

OptiSense

Terms and Conditions



1. General, conclusion of contract, binding period

1.1 The following general terms and conditions apply exclusively to all of our deliveries and services, including those in the future and consulting and other ancillary services, provided that the customer is an entrepreneur, a legal entity under public law or a special fund under public law. The customer's conditions are hereby rejected.

1.2 Agreements that change these general terms and conditions require our written confirmation to be effective. Compliance with this written form requirement can only be waived by means of a written declaration on our part.

1.3 The customer is bound to his order for two weeks. The contract is concluded when we confirm acceptance of the order or have performed the delivery or service within this period.

1.4 We assume no guarantee and no procurement risk for the deliveries and services owed by us. All obligations on our part are subject to our being supplied correctly and on time. We reserve the right to make changes in design and material, provided the delivery or service is not significantly changed and the customer can reasonably be expected to accept the changes.

1.5 The contract signed by both parties is decisive for the scope, type and quality of the deliveries and services, or, aside from this, our order confirmation or our offer. Other information or requirements will only become part of the contract if we have expressly agreed this with the customer in writing. All of the information contained in our product descriptions, illustrations and other documents, in particular in our brochures, catalogues, price lists, images, drawings, calculations, advertising materials and on our website is only intended to provide a general idea of the products described therein. It does not contain any declaration, assurance or guarantee on our part regarding features of the product and does not form part of the contract.

1.6 A transfer of the customer's rights from contracts concluded with us is only permitted if we have given our prior written consent.

2. Prices

2.1 All prices are in EUROS without discount or other deductions and plus the sales tax applicable on the day of delivery or service as well as any duties levied by the customs authorities and their associated costs as well as additional transport costs, travel costs, expenses, extras and telecommunication costs. Additional services requested by the customer will be invoiced according to our current price list.

2.2 If there are significant changes to cost factors, in particular wages, material prices or freight costs, we can adjust the agreed prices appropriately and in accordance with the influence of the changed cost factors.

2.3 If the delivery or service does not take place on the agreed date or within the agreed time period for reasons for which the customer is responsible and if more than 3 months have passed since the conclusion of the contract, we shall be entitled to charge our then applicable list prices.

3. Payment conditions

3.1 We are not obliged to make advance payments. Our accounts are due for payment upon conclusion of the contract.

3.2 All payments must be made in cash or by transfer to one of our accounts without any deduction.

3.3 Bills of exchange and cheques are only accepted by us on the basis of a written agreement, only as a conditional payment and without guarantee for timely presentation or timely protest. Discount charges and all other costs incurred in collecting or cashing the bill of exchange or cheque are borne by the customer.

3.4 In the event of default of payment or if accounts payable are endangered by a deterioration of the customer's creditworthiness, we can make all our claims due and/or demand securities, irrespective of the term of any bills of exchange or agreed payment terms. Furthermore, we are entitled to carry out outstanding deliveries or services only against prepayment or against the provision of securities. If the customer refuses to make advance payments or provide security, we can withdraw from the contract and demand compensation. In addition, we may, without withdrawing from the contract, prohibit the use, processing, alteration, combination, mixing and sale of the products delivered by us, revoke the direct debit authorisation pursuant to section 6.7 and demand return of the products at the customer's expense, without the customer being entitled to a right of retention or similar right. We will dispose of any products taken back by private sale and the proceeds less costs incurred will be credited to our claims against the customer.

3.5 The customer is only entitled to a right of offset or retention if his counterclaims have not been disputed by us or have been legally established.

4. Time of delivery and performance

4.1 Dates and times for deliveries and services are to be regarded as approximate and only binding when there is a corresponding and explicit written agreement and only if all details of the order are clarified in good time and the customer has punctually fulfilled all his obligations. Changes to the execution of the delivery or service requested by the customer and accepted by us after conclusion of the contract entitle us to a reasonable extension of the originally agreed dates or times.

4.2 If we are prevented from adhering to the bindingly agreed deadlines and times for deliveries and services for reasons for which we are not responsible, the delivery or service time is extended by the duration of the hindrance and by an appropriate start-up time. Events for which we are not responsible in the above sense include, in addition to cases of force majeure, in particular pandemics, strikes and lockouts as well as incorrect deliveries by our suppliers for which we are not responsible. In these cases, we can withdraw from the contract in whole or in part with regard to the not yet fulfilled part. In these cases, the customer is entitled by law to withdraw from the contract after the fruitless expiry of a reasonable extension period set in writing, if the customer deems the acceptance of the goods unreasonable due to the delay.

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4.3 If we are in default, the customer can withdraw from the contract after the fruitless expiry of a reasonable extension period set by him in writing.

5. Delivery, service, shipping, transfer of risk, copyrights

5.1 We are entitled to provide partial deliveries and services.

5.2 The customer must immediately accept the deliveries and services offered by us. Otherwise, we are entitled to store the goods to be delivered at the customer's expense and risk and at our own discretion. If the customer does not accept the delivery or service within a reasonable extension period granted to him or does not expressly declare that he does not wish to accept it, we may withdraw from the contract and/or claim damages. We can claim a flat rate of 15% of the order value as compensation. The customer is free to provide evidence that we have incurred minimal or no loss. We reserve the right to prove higher losses in individual cases.

5.3 The place of performance for our delivery or service obligation is our company headquarters. A dispatch or other transmission of our product is always at the expense and risk of the customer. Unless otherwise agreed, the choice of the transmission route and means of transmission is left to us. We do not guarantee the cheapest or fastest mode of transmission. Transport insurance is only taken out by us at the express request and expense of the customer.

5.4 The risk, including that of accidental loss or accidental deterioration of the product, is transferred to the customer when it is picked up by the customer or when the product is dispatched to the forwarding agent, carrier or other person or institution responsible for carrying out the shipment, regardless of whether the shipment is carriage paid or not. If the customer does not immediately collect or retrieve goods that are reported as being ready for collection or ready for dispatch, the risk is transferred to the customer when the goods are ready for dispatch. In the case of transferring software by means of electronic communication media (e.g. via the Internet), the risk is transferred to the customer when the software leaves our sphere of influence (e.g. in the case of downloads).

5.5 If software is included in the scope of delivery, it is provided to the customer for exclusive use on the respective machine or device for which the software is intended or on which the software was first installed. The customer may neither copy the software nor use it in any other way nor allow others to use it. All rights of use and copyrights to the software remain with us.

6. Retention of title

6.1 The delivered goods shall remain our property (goods subject to retention of title) until all claims, including future claims, are fulfilled, in particular the respective balance claims to which we are entitled against the customer within the scope of the business relationship, regardless of the legal reason. If we enter into obligations towards the customer or third parties to finance or refinance the purchase price, or if such obligations arise, e.g. due to acceptance of bills of exchange, guarantee or other indirect or direct liability, ownership will only be transferred to the customer if we are relieved of any liability to the customer or third parties.

6.2 The processing, alteration, combination and mixing of the goods subject to retention of title are carried out for us as the manufacturer within the meaning of § 950 of the German Civil Code (BGB), without placing us under any obligation. The processed, altered, combined or mixed goods are deemed to be goods subject to retention of title within the meaning of section 6.1. If the customer processes, alters, combines or mixes the goods subject to retention of title with other goods, we shall be entitled to co-ownership of the new item in the ratio of the invoice value of the goods subject to retention of title to the invoice value of the other goods used. If our ownership expires through processing, altering, combining and mixing, the customer must immediately transfer to us the ownership rights to which he is entitled to the new inventory or the new item in proportion to the invoice value of the goods subject to retention of title. Our co-ownership rights shall be deemed to be goods subject to retention of title within the meaning of section 6.1.

6.3 The customer shall store the goods subject to retention of title for us free of charge and with the care of a prudent businessman, maintain them in proper condition and insure them at his own expense against fire, water damage and theft at the invoice value, with the proviso that we are entitled to the rights from the insurance. If the customer does not comply with these obligations despite a written request from us, we are entitled to take out this insurance ourselves at the customer's expense, to pay out the premium and to collect it as part of the claim from the purchase contract. The customer must use insurance payments in full for the repair of the goods subject to retention of title. The customer must store and label the goods subject to retention of title in a particular way if we request this at any time. The customer is obliged to provide us with information at any time about the inventory of the goods subject to retention of title still in his possession, the location of their storage and, if applicable, their processing, alteration, combination or mixing status. We are entitled to inspect the goods subject to retention of title at any time. Any damage to the goods subject to retention of title identified or caused by the customer, which occurred after the transfer of risk to the customer, must be reported to us immediately in writing. A written report on the circumstances of the damage shall be prepared at our request. Any repairs that become necessary during the period of retention of title must be agreed with us and carried out immediately upon our request.

6.4 The customer may only resell the goods subject to retention of title in the ordinary course of business, only under his normal terms and conditions of business and only if he is not in default with his payment or other contractual obligations, if he agrees a retention of title with his customer and if the claims arising from the resale are transferred to us in accordance with sections 6.5 and 6.6 below. The customer is not entitled to dispose of the goods subject to retention of title in any other way. The use of the goods subject to retention of title to fulfil contracts for work and services and contracts for work and materials shall also be deemed to be a resale.

6.5 The customer's claims from the resale of the goods are now assigned to us; this also applies to the respective balance claims if the resale claims are placed in a current account. The assigned

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claims shall serve as security to the same extent as the actual goods subject to retention of title.

6.6 If the customer sells goods subject to retention of title together with other goods, the claims from the resale or the respective balance claims are assigned to us in the ratio of the invoice value of the goods subject to retention of title to the invoice value of the other goods. In the event of the resale of goods of which we have co-ownership in accordance with section 6.2, a part of the claim corresponding to our co-ownership is assigned to us.

6.7 The customer is entitled to collect claims from the resale or balance claims, unless we revoke the direct debit authorisation in the cases mentioned in section 3.4. At our request, the customer is obliged to inform his buyers immediately of the assignment to us and to give us the information and documents necessary for collection.

6.8 The customer is not entitled to any other assignment of claims. This also applies to factoring transactions; the customer is not permitted to undertake these on the basis of the direct debit authorisation. However, we are prepared to agree to factoring transactions in individual cases, provided that the equivalent value is finally received by the customer and the fulfilment of our claims is not endangered.

6.9 In the cases mentioned in section 3.4, we are also entitled to prohibit the processing, alteration, combination and mixing as well as the resale of the goods subject to retention of title. In these cases, as well as in the event of a breach by the customer of the obligations under section 6.4, we may also demand the return of the goods subject to retention of title at the customer's expense, excluding any right of retention. The customer has already authorised us to enter his company and to take back the goods subject to retention of title. Taking back the goods does not constitute a withdrawal from the contract.

6.10 The customer must inform us immediately of any seizures or other impairments of the goods subject to retention of title and the assigned claims. If we incur judicial or extrajudicial costs as a result of fending off such seizures or other impairments, for which we are not reimbursed by third parties because they are not in a financial position to do so, the customer is liable to us for the loss incurred.

6.11 If the value of the existing securities exceeds the secured claims by a total of more than 10%, we are obliged to release securities of our choice if requested to do so by the customer.

7. Warranty

7.1 The customer must report any malfunctions and errors to us immediately in writing and describe them as precisely as possible (error report). The customer must support us to the best of his ability in clarifying and eliminating any errors. If there is no defect in our product or service, the customer must compensate us for the work created by the error report, in particular by remunerating us for our work. This is particularly the case if the cause of the error report was incorrect operation or a problem in the software environment.

7.2 When purchasing our products, warranty claims for the purchase of used products are excluded. Warranty claims as a result of defective new products purchased are otherwise determined in accordance with sections 7.3 to 7.11.

7.3 The contractual quality of our software is determined exclusively by the specifications of the documentation in the version valid when the contract was concluded. Errors that only lead to an insignificant reduction in the usability of our software are not taken into account. Functional impairments that result from the hardware and software environment not provided by us, incorrect operation, external defective data, disruptions in computer networks or for other reasons arising from the customer or end user's risk area are not defects. There are no warranty claims for software that has been changed by the customer, end user or third party, unless the customer can prove that the change was not the cause of the defect. All warranty rights are excluded for defects in software provided for test or demonstration purposes.

7.4 Warranty claims can only be asserted if and to the extent that the defective product amounts to more than 5% of the total delivery. Defects in part of a delivery cannot result in a complaint about the entire delivery.

7.5 If the product has been accepted by the customer or if it is deemed to have been accepted, complaints which concern such defects that could have been detected during acceptance are excluded. Otherwise, complaints concerning (open) defects that are recognisable upon careful examination are excluded after two weeks from receipt of the product at its destination.

7.6 The customer must ensure proper storage of the product about which the complaint has been made and give us the opportunity to inspect the product. Use, processing, alteration, combination and mixing as well as sale of the product about which the complaint has been made must be refrained from immediately. The customer must take all necessary and reasonable precautions to prevent damage caused by the product, in particular he must ensure that programs and data are backed up. Furthermore, at our request, which is admissible at any time, the customer shall immediately provide us with the product about which the complaint has been made or – at our discretion – samples thereof. The customer must support us in analysing the errors and eliminating defects, in particular by specifically describing the problems that occur, providing comprehensive information and granting us the necessary time and opportunity to correct the defects. If the customer violates his obligations under this section or section 7.1, all warranty claims are void.

7.7 The customer must reimburse us for additional costs arising from the fact that products supplied by us have been changed, used outside the specified environment or incorrectly operated.

7.8 Insofar as we are responsible for defective products, we are entitled to choose between remedying the defect (repair) or delivering a defect-free product (replacement delivery). Defects can also be remedied by providing a new program version of the software or by showing reasonable ways of avoiding the effects of

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the defect (workaround). A new program version must also be accepted by the customer if this leads to what he deems to be a reasonable level of adjustment. We are only liable for transport costs insofar as these have not increased due to the fact that the product was brought to a location other than the place of performance. We can choose to remedy the defect on site or at our business premises. We can also provide software services through remote maintenance. The customer must provide at his own expense the necessary technical prerequisites and grant us electronic access to the software after prior notice has been given.

7.9 After the fruitless expiry of a reasonable extension period set by him in writing with regard to the defective product, the customer can withdraw from the contract or demand a reduction in the purchase price if a repair or replacement delivery fails. The customer is due the same rights, even without setting a deadline, if we seriously and definitively refuse to repair or replace the goods. Further rights due to defects – in particular, contractual or non-contractual claims for damages – are excluded to the extent specified in section 8.

7.10 The customer has unlimited legal warranty rights if we have fraudulently concealed the defect.

7.11 The limitation period is (i) in the case of material defects for claims to purchase price repayment from withdrawal or reduction one year from delivery of the product, but for properly reported defects not less than three months from the submission of the effective declaration of withdrawal or reduction; (ii) one year for other claims based on material defects; (iii) two years for claims based on defects in title, if the defect in title does not pertain to a third party right, on the basis of which the third party can demand the return of the product or demand that it no longer be used. The limitation shall come into effect no later than the expiry of the periods specified in § 199 of the German Civil Code (BGB).

7.12 In the event of any defects in work performance, we are entitled to at least five attempts at rectification before the customer can assert further warranty claims. Otherwise, the regulations in sections 7.1 to 7.11 apply accordingly. The subject of any right of reduction is the payment owed by the customer.

7.13 In the event of any defects in rented products, we are entitled to at least five attempts at rectification before the customer can assert further warranty claims. Otherwise, the regulations in sections 7.1 to 7.11 apply accordingly. The subject of any right of reduction is the rent owed by the customer. Liability without fault for errors already existing at the time of conclusion of the contract in accordance with § 536a para. 1 of the German Civil Code (BGB) is hereby excluded.

8. Liability

8.1 Subject to the following provisions, we shall only be liable for direct damages, lost profits, lost savings, indirect and/or consequential damages as well as expenses incurred by the customer or third parties in connection with the initiation, execution or termination of a contract if our legal representatives, executive employees or ordinary vicarious agents have caused the damage/expenses to arise through wilful or grossly negligent misconduct, whereby our liability in the case of gross negligence of ordinary vicarious agents (unlike legal representatives or executive employees) is limited to the amount of the foreseeable (typically occurring) damages or expenses. Our contractual, non-contractual and other liability is excluded, irrespective of the legal basis of the claim for compensation (in particular also due to a breach of duties arising from a contractual or statutory obligation – such as in the case of defects or delay –, due to impediments to performance existing at the time of conclusion of the contract and due to tort), insofar as our legal representatives, executive employees or ordinary vicarious agents cannot be blamed or can be accused only of simple negligence.

8.2 The above limitations of liability shall not apply (i) to personal injury, (ii) to any producer's liability and (iii) in the event of culpable breach of material obligations arising from the contractual obligation to the extent that this jeopardises the achievement of the purpose of the contract; in the case mentioned under (iii), however, our liability shall be limited to compensation for foreseeable (typically occurring) damage.

9. Place of performance, place of jurisdiction, severability clause

9.1 The place of performance for our deliveries and services as well as for the customer's payment obligations is our company headquarters.

9.2 If the customer is a merchant, a legal entity under public law or a special fund under public law, the exclusive place of jurisdiction is our company headquarters. We can also seek redress in the courts holding jurisdiction over the customer.

9.3 All legal relations between us and the customer shall be governed exclusively by the law of the Federal Republic of Germany applicable to the legal relations of domestic parties. The UN Convention on Contracts for the International Sale of Goods is excluded.

9.4 Should one or more provisions of these General Terms and Conditions be or become invalid, this shall not affect the validity of the remaining provisions. The invalid contractual provision shall be replaced by a regulation that comes as close as possible to the economic objective pursued by the invalid regulation.



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