar **lines**, as well as **information** to enable proper execution, such as construction and seating plans, necessary information on the timing of the event including operating times, stage instructions, accident prevention regulations, etc., and shall notify us in good time of any changes projected in this regard.
- 9.5. The customer shall inform us of any special hazards and **risks** at the place of use (e.g. floods) as soon as possible, but in any case before the start of the work, usually in the course of a joint inspection of the place of the event and/or the construction site.
- 9.6. For the purpose of clarification within the framework of the performance of the contract (e.g. time when it is possible for us to completely set up or dismantle), the customer shall provide us with the name of a **contact person** who is comprehensively authorised and informed for the handling.
- 9.7. During the performance of our services (including assembly and dismantling as well as any storage of equipment, etc.), the customer shall provide a sufficient number of **assistants** and we shall announce this before conclusion of the contract.
- 9.8. The customer shall arrange for the necessary third-party **permits and notifications** and approvals vis-à-vis authorities, in particular also of a copyright nature, including registration of the event, at its own expense, as well as provide E-documents and static reports required for authorities. We shall draw the consumer's attention to these

within the framework of the conclusion of the contract, unless the customer has waived this.

- 9.9. The energy and water quantities required for the performance of the service, including the trial operation, shall be provided by the customer at the customer's expense. The customer shall ensure that sufficiently dimensioned power circuits are provided.
- 9.10. If required, the customer shall provide us free of charge with **lockable rooms** in sufficient quantity and size for the stay of the personnel as well as for the storage of working materials and consumables, tools and materials as well as toilet facilities for the time of the performance of the service.

#### 10. Performance execution (assembly, operation, dismantling)

- 10.1. We are only obliged to take into account the customer's subsequent requests for changes and extensions if they are necessary for technical reasons in order to achieve the purpose of the contract.
- 10.2. Minor **changes to our performance** which are objectively justified and reasonable for the entrepreneurial customer shall be deemed to have been approved in advance by the customer.
- 10.3. Our **performance obligations** shall only include installation, familiarisation, transport, uninstallation, storage and training if this is expressly agreed. If we contractually assume responsibility for transport, we may also engage third parties for this purpose.
- 10.4. **Partial deliveries** and services that are objectively justified are permissible and can be invoiced separately.
- 10.5. Drawings, copies, performance specifications, information on dimensions and weights, promised assembly and dismantling times, materials used as well as working materials and consumables passed on by us shall only represent approximate information based on our practical experience.
- 10.6. (Pre-) **installation**, assembly and dismantling as well as **operation** of the equipment shall be carried out in accordance with the local conditions, technical possibilities and the instructions of the customer through the contact person named by him as well as the responsible authorities.
- 10.7. In the event of a significant change in our contractual obligations after conclusion of the contract for the purpose of adapting to the customer's needs (e.g. rehearsal time exceeding the agreed time not caused by us), we shall be entitled to invoice the customer for the necessary **additional expenditure** in terms of material and labour. This shall also apply to an extensive examination as to whether and under which conditions a modification or extension is feasible, however, vis-à-vis consumers only if we have pointed this out in writing.
- 10.8. Likewise, additional expenditure due to desired **additional services**, such as in particular as a result of the submission of data in non-digitalised form or in formats other than those agreed, necessary and reasonable use of services of third parties, expenditure for licence management, commissioned testing, research services and legal checks as well as services provided outside business hours, shall be remunerated separately.

- 10.9. If it is not possible for us to remove equipment and materials immediately due to circumstances for which we are not responsible (e.g. due to a ban on night-time driving), these shall be stored temporarily in a suitable manner at the event location and/or the construction site at the risk and expense of the customer.

#### 11. Performance deadlines and dates

- 11.1. Deadlines and dates shall be postponed in the event of **force majeure**, strikes, unforeseeable delays on the part of our suppliers for which we are not responsible, or other comparable events beyond our control, for the duration of the event in question. This shall not affect the customer's right to withdraw from the contract in the event of delays which make it unreasonable to commit to the contract.
- 11.2. If the start of the performance or the performance is delayed or interrupted due to circumstances **attributable to the customer**, in particular due to a breach of the duty to cooperate in accordance with item 8 of these GTC, performance deadlines shall be extended accordingly and agreed completion dates shall be postponed accordingly.
- 11.3. Delivery and completion dates are only **binding** for business customers if their compliance has been agreed in writing.
- 11.4. In the event of a **delay** in the fulfilment of the contract by us, the customer shall be entitled to withdraw from the contract after setting a reasonable period of grace. The grace period must be set in writing with a simultaneous warning of withdrawal.

#### 12. Transfer of risk (for loss, damage)

- 12.1. The risk shall pass to the entrepreneurial customer as soon as we hold the object of purchase, the material or the work **ready for collection in the factory or warehouse**, deliver it ourselves or hand it over to a carrier.
- 12.2. The entrepreneurial customer is obliged to take out appropriate insurance against this risk. We undertake to take out transport insurance at the written request of the customer and at the customer's expense. The customer approves any customary mode of shipment.

#### 13. Default of acceptance

- 13.1. If the customer is in default of acceptance for more than 2 hours (refusal of acceptance, default with advance performance or other) and if the customer has not ensured the elimination of the circumstances attributable to him which delay or prevent the performance of the service, we shall be entitled to **dispose otherwise of the equipment and materials** specified for the performance of the service while the contract remains in force, provided that in the event of the continuation of the performance of the service we procure these within a period appropriate to the respective circumstances.
- 13.2. In the event of default of acceptance on the part of the customer, we are also entitled, if we insist on performance of the contract, to **store** the goods on our premises, for which we are entitled to a storage fee.
- 13.3. This shall not affect our right to demand payment for services rendered and to **withdraw** from the contract after a reasonable period of grace.

- 13.4. In the event of a justified withdrawal from the contract, we shall be entitled to demand from the entrepreneurial customer **liquidated damages** in the amount of 80% of the order value plus VAT without providing evidence of the actual damage. The obligation to pay damages is independent of fault.
- 13.5. The assertion of a **higher damage** is permissible. This right only exists vis-à-vis consumers if it is negotiated in the individual case.

#### 14. Retention of title (purchase)

- 14.1. The goods delivered, assembled or otherwise handed over by us remain our property until the purchase price has been paid in full.
- 14.2. A **resale** is only permissible if we have been informed of this in good time beforehand, stating the name and address of the purchaser, and we consent to the sale.
- 14.3. In the event of our consent, the purchase price claim of the entrepreneurial customer shall already be deemed **assigned** to us.
- 14.4. If the customer is in **default of payment**, we shall be entitled to demand the return of the goods subject to retention of title after setting an appropriate grace period. We may only exercise this right vis-à-vis consumers as customers if at least one overdue payment by the consumer has been due for at least six weeks and we have sent him a reminder threatening this legal consequence and setting a grace period of at least two weeks without success.
- 14.5. The customer must inform us immediately of the opening of **bankruptcy** proceedings against his assets or of the **seizure** of our goods subject to retention of title.
- 14.6. We are entitled to **enter the location** of the goods subject to retention of title in order to enforce our retention of title, insofar as this is reasonable for the customer, after giving reasonable advance notice.
- 14.7. Necessary and reasonable **costs** for the appropriate prosecution shall be borne by the customer.
- 14.8. The assertion of the reservation of title shall only constitute a **withdrawal from the contract** if this is expressly declared.
- 14.9. We may **sell** the goods subject to retention of title taken back to entrepreneurial customers on the open market and at the best possible price.

#### 15. Property rights of third parties / collecting societies

- 15.1. If the customer contributes **intellectual creations** or documents and if third party property rights are asserted with regard to such creations, we are entitled to stop the production of the delivery item at the risk of the customer until the third party rights have been clarified and to claim compensation for the necessary and appropriate costs incurred by us, unless the unjustified nature of the claims is obvious.
- 15.2. The customer shall indemnify and hold us **harmless** in this respect.
- 15.3. We are entitled to demand reasonable **advances on costs** from entrepreneurial customers for any legal costs.

- 15.4. **Rights of use** shall be obtained by the customer and the customer shall bear the fees incurred, including the AKM fees and fees of other collecting societies concerned.

#### 16. Our intellectual property

- 16.1. **Plans**, sketches, cost estimates and other documents provided by us or created by our contribution remain our intellectual property.
- 16.2. The use of such documents outside of the intended use, in particular the **passing on**, duplication, publication and making available, including copying even of extracts, requires our express consent.

#### 17. Protection of our software and data carriers

- 17.1. The customer undertakes not to make the **software** and **data carriers** provided by us within the scope of the project accessible to third parties without our express written consent.
- 17.2. The customer is not permitted to access or interfere with the software beyond the **user interface** provided for this purpose.
- 17.3. The customer undertakes to take **appropriate protective measures** against unauthorised access and intervention by third parties while the software or data carriers are within its sphere of influence.

#### 18. Confidentiality and data protection

- 18.1. The customer undertakes to maintain the confidentiality of all documents and information which are not generally known and which relate to our business sphere and services and which become accessible to them during the preparation and implementation of this project. This obligation shall remain in force even after the termination of the contractual relationship, as long as there is a justified interest in doing so.
- 18.2. The customer undertakes towards us to comply with the provisions of the DS-GVO.

#### 19. Warranty

- 19.1. The provisions regarding the statutory warranty shall apply. For business customers, the **warranty period** is one year from handover.
- 19.2. In the absence of an agreement to the contrary (e.g. formal acceptance), the time of **handover** shall be the time of completion, at the latest when the customer has taken control of the performance or has refused to take control without giving reasons.
- 19.3. **Remedies** of a defect claimed by the customer do not constitute an acknowledgement of this defect claimed by the customer.
- 19.4. The entrepreneurial customer shall grant us **at least two attempts** to remedy the defect.
- 19.5. If the customer's allegations of defects are unjustified, the customer shall be obliged to reimburse us for any **expenses** incurred in determining that the goods are free of defects or in rectifying the defect.
- 19.6. The entrepreneurial customer must always **prove** that the defect was already present at the time of handover.

- 19.7. **Defects** in the delivery item which the entrepreneurial customer has discovered or should have discovered by examination in the ordinary course of business after delivery must be **reported** to us in writing without delay, at the latest 48 hours after handover. Hidden defects must also be reported within this reasonable period from the time of discovery.
- 19.8. Any **use or processing** of the defective object of performance which threatens further damage or makes it more difficult or impossible to determine the cause shall be discontinued by the customer without delay, unless this is unreasonable.
- 19.9. If a **notice of defect** is not made in due time, the goods shall be deemed to have been accepted.
- 19.10. The defective delivery or samples thereof are to be **returned** to us by the entrepreneurial customer - insofar as this is economically justifiable.
- 19.11. The **costs of returning** the defective goods to us shall be borne in full by the entrepreneurial customer.
- 19.12. The warranty is excluded if the customer's technical equipment, such as supply lines, cabling, networks, etc., is not in a technically flawless and operational condition or is not **compatible** with the delivered items, insofar as this circumstance is causal for the defect.

## 20. Liability

- 20.1. In the event of a breach of contractual or pre-contractual obligations, in particular due to impossibility, delay, etc., we shall only be liable for **financial losses** in cases of intent or gross negligence.
- 20.2. In relation to entrepreneurial customers, liability is **limited** to the maximum liability amount of any **business liability insurance** taken out by us and to the amount of the **remuneration agreed** between the parties.
- 20.3. This limitation shall also apply vis-à-vis the entrepreneurial customer with regard to damage to an item which we have **accepted for processing**. However, this shall only apply to consumers if this has been negotiated in detail.
- 20.4. The exclusion of liability also includes claims against our **employees**, representatives and vicarious agents due to damage which they cause to the customer - without reference to a contract on their part with the customer.
- 20.5. We are not liable for **damage caused by third parties** who do not act as our employees or vicarious agents directly bound to us by instructions.
- 20.6. We are not liable for **indirect or consequential damages** such as lost profits, unrealised savings, claims by third parties or for consequential damages due to defects or loss of data.
- 20.7. Claims for damages by entrepreneurial customers must be asserted in court within **two years**, otherwise they will be forfeited.
- 20.8. Our liability is excluded for damage caused by **improper handling** or storage, overloading, non-compliance with operating and installation instructions, faulty assembly, commissioning, maintenance, servicing by the customer or third parties not authorised by us, or natural wear and tear, insofar as this event was causal for the damage. Liability is also excluded for failure to carry out necessary

maintenance, unless we have contractually assumed the obligation to carry out maintenance.

- 20.9. If and to the extent that the customer can claim **insurance benefits** for damages for which we are liable through a damage insurance policy of its own or concluded in its favour (e.g. liability insurance, hull insurance, transport, fire, business interruption or others), the customer undertakes to claim the insurance benefit and our liability shall be limited to the disadvantages incurred by the customer as a result of claiming the insurance (e.g. higher insurance premium).

## 21. Special provisions on rent

- 21.1. Equipment, accessories and similar items made available by us for a limited period of time as part of the performance of the contract shall be handed over to the customer in perfect condition and this shall be confirmed by the customer in a **handover report**. The rental period shall commence upon handover or readiness for collection in accordance with the contract.
- 21.2. Unless expressly agreed otherwise, the customer shall return any packaging supplied.
- 21.3. The customer shall **insure** the items provided against any event of damage (including vandalism, theft, misappropriation or other loss).
- 21.4. The customer shall notify us immediately of any **damage event** and enable us to carry out repairs without delay. The customer shall compensate us for any disadvantages arising from delayed notification.
- 21.5. The customer shall treat the items provided with care and shall only use **skilled persons** for the operation, assembly and dismantling of the items.
- 21.6. The customer shall protect the equipment, accessories and other items provided by us from weather, **external influences** and other external influences in a suitable manner (e.g. roofing in the case of open air, covering the cable routes with heavy rubber mats, etc.), otherwise we shall be entitled to take appropriate protective measures at the customer's expense.
- 21.7. The actual **rental period** shall end only upon return of the items against signature of the rental counterfoil, in the case of handover to us for transport only upon receipt by our company. In the event of non-use of rented equipment which has not been returned accordingly, a deduction of costs is not possible.
- 21.8. If the agreed rental period is **exceeded**, a usage fee corresponding to the calculated fee agreed per rental day will be charged for each day or part thereof that the period is exceeded. We shall be entitled to assert claims for damages in excess of this. If the customer is aware of the longer rental period, he/she must inform us of this 4 working days in advance if the agreed rental period is at least 5 days, stating the expected duration; if the rental period is shorter, notification on the last agreed rental day is sufficient.
- 21.9. The customer shall be obliged to **maintain** the items provided in the usual manner, whereby such work shall be carried out professionally at the customer's expense. In return, the customer shall not be responsible for any

changes to the items provided, including deterioration, caused by their use in accordance with the contract.

- 21.10. In the event of changes that were not caused by the contractual use, the customer shall bear the costs of restoring the condition upon handover; in the event of loss, the replacement value shall be reimbursed.
- 21.11. If items provided are returned heavily soiled, the customer shall reimburse the costs incurred for cleaning in full.
- 21.12. The **transfer** of equipment, accessories and similar items made available by us for a limited period of time to **third parties** - whether against payment or not - is only permissible insofar as the customer also contractually transfers all obligations from this contract to such third parties. If the customer informs us of such a transfer, this shall not constitute a contractual relationship between the third party and us, even if we do not object to the transfer. The customer shall continue to be liable to us for compliance with the contract.
- 21.13. If the customer fails to comply with essential contractual obligations, we may terminate the rental contract without notice.

## 22. Severability clause

- 22.1. Should individual parts of these GTC be invalid, this shall not affect the **validity** of the remaining parts.
- 22.2. We, as well as the entrepreneurial customer, undertake now already to jointly - based on the horizon of honest contracting parties - make a **substitute provision** which comes closest to the economic result of the ineffective condition.

## 23. General

- 23.1. Austrian law shall apply.
- 23.2. The UN Convention on Contracts for the International Sale of Goods is excluded.
- 23.3. **Place of performance** is the registered office of the company (1050 Vienna).
- 23.4. The place of jurisdiction for all disputes arising from the contractual relationship or future contracts between us and the entrepreneurial customer is the court with local jurisdiction for our registered office. The place of jurisdiction for consumers, provided that they are domiciled in Austria, shall be the court in whose district the consumer has his habitual residence or place of employment.
- 23.5. If, at the time the action is brought, the contracting party is not domiciled in a state in which a judgment of the court referred to in clause 23.4. is enforceable on the basis of directly applicable Union law or an enforcement agreement, the action may instead be brought before an arbitral tribunal in accordance with the following provisions:
- 23.5.1. The dispute shall be finally settled in accordance with the Rules of Arbitration (Vienna Rules) of the International Arbitration Institution of the Austrian Federal Economic Chamber (VIAC).
- 23.5.2. The arbitral tribunal shall consist of a sole arbitrator.
- 23.5.3. The place of arbitration shall be Vienna.

23.5.4. The language of the proceedings shall be German.

23.5.5. The applicable substantive law, the substantive law applicable to the arbitration agreement and the law applicable to the proceedings shall be Austrian law.

23.6. In case of disputes, the German language version of these Terms and Conditions shall prevail.