

# General Terms and Conditions

## **sensotec Mess- und Regeltechnik GmbH**

Triester Straße 305  
A-8073 Feldkirchen bei Graz  
Tel. +43 3135 51650  
Fax. +43 3135 51650-50  
E-Mail office@sensotec.at

Legal venue: Graz, place of performance: Feldkirchen bei Graz  
Company register number: 273910i, Handelsgericht (Commercial Court) Graz  
VAT identification number: ATU62254704, ARA Licence number: 14433  
Bank details: Steiermärkische Sparkasse, sort code: 20815, account: 00001593490  
IBAN code: AT09 2081 5000 0159 3490, BIC: STSPAT2GXXX

- 1.1 The following General Terms and Conditions shall govern the entire business relationship between us and our customers.
  - 1.2 Changed conditions by our client, which we have not explicitly acknowledged in writing, shall not be binding to us, whether we explicitly objected to them.
  - 1.3 Our sales staff are not authorised to enter into a verbal contract, make verbal changes to these General Terms and Conditions or other verbal agreements.
  - 1.4 In addition to these general terms and conditions, the supplementary provisions for the licensing of software products for the industrial automation shall apply. In this context, we explicitly refer to these licensing terms and conditions.
- ## 2 Offer and Order
- 2.1 Our offers are subject to change without notice.
  - 2.2 Orders, as well as verbal agreements regarding the very same, require our written confirmation. The order confirmation shall be solely decisive. Any documents relating to the offer or the order confirmation, such as sketches, drawings, dimensions and weights shall not be binding unless they are expressly specified in writing to be binding. We shall retain title and intellectual property rights to the documentation enclosed with our offers and order confirmations. The customer shall not duplicate them or make them accessible to third parties without our permission.
  - 2.3 Call orders will only be accepted upon agreement of a delivery period. If the customer fails to respond within the agreed delivery time, the already manufactured items will be delivered without further notice or we shall withdraw from the contract.
  - 2.4 If changes to customer's personal or financial circumstances become subsequently known, for example payment stop, bankruptcy proceedings, insolvency proceedings, inaccurate information and so forth, we reserve the right to withdraw from the contract or set new conditions (advance payment, cash on delivery).
  - 2.5 **Minimum order value:** equipment on store EUR 70,-; production equipment EUR 150,-.
  - 2.6 Our General Terms and Conditions shall apply all future business relationships with our company.
  - 2.7 All legal communications and notices must be submitted in written form.
  - 2.8 **Retention of title:** We shall retain title to the items delivered by us until the customer has fulfilled all his payment obligations in accordance with the delivery contract.
  - 2.9 When benefiting from the later maturity of the purchase price, the customer consents to the reservation of title of the supplier until full payment is effected.
  - 2.10 We are entitled to claim the right to separate settlement of the delivered goods respectively assign the right to consideration of equivalent value, if the customer suspends payment, initiates insolvency proceedings or falls into bankruptcy. In any case of assertion of the retention of title to returned goods, only the amount remaining after consideration of best possible utilisation and deduction of all processing costs can be credited to the customer.
  - 2.11 In case of resale, even in installed condition, the purchase price claim is considered to be assigned to us. Merchandise under the retention of title may neither be given in pledge nor transferred by way of security. Processing or conversion of items originally provided under retention of title grants us co-ownership of the newly manufactured merchandise. Should the

goods delivered under the reservation of proprietary be resold, the right of retention will also extend to the proceeds respectively demand.

### **3 Prices**

- 3.1** All prices shall be without obligation, in EURO, unless another currency has been agreed on. Unless otherwise stated our prices are “ex stock” or “ex works” and exclusive of shipping and handling charges.
- 3.2** We reserve the right to adjust our prices accordingly if after conclusion of the contract cost reductions or cost increases take place. This especially applies to call orders.
- 3.3** We shall choose the inner packaging at our discretion; it shall be charged and cannot be returned.
- 3.4** Sales tax is not included in our prices and must therefore be paid additionally.

### **4 Delivery Time**

- 4.1** The delivery period shall commence with the date of confirmation of order. It is given on the basis of controlled manufacturing circumstances, so that it may be observed in so far as possible. We reserve the right to make partial deliveries.
- 4.2** Shipment is delayed for the time period the customer has fallen behind with his payment and other obligations to the supplier.
- 4.3** In the event of force majeure or any other event beyond our control, in particular force majeure, the agreed delivery times and deadlines shall be extended commensurate with the type of disruption.
- 4.4** In case of unforeseen events, insofar as they change the economic significance substantially or have a substantial impact on the content of the products and services, the supplier is entitled to withdraw completely or partly from the contract. If the supplier wishes to make use of his right of withdrawal, he must inform the customer immediately the consequences of the event become known. The customer shall not be entitled to compensation in the event of such a withdrawal from the contract.

### **5 Payment Terms and Conditions**

- 5.1** Any payments are due on the issue date without any deduction and free of transaction charges to the designated bank account.
- 5.2** Other terms of payment shall only be valid if agreed upon in written form.

**5.3** Bills of exchange and cheques shall only be accepted as undertaking to pay. We reserve the right to decide on any possible acceptance. The customer shall be responsible for any costs and bank charges. Payment shall be deemed effected on the date on which the amount is our free disposal.

**5.4** Starting from maturity, an interest at the rate of 1.5 % per month is charged from the respective outstanding amount. We are entitled to be fully compensated beyond the interest due for all dunning, collection and information costs as well as any fees payable to an attorney at law commissioned by us, if an invoice is not paid by due date.

**5.5** If the customer is unable to meet his payment obligations, particularly if a cheque or bill of exchange is not honoured, or if his payments are terminated or if we gain knowledge of any circumstances having a negative influence on the financial credibility of the buyer, we shall have the right to debit the complete remaining debt. We are entitled without prior announcement to exercise a right of retention to all supplies and services still outstanding or to demand further, previously not agreed advance payments.

### **6 Transfer of Risk and Shipping**

**6.1** The risk shall be transferred to the customer on delivery of the ordered items, even if partial delivery or carriage-paid delivery is agreed on.

**6.2** If delivery is delayed as a result of circumstances which are outside our responsibility, the risk shall be transferred to the customer on the date the goods are ready for shipment.

**6.3** All items are subjected to a control prior to shipment. Complaints regarding number and condition of the delivered goods are only considered when communicated in writing by the recipient and confirmed by the carrier no later than three (3) working days after the receipt of the goods. Damage or loss during transport shall be borne by the consignee and reported to the transport agent by the very same.

**6.4** The supplier is entitled to insure the goods against transportation risk at the expense of the contractual partner. If such insurance has been taken out, any damages during transport must be reported immediately to the carrier and communicated to the supplier with the written confirmation from the carrier. If such confirmation is not received within five (5) business days, the buyer's claims for indemnification shall be excluded.

## 7 Assembly and Service

**7.1** Assembly work and service shall be remunerated separately. The remuneration shall include, in particular, travel costs, allowances, the usual rates for working hours and surcharges for overtime. Expenses for preparation, base and actual traveling and waiting time shall be charged as charged as working time. If the assembly or commissioning is delayed for reasons for which we are not responsible, the customer shall bear all costs for the waiting time, and for other necessary travel. All the assembly work being directly connected with the installation of the plant will be finished when commissioning is carried out for test purposes. If assembly is performed by the customer or by a third party engaged by them, our respective operating and assembly instructions must be observed.

## 8 Warranty

**8.1** Defects in delivered items, which are reported to us within the statutory guarantee period, shall be repaired or replaced by us at our own discretion, which we are also entitled to after repeated unsuccessful improvement attempts. A written notification must be received by us at the latest within ten (10) days after acceptance of the delivered goods in the case of obvious defects or, in case of defects that are not obvious, immediately after the defect has become apparent. Claims for termination of the contract expire upon rectification of the defect or compensatory service. Remediable deficiencies do not entail any obligation to reduce the price. Any parts exchanged become our property and are to be sent to us upon request. Spare parts and expendable parts or parts for further processing must be examined by the customer immediately after delivery and possible defects shall be reported immediately. With regard to defects which could have been noticed before installation or conversion, any warranty claims are excluded after installation and conversion.

**8.2** If the customer initiates an inspection of the supplied product based on a claim of defective quality, for which the we would be responsible under section 8.1 GDPT, we will charge a handling fee for each inspected product, if it is determined that the product is not defective.

**8.3** In the following circumstances the guaranty does not cover: inappropriate or improper use, defective assembly or start-up by the customer or by third parties, non-observance of our instruction manual, defective or negligent treatment, normal wear and tear, chemical, electrochemical or electrical inflows, in so far as they

are not caused by wilful or gross negligence by us, changes and repairs not authorized by us.

**8.4** Advising the customer, especially regarding the utilization of the delivery item, is only obligatory for us, if we have indicated such in writing or if we have confirmed in writing a verbal consultation. For the adequacy of the product for certain purposes we are only liable, if this has been assured in writing.

**8.5** In the event of the execution of repair and service the claims for guaranty of the customer are limited to the commissioned and executed work.

## 9 Liability and Statute of Limitations

**9.1** Precondition for our assumption of liability is the purchaser's fulfilment of all contractual obligations. We cannot be held liable for damages incurred as the result of insufficient or incorrect information about operational conditions, as a result of improper handling or mounting of contractual goods. We furthermore assume no liability that the delivered products are conform to foreign regulations. The right of the purchaser to enforce claims under the warranty as well from notifications of defects expires one (1) month after the written rejection by the supplier.

**9.2** We shall only be liable for compensation of damages, regardless of any legal basis, if the damage is the result of (a) a breach of a significant obligation, which secures the achievement of the purpose of the contract (cardinal obligation) or (b) wilful intent or gross negligence on our part.

**9.3** If according to paragraph 9.2 (a) we are liable for any violation of obligations essential to the contract, without any occurrence of gross negligence, the level of liability is limited to the damage according to the predictable and typical conditions and circumstances given at the time when the contract was concluded.

**9.4** The limitation of liability in accordance with section 9.3 GDPT shall apply likewise to damage caused by gross negligence or wilful intent on the part of our employees or agents, who are neither directors nor senior employees.

**9.5** In the event of section 9.3 and 9.4 GDPT, we shall accept no liability for indirect damage, consequential damages or loss of profit.

**9.6** In case of loss or deterioration of data and programs and their restoration, we shall be liable only within the scope defined by section 9.1 to 9.4 GDPT and only in so far as this loss could not have been avoided by appropriate precautionary measures by the customer, in particular

by creating regular backups of all data and programs.

- 9.7** The limitations on liability set out in section 9.2 through 9.6 GDPT shall apply accordingly in favour of our employees and agents.
- 9.8** Potential liability for guaranteed features or liability according to the Product Liability Law remains unaffected, excluding the event where the customer is a consumer themselves.

## **10 Return policy**

- 10.1** Properly ordered and delivered goods shall in principle not be taken back. In case of a voluntary return of the reserved goods, all expenses, such as warehouse, transport and other costs shall be charged to the buyer.

## **11 Place of Performance and Jurisdiction**

- 11.1** Place of performance for all deliveries and services as well as payments shall be the registered office of our company in 8073 Feldkirchen bei Graz. Handelsgericht (Commercial Court) Graz is agreed on as the exclusive place of jurisdiction for any disputes arising out of or in connection with our contract.

## **Supplementary Provisions to Section 1.4 of our General Terms and Conditions Applicable to the Licensing of Software Products for the Industrial Automation (Powering, Measuring, Switching, and Controlling)**

### **1 Subject Matter of the Supplementary Provisions**

- 1.1** The following supplementary provisions shall amend the General Delivery and Payment Terms and Conditions of the sensotec Mess- und Regeltechnik GmbH, which are in the following referred to as GDPT.
- 1.2** The subject matter of these supplementary provisions is the software, which the customer regularly receives as part of the product.
- 1.3** These supplementary provisions shall not obligate us to provide support services for the software. Such services shall be subject to a separate agreement.

### **2 Risk Transfer**

Supplementary provision to section 6.1 GDPT:

If the software is provided to the customer via electronic communications media (e. g. the internet), the risk shall be transferred upon the software leaving the provider's control (e. g. download via the server).

## **3 Liability for Data Loss**

Supplementary provision to section 9 GDPT:

In case software defects cause the customer to lose data or the customer's data and/or programmes are damaged, the software provider shall be liable solely within the framework specified in section 9.1 through 9.8 GDPT.

## **4 Documentation**

The customer buys the software documentation separately from the software unless the order confirmation lists the documentation as part of the delivery.

## **5 Single-User License**

- 5.1** The customer acquires the agreed usage rights to the software as specified in the order confirmation or software product certificate.
- 5.2** The supplier shall grant the customer the non-exclusive right to use the software with the device(s) specified in the order confirmation or the software product certificate for an indefinite time; a single-user license shall entitle the user to run the software on only one device at a time. If several work stations are associated with a single device the single user license permits the software use for one work station only.
- 5.3** The customer shall be permitted to copy the software as precautionary measure exclusively (safety copies). Before copying the software for any other purpose, the customer must acquire a multi-user license.
- 5.4** The licensed software user shall not modify, re-engineer or translate the software or isolate parts of it. The customer shall not remove alphanumeric or other code from the data medium and shall transfer this code to the safety copies without modification.
- 5.5** The software supplier grants the customer/user the irrevocable right to transfer his/her usage rights to third parties. If the customer acquired the software license as part of a purchased device the customer shall transfer the software to third parties only for use together with the device. The software user/customer shall enter into an agreement with the third party, which binds this third party to the provisions of this supplementary agreement. In case the customer sells his usage rights to the software to a third party, the customer shall be responsible for the compliance with existing export requirements and shall indemnify the sensotec Mess- und Regeltechnik GmbH from any and all liability resulting from the software transfer.

## 6 Warranty

Supplementary provision to section 8 GDPT:

- 6.1** The software supplier and customer mutually agree that it is not feasible to develop software in such a way that it is error-free for all applications. In this context, software defects are defined as follows: Errors are reproducible deviations from the associated documentation using the newest software version as proven by the customer/user; the error must be significant unless the error is based on the absence of a guaranteed characteristic. The customer/user shall provide the software supplier with verifiable documentation on the type and occurrence of the deviations from the software documentation and shall provide assistance in pinpointing the observed error(s). We shall not be liable for software defects caused by the deviation from the usage conditions for the programme, which are specified in the software documentation.
- 6.2** Should a delivered data medium turn out to be unsatisfactory the purchaser shall only have the right to the error-free replacement software.
- 6.3** At the discretion of the software supplier, the software error shall be remedied either on site or on the premises of the supplier. In case the software supplier decides on trouble-shooting the error on site, the customer/user shall provide operators as well as the hardware and software for this task and create suitable operating conditions as required for the efficient error correction. The customer/user shall provide the software supplier with the necessary documentation and information for the error correction. The software supplier may request compensation for the costs associated with correcting the software error on site (costs of travel, transport, and accommodation).
- 6.4** In the event the customer/user reports a software error and this error is not reproducible or caused by user error(s) or is otherwise not covered by warranty, the software supplier shall have the right to demand from the customer reasonable compensation for the troubleshooting plus compensation for the costs of transport, travel, and accommodations.
- 6.5** In case the customer or a third party extended the software use via an interface provided by the software supplier, the software warranty shall extend up to this interface only.
- 6.6** The software supplier does not guarantee that the purchased software is compatible with the customer-created data processing environment; this applies in particular to the hardware and software used by the customer.

- 6.7** The customer shall use all just and reasonable measures to avoid or reduce damages due to software error; furthermore, the customer shall report errors to the software supplier immediately and do everything in his/her power to secure the programmes and data.

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