

TERMS AND CONDITIONS OF SALE

Version applicable from 24/02/2023 to 04/09/2023

[TERMS AND CONDITIONS OF SALE](#)

[ARTICLE 1. FIELD OF APPLICATION](#)

[ARTICLE 2. ACCEPTANCE OF THE TERMS AND CONDITIONS OF SALE](#)

[ARTICLE 3. ORDER](#)

[ARTICLE 4. PRICE](#)

[ARTICLE 5. PAYMENT CONDITIONS](#)

[ARTICLE 6. DELIVERY](#)

[ARTICLE 7. RETENTION OF OWNERSHIP – RISK TRANSFER](#)

[ARTICLE 8. RIGHT OF WITHDRAWAL](#)

[ARTICLE 9. WARRANTIES](#)

[ARTICLE 10. AUDIOPHONICS' LIABILITY – force majeure](#)

[ARTICLE 11. TREATMENT OF PERSONAL DATA](#)

[ARTICLE 12. INTELLECTUAL PROPERTY](#)

[ARTICLE 13. SEVERABILITY](#)

[ARTICLE 14. NON WAIVER](#)

[ARTICLE 15. APPLICABLE LAW](#)

[ARTICLE 16. LANGUAGE](#)

[ARTICLE 17. DISPUTE RESOLUTION](#)

[ANNEX 1](#)

[LEGAL PROVISIONS ON THE LEGAL WARRANTIES](#)

ARTICLE 1. FIELD OF APPLICATION

The following terms and conditions (« Terms and Conditions ») are applicable, without any restriction or reserve, to all sells made by **AUDIOPHONICS, limited liability company with a sole associate registered to the RCS de BORDEAUX under the number 484 107 412 and which headquarters are located 10 rue Marcellin Berthelot 33270 FLOIRAC** (hereinafter « AUDIOPHONICS ») to any business or consumer (« the Customer ») wishing to acquire the for sale products by AUDIOPHONICS (« the Products ») on the website <https://www.audiophonics.fr/> (« the Website »).

The Terms and Conditions bring precisions to the order conditions, payment conditions, delivery conditions and to the handling of the potential return of the Products ordered by the Customer.

The action of ordering with AUDIOPHONICS implies the full acceptance and adherence to these Terms and Conditions and the obligation for payment of the ordered Products, which therefore constitutes a contract (« the Contract »).

The following Terms and Conditions apply to the exclusion of any other conditions, and most notably those in vigor for in store sales or for those made via any other supply and commercial chains.

The Terms and Conditions are available at any given time on the Website and will prevail, if required, on any other version or any other contradictory document.

Since the Terms and Conditions may be subjected to future amendments, the version applicable to the Customer's purchase is the one in vigor at the time the order was placed.

In the case where the Contract is concluded by a professional Customer, the Terms and Conditions constitute, in accordance with the article L441-1 of the Code de commerce, the only base of the commercial relationship between the involved Parties.

ARTICLE 2. ACCEPTANCE OF THE TERMS AND CONDITIONS OF SALE

The Customer declares to have acknowledged the present Terms and Conditions and to have accepted them, when validating their Order, by clicking on the desired method of payment.

This acceptance implies the full acceptance and adherence to these Terms and Conditions and the obligation for payment of the ordered Products, which is expressly admitted by the Customer, who thus renounces, notably, the right to make any form of claim based on any contradictory document, which would then be unenforceable against AUDIOPHONICS.

The Customer acknowledges to be in capacity to contact and to acquire the Products offered on the Website.

ARTICLE 3. ORDER

Creation of a Customer account online :

In order to create an account, the Customer must provide the required personal information about themselves.

The Customer must create a password to secure their personal account. This password is strictly personal and the Customer is therefore the sole responsible party regarding the fact this password must remain confidential. AUDIOPHONICS decline any responsibility regarding the theft or loss of the password.

The Customer is the sole responsible party regarding any access to their personal account, unless this access or use is the exclusive consequence of a neglectful action on AUDIOPHONICS's part.

The Customer agrees to contact AUDIOPHONICS immediately if they notice any activity suggesting their account is used in an unauthorised manner.

AUDIOPHONICS reserve the right, at their sole discretion, to suspend, temporarily or definitively, the Customer's access to their account, without any notice or compensation for the Customer, in a case of infringement of the provisions of the present Terms and Conditions by the Customer.

Precontractual information – For sale Products

The Customer acknowledges they were informed, before placing an order and concluding the Contract, in a legible and comprehensible manner, regarding the present Terms and Conditions and all the information pertaining directly and necessarily to the content of the Contract.

The main characteristics of the Products, and notably the specifications, illustrations and indications of dimensions or capacity of the Products, are presented on the Website.

The Customer must refer to the details of every Product in order to know its properties, its essential particularities and the times of arrival before placing any order.

All photographs of the Products on the Website are non-contractual and displayed for illustration only.

The Products are sold within the limit of available stocks.

Placing of the order

It is incumbent upon the Customer to select on the Website the Products they want to order.

It is noted that the minimum purchase amount is (5) euros without tax.

The Customer has the possibility to check the details of their order, its total price and to correct any potential mistakes before validating their order. It is incumbent on them to check the accuracy of the order and to signal or rectify immediately any mistake.

Orders can be modified by the customer service as long as they do not have the status « In preparation ». Once they have this status, the order is being prepared and can no longer be modified.

In case of total unavailability of an ordered Product, the Customer will be notified and will be able to cancel the Order. They will be able to choose between a full refund, to take place in the 30 days following the payment, and an exchange of the Product.

An order is placed on the Website when the Customer accepts the present Terms and Conditions by clicking on the desired method of payment and validates the Order. This validation implies the full acceptance of the present Terms and Conditions.

Acceptance of the Order – Conclusion of the Contrat

The sell is only made definitive once the Customer is sent the confirmation of the order's acceptance by AUDIOPHONICS via email.

Any order placed by the Customer on the Website and confirmed by AUDIOPHONICS, in the conditions and in accordance to the processus hereinabove described, constitutes the formation of a Contract concluded remotely between the Customer and AUDIOPHONICS.

In the absence of evidence to the contrary, all data saved in AUDIOPHONICS's IT system act as proof regarding all the transactions concluded with the Customer.

AUDIOPHONICS reserve their right to cancel or decline any order from a Customer with whom there would be a dispute regarding the payment of a previous order.

ARTICLE 4. PRICE

The Products are sold at the current price displayed on the Website, when the order is registered by AUDIOPHONICS. Prices are displayed in euros, with and without taxes. Any change applicable of the VAT rate will be automatically applied to the prices of the Products. If one or several taxes or additional fees, notably environmental taxes, were to be created or modified, raising or decreasing the prices, the changes to the prices of the Products will be applied.

The prices take into account any potential discount which would be consented by AUDIOPHONICS on the Website.

These prices are firm and non-revisable during their validity period, as indicated on the Website, AUDIOPHONICS reserving their right, notwithstanding this period, to modify the prices at any given time. The prices displayed on the Website do not take into account any processing fees, shipping fees, transporation and delivery fees, to be billed additionally, in the conditions indicated on the Website and calculated before the order is placed.

In case of a special request from the Customer regarding the packing conditions or the transportation conditions of the ordered Products, duly accepted in written form by AUDIOPHONICS, all related costs will be the object of a specific and additional billing, based on a quotation accepted beforehand by the Customer.

AUDIOPHONICS reserve their right to address a quotation regarding the shipping costs of any oversized order which would not be transported by the usual carriers. This case is specified in the shopping cart by the mention « On quotation » instead of a carrier name.

ARTICLE 5. PAYMENT CONDITIONS

The price is to be paid at once, in full the day the order is placed by the Customer, using a credit card, a Paypal account or any other payment method offered by AUDIOPHONICS.

For orders paid by bank wire, they will be automatically canceled if the funds have not been received within ten (10) days.

All bank charges applicable to bank wires and international bank wires are incumbent on the Customer. In the case when those charges are paid by AUDIOPHONICS, they will be added to the order's total amount to be paid.

For the orders of a significant amount, AUDIOPHONICS may instore a verification process to insure that no person uses the bank information of another person without their knowledge. As part of this process, the Customer will be asked to provide a copy of their ID as well as a proof of residence by fax or by email to the company AUDIOPHONICS.

The payment date are exchanged in an encrypted mode with the « 3D Secure » procedure. AUDIOPHONICS does not manage the Systempay website and therefore cannot be held responsible for the consequences of an improper use by the Customer of the Systempay website or for any unavailability of the website services. At any given time, the terms and conditions of the Systempay website apply to any payment made via credit card and the Customer is invited to read them.

An invoice is issued by AUDIOPHONICS and given to the Customer at the time of the delivery of the ordered Products, or is sent by email to the address provided when the order was placed.

Deferred payments are not possible, except for the drafting of a quotation for a French administration, which will be paid using a government-issued payment and for which an invoice will be transmitted to the platform Chorus.

ARTICLE 6. DELIVERY

Conditions of delivery

Delivery shall be deemed to refer to the transfer to the Customer of the physical possession of the Products. It is concluded once the payment is confirmed by AUDIOPHONICS's bank.

The Products of the same order will be all delivered at the same time.

The Products ordered by the Customer will be delivered to the address provided by the Customer when placing the order on the Website. The Customer must ensure the accuracy of the address provided to AUDIOPHONICS when placing their order. The Customer must ensure they provide all the information necessary to the proper delivery of their order (company name, block of flats name, building number, flat number, etc...). Any parcel returned to AUDIOPHONICS because of an incomplete or erroneous delivery address will be shipped again at the Customer's expense.

The Customer must check the condition in which their order presents itself upon delivery and must signal any damage, error or negligence on the delivery slip, to the carrier and must notify AUDIOPHONICS without delay via an After Sale Service form available on the Customer account.

Delays – Lateness of the Delivery

AUDIOPHONICS commit to do their very best to deliver the ordered Products as soon as possible, it being specified that the estimated times of delivery are cited for information purposes only when an order is placed.

If the ordered Products have not been delivered within a reasonable period after the indicative delivery date, it will be possible for the sale concluded with a Customer to be cancelled at the written request of the Customer under the provisions laid down in the articles L 216-2, L 216-3 et L 241-4 of the Code de la consommation.

The sums paid by the Customer will then be returned to them within fourteen (14) at the latest following the date of the Contract's forfeiture.

However, in accordance with the article L121-19-4 of the Code de la Consommation, these provisions are not intended to apply if the delayed delivery is due to either the Customer, or the unpredictable and insurmountable act of a third party, or a case of force majeure, as defined in the article « Force Majeure ».

In the case of a delivery anomaly, the Customer must contact AUDIOPHONICS in order for an investigation to be opened with the carrier in charge of the parcel. When this investigation is concluded, AUDIOPHONICS will be able to confirm the delivery or to proceed to a new shipping or a refund, depending on the case.

Delivery outside of Metropolitan France

In case of an order which is to be delivered to any destination other than Metropolitan France, the Customer is the importer of the concerned Products. Customs duties or any other local taxes or importation duties or state taxes may be due. They will be at the sole expense and at the sole responsibility of the Customer.

If required, customs formalities, as well as all related fees and taxes will be at the Customer's expense.

The Customer commits to respect all regulations regarding importing, transportation and storage in vigor in the destination country of the Products, in such a way that neither AUDIOPHONICS nor their partners could ever be investigated or be wanted in case of the Customer not having complied with said regulations.

ARTICLE 7. RETENTION OF OWNERSHIP – RISK TRANSFER

Provisions applicable to the Customer

The ownership transfer of the Products sold by AUDIOPHONICS to the Customer's benefit will be completed once the order is confirmed, providing payment was made in full by the Customer.

Regardless of the date of the Products' ownership transfer, the transfer of the risks related to the loss and deterioration will only be effective at the very moment the Customer will have the Products in their physical possession. The Products therefore travel at AUDIOPHONICS's expense.

The risk transfer happens after the delivery is made, to the Customer's address or to a pick-up point, as per the Customer's choice when placing their order. The Customer will be held responsible for the fees and the potential damage to the Products after their delivery.

By way of exception, in accordance with the provisions of the article L 216-4 of the Code de la Consommation, if the Customer wishes to request another carrier than the one offered by AUDIOPHONICS, all related risks of loss and damage to Products will be transferred to the Customer once the carrier takes physical possession of them.

ARTICLE 8. RIGHT OF WITHDRAWAL

Modalities of exercising the right of withdrawal

The Customer can exercise the right of withdrawal, under the provisions specified in the present Article.

In accordance with the current legal provisions, the Customer has a fourteen (14) day period beginning on the day they receive the Product to exercise their right of withdrawal with AUDIOPHONICS, without having to provide any reason nor pay any penalties, in order to obtain a refund.

Before returning any Product, the Customers must notify AUDIOPHONICS of their intent to exercise their right of withdrawal with an unambiguous written statement, through the withdrawal form available online on the Customer's account.

Exceptions to the exercise of the right of withdrawal

In accordance with the article L.121-21-8 of the Code de la Consommation, certain contracts cannot be submitted to the Customer's right of withdrawal, including any contract of « the supply of goods made to the consumer's specifications or clearly personalized or which are liable to deteriorate or expire rapidly ».

Therefore, any « custom made » and/or personalised Product will be excluded from the right of withdrawal: custom toroidal transformer, by-the-meter cable and cable-sheathing, custom orders.

For all intra-auricular devices , the exercise of the right of withdrawal will be denied for hygiene reasons in case of usage by the Customer.

Conditions for the return of the Products

The Products must be returned in their original packaging and in perfect condition in the fourteen (14) days following the notification to AUDIOPHONICS by the Customer of their decision to exercise their right of withdrawal. Products are to be returned in full and in their original state (packaging, accessories, instructions document...) so as to be sold again as new, with the related invoice.

The damaged, used, dirtied and incomplete products will not be accepted and their shipping back will be billed to the Customer. As an exception, these Products can be accepted to be refunded at a reduced cost (a discount of up to 30% will be applied to the original price).

In a case when the right of withdrawal is exercised in the aforementioned period, the price of the purchased Products and the standard shipping costs will be refunded.

The return fees are incumbent on the Customer. If a return label was provided to the Customer, its cost will be deducted from the refund.

If the delivery of a returned parcel entails custom charges on the part of AUDIOPHONICS, those charges will be deducted from the refund.

The refund will be made within a fourteen (14) days period, beginning at the moment AUDIOPHONICS receive the Customer's notification stating their desire to exercise their right of withdrawal. However, AUDIOPHONICS reserve their right to defer the refund until the returned Product is received (the refund may take up to eight (8) days once the Product is received and once the bank information of the Customer is received if the payment method is bank wire).

In the case of an exercise of withdrawal emanating from a country outside of the European Union, all custom charges pertaining to the initial shipment of the order cannot be refunded by AUDIOPHONICS.

ARTICLE 9. WARRANTIES

The Products supplied by AUDIOPHONICS to the Customer shall be entitled to, without any additional cost:

- the legal compliance of conformity, for the Products which appear to be defective, ruined or damaged or which do not correspond to the order
- to the legal compliance against the hidden defects, caused by a material defect, a design defect or a manufacturing defect affecting the delivered products and making them unsuitable to use, in accordance with the terms and provisions referred to in the boxed text below, as defined in the Annex 1 of the present Terms and Conditions.

It is hereby reminded that within the context of the legal compliance of conformity, the Customer:

- is granted a two-year period beginning upon receiving the good to act against the seller;
- can choose between their ordered Product being repaired or replaced, subject to the cost conditions provided for in the article L 217-9 of the Code de la consommation;
- is exempted from having to provide the proof of existence of the conformity defect of the Product during the twenty four months following the delivery of the Product

The Customer can decide to apply the warranty against the hidden defects of the Product in accordance with the article 1641 of the Code Civil; in which case, they can choose between the cancelling of the sell or a discount on the selling price in accordance with the article 1644 of the Code Civil.

The legal warranty is not applicable on the tubes, but AUDIOPHONICS offer a commercial warranty of three (3) months on this type of product.

In order to enforce their rights, the Customer will have to inform AUDIOPHONICS' after-sale service, via an after-sale service form available on the Customer's account, of the non-conformity of the Products, within the deadlines referred hereinabove and will have to return the defective Products in the condition they had been received with all its parts (accessories, packaging, instructions document...).

AUDIOPHONICS will refund, replace or repair the Products or parts under warranty that are considered non-compliant or defective.

The following damage, failures or defects are not under warranty:

- those due to external causes or to a modification made to the device,
- those caused by a failure to follow the provided supplier's instructions or recommendations,
- those due to oxydisation, corrosion, an incorrect connection or a problem with the electrical supply,
- those related to aesthetic concerns.

In a case of damage, failures or defects not physically noted by our After-Sale Service, additional fees could be billed on the following basis: a 30€ flat rate + standard shipping costs for the goods to be send back to the Customer.

If a return label had been provided to the Customer, its cost will be added to this sum.

Refunds made to the Customer's bank account for the Products deemed non-compliant or defective will be made as soon as possible and at the latest within the thirty (30) days following the moment AUDIOPHONICS noted the defect of conformity or the hidden defect.

In certain cases, our After-Sale Service can repair products for which the warranty period is already over. This repair will be billed to the Customer. This repair will be made once the Customer accepts the quotation and the payment is received by AUDIOPHONICS. A commercial warranty of three (3) months will be applied to the repair.

ARTICLE 10. AUDIOPHONICS' LIABILITY – force majeure

AUDIOPHONICS cannot be held liable in situations where the non-execution or the incorrect execution of the contract is attributable to the Customer, or to the unpredictable and insurmountable act of a third party, notably a subcontractor, or to force majeure or to fortuitous events.

Events considered as cases of force majeure, besides those usually upheld by the jurisprudence of French courts and tribunals, are: wars, civil unrest (strikes or lock-out situations), attacks, weather problems, epidemics, pandemics, confinement measures imposed by the authorities, fait du prince, earthquakes, floodings, water damage, fires, blockings of the means of communication (including internet, satellite and telecommunications networks).

Likewise, AUDIOPHONICS will not be held liable in the following situations:

- non-compliance with the laws of the country to which the products will be delivered, which must be checked out by the Customer ahead of placing an order,
- in the case of misuse of the Products, neglect on the part of the Customer, as well as normal wear of the Product or accident.
- In case of non-conformity of the delivered Product, AUDIOPHONICS commit to address the problem or refund the Customer, as provisioned in the article « Warranties ».

ARTICLE 11. TREATMENT OF PERSONAL DATA

AUDIOPHONICS can, as part of the execution of the present Contract, be made to access and process personal data within the meaning of the applicable regulations, most notably the law Informatique et Libertés n° 78-17 of January 6th 1978 as amended, and within the meaning of the regulation (UE) 2016/679 du 27 avril 2016 – RGPD.

It is hereby reminded that all nominative data the Customer is asked for are necessary to the processing of their order (including the contract subscription, payment and delivery) and the creation of the invoices.

In accordance with the Loi Informatique et Libertés, AUDIOPHONICS, as liable party for the processing, commit to ensure to maintain the confidentiality of all personal data provided by the Customer and to process them in compliance with said law.

The personal data transmitted to AUDIOPHONICS by the Customer undergo an IT processing and may be used by AUDIOPHONICS for the processing, the execution, the management of the Contract and the follow-up of the customer relationship. This data will be kept for three (3) years beginning at the moment the order is placed for the follow-up of the customer relationship, ten (10) years beginning at the moment the Products are delivered for evidence purposes regarding the execution of the Contract as well as ten (10) years beginning at the closure of the accounting year for the editing of accounting documents and supporting documentation.

AUDIOPHONICS commit to not transmit this information to any other third party other than their potential commercial partners in charge of the management and the payment of the orders as well as the delivery of the Products, within the specific purposes detailed hereinabove. AUDIOPHONICS may transmit this information to answer any legal injunction.

Upon proof of their identity, any physical person can exercise the following rights: the right to access, rectify and cancel their personal data, the right to limit or oppose the use and the portability of their data, in the conditions set out in the applicable regulation, upon addressing a written request to AUDIOPHONICS.

Therefore, any physical person enjoys the right to define general guidelines regarding the retention, the cancelling and the communication of their personal data after their death and to make a claim with the CNIL (Commission Nationale Informatique et Libertés) if they think their rights were not respected.

Finally, pursuant to article L223-2 of the Code de la consommation, the Customer is reminded that if they provided their telephone information, they have the right to register on the dedicated list to oppose any telephone solicitation.

ARTICLE 12. INTELLECTUAL PROPERTY

The brand AUDIOPHONICS trademarked at the INPI under the number 4345611 as well as the content of the Website are the property of AUDIOPHONICS and are protected by the French and international laws pertaining to intellectual property.

Any total or partial reproduction of this content is strictly prohibited and may constitute a copyright infringement.

ARTICLE 13. SEVERABILITY

The annulment of one of the clauses of the present Contract shall not invalidate it as a whole.

In case of annulment of one of the provisions of the present Contract, the Parties will strive to negotiate an economically equivalent clause.

ARTICLE 14. NON WAIVER

The fact for a Party not to enforce any of their rights arising out of the present Contract will not possibly be interpreted as a wish to waive any other right granted by the Contract.

ARTICLE 15. APPLICABLE LAW

The present Terms and Conditions and all related operations are regulated under the French law, at the exception of the conflict-of-law rules.

ARTICLE 16. LANGUAGE

The Terms and Conditions are written in French. Regardless of any translation into one or several languages, only the French text prevails in case of a dispute.

ARTICLE 17. DISPUTE RESOLUTION

Claim

Each Party commits to always behave towards the other Party as a loyal and of good faith partner, and most notably, to inform the other Party without delay of any dispute or difficulty they may encounter throughout the execution of the Contract or of their relations with third parties that could affect the execution of the Contract.

In a case of claim, the Customer must send a claim to AUDIOPHONICS via recorded letter in order to reach an amical settlement.

Recourse to an independent mediator

In the case AUDIOPHONICS have not answered the Customer's written claim or if the received answer does not satisfy them, the Customer can have recourse to a conventional mediation, notably with the Commission de la médiation de la consommation (in accordance with the article L.534-7 du Code de la Consommation) or with any sector-specific mediating bodies or any alternative mode of settling a dispute in a case of disagreement.

The Customer may contact the mediator SAS CNPM - MÉDIATION – CONSOMMATION in order to present the claim opposing them against AUDIOPHONICS:

- via mail, using the following address: 27 avenue de la Libération, 42400 Saint-Chamond, +33 (0)9 88 30 27 72
- on their website: <https://www.cnpm-mediation-consommation.eu/>

Relevant jurisdiction

In the absence of an amicable settlement, a recourse to a mediation or the agreement of both Parties to the solution proposed by the mediator, **the dispute will be settled by the French courts, either at the Tribunal de Commerce de Bordeaux (France) if the Customer has a trader status, including in the case of multiple defendants or a recourse in warranty or, in any other case, by the relevant jurisdiction in accordance with the statutory rules.**

ANNEX 1

LEGAL PROVISIONS ON THE LEGAL WARRANTIES

Article L217-4 of the Code de la consommation

The seller must deliver goods which are in conformity with the contract and is accountable for any conformity defect already existing at the time of the delivery.

They are accountable for any conformity defect due to the packaging, the assembling or set-up instructions when those are their responsibility per the contract or were made under their responsibility.

Article L217-5 of the Code de la consommation

In order to be in compliance with the contract, the goods must:

- to be fit for the usual use made of similar goods and, if that is the case:
- match the description provided by the seller and possess all the characteristics the seller presented the buyer with in the form of a sample or a model
- present the characteristics that a buyer may legitimately expect based on the public statements made by the seller, by the supplier or by their representative, mostly in regards with marketing or labelling

- or present the characteristics defined by common accord by the parties or necessary for any special use sought out by the buyer, about which the seller was informed and upon which they agreed.

Article L217-12 of the Code de la consommation

Any legal action prompted by a conformity defect lapses after two years beginning upon delivery of the goods.

Article L217-16 of the Code de la consommation

When the buyer asks the seller for a refurbishment covered by the warranty, during the commercial warranty period which they were granted when they acquired a personal property or had a personal property repaired, any immobilisation period of at least seven days will be added to the warranty duration that was left on the goods.

This period begins from the moment the buyer makes their request or from the moment the concerned goods are submitted for repair, if the latter happens after the request was made.

Article 1641 of the Code civil

The seller is bound to the warranty on account of the hidden defects of the sold thing which make it unsuitable for the use it was intended for, or which so impair that use that the buyer would have not acquired it, or would have paid less for it, had they been aware of it.

Article 1648 first paragraph of the Code civil

The action resulting from redhibitory vices must be brought up by the buyer within a two-years period beginning at the moment the vice was discovered.