

## Terms of Sale

These Terms of Sale ("**Terms**") govern the sale of Products, the rendering of Services and the licensing of Software by AP Sensing GmbH and its affiliated group companies ("**AP Sensing**"). In case of different or supplementary agreements, in particular in case of conflicting terms and conditions, the express written consent of AP Sensing is required. This also applies if AP Sensing in awareness of any conflicting or deviating terms and conditions on the part of Customer fulfills the sales, software or services agreement ("**Agreement**") unconditionally.

"**Product**" means any standard hardware or consumables sold under these Terms. "**Software**" means one or more computer programs and related documentation licensed under these Terms. "**Service**" means any standard support service rendered to support or maintain Products or Software, and other standard or customized services (including, but not limited to, commissioning, onsite supervision, design services, configurations, site acceptance tests, project management, installation or training). "**Specifications**" means technical information about Products, Software or Services published by AP Sensing and in effect on the shipment date.

### 1. Sale

1.1 All orders are subject to acceptance by AP Sensing ("**Order Confirmation**").

1.2 Orders are governed by the applicable trade term specified on the quotation ("**Quotation**") or agreed to by AP Sensing as defined in the Incoterms 2010.

1.3 Customer shall be responsible for satisfying itself as to the suitability of the Products, Software or Services for Customer's needs. AP Sensing shall not be bound by any statement regarding scope of supply, performance or characteristics of Products, Software or Services unless agreed within the Agreement.

1.4 AP Sensing reserves the right to change the Specifications where required by applicable laws or where AP Sensing deems such change necessary in order to reflect improved industry standards, provided that such changes do not materially affect the quality of the Products, Software or Services. During the validity period of the Quotation or until final delivery, some of the Products or Software may become obsolete. If so, AP Sensing shall on a reasonable effort basis provide equivalent replacement products at similar prices but shall not be held responsible in case there is no replacement product available or if the price of the replacement product is higher.

1.5 AP Sensing advertising, samples, drawings or descriptive matters are made available for the sole purpose of providing an approximate idea of the Products, Software or Services described therein and shall not be binding on AP Sensing unless otherwise agreed within the Agreement.

1.6 Customer may cancel orders for Products or Software (other than customized products or software, "**Custom Products**") eight (8) weeks prior to shipment at no charge. Thereafter the cancellation is subject to a cancellation charge of 30% of the corresponding canceled value. Cancellation of orders for Custom Products are subject to AP Sensing's approval. Cancellation of a Services order will be subject to reasonable charges. Product returns will also be subject to AP Sensing's approval and return/refurbishment charges of at least 35% of the corresponding returned value. In addition to products or software customized on specific request of Customer, Custom Products include any sensor cables, mounting material and racks.

1.7 Customer may request to change or postpone orders for Products, Software or Services, however, subject to the written acceptance by AP Sensing. A change of orders or postponement by more than sixty (60) days may be subject to higher charges (storage, interest, administration, price changes).

### 2. Delivery

2.1 Prior to dispatch, AP Sensing shall verify that the Products have been tested (AP Sensing standard factory test). If Customer requests further testing, this has to be specifically agreed upon and paid for by Customer.

2.2 AP Sensing may deliver and invoice the Products and Software by separate installments.

2.3 Unless expressly agreed in writing, delivery dates are for approximate information purposes only and shall not be binding on AP Sensing.

2.4 If AP Sensing delivers a quantity of Products (such as cables or mounting material) of up to 3% more or less than the quantity ordered Customer shall not be entitled to reject parts or all of the Products by reason of the surplus or shortfall and shall pay for such Products at the pro rata rate as per the Agreement. Customer shall notify AP Sensing of the surplus or shortfall of the Products within ten (10) days of receipt.

2.5 Unless expressly agreed otherwise in writing, Customer shall provide in due time all and any support (information, approval, instruction, material, facilities, equipment etc.) which may be required in relation to the performance of AP Sensing's obligations.

2.6 Unless expressly agreed otherwise in writing, Customer shall provide in due time all and any authorization, license, permit, planning permission or approval required from any regulatory authority for the delivery or other performance of AP Sensing's obligations.

2.7 Customer shall be responsible for obtaining any necessary customs import clearance and shall give all reasonable assistance to AP Sensing in obtaining any work letter of invitation, permit, visa and similar document which AP Sensing or any of its personnel may require at no cost to AP Sensing.

### 3. Acceptance

3.1 For Products and Software acceptance occurs upon delivery.

3.2 Customer shall inspect the Products and Software within five (5) days after delivery and shall immediately notify AP Sensing in writing of any defects. In case of obvious damage of the Products or its packaging the Customer shall immediately report in writing to AP Sensing and the carrier all details of the damage.

3.3 If for any reason the Customer will not accept delivery of any of the Products or Software when ready for delivery, or AP Sensing is unable to deliver the Products on time because the Customer has failed to comply with its obligations under Sec. 2 above, or Customer schedules or delays installation by AP Sensing by more than thirty (30) days after delivery plan date, (i) risk in the Products will pass to Customer immediately, (ii) the Products will be deemed to have been delivered so AP Sensing becomes entitled to full payment; and (iii) AP Sensing may store the Products at Customer's expense until final delivery.

### 4. Prices & Payment Terms

4.1 Unless otherwise agreed by AP Sensing in writing the price of the Products, Software or Services shall be the price set out in the Agreement or Order Confirmation or if not provided, AP Sensing's price list published or agreed upon in writing at the time of the Agreement.

4.2 Prices exclude any duties, applicable sales, value added or similar tax payable by Customer.

4.3 Unless otherwise indicated on the Quotation / Order Confirmation, prices are ex-works Boeblingen (sensor cables and mounting material ex-works respective manufacturing site).

4.4 If the Customer or Customer personnel requests changes of delivery or performance which AP Sensing accepts in writing or by increased delivery or performance prices shall be adjusted accordingly. If any law or regulation comes into effect after the date of the Agreement which increases the cost of performing the Agreement, the price shall be adjusted accordingly.

4.5 Payment terms are stated in the Quotation / Order Confirmation, and are subject to change if Customer's financial condition or payment record merits such change. Place of performance for payment is Boeblingen/Germany.

4.6 All sums due to AP Sensing shall be payable by the time period specified in the Quotation / Order Confirmation. Customer shall not make any deduction whether by way of set-off, counterclaim or otherwise. Customer shall not be entitled to withhold payment if unimportant parts are missing, post-delivery work is to be carried out where Products, Software or Services are available for use, or in case of delay or non-delivery due to reasons beyond AP Sensing's reasonable control.

4.7 If any amount due and payable to AP Sensing under the Agreement is overdue for reasons for which AP

Sensing is not responsible, and, five (5) days after notification such failure has not been cured, AP Sensing may, at its own discretion and without prejudice to any other rights, suspend deliveries or terminate the Agreement and in addition charge Customer interest on amounts overdue at an annual rate of 5% above the then current three (3) month EURIBOR.

4.8 Where payment is to be secured by a letter of credit such letter of credit shall: (i) be irrevocable; (ii) be entirely at the Customer's expense including applicable bank charges in- and outside Customer's country and including confirmation charges; (iii) provide for partial deliveries; (iv) be advised through and confirmed by a bank acceptable to AP Sensing within 30 days after issuance of the Order Confirmation; (v) conform to the latest edition of the International Chamber of Commerce's Uniform Custom and Practice for Documentary Credits (UCP 600); and (vi) be valid for at least 60 days beyond the latest delivery date stated in the Agreement. Customer shall, at its own expense, extend the letter of credit in accordance with any variation or other event which entitles AP Sensing to any extension of time for delivery.

### 5. Warranty

5.1 Each Product receives a global warranty. AP Sensing warrants that the Products supplied shall be free from defects in design, material and workmanship and conform to the Specifications. Unless explicitly agreed otherwise in writing, and unless no extended warranty to Products has been purchased by Customer or granted in writing by AP Sensing, the warranty period shall be twenty-six (26) months from shipment date or twenty-four (24) months from the installation whichever occurs first ("**Warranty Period**"). A Warranty Period of six (6) months shall also apply for delivery of spare parts and repair services that will be delivered after the initial Warranty Period. Repair services or replacement of products at no charge will only be deemed to be an acknowledgement of a defect if explicitly stated in writing by AP Sensing.

5.2 If AP Sensing receives notice of defects or non-conformance during the Warranty Period, AP Sensing will, at its option, repair, or replace the affected Product or grant the Customer the right to (i) rescind the specific Product purchase without costs or (ii) demand reduction of the purchase price or the remuneration or (iii) demand compensation for damages or vain expenses. AP Sensing shall not be obliged to pay increased re-fulfillment expenses, if such an increase is resulting from Customer move of the Product to a location other than the location of original delivery, except that such a move is in accordance with the agreed use of the Product.

5.3 AP Sensing's obligation shall not extend to failure caused by wear and tear, accidents, improper or misuse, neglect, improper maintenance, failure to observe AP Sensing's operating instructions, repairs or modifications to the Products which have been made without AP Sensing's approval, or result from designs and specifications provided by Customer, instructions given by Customer, software and firmware programs developed by Customer and used in or with the Products and more generally by defects for which Customer is to

blame or which are caused by activities performed by Customer without AP Sensing's written consent, or resulting from other reasons beyond AP Sensing's reasonable control.

5.4 Prior to returning any of the Products, Customer shall inform AP Sensing of its intention to return by email support@apsensing.com and provide: (i) manufacturing part number(s) and serial numbers present in the product label; (ii) the manufacturing date (present in the product label); (iii) quantity for each part number; and (iv) reason for return for each Product. Products may solely be returned provided that AP Sensing has formally authorized the return. Out of warranty Products may be repaired by AP Sensing on Customer expense. In case of a return Customer shall attach: (i) a "pro-forma" invoice indicating the actual value of the Products for custom requirements; and (ii) a statement declaring that the Products are being returned for examination or repair.

5.5 Where AP Sensing is not the manufacturer of the Products, AP Sensing will use reasonable endeavours to transfer to the Customer the benefit of any warranty given to AP Sensing.

5.6 The warranties in these Terms are exclusive and no other warranty, whether in writing or oral, is expressed or implied. AP Sensing specifically disclaims the implied warranties of merchantability and fitness for a specific purpose.

## **6. Title to Products & Transfer of Risk**

6.1 Title to the Products shall transfer to Customer upon receipt by AP Sensing of all sums due in respect of the Products. Nevertheless, all risks of loss or damage to the Products shall pass to Customer on delivery.

6.2 Until title transfer, Customer shall hold the Products as bailee for AP Sensing and clearly identify them as belonging to AP Sensing. AP Sensing may at any time until title transfer require a Product return.

6.3 In order to ensure the continued traceability of any of the Products purchased from AP Sensing under these Conditions, Customer shall maintain accurate records and shall provide reasonable assistance to AP Sensing in the event that any of the Products it has purchased are affected by a product recall or corrective action procedure implemented by AP Sensing.

6.4 If the Products are incorporated in other equipment by Customer, AP Sensing will become a co-owner of the newly created products, the scope of co-ownership being determined by the ratio of the value. The products thus created will also be deemed to be products subject to retention of title by AP Sensing.

6.5 Insofar as Customer fulfills its payment obligations to AP Sensing Customer will have the right to resell such Products, however, only subject to retention of title. Other disposals, in particular pledging of the Products or transfer of ownership thereto by way of security will not be permitted. Customer now assigns to AP Sensing by way of security all claims and ancillary rights that may arise from reselling or re-letting the Products subject to

retention of title. At Customer's request, AP Sensing will release the securities insofar as their value exceeds all claims to be secured by more than 10%.

6.6 The terms of this Sec. 6 shall apply in equivalent terms in respect to any (i) Software tangibles, (ii) deliverables provided by AP Sensing pursuant to the Services, and (iii) any AP Sensing materials.

## **7. Software**

7.1 AP Sensing grants Customer a worldwide, non-exclusive, non-transferable license to use Software within its Enterprise. Enterprise is any legal entity of the Customer (such as a limited liability company or a corporation) and the subsidiaries it owns by more than 50% of the voting rights. Software is owned by AP Sensing, its affiliated companies, or a third party and are copyrighted and licensed to Customer (not sold).

7.2 The license to use is limited to a use (i) in conjunction with the Products, (ii) within the Enterprise, and (iii) in accordance with documentation provided with the Software. AP Sensing license terms or third party license terms included with such documentation will take precedence over these license terms. If the documentation does not include license terms, AP Sensing grants Customer a license to use one copy of the Software on one Product, or a license as otherwise stated in the Agreement.

7.3 Customer agrees not to sublicense, assign, rent, or lease the Software or transfer it outside Customer's Enterprise. Customer agrees not to reverse assemble, reverse compile, otherwise translate, or reverse engineer the Software unless expressly permitted by law. As far as AP Sensing provides additional information to the Customer in that regard, AP Sensing can demand for an adequate remuneration.

7.4 Unless otherwise agreed in writing, the amount payable for the Software license will be based on a one-time charge. The terms of the license are specified in the Order Confirmation / Quotation.

7.5 Customer shall replace the current version of the Software with any updated or upgraded version or new release provided by AP Sensing promptly upon receipt of such version or release.

7.6 AP Sensing warrants that for the period of twenty-four (24) months from shipment warranted Software substantially conforms to its Specifications. AP Sensing does not warrant uninterrupted or error-free operation of any Software or that AP Sensing will correct all minor deviations from applicable Specifications. Where AP Sensing is not the owner or licensor of the Software, AP Sensing will use reasonable endeavours to transfer to the Customer the benefit of any warranty given to AP Sensing.

7.7 Customer shall cooperate and assist in identifying and removing any defects. AP Sensing will endeavour to remedy or circumvent any deviations of the Software from its Specifications. If a Software does not function as warranted and AP Sensing is unable to make it to do so,

the Customer may in respect of such defect at its discretion either request a refunding of the (one-time) license charge, a corresponding reduction in future license charges (in case of recurring charges only), or terminate the license. In case of minor defects, the Customer shall not be entitled to terminate the license. Sec. 10 (Limitation of Liability) shall apply.

7.8 The above warranties shall not apply to the extent that there has been misuse, unsuitable physical environment, accident, modification, operation other than on a Product, improper maintenance by Customer or a third party, or failure or damage caused by a product for which AP Sensing is not responsible or other circumstances which are beyond AP Sensing's control.

## **8. Services**

8.1 AP Sensing shall supply the Services to Customer materially in accordance with the Quotation / Order Confirmation and the Specification.

8.2 Unless agreed otherwise in writing, the charges for the Services shall be on a time and materials basis: (i) the charges shall be calculated based on AP Sensing's standard fee rates (incl. overtime charges), as set out or referred to in the Order Confirmation / quotation, and (ii) AP Sensing shall be entitled to charge Customer for any expenses reasonably incurred by the personnel including, but not limited to, travelling expenses, obtaining visa, hotel costs, subsistence and any associated expenses (charged at cost plus 10%), and for the cost of services provided by third parties and required by AP Sensing for the performance of the Services, and for the cost of any materials.

8.3 AP Sensing warrants to Customer that the Services shall be provided using reasonable care and skill.

8.4 AP Sensing shall endeavour to meet performance dates specified in the Agreement. The Customer agrees that any such dates shall be on estimation basis only and time shall not be of the essence for performance of the Services.

8.5 The Customer shall (i) co-operate with AP Sensing in all matters relating to the Services, (ii) provide AP Sensing, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, with access to Customer's premises and data as reasonably required by AP Sensing to perform the Services, (iii) be responsible at its own cost for preparing and maintaining the relevant premises for the supply of the Services, (iv) inform AP Sensing of all health and safety rules and regulations and any other reasonable security requirements that apply at the Customer's premises, (v) ensure that all Customer's equipment is in good working order and suitable for the purposes for which it is used in relation to the Services and conforms to all relevant standards, (vi) keep and maintain all AP Sensing equipment at Customer's premises in safe custody at its own risk, maintain AP Sensing equipment in good condition until returned to AP Sensing, and not dispose of or use AP Sensing equipment other than in accordance with AP Sensing' written instructions or authorization, and (vii) obtain and maintain all necessary licenses and consents and comply with all relevant

legislation in relation to the Services, the installation of the Products and the use of Customer's equipment in relation to the Products, in all cases before the date on which the Services are to start.

8.6 AP Sensing shall be entitled to make any changes to the Services which do not materially affect the nature or quality of the Services, or which are necessary in order to comply with any applicable law or safety requirement. AP Sensing shall notify Customer in such event.

## **9. Intellectual Property Protection**

9.1 Customer acknowledges that all rights, title and interest in and to all intellectual property rights in respect of Products, Software and Services supplied by AP Sensing and any information, drawings, plans, designs, inventions, models or memoranda produced by AP Sensing for the Customer in respect of the supply of such Products, Software or Services shall remain the property of AP Sensing. The Customer shall not at any time make any unauthorized use of such intellectual property rights, nor authorize or permit any of its agents or contractors or any other person to do so.

9.2 AP Sensing will – at its expense - defend the Customer against any claims arising from a violation of an intellectual property right or copyright resulting from the use of Products or Software provided or licensed in accordance with the Agreement, and will reimburse the Customer the cost and compensation for damages, which are included in a settlement previously approved by AP Sensing or which a court finally awards, provided (i) that Customer has promptly notified AP Sensing in writing of such claims and (ii) that Customer allows AP Sensing to control the defense or settlement.

9.3 If such claims are made or appear likely to be made, AP Sensing may modify or replace the Product or Software at AP Sensing's expense. If AP Sensing determines that none of these alternatives is reasonably available, AP Sensing will refund the amount paid by Customer to AP Sensing, or twelve months' charges, (whichever is less) and insofar as applicable law requires that AP Sensing be liable for such damages, the amount of the Customer's losses, subject to the limitations and exclusions in Sec. 10 (Limitation of Liability).

9.4 AP Sensing has no obligation regarding any claim based on any of the following: (i) anything the Customer provides which is incorporated into a Product or Software or AP Sensing's compliance with any designs, specifications, or instructions provided by the Customer or by a third party on Customer's behalf; (ii) the Customer's modification of the Product or Software or the use of such Product or Software in an operating environment different to AP Sensing instruction; (iii) the combination, operation, or use of a Product or Software with other materials not provided by AP Sensing as a system, or the combination, operation or use of a Product or Software with any product, data or method provided by a third party.

## 10. Limitation of Liability

10.1 AP Sensing will be fully liable for loss or damages caused by intent or gross negligence, damages resulting from a breach of a guarantee or damages resulting from personal injury caused by AP Sensing.

10.2 In case of loss or damage caused by slight negligence, AP Sensing shall be liable per claim up to the lower of US\$ 250,000 (two hundred and fifty thousand US dollars) or the price of the Product, Software or Service which caused the loss or damage. This applies regardless of the basis of the Customer's claim (incl. fundamental breach, misrepresentation, tort or contractual claim). A number of defaults which together result in substantially the same loss or damage will be treated as one default.

10.3 In the event of loss or damage caused by slight negligence, AP Sensing shall not be liable for indirect or consequential damages, even if AP Sensing was informed about the possibility of such loss or damage.

10.4 In case of delay on AP Sensing's part regarding expressly agreed upon delivery dates (Sec. 2.3 above), AP Sensing will pay to the Customer an amount not exceeding the loss or damage caused by AP Sensing's delay and subject to Sec. 10.2 and 10.3 above, provided that the Customer demonstrates the amount of the loss or damage suffered. In no case shall the amount to be paid by AP Sensing for a delay exceed 5% of the value of the delayed part of delivery (1% per week of delay).

## 11. Termination

11.1 Each Party shall be entitled to terminate the Agreement for cause if the other Party is in material breach of any provision of the Agreement, provided that such breach has not been cured to the satisfaction of the non-breaching Party within thirty (30) days after written notice thereof from the non-breaching Party.

11.2 If Customer fails to pay any amounts due under the Agreement AP Sensing may by written notice and without limiting its other rights or remedies terminate the Agreement with immediate effect.

11.3 On termination of the Agreement for any reason: (i) Customer shall immediately pay to AP Sensing all of AP Sensing's outstanding unpaid invoices and interest and, in respect of Products, Software or Services supplied but for which no invoice has been submitted, AP Sensing shall submit an invoice, which shall be payable by Customer immediately on receipt; (ii) Customer shall return all of AP Sensing materials and any deliverables which have not been fully paid for; (iii) the accrued rights, remedies, obligations and liabilities of the Parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry; and (iv) rights and obligations which expressly or implicitly have effect after termination shall continue in full force and effect.

## 12. General

12.1 AP Sensing may collect, store and use Customer's contact data for the purpose of the performance of the Agreement and for promoting the business relationship with the Customer as well as for marketing purposes. "Business Contact Data" is business-related contact data which the Customer discloses to AP Sensing including names, business addresses, telephone and fax numbers as well as e-mail addresses of Customer personnel or of third parties. The Customer also agrees that such Business Contact Data may be disclosed to AP Sensing group companies and AP Sensing Business Partners and their respective subcontractors. The Customer and its personnel are entitled to object to the collection, storing and use of their Business Contact Data for marketing purposes at any time.

12.2 AP Sensing may perform its obligations and exercise the rights granted under these Terms through any affiliated company or an AP Sensing Business Partner.

12.3 The Parties agree to comply with applicable laws and regulations. AP Sensing may suspend performance if Customer is in violation of applicable laws or regulations. In particular, the Parties agree to comply – and Customer agrees to oblige its customers to comply – with applicable export and import laws and regulations, including those of the European Union, the exporting country and the United States which limit or prohibit the export of Products, Software or Services to specific countries or customers or for specific use.

12.4 AP Sensing reserves the right to defer date of delivery or date of performance or to terminate the Agreement or reduce the volume of the Products or Software ordered by the Customer (without liability to the Customer) if it is prevented from or delayed in the carrying out of its business due to a force majeure (circumstances beyond the reasonable control of AP Sensing including, but not limited to, acts of God, governmental actions including travel warnings, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, war or national emergency, acts of terrorism, malicious damage, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes, or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials).

12.5 Disputes arising in connection with these Terms will be governed by the laws of the Federal Republic of Germany, with exclusion of the United Nations Convention on Contracts for the International Sale of Products. The courts of Stuttgart will have exclusive jurisdiction of all claims pertaining to or arising out of the Agreement. In addition, AP Sensing will be entitled to bring suit against Customer at the court that has jurisdiction according to the location of Customer's commercial establishment.

12.6 Upon Customer's request, AP Sensing will provide an end-of-use take-back service for environmentally sound disposal of the Products as legally required. AP Sensing will pay related disposal fees. All freight costs related to the end-of-use take back of the Products

remain at the expense of the Customer.

12.7 Products are not specifically designed, manufactured or intended for sale as parts, components or assemblies for the planning, construction, maintenance or direct operation of a nuclear facility. AP Sensing shall not be liable for any damages resulting from such use.

12.8 AP Sensing may assign or transfer any of its rights or obligations under these Terms upon notice in connection with a merger, reorganization, transfer, sale of assets or product lines, demerger or spin-off transaction or change of control or ownership of AP Sensing, or its permitted successive assignees or transferees.

12.9 These Terms and any supplemental terms applicable to the Agreement constitute the entire agreement between AP Sensing and Customer, and supersede any previous communications, representations or agreements between the Parties, whether oral or in writing. Any amendment to these Terms must be in writing in order to be valid (including any waiver of this written form requirement).

12.10 If any provision of these Terms or the Agreement is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable or unenforceable it shall, to the extent of such illegality, invalidity, voidness, voidability or unenforceability, be deemed severable and the remaining provisions of the Terms or the Agreement and the remainder of such provision shall continue in full force and effect.