

General Terms and Conditions for Sales and Services of Sensortherm GmbH

Section 1 – Scope, Form

1. All our deliveries, services (including repairs) and offers are provided exclusively on the basis of these Terms and Conditions for Sales and Services (hereinafter “Terms and Conditions for Sales”). Our Terms and Conditions for Sales only apply to entrepreneurs, legal entities under public law or special funds under public law within the meaning of Section 310 Subsection 1 of the German Civil Code (BGB). We will only recognise purchaser’s contradictory terms or purchaser’s terms divergent from our Terms and Conditions for Sales if we expressly consent to their application in writing. This shall also apply if, in knowledge of purchaser’s terms, we carry out the delivery or repair for them without any reservation.
2. These Terms and Conditions for Sales and any subsequent versions shall also apply without further separate agreement to all future transactions with purchaser in so far as these are legal transactions of a related kind. We publish the respective current version of our Terms and Conditions for Sales on our website www.sensortherm.de.
3. Legally relevant declarations and notices of the parties relating to the contract (e.g. deadlines, notifications of defect, withdrawal or reduction of purchase price, acceptance of orders or commissions from purchaser by us) must be made in writing, i.e. in written or text form (e.g. letter, email, fax). Statutory formal requirements and other supporting documents, particularly if there are doubts about the legitimization of the party making the declaration, shall not be affected hereby.

Section 2 – Offer and Conclusion of Contract

1. Our offers are always without obligation and non-binding. Conclusions of contract shall only become binding on our written confirmation.
2. Individual agreements with purchaser reached in specific cases, such as e.g. verbal side agreements, shall take precedence over these Terms and Conditions for Sales. A written contract or our written confirmation is controlling with regard to the content of such agreements, subject to evidence to the contrary.
3. Documentation belonging to the offer such as diagrams, drawings, information about weights and dimensions, technical data, etc. is of an only approximate nature. It does not represent assured characteristics but descriptions or labels of our deliveries or services. We reserve the right to make technical changes, including the replacement of components by parts of equal value, through which the function of the delivery item is not impaired, until final delivery.
4. If after conclusion of a contract we become aware of facts which are suited to significantly reduce the creditworthiness of purchaser, we shall be entitled to demand payment in advance or appropriate collateral or, having set an appropriate extension period, to withdraw from the contract.

Section 3 – Documentation provided

We reserve property rights and copyright in all documentation such as calculations, drawings, etc. provided to purchaser in connection with the offer or order placement. These documents must not be made accessible to third parties unless we have granted purchaser our express written consent to do so. In the event that the offer is not accepted, this documentation must be returned to us immediately.

Section 4 – Prices and Payment Terms

1. In the absence of any written agreement to the contrary, our prices shall apply ex works exclusive of packaging and insurance and plus value-added tax in the respectively valid amount.
2. Prices relate to the scope of performance confirmed by us in writing. Should there be changes before delivery with regard to quantity, technical details, etc., we are entitled to change the prices.

3. Unless otherwise agreed, payment must be made within 30 days net as of invoicing and delivery or acceptance of the goods or service.
4. The deduction of a discount shall only be permitted on the basis of a written separate agreement. The date of receipt by us shall be decisive for the date of payment. On payment arrears, we shall be entitled to charge interest on arrears of 9 percentage points above the respective base lending rate of the European Central Bank. We reserve the right to claim higher compensation for losses arising from arrears.
5. Purchaser shall be entitled to rights of offset or retention only to the extent that its claim has been established as legally binding or is not in dispute.
6. If after conclusion of contract it becomes apparent (e.g. through an application to open insolvency proceedings) that our claim to the purchase price is at risk through purchaser's lack of ability to pay, we are entitled, pursuant to the statutory regulations, to refuse performance and – after setting a deadline as appropriate – to withdraw from the contract (Section 321 of the German Civil Code [BGB]).

Section 5 – Electronic Invoicing

In order to optimise the process of invoicing and invoice despatch, we send invoices digitally to all business partners who provide an email address for e-invoicing in their orders. Should the announced email addresses serve a different purpose, we will adjust our system accordingly following written notification.

Section 6 – Rights of Retention

Purchaser shall only be entitled to exercise a right of retention to the extent that its counterclaim is based on the same contractual relationship.

Section 7 – Delivery Period and Default in Delivery

1. Deadlines and dates for deliveries and services indicated by us are always only approximate unless we have expressly promised or agreed on a firm date. To the extent that shipping was agreed, delivery periods and delivery dates relate to the time of handover to the carrier or freight forwarder or any other third party charged with transportation.
2. To the extent that we cannot comply with delivery deadlines for reasons outside of our responsibility (non-availability of performance), we will inform purchaser of this immediately and at the same time notify it of the likely new delivery deadline. If performance is not available within the new delivery deadline either, we are entitled to withdraw from the contract in whole or in part; we will reimburse any consideration received from purchaser without delay. A case of non-availability of performance in this sense is deemed to exist in particular in the delayed delivery to ourselves from our supplier if we have concluded a congruent covering transaction, neither we nor our supplier is at fault, or we are not obliged to undertake procurement depending on the individual case.
3. The start of the firm delivery periods set by us requires the timely and proper performance of the obligations of purchaser. The defense of non-performance of contract remains reserved. We may – irrespective of our rights arising from the contract with purchaser – demand an extension of delivery and performance deadlines or the deferral of delivery and performance dates by the time period during which purchaser fails to meet its obligations towards us.
4. If purchaser is in default of acceptance, or culpably breaches any other duty to co-operate, we shall to this extent be entitled to demand compensation for any losses arising to us, including any additional expenditures. Further claims for damages remain reserved. To the extent that the above conditions prevail, the risk of the accidental loss or accidental deterioration of the sales item transfers to the ordering party at the time at which the latter has fallen into default in taking delivery or is in a general situation of debtor's default.
5. The occurrence of default in delivery by us is determined by the statutory regulations. However, in any event a reminder from purchaser is required. If we fall into default in delivery, purchaser may demand flat-rate reimbursement for its loss caused by the delay. The flat-rate compensation is 0.5% of the net price (delivery value) for each completed calendar week of delay, in total however no more than 5% of

the delivery value of the goods delivered in arrears. We retain the right to demonstrate that purchaser did not suffer any loss or that only a significantly lower loss occurred than the above flat-rate.

6. We shall not be liable for impossibility of delivery or for delayed delivery to the extent that those were caused by force majeure or other events which could not be foreseen at the time of conclusion of contract (e.g. operational breakdowns of any type; difficulties in the acquisition of materials or energy; transport delays; strikes; lawful lockouts; shortage of labour, energy or raw materials; difficulty in obtaining the necessary official approvals; official measures; or missing, incorrect or late deliveries from upstream suppliers) for which we are not responsible. To the extent that such events make the delivery or performance significantly more difficult for us, or impossible, and the impediment is of more than temporary duration, we are entitled to withdraw from the contract. With impediments of temporary duration, the delivery and performance deadlines shall be extended or deferred by the period of the impediment plus an appropriate start-up period. The rights of purchaser in accordance with Section 11 and our statutory rights, particularly if the obligation to perform is excluded (e.g. due to impossibility or unreasonableness of performance and/or subsequent performance), remain unaffected.
7. In the event of an unjustified withdrawal of purchaser from the contract, the latter is obliged to compensate us with flat-rate compensation of 25% of the order value unless purchaser can provide evidence that we have suffered no or smaller damages. If we can provide evidence that there has been a significantly higher damage, purchaser shall compensate it to the full amount.

Section 8 – Delivery, Transfer of Risk, Acceptance, Default in taking Delivery

1. As a matter of principle, deliveries shall be undertaken from our principal place of business. That is also the place of performance for the delivery and for any subsequent acts of performance.
2. If the goods are shipped to purchaser at its request (sale by dispatch), then the risk of accidental loss or accidental deterioration of the goods passes to purchaser on dispatch to purchaser and no later than on leaving the works/warehouse. This shall apply irrespective of whether the goods are dispatched from the place of performance or who bears the freight charges. Sender must be notified immediately of any transport damage to the goods, but no later than 3 days after arrival of the goods. The same shall also apply in the case of hidden damages.
3. If purchaser is in default in taking delivery or if purchaser culpably breaches any other duty to cooperate, we shall be entitled to demand compensation for damages arising to us in this respect, including any additional expenditures (e.g. storage costs). Further claims for damages remain reserved. To the extent that the preceding conditions apply, the risk of accidental loss or accidental deterioration of the sales item shall transfer to purchaser at that point in time at which the latter has fallen into default in taking delivery or is in a general situation of debtor's default.

Section 9 – Retention of Title

1. We reserve ownership in the sold goods until the complete payment of our present and future claims arising from the purchase contract and from the ongoing business relationship (secured claims).
2. The goods subject to retention of title may not be pledged to third parties nor transferred as collateral until the complete payment of the secured claims. Purchaser must notify us immediately in writing if an application to open insolvency proceedings has been made or to the extent third parties have seized (e.g. by implementing attachments) the goods belonging to us.
3. If purchaser is in a breach of contract, particularly in case of non-payment of the purchase price due, we are entitled to withdraw from the contract in accordance with the statutory regulations or/and to demand the restitution of the goods on the grounds of retention of title. The demand to reconstitute the goods does not simultaneously include the declaration of withdrawal; on the contrary, we are entitled merely to demand the restitution of the goods and to reserve our withdrawal. If purchaser fails to pay the purchase price due, we may only assert these rights if we have previously without success set purchaser an appropriate deadline for payment or the setting of such a deadline is not required in accordance with the statutory regulations.

4. Until revocation in accordance with letter c.) below, purchaser shall be authorised to sell on and/or process the goods subject to retention of title in the proper course of business. In such an event the following supplementary terms shall apply.

a.) The retention of title shall extend to the products created through processing, mixing or combining our goods to their full value, whereby we are deemed to be the manufacturer. If in processing, mixing or combining our products with the goods of third parties the ownership rights of the latter persist, we shall acquire co-ownership in proportion of the invoice values of the processed, mixed or combined goods. In all other respects the same shall apply to the created products as to goods supplied under retention of title.

b.) Claims against third parties arising from the onward sale of the goods or the product shall be assigned to us as collateral by purchaser now already in total or to an amount of any co-ownership share due to us in accordance with the paragraph above. We accept such an assignment. Purchaser's obligations set out in Subsection 2 shall also apply with regard to the assigned claims.

c.) Purchaser shall remain authorised to collect the claim alongside us. We undertake not to collect the claim for as long as purchaser meets its payment obligations towards us, there is no deficiency in its ability to pay, and we do not assert the retention of title by exercising a right in accordance with Subsection 3. But should this be the case, we may demand that purchaser discloses to us the assigned claims and their debtors, provides all the information required for collection, hands over the associated documentation and notifies the debtors (third parties) of the assignment. We are further entitled in such a case to revoke the authorisation of purchaser for the onward sale and processing of the goods which are subject to the retention of title.

d.) If the realisable value of the collateral exceeds our claims by more than 10%, we will release at our choice collateral at purchaser's request.

Section 10 – Warranty and Notification of Defects

1. The statutory regulations shall apply to the rights of purchaser in the event of material defects and deficiencies in title (including wrong and short delivery as well as incorrect assembly or defective assembly instructions) unless otherwise set out below.
2. Our liability for defects is based above all on the agreement reached on the quality of the goods. All product descriptions which are the object of the individual contract or were made publicly available by us (particularly in catalogues or on our Internet website) are deemed to be agreement on the quality of the goods.
3. To the extent that the quality was not agreed, the statutory regulations shall be used to judge whether a defect exists or not (Section 434 Subsection 1 Sentences 2 and 3 of the German Civil Code [BGB]). We accept no liability for the public statements of third parties (e.g. in any advertising messages).
4. Purchaser's warranty rights presuppose that purchaser has properly complied with its inspection obligation and requirement to give notice of defects pursuant to Section 377 of the German Commercial Code (HGB). In any event, obvious defects must be notified in writing within 14 working days (i.e. the weekdays Monday to Saturday inclusive) from delivery and in the investigation of non-detectable defects within the same period from discovery. Transport damage must be notified in writing within 3 working days.

If purchaser fails to undertake a proper inspection and/or the notification of defects, our liability for defects which have not been notified or have not been notified in good time or in the proper manner is excluded pursuant to the statutory regulations.

5. If despite all care taken the supplied goods show a defect which already existed at the time that risk was transferred, we will at our option as a matter of subsequent performance either repair the goods or provide a non-defective matter (replacement delivery) subject to the timely notification of defects. We shall always be given the opportunity for subsequent performance within an appropriate period.
6. The expenditures required for the purpose of inspection and subsequent performance, particularly transport, travel, work and material costs as well as, if necessary, removal and installation costs, will be borne or reimbursed by us as set out in the statutory regulations if a defect really exists. Otherwise we may demand reimbursement from purchaser for the costs arising from the unwarranted demand for removal of defects (particularly inspection and transport costs) unless the absence of defect was not recognisable for purchaser.

7. Purchaser's claims for expenditures required for the purpose of subsequent performance, particularly transport, travel, work and material costs, are excluded to the extent that the expenditures increase because the goods supplied by us have subsequently been taken to a location other than purchaser's place of business unless the move corresponds to its intended use.
8. In urgent cases, e.g. if operational safety is at risk or to prevent excessive damage, purchaser shall have the right to remedy the defect and demand from us the reimbursement of the expenditures objectively required for this purpose. We are to be notified of such self-remedy immediately and if possible beforehand. The right of self-remedy does not exist if we were entitled to refuse the corresponding subsequent performance in accordance with the statutory regulations.
9. If subsequent performance has failed, or an appropriate deadline to be set by purchaser for subsequent performance has unsuccessfully expired or is not required pursuant to the statutory regulations, purchaser may withdraw from the purchase contract or reduce the purchase price. There is, however, no right of withdrawal if the defect is negligible within the meaning of Subsection 10. below.
10. Claims for defects do not exist if the divergence from the agreed quality is only negligible, if the impairment of usability is only negligible, for natural wear and tear as well as for damage arising after the transfer of risk as the result of incorrect or negligent treatment, excessive load, unsuitable operating materials or due to special external influences which are not provided for in accordance with the contract. If purchaser or third parties undertake improper maintenance work or changes, those and any consequences resulting therefrom are not covered by any warranty claims.
11. Purchaser's claims for compensation for damages or expenses incurred in vain only exist, also in the case of defects, in accordance with Section 11 below and are excluded in all other respects.

Section 11 – Any other Liability

1. Unless otherwise set out in these Terms and Conditions for Sales, including the following terms, we are liable for the breach of contractual and non-contractual obligations in accordance with the statutory regulations.
2. We are liable for damages – no matter on what legal grounds – under fault-based liability in the event of intent and gross negligence. Concerning simple negligence we are liable, always subject to a milder degree of liability in accordance with applicable statutory regulations (e.g. for diligence in our own affairs) only
 - a) for damages arising from injury to life, physical injury or injury to health,
 - b) for damages arising from the not inconsiderable breach of a material contractual obligation (obligations without the performance of which the contract cannot be properly carried out at all and on compliance with which the contractual partner regularly trusts and may trust); in this case our liability is, however, restricted to compensation for the foreseeable, typically occurring damage.
3. The restrictions on liability arising from Subsection 2 also apply in the event of neglect of duty through or for the benefit of persons for whose culpability we are responsible in accordance with the statutory regulations. They shall not apply to the extent that we have deceitfully kept secret a defect or have assumed a guarantee for the quality of the goods and for purchaser's claims under the Product Liability Act.
4. In the event of a breach of duty which is not a defect, purchaser may only withdraw or give notice if we are responsible for the breach of duty. An unconditional right of termination of purchaser (particularly pursuant to Sections 651 and 649 of the German Civil Code [BGB]) is excluded. In all other respects the statutory prerequisites and legal consequence apply.

Section 12 – Statute of Limitations

1. Divergent from Section 438 Subsection 1 No. 3 of the German Civil Code (BGB), the general period of the statute of Limitations for claims arising from material defects and deficiency in title is one year from delivery. To the extent that acceptance has been agreed, the statute of limitations starts to run with acceptance.

2. The above periods of the statute of limitations of sale of goods law shall also apply with regard to purchaser's contractual and non-contractual claims for damages based on a defect in the goods unless the application of the regular statutory period of limitation (Sections 195 and 199 of the German Civil Code [BGB]) would in the individual case lead to a shorter period of limitation. Purchaser's claims for damages pursuant to Section 11 Subsection 2 Sentence 1 and Sentence 2 letter a) above as well as pursuant to the Product Liability Act are, however, time-barred exclusively in accordance with the statutory period of limitation.

Section 13 – Repairs

1. Repairs may only be carried out by us.
2. If a cost estimate is wanted for before the repair, this should be expressly stated.
3. We assume no guarantee for any parameter settings which after return delivery will not be adjusted to the customer's installation. Customer must check these settings before integration into the installation and adjust them as necessary. Relevant parameters may, among others, include: emissivity settings, part of measuring range, storage function, transmission, fill factor, power settings of the analogue output, control parameters, setting time.
4. Any liability by us for consequential damage arising from incorrect parameter settings is excluded.
5. For repairs for which the customer does not give us the approval of the cost estimate it has asked for, we reserve the right to return the product against advance payment or disposal of the product at customer's cost after the expiry of 12 months after issue of the cost estimate. The costs for that and also for the cost estimate shall be borne by the customer.

Section 14 – Export Restrictions

The supplied goods are intended for end use in the EU member states and may not be exported without approval.

Section 15 Miscellaneous

1. This contract and the legal relations as a whole between the parties are subject to the laws of the Federal Republic of Germany with the exclusion of the UN convention on the sale of goods (CISG).
2. Place of performance and exclusive place of jurisdiction for all disputes arising from this contract is our place of business in the absence of any other arrangement in the order confirmation.
3. All agreements reached between the parties for the purpose of carrying out this contract are set out in this contract in writing. Supplements to and amendments of the agreements reached under inclusion of these Terms and Conditions for Sales must be in written form to be valid. Deviation from this written form requirement must be in writing.
4. If individual provisions of the contract concluded between us and purchaser are or become void, invalid or infeasible, this shall not affect the validity of the remaining terms. On the contrary, the contractual partners undertake to replace these provisions with retroactive effect by one such valid or practicable arrangement which comes closest to the contractual purpose endeavoured by them. If the invalidity of a provision is based on a measure of performance or time set out therein (deadline or date), then the provision shall be deemed to have been agreed with a legally permissible measure which comes closest to the original measure. The above applies analogously also to gaps in the terms.