

General Terms and Conditions

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I. General Terms and Conditions

I.1. General

These General Terms and Conditions of Delivery and Payment shall apply in dealings with companies, legal entities under public law and special funds under public law (hereinafter referred to as "Buyer").

(1)

The General Terms and Conditions of Delivery and Payment as well as any other separately agreed contractual agreements shall govern all supplies and services provided by SensoTech GmbH (hereinafter referred to as "Contractor"). Any terms and conditions which deviate from, or are in conflict with, these General Terms and Conditions shall not apply unless the Contractor has expressly agreed to them. The following General Terms and Conditions shall also apply in cases where the Contractor or his representative is performing the service without reservations although being aware that the terms and conditions of the Buyer are conflicting with or deviating from these General Terms and Conditions.

(2)

Contracts or any other binding agreements shall be deemed to have been formed only if the Contractor has confirmed the order in writing or is carrying out the order. The Contractor reserves the right to insignificantly deviate for technical reasons from the offer even after the offer has already been accepted.

(3)

The Contractor reserves his unrestricted property rights and copyrights in respect of the exploitation of cost estimates, drawings as well as any other documents and similar information of a physical and intangible type (hereinafter referred to as the "Documents"), including Documents in electronic form. The Documents may be made available to third parties only with the Contractor's prior permission and, if the order is not placed with the Contractor, shall be promptly returned to the Contractor on request. Sentences 1 and 2 of this sub-clause shall apply mutatis mutandis to the Buyer's documents; these documents may, however, be made available to third parties, to which the Contractor has legitimately subcontracted supplies.

(4)

The Contractor, in addition, reserves his unrestricted property rights and copyrights in respect of the exploitation of all specifications, algorithms, source codes, documents, working principles and methods as well as any upgrades, including those existing in electronic form.

(5)

These General Terms and Conditions shall also apply to all future services up to the time when new terms and conditions enter into force.

I. 2. Prices, terms of payment

(1)

Unless agreed upon otherwise in writing, the prices shall be FCA (INCOTERMS 2010) including handing over of the goods to the first carrier, inclusive of packing and plus any applicable statutory value-added tax.



(2)

Unless agreed upon otherwise in writing, payment shall be effected without any deductions within 14 calendar days of the invoice date. In case of a delay in payment, the Contractor shall be entitled to demand interest on arrears at the legally applicable rate. This shall be without prejudice to any other claims for damages to which the Contractor may be entitled.

(3)

If the Contractor becomes aware of a significant deterioration in the financial situation of the Buyer only after conclusion of the contract and the deterioration puts the Contractor's entitlement to compensation at risk, the Contractor shall be entitled to demand payment for any orders still to be completed on a step by step basis, if no security has been furnished for the consideration payable to the Contractor.

(4)

The Buyer shall be entitled so set off with the Contractor's claims only if Buyer's counterclaim is undisputed or Buyer has a final and binding legal title.

I. 3. Delivery, delay in delivery

(1)

The delivery time will be as agreed between the contracting parties. Meeting the delivery times shall be subject to clarification of all commercial and technical questions between the Contractor and the Buyer. In addition to this, the Buyer must have fulfilled all his obligations, in particular in respect of compliance with the agreed terms of payment. If these preconditions are not satisfied on time, the delivery times shall be reasonably extended; this shall not apply if the delay is due to causes attributable to the Contractor.

(2)

The delivery time shall be deemed as having been met if the delivery item has left the Contractor's plant prior to its expiration, or when readiness for shipment has been advised.

(3)

Unless agreed otherwise in the contract, the goods will be delivered FCA (Free Carrier) in accordance with INCOTERMS 2010.

(4)

Part deliveries will be permissible, provided that the Buyer can be reasonably expected to accept such deliveries.

(5)

If the Contractor's failure to meet delivery times is attributable to Force Majeure, e.g. mobilisation, war, riot or similar events such as strike or lock-out, the delivery times shall be extended by a reasonable period. The same shall apply for the case that the Contractor himself is not supplied on time or not properly.

(6)

If the Contractor becomes definitely unable to perform the entire service prior to the passage of risk, the Buyer will be entitled to terminate the contract without notice. The Buyer shall also be entitled to withdraw from the contract if it becomes impossible to perform part of an order and the Buyer is justifiably interested in rejecting a



part delivery. If this is not the case, the Buyer shall pay the contract price due for the part delivery. The same shall apply in case of the Contractor's incapability. As for the rest, clause I. 9.2 shall apply. If the impossibility or incapability occurs while the Buyer is in delay of acceptance, or if these circumstances are solely or for the most part attributable to the Buyer, the Buyer shall remain obligated to pay the consideration due. Any other claims arising from a delay in delivery shall be exclusively subject to clause I. 9.2 of these General Terms and Conditions.

(7)

If shipment or acceptance of the delivery item is delayed for reasons attributable to the Buyer, the costs incurred as a result of the delay will be charged to the Buyer's account starting one month after notification of readiness for shipment or acceptance.

(8)

If the terms of payment provide for opening of a Letter of Credit (hereinafter called "L/C"), the agreed delivery time will commence at the date of opening of the L/C by the Buyer. Any delay in the opening of the L/C will result in a corresponding delay in the date of delivery.

(9)

If the dispatch or delivery is delayed at the Buyer's request by more than one month after notification of readiness for shipment, storage charges of 0.5 % of the price of the items to be delivered, not more than an aggregate amount of 5 % maximum, however, can be charged to the Buyer's account. This shall be without prejudice to the right of the contracting parties to furnish proof of higher or lower storage costs.

(10)

When receiving the shipment, the Buyer shall, in addition, observe any notes and dispositions separately made by the Contractor in respect of the receipt of the goods.

I. 4. Passage of risk

(1)

The risk shall pass to the Buyer in accordance with the contractually agreed delivery terms, i.e. INCOTERMS 2010. Any subsequent agreements deviating from the contractually stipulated terms of delivery shall require the written form and confirmation by the Contractor.

(2)

If there is a delay in the shipment or acceptance, or if the shipment or acceptance is completely cancelled due to reasons not attributable to the Contractor, the risk shall pass to the Buyer from the date of notification of readiness for shipment or acceptance.

(3)

The Contractor will insure the supplies against the usual transport risks at the Buyer's request and expense.



I. 5. Reservation of title

(1)

The goods to be delivered (reserved goods) remain the Contractor's property up to the time of fulfilment of all claims against the Buyer to which the Contractor is entitled under the business relationship. If the value of all security rights to which the Contractor is entitled exceeds the value of all secured claims by more than 10 %, the Contractor will release a corresponding part of the security rights at the Buyer's request; the Contractor may choose at his own discretion which of the various security rights existing are released by him.

(2)

As long as the reservation of title exists, the Buyer may not sell, pledge or assign the goods as security. The Buyer shall notify the Contractor immediately of any attachments, seizures or any other dispositions or interventions by third parties.

(3)

If the Buyer is in breach of his obligations, in particular if he is in default of payment, the Contractor shall be entitled, in addition to taking back the goods, to withdraw from the contract, if the Buyer has failed to cure the breach within the reasonable time period specified by the Contractor; this shall be without prejudice to the legal provisions stipulating that no deadline needs to be fixed. The Buyer shall be obligated to surrender the goods. Taking back, asserting the reservation of title or pledging of the reserved goods by the Contractor shall not be deemed as constituting a withdrawal from the contract unless the Contractor has expressly stated that it is to be understood as a withdrawal.

(4)

If a petition in bankruptcy is filed, the Contractor will be entitled to withdraw from the contract and to demand that the goods delivered be returned immediately.

I. 6. Utilisation of software

(1)

If the scope of supply includes software, a non-exclusive right to use the supplied software including its documentation will be granted to the Buyer. It will be provided for use with the delivery item designed for this purpose. It will not be permissible to use the software on more than one system.

(2)

The Buyer may copy, revise or compile the software only to the extent permitted under the law (§§ 69 a ff. German Copyright Act). The Buyer undertakes not to remove identifications of the manufacturer – in particular copyright notices – or to change them without the prior written permission of the Contractor.

(3)

The Contractor or the software supplier retains all other rights in the software and documentation including copies thereof. Granting of sub-licenses will be permissible.



I. 7. Defects of quality

The Contractor will be liable for defects of quality as follows:

(1)

All parts or services exhibiting a defect of quality shall at the Contractor's own discretion be rectified, replaced or newly provided free of charge, provided that the cause of the defect had already existed at the time of passage or risk. The Contractor shall be promptly notified in writing of such defects. Replaced parts become the Contractor's property.

(2)

Following a corresponding agreement with the Contractor, the Buyer shall grant the time and opportunity required for performing any rectification and replacement supplies the Contractor deems necessary; if the Buyer fails to grant the time and opportunity, the Contractor will not be liable for any consequences resulting from such failure. The Buyer shall be entitled to rectify the defect himself or have it rectified by a third party and claim reimbursement of the associated expenditure only in urgent cases where operational safety is at risk or disproportionately large damages have to be avoided.

(3)

The Contractor shall be allowed the opportunity to rectify defects or make replacement supplies within a reasonable period of time.

(4)

If the Contractor – without being able to plead exceptional cases under the law – fails to rectify or replace within the time limit fixed by Buyer, the Buyer shall be entitled in conformity with the legal regulations to withdraw from the contract.

(5)

As concerns the costs resulting from rectification or replacement, the Contractor shall bear the costs of the repair or replacement part, provided that the complaint turns out to be justified. If, for rectifying or replacing the defective item, the item has to be returned to the Contractor, the Buyer will be responsible for obtaining any import and export declarations which may be required and shall bear all costs associated with the return; the Buyer shall, in addition, observe the notes and dispositions the Contractor has separately made in respect of the return of the defective item.

(6)

Buyer shall not be entitled to warranty claims arising from a defect if the item in question deviates only insignificantly from the agreed quality, if the fitness for use is affected only insignificantly, in the case of natural wear and tear or in case of damages which have arisen after the passage of risk due to unsuitable or improper use, improper installation or commissioning by the Buyer or a third party, faulty or negligent treatment, excessive loading, improper maintenance, unsuited operating supplies, defective construction works, unsuitable subsoil or special external influences not envisaged under the contract as well as in the case of non-reproducible software faults.

(7)

The Contractor will not be liable for improper rectification by the Buyer or a third party and any consequences arising from it. The same shall apply to any changes made to delivery items without the Contractor's prior permission.



I. 8. Industrial property rights and copyright, deficiencies in title

(1)

Unless agreed otherwise, the Contractor will be obligated to make delivery free from industrial property rights and copyrights of third parties (hereinafter referred to as "Property Rights" only in the country of the place of delivery. If a third party raises justified claims against the Buyer by reason of an infringement of Property Rights by the supplies made by the Contractor and used in conformity with the contract, the Contractor will be liable to the Buyer within the period of time set forth in clause I. 9.3 as follows:

a.

The Contractor will at its sole discretion and at its own expense either obtain a right to use the supplies in question, change them in such a way that the Property Right will no longer be infringed, or replace them. If this is not possible for the Contractor on reasonable conditions, the Buyer shall be entitled to the remedy of withdrawal or reduction of the purchase price.

b.

The obligations of the Contractor set out above shall apply only if the Buyer promptly notifies the Contractor in writing of the claims raised by the third party, if he does not recognise the infringement and if the Contractor retains the right to take all defence measures and enter into composition agreements. If the Buyer discontinues the use of the supply to minimise losses or for any other important reasons, he shall be obligated to point out to the third party that the discontinuation of use does not mean that he recognises that an infringement of a Property Right has taken place.

(2)

Any claims by the Buyer shall be excluded, if the infringement of the Property Right is attributable to him.

(3)

Any claims by the Buyer shall also be excluded, if the infringement of the Property Right has been caused by the Buyer's specifications, by an application which could not be foreseen by the Contractor or by the fact that the supply has been changed by the Buyer or has been used together with products which have not been supplied by the Contractor.

(4)

In case of infringement of Property Rights, the provisions set forth in I. 8.1 a) shall apply to any claims of the Buyer. As for the rest, the provisions of clause I. 7.3, shall apply accordingly.

(5)

If there are any other deficiencies in title, the provisions of clause I. 7 shall apply accordingly.

(6)

Any further claims, or any claims other than those set out in clause I. 8., raised by the Buyer against the supplier and his vicarious agent by reason of a deficiency in title shall be excluded.

I. 9. Liability, statutory limitation

(1)

If the delivery item cannot be used in conformity with the contract by the Buyer through the Contractor's fault because of neglected or faulty execution of proposals made and advice given prior to or after execution of the contract, or because of the violation of any other contractual accessory obligations – in particular in respect of



the operating and maintenance instructions for the delivery item – the provisions of clauses I. 7., I. 8. and I. 9. 2 shall apply accordingly to the exclusion of any other claims the Buyer may have.

(2)

The Contractor will be liable – for any legal reason whatsoever – for damages which have not been arisen on the delivery item itself only

- a. if he has acted with intent,
- b. in case of gross negligence of the owner / bodies or managerial employees,
- c. in case of culpable injury to life, body, health,
- d. in case of defects which he has fraudulently concealed or whose absence he has guaranteed,
- e. in case of defects of the delivery item to the extent that he is liable under the Product Liability Act for personal injury or injury to privately used items.

In case of culpable violation of essential contractual obligations, the Contractor shall also be liable in case of gross negligence of non-managerial employees and of minor negligence. In the latter case liability shall be limited to reasonably foreseeable damage that is typical of the contract. Any further claims shall be excluded.

(3)

Any claims by the Buyer – for any legal reasons whatsoever – shall expire by limitation after 12 months. In respect of claims for damages pursuant to clause I. 9. 2 a – e, the legal time limits shall apply.

I. 10. Governing law, jurisdiction

(1)

The principal place of business of the Contractor shall be the sole place of jurisdiction for any disputes arising directly or indirectly from the contractual relationship. The Contractor will also be entitled, however, to bring an action at the Buyer's principal place of business.

(2)

The legal relations of the parties under this contract shall be governed by the German substantive law to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

I. 11. Severability

Should any provision of these General Terms and Conditions of Delivery and Payment be or become invalid, this shall not affect the validity of the remaining provisions. The invalid provision shall be replaced by a provision which comes closest to the original intention of the contracting parties.
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