

Sensovation AG

General Terms and Conditions for Sensovation's Supply of Goods and Services

Revision May 2015



§ 1 Scope

1. Sensovation AG ("Sensovation") concludes contracts for sales and/or services solely on the basis of these Standard Terms and Conditions ("Ts & Cs").
2. All future deliveries and services shall also be performed on the basis of these Ts & Cs, even if they are not expressly referred to.
3. Conflicting general terms and conditions of the customer are hereby expressly rejected. These Ts & Cs shall apply even if Sensovation performs deliveries or services in the knowledge of such conflicting terms without expressly rejecting them.
4. These Ts & Cs only apply in transactions with merchants as defined in Sec. 310 I of the German Civil Code (B2B transactions).

§ 2 Conclusion of Contracts

1. Sensovation's offers are non-binding. A contract shall only be made when Sensovation has acknowledged an order in writing or has started performance thereof.
2. Side agreements, modifications and additions to a contract must be made in writing and signed by a duly authorized Sensovation representative.

§ 3 Prices

1. All prices shall be Ex Works (EXW Incoterms 2010) Radolfzell, Germany in EURO. Prices are exclusive of statutory Value Added Tax, which will be shown as a separate item on the invoice at the rate then in effect. Packaging and transportation costs will be charged separately.
2. Sensovation's price in effect at the time of Sensovation's receipt of the order shall continue to apply if the quantity ordered is scheduled to be delivered within six (6) months. Otherwise, Sensovation's price in effect on the actual delivery date for the quantity actually delivered shall apply.
3. Services shall be charged on a time-and-material basis. Hourly rates as well as travel and other expenses shall be as per Sensovation's price list then in effect.
4. If the price of fuels, raw materials, equipment or other production costs increase significantly, Sensovation shall have the right and the customer shall have the obligation to renegotiate the price of all products not yet shipped, and if an agreement is not reached, Sensovation shall have the right to terminate the respective order.

§ 4 Payment Terms

1. Payments shall be due in full upon delivery or performance of service and receipt of invoice. The customer will be in default ten (10) days thereafter. The statutory provisions apply.
2. As a rule, bills of exchange, cheques and other payment orders are not accepted. If at all, they are only accepted on account of performance.
3. The customer may only set off claims which are undisputed or res judicata. A right of retention (including the right to demand concurrent performance as provided for in Section 320 of the German Civil Code) may only be exercised by the customer in relation to claims from the same contractual relationship. The customer may not assign its rights and obligations to any third party.
4. Sensovation may make further deliveries or services contingent upon advance payment if the customer's financial condition deteriorates considerably after conclusion of a contract, in particular if the customer fails to make payments when due, and Sensovation's claims thus appear to be in jeopardy. In this event, Sensovation may also suspend other deliveries and services until all payments due have been made or sufficient collateral has been furnished. If the customer does not comply therewith, Sensovation may otherwise dispose of the products and charge 20% (twenty per cent) of the agreed price as damages unless the customer can demonstrate that Sensovation incurred no or significant lower damages.

§ 5 Delivery Dates

1. Delivery dates are estimates and non-binding, unless Sensovation has confirmed them in writing as binding. Sensovation shall not be liable for any damages, losses or expenses incurred by the customer if Sensovation fails to meet the estimated delivery dates. Sensovation will only come into default with delivery by the customer's written request for delivery which may not be sent earlier than one (1) month after the lapse of the estimated delivery date.
2. In case force majeure, such as import disruptions, strikes, lock-outs, traffic disruptions, governmental acts and the like, or other circumstances beyond Sensovation's control have a significant impact on Sensovation's deliveries or services, delivery dates are extended accordingly. Should such circumstances continue for more than one (1) month or prevent Sensovation from performing the delivery or service at all or in conformance with the contract, either party may withdraw from the contract. Sensovation will inform the customer immediately of the unavailability of the delivery or service and return any consideration already executed.
3. The customer cannot invoke agreed delivery dates in case the customer submitted incomplete orders or modification requests.

4. If Sensovation has to wait for contributions or information from the customer, delivery dates shall be deemed extended by such waiting period plus a reasonable start-up period thereafter. Sensovation reserves the right to claim the damages, including additional expenditures, caused by the customer's breach of its contribution obligations. The affirmative defense of non-performance of contract remains reserved.

§ 6 Delivery Terms, Partial Deliveries

1. All deliveries shall be made Ex Works (EXW Incoterms 2010) Radolfzell, Germany.
2. Sensovation may deliver products in instalments if this is commercially reasonable for the customer.

§ 7 Retention of Title

1. All products shipped to the customer shall remain Sensovation's property ("Products with Title Reserved") until all claims by Sensovation relating to business transacted with the customer and outstanding at the time of delivery have been settled in full.
2. The customer shall be entitled to resell or process Products with Title Reserved in the normal course of its business, provided it does not default on its payments to Sensovation. The customer is not entitled to pledge or transfer as security title to any Products with Title Reserved.
3. The customer hereby assigns to Sensovation all claims arising in relation to Products with Title Reserved either from resale thereof or on any other legal grounds (e.g. tort), in an amount equal to their invoiced value. This shall also apply to the balance of any agreed current account. Sensovation authorizes the customer to collect in the customer's name but on Sensovation's account claims thus assigned to Sensovation. Sensovation shall be entitled to revoke such authorization to collect and require that the customer discloses all such claims if the customer is in delay with any payment due to Sensovation, if judgment enforcement proceedings are brought against the customer, if the customer's assets deteriorate substantially or in case of insolvency proceedings.
4. If a third party attempts to seize Products with Title Reserved, the customer shall inform the third party that such goods are the property of Sensovation and shall immediately notify Sensovation. If the customer fails to notify Sensovation, Sensovation shall be entitled to claim all amounts outstanding immediately. To the extent that delivery has not taken place, Sensovation shall have the option to deliver immediately and/or to withhold delivery until payment is tendered.
5. Any processing or reworking of Products with Title Reserved shall be undertaken by the customer on Sensovation's behalf. Sensovation shall acquire title to the product of such processing or treatment in the amount of the market value of the Products with Title Reserved at the time they are processed or reworked.
6. If Products with Title Reserved are commingled or combined with other goods, Sensovation acquires pro rata joint ownership of the new product proportional to the value of the Products with Title Reserved as compared to that of the other goods at the time of commingling or combining. If another good is deemed the major item in the processing, it is hereby agreed that the customer shall, to the extent that it owns the new product, grant Sensovation joint ownership in the new product proportional to the value of the Products with Title Reserved as compared to the value of the new product.
7. In case the customer is in breach of any purchase order, in particular default in payment, Sensovation is entitled to rescind the purchase order and/or recover the Products with Title Reserved without the need to set a grace period. The customer is obligated to return the Products with Title Reserved. In order to recover the Products with Title Reserved, Sensovation may enter the customer's premises where these are stored, and subsequently store them or have them stored for Sensovation.
8. The recovery of Products with Title Reserved does not require that Sensovation rescinds the contract; a rescission requires Sensovation's express statement to that end.

§ 8 Examination and Non-Conformance Reporting

1. The customer must immediately examine products and services with regards to quantity and quality. Evident non-conformances, including the delivery of a different product or insufficient quantities, must be reported to Sensovation in writing within two (2) weeks of delivery. Non-conformances which only become apparent at a later point in time must be reported to Sensovation within two (2) weeks of detection. Dispatch of the notice is sufficient to comply with the term.
2. At Sensovation's option, defective products must - in the same condition they were in when the defect was detected - be returned to Sensovation or made available for Sensovation's inspection.

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§ 9 Warranty [Sachmängel]

1. If, during the limitation period in Subsection 5 hereof, a product shows a defect which already existed at the time of transfer of risk, Sensovation will at its option and expense repair the defect or supply as a replacement at least a refurbished product of corresponding quality ("Subsequent Performance") or take back the products concerned and credit the purchase price to the customer's account. In case of defective services, Sensovation will free of charge improve or repeat the service. Subsequent Performance shall be effected without recognition of a legal obligation.
2. A product or service is defective, if it does not conform to the written agreement between Sensovation and the customer; the lack of a feature, which the customer expects because of Sensovation's public statements, in particular in advertising, only constitutes a defect if such feature was listed in such written agreement. In the absence of a written agreement a product is only defective if it does not conform to Sensovation's specification.
3. Sensovation shall not be liable for any defects that are caused by neglect, misuse or mistreatment, including improper installation, operation, use, maintenance or testing, use in fields of application and environmental conditions other than those expressly specified by Sensovation, and use in combination with other products not approved by Sensovation for this purpose, excessive stress or normal wear and tear, or for any products that have been altered or modified in any way. The customer's claims for defects shall also be excluded for development samples, prototypes and preproduction deliveries. Moreover, with respect to products manufactured specifically for the customer, Sensovation shall not be liable for any defects that result from the customer's design, specifications or instructions for such products. The customer's claims for defects shall also be excluded if the customer fails to notify Sensovation of apparent defects within two (2) weeks of delivery and of hidden defects within two (2) weeks after they have been detected.
4. If Subsequent Performance fails, the customer shall, notwithstanding its claims under Section 11, if any, be entitled to rescind the respective order or to claim a price reduction.
5. The limitation period for warranty claims is one (1) year. This does not apply for claims for damages in cases of injury to life, body or health, fraudulently concealed defects, intent, gross negligence and if a guarantee for the quality of the products [Beschaffenheitsgarantie] has been given; these claims shall become time-barred within the limitation periods defined by applicable law or, in case a guarantee has been given, within the limitation period stipulated in such guarantee, if any. Subsequent Performance does not restart the limitation period; the remainder of the original limitation period shall run from delivery of the repaired or replaced product.
6. The customer's claims for compensation for expenses necessitated by Sensovation's Subsequent Performance, in particular transportation, travel, labor and material costs, are excluded as far as such are increased because the products have been moved from the original place of delivery.
7. If the analysis of an alleged defect shows that no defect exists, Sensovation is entitled to charge for the failure analysis at Sensovation's then applicable rates. Shipment costs for the return of such products will not be reimbursed and their return shall be at the customer's expense and risk.
8. The customer agrees that prior to using or distributing any systems that include Sensovation products, the customer will thoroughly test such systems and the functionality of such Sensovation products as used in such systems. In case Sensovation provides technical, applications or design advice, quality characterization, reliability data or other services free of charge, such services shall be provided by Sensovation without legal obligation and shall not expand or otherwise alter Sensovation's obligations under any purchase order, notably this shall not change Sensovation's obligations in case of defects as provided for in this Section 9.

§ 10 Intellectual Property Indemnification, Defects in Title

1. Subject to Subsections 2 and 3 hereof and Section 11 and during the time period in Subsection 5 of Section 9, Sensovation will indemnify the customer against any damages, liabilities or costs finally awarded against the customer, or agreed to by Sensovation as settlement or compromise, insofar as such claim is based on an allegation that products manufactured and supplied by Sensovation to the customer directly infringe any United States, Canadian, Japanese or European Union member state patent, copyright, or other intellectual property right; provided (i) Sensovation is promptly informed and, where applicable, furnished a copy of such claim, (ii) Sensovation is given all evidence in the customer's possession, (iii) Sensovation is given reasonable assistance in and sole control of the defense thereof, to which Sensovation is entitled but not obliged, and all negotiations for its settlement or compromise, and (iv) the customer does not concede an infringement of intellectual property rights vis-à-vis third parties. If the customer discontinues the use of the products for mitigation of damages or other important reasons, the customer is obligated to point out to the third party claimant that the discontinuation of use does not constitute an acknowledgement of an infringement of such third party's intellectual property rights.

2. In the event of an allegation for which Sensovation is obligated to indemnify the customer pursuant to Subsection 1 hereof, Sensovation shall, at its choice: (i) obtain a license that allows the customer to continue the use of the products, (ii) replace or modify the products so as to be non-infringing, but in a manner that does not materially affect the functionality of the products, or (iii) if neither (i) nor (ii) is available to Sensovation at a commercially reasonable expense then Sensovation may refund to the customer the purchase price and the transportation costs of such products. If Sensovation elects the option set forth in clause (iii) above, the customer shall return to Sensovation any and all products remaining in the customer's possession, custody or control. The foregoing shall be Sensovation's exclusive liability safe for any restricted claims for damages in accordance with Section 11.
3. Sensovation shall have no liability for any costs, losses or damages resulting from the customer's willful acts, or any settlement or compromise incurred or made by the customer without Sensovation's prior written consent. Sensovation shall have no obligation to defend and no liability for any costs, losses or damages, to the extent that an infringement allegation is based upon: (i) the customer's use of the products in combination with any other product, software or equipment; (ii) the customer's use of the products in a manner or for an application other than for which they were designed or intended, regardless of whether Sensovation was aware of or had been notified of such use (unless Sensovation has expressly approved such use); (iii) the customer's use of the products in a manufacturing or other process; (iv) the customer's modifications to the products; (v) Sensovation's compliance with the customer's particular design, instructions or specifications; or (vi) Sensovation's compliance with any industry or proprietary standard or the customer's use of the products to enable implementation of any industry or proprietary standard (such claims – i.e. those set forth in (i) through (vi) above – are individually and collectively referred to herein as "Other Claims").
4. The customer shall indemnify and hold Sensovation harmless against any damages, liabilities or costs finally awarded against Sensovation or agreed to by the customer as settlement or compromise, and will defend any claim brought against Sensovation insofar as such claim is based on an allegation arising from Other Claims.
5. This Section 10 states the sole liability of Sensovation and the customer for intellectual property rights infringement.
6. Section 9 shall apply to all other defects in title.

§ 11 Limitation of Liability

1. Sensovation shall be liable without limitation for damages caused by willful intent or gross negligence.
2. Sensovation shall further only be liable for damages caused by slight negligence [einfache Fahrlässigkeit] if such are due to a material breach of duty, which endangers the achievement of the objective of the respective contract, or to a failure to comply with duties, the very discharge of which is an essential prerequisite for the proper performance of the respective contract and on the observance of which the customer may rely.
3. In cases of Subsection 2 hereof, the liability is limited to the damage, which is typical for contracts like the ones governed by these Ts & Cs and which could have been foreseen.
4. For damages caused by the gross negligence of an agent [Erfüllungsgehilfe] or an employee of Sensovation, who is not a statutory representative [gesetzlicher Vertreter], officer or executive of Sensovation, Sensovation's liability is also limited to the damage, which is typical for contracts like the ones governed by these Ts & Cs and which could have been foreseen.
5. In cases of Subsections 2 and 4 hereof, Sensovation's liability is limited to a maximum amount of EURO 500.000, respectively EURO 100.000 for financial losses.
6. Customer's claims for damages caused by slight negligence or caused by the gross negligence of an agent [Erfüllungsgehilfe] or an employee of Sensovation, who is not a statutory representative [gesetzlicher Vertreter], officer or executive of Sensovation, which are not based on defects and thus not subject to time-barring in accordance with Section 9 Subsection 5, are time-barred at the latest two (2) years from the point in time the customer became aware of the damage and regardless of the customer's awareness at the latest three (3) years after the damaging event.
7. With the exception of claims for damages in the event of (i) an injury to life, body or health, (ii) liability under the Product Liability Act [Produkthaftungsgesetz], (iii) defects after having given a guarantee for the condition of the products [Beschaffenheitsgarantie] (in which case the liability terms and limitation period under the guarantee, if any, shall apply), and (iv) fraudulently concealed defects, the above limitations of liability shall apply to all claims for damages, irrespective of their legal basis, including but not limited to all claims based on breach of contract or tort.
8. The above limitations of liability also apply in case of customer's claims for damages against Sensovation's employees, statutory representatives [gesetzliche Vertreter] or agents [Erfüllungsgehilfen].

§ 12 Rights in Products and Services; Software

1. The delivery of products or services does not grant the customer any rights which go beyond the mere use of the products or the results of the services.
2. Software and documentation are provided on the basis of the terms and conditions of the License Agreement available for download at www.sensovation.com and provided with the software. Unless otherwise specified in the License Agreement, these Ts & Cs apply.

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§ 13 Product Changes

Sensovation reserves the right to modify products.

§ 14 Governing Law and Venue

The contractual relationship between Sensovation and the customer shall be governed by and interpreted in accordance with German law. The United Nations Convention on Contracts for the International Sale of Goods shall not apply. Exclusive venue for all disputes shall be Konstanz, Germany. Sensovation shall be entitled to commence proceedings against the customer also at the customer's registered office.

§ 15 Assignment

The customer shall not assign any contract to which these Ts & Cs apply without Sensovation's prior written consent.

§ 16 Severability

If any provision in these Ts & Cs or part of any provision shall be or become invalid, the other provisions as well as the other part of the provision shall remain valid.

§ 17 Entire Agreement

These Ts & Cs constitute the entire agreement and understanding of the customer and Sensovation and supersede all prior agreements, understandings or arrangements (both oral and written) relating to the subject matter hereof. Any additions or modifications hereto must be made in writing and signed by a duly authorized Sensovation representative. This also applies to any waiver of this requirement of written form.

§ 18 Decisive Version

The above is a convenience translation of the German version of the "Allgemeine Verkaufsbedingungen für Lieferungen und Leistungen der Sensovation AG" ("General Terms and Conditions for Sensovation AG's Supply of Goods and Services"). The contractual relationship between Sensovation and the customer shall be governed by and interpreted in accordance with the German version.

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Subject to change

