

I. Scope

1. These Terms and Conditions of Delivery apply to all current and future transactions of UNISENSOR Sensorsysteme GmbH (hereinafter referred to as "UNISENSOR") with businesses, legal entities under public law or special funds under public law (hereinafter referred to as "Buyers") under which UNISENSOR undertakes to deliver goods or provide other services (hereinafter referred to as "Deliveries").
2. The scope of Deliveries shall be governed by the written declarations of the two parties. We shall not recognise terms and conditions of the Buyer that differ from or contradict the UNISENSOR Terms and Conditions of Delivery unless UNISENSOR has explicitly agreed to such terms and conditions in writing.

II. Conclusion of contract

1. UNISENSOR offers are non-binding. The order for the Delivery by the Buyer shall constitute a binding offer to enter into a contract. A contract shall only come into effect upon a written order confirmation from UNISENSOR and shall be governed solely by the content of the order confirmation and by these Terms and Conditions of Delivery.
2. UNISENSOR shall retain its unlimited rights of ownership and copyright exploitation rights to cost estimates, offers, drawings and other documents (hereinafter referred to as "Documents"). The Documents may only be made available to third parties with the prior consent of UNISENSOR and, if the order is not placed with UNISENSOR, shall immediately be returned to UNISENSOR on request. The first and second sentences above shall apply accordingly to documents of the Buyer; however, such documents may be made available to those third parties to which UNISENSOR has assigned Deliveries and said assignment is permissible.

III. Prices, terms of payment and payment default

1. Prices quoted are ex works and do not include packaging, applicable VAT or other statutory charges. The Buyer shall bear the cost of any customs duties, fees, taxes and official charges.
2. In the event that UNISENSOR has agreed to carry out installation or assembly and unless otherwise agreed, the Buyer shall bear all the necessary ancillary costs such as travel expenses, the cost of transporting tools and personal luggage, and employee allowances in addition to the agreed remuneration.
3. Payments are to be made to the account nominated by UNISENSOR within 14 days of the invoice date, with the Buyer covering all payment fees.
4. In the event that the Buyer is in default, UNISENSOR shall be entitled to charge default interest and claim for any further loss in accordance with statutory provisions. With respect to merchants, the claim to the commercial due date interest (Section 353 HGB / German Commercial Code) shall remain unaffected.
5. The Buyer shall only be entitled to offset claims that are undisputed or have been established by declaratory judgment. This provision shall not apply if and to the extent that the claims are reciprocal.

IV. Delivery times, delay and impossibility

1. Unless otherwise agreed, UNISENSOR shall deliver the products in accordance with INCOTERMS 2020 EXW.
2. Delivery deadlines and times shall only be binding if they have been confirmed by UNISENSOR in writing. Compliance with the agreed deadlines for Deliveries shall be contingent upon prompt receipt of all documents to be supplied by the Buyer, the fulfilment of any duties of cooperation (cf. VIII par. 1), the necessary permits and approvals, including but not limited to approvals of plans, and compliance with the agreed terms of payment and other obligations on the part of the Buyer. In the event that these conditions are not met in good time, the deadlines shall be extended by a reasonable period of time; this shall not apply if UNISENSOR is responsible for the delay.
3. The delivery deadline shall be deemed to have been complied with if the item for delivery has left the UNISENSOR plant or the Buyer has been notified of readiness for delivery.
4. Partial deliveries shall be permissible if the Buyer can reasonably be expected to accept them.
5. We shall not be liable for impossibility or delays in our Deliveries or services if such impossibility or delays are a result of force majeure or other events that were not foreseeable at the time the contract was concluded and for which we are not responsible (for example stoppages of any kind, fire, natural disasters, epidemics, pandemics, weather, floods, war, insurrection, terrorism, delays in transit, strikes, lawful lockouts, labour shortages, shortages of energy or raw materials, delays in the issue of any necessary official permits, and official / state actions and bans. In the case of such events, the delivery deadlines shall automatically be extended by the duration of the event plus a reasonable lead time. We shall notify the Buyer of such events without delay.
6. In the event that UNISENSOR is in default, the Buyer – provided it credibly proves it has suffered a loss as a result of such default – shall be entitled to demand compensation of 0.5% of the price for each full week of delay and no more than 5% of the price in total for that part of the Deliveries that could not be put into useful service as a result of the delay. The Buyer shall not be entitled to bring claims for compensation over and above the limits stipulated above in any cases of late delivery, even after expiry of any grace period granted to UNISENSOR, subject to IV par. 8 of these Terms and Conditions.
7. In the event that it becomes impossible for UNISENSOR to make the Delivery it owes for reasons for which it is responsible, the Buyer shall be entitled to demand compensation. However, the Buyer's rights to compensation shall, subject to IV par. 8 of these Terms and Conditions, be limited to 10% of the value of that part of the Delivery that cannot be put into useful service as a result of said impossibility.
8. The limitation of liability set out in IV nos. 6 and 7 of these Terms and Conditions shall not apply in cases of intent or gross negligence or to personal injury; such cases shall not involve a shift in the burden of proof to the disadvantage of the Buyer. This shall not affect the Buyer's right to withdraw from the contract.
9. In the event that dispatch or delivery is delayed by more than one month at the request of the Buyer after notice of readiness to dispatch, the Buyer may be invoiced for storage costs of 0.5% of the price of the items to be delivered for each month or part thereof and no more than 5% in total. The contracting parties shall retain the right to prove that the actual storage costs are higher or lower.

V. Transfer of risk

1. Risk shall be transferred to the Buyer as follows including in the case of carriage paid:
 - a) For deliveries without installation or assembly, when they are brought to the dispatch point or have been collected. UNISENSOR shall insure Deliveries against the usual transport risks at the request and cost of the Buyer.
 - b) For deliveries with installation or assembly if agreed, after successful trial operation and no later than at the time of commissioning. However, this provision shall not apply if the Buyer collects the Delivery from Unisensor and carries out transport itself or arranges for transport to be carried out by a third party. In this case, the risk of damage in transit and other damage to the Delivery not caused by Unisensor during installation or assembly shall be transferred at the time specified in V par. 1 a) above.
2. In the event that dispatch, delivery, commencement or execution of installation or assembly, commissioning or trial operation is delayed for reasons attributable to the Buyer or the Buyer is otherwise delayed in accepting, risk shall be transferred to the Buyer.

VI. Installation and assembly

Unless agreed otherwise in writing, the following provisions shall apply to installation and assembly:

1. In the event that installation, assembly or commissioning is delayed due to circumstances for which UNISENSOR is not responsible, the Buyer shall, to a reasonable extent, bear the costs for the waiting period and additional travel incurred by UNISENSOR or the assembly personnel.
2. The Buyer shall send UNISENSOR confirmation of the assembly personnel's working hours and of completion of installation, assembly or commissioning without delay.
3. In the event that UNISENSOR requires acceptance of the Delivery following completion, the Buyer shall carry out an acceptance inspection within two weeks. If the Buyer fails to do so, acceptance shall be deemed to have taken place. Acceptance shall also be deemed to have taken place if the Delivery – if applicable following completion of an agreed test phase – has been put into service.
4. UNISENSOR shall be entitled to have installation and assembly carried out by subcontractors.

VII. Reservation of title

1. The items in the Delivery (goods subject to reservation of title) shall remain the property of UNISENSOR until all its claims against the Buyer arising from the business relationship have been satisfied. Insofar as the value of all security interests to which UNISENSOR is entitled exceeds the amount of all secured claims by more than 10 %, UNISENSOR shall release a corresponding part of the security interests at the request of the Buyer.
2. During the period of reservation of title, the Buyer shall not be entitled to pledge or transfer the goods by way of security and shall only be permitted to sell on the goods to resellers within its ordinary course of business and only on condition that the reseller receive payment from its customer or make the sale only on condition that ownership is not transferred to the customer until the customer has fulfilled its payment obligations.
3. The Buyer shall be permitted to process, transform and combine the goods that are subject to reservation of title with other items. Such processing, transformation and combination shall be carried out on behalf of UNISENSOR. The Buyer shall safeguard the new item with the due care and diligence of a prudent business.

UNISENSOR shall be entitled to rights of co-ownership to the new item in proportion to the relevant share of the value of the new item. The processed, transformed or combined item shall be deemed to be subject to reservation of title.

4. For the event that the Buyer resells the goods subject to reservation of title, the Buyer hereby assigns to UNISENSOR, by way of security, all the Buyer's future claims against its customers arising from such resale including all ancillary rights and any outstanding accounts receivable claims, without further need for specific declarations to this effect. In the event that the goods subject to reservation of title are resold together with other items without an individual price being agreed for the reserved title goods, the Buyer shall assign to UNISENSOR priority rights to that proportion of the total price payable that represents the price of the reserved title goods as invoiced by UNISENSOR. The share of the receivable assigned to UNISENSOR shall be satisfied with priority. VII par. 6 shall apply accordingly to the authorisation to collect and the conditions for the revocation of said authorisation.
5. In the event of substantial evidence of a justified interest, the Buyer shall provide UNISENSOR with all information required to exercise its rights against the customer and shall issue UNISENSOR with all the necessary documents.
6. The Buyer shall be authorised to collect the assigned receivables from resale until such authorisation is revoked. In the event of good cause, including but not limited to default on payment, cessation of payments, the launch of insolvency proceedings or protest of a bill, or of comparable indications of the inability of the Buyer to pay, UNISENSOR shall be entitled to revoke the Buyer's authorisation to collect. Following prior warning of the disclosure of the assignment by way of security or realisation of the assigned receivables and subject to a reasonable period of notice, UNISENSOR may disclose the assignment by way of security, realise the assigned receivables and demand that the Buyer disclose the assignment by way of security to the customer.
7. Following prior warning, UNISENSOR shall be entitled to realise the value of the good subject to reservation of title that it has taken back and settle outstanding claims by setting off the proceeds received for said goods.
8. The Buyer shall notify UNISENSOR immediately of any attachments, seizures or other disposals or interventions by third parties.
9. In the event that the Buyer fails to comply with its obligations, including but not limited to default on payment, and following the expiry without effect of a grace period set for the Buyer, UNISENSOR shall be entitled to withdraw from the contract and to the return of the goods; this shall not affect statutory provisions concerning cases in which no grace period is required. The Buyer shall be obliged to relinquish possession.
10. If and to the extent that, in the case of Deliveries to places with other legal systems, mandatory legal provisions of the state in question do not allow for the reservation of title within the meaning of paragraphs 1 to 9 above, but do provide for other and comparable rights to secure receivables arising from invoices of the supplier, UNISENSOR shall be entitled to exercise such comparable rights. The Buyer shall do everything in its power to create such security interests for UNISENSOR without delay. The Buyer shall, at its expense, assist with all measures such as registration, publication, etc. that are necessary and useful for the effectiveness and enforceability of such security interests.

VIII. Other obligations of the Buyer

1. The Buyer shall support UNISENSOR in the provision of its services. The Buyer shall in particular ensure all necessary conditions at its site to allow UNISENSOR to provide its service.
2. The Buyer shall ensure the due and proper handling and regular maintenance of the products in accordance with the UNISENSOR operating instructions applicable at the time of conclusion of the contract.
3. The Buyer is responsible for compliance with national laws, ordinances and safety regulations, including but not limited to those regarding approval, installation, operation, maintenance and repair of the delivery items and undertakes to fulfil that responsibility.

IX. Warranty

1. The deliveries shall be deemed free of material defects if they comply with the subjective requirements within the meaning of Section 434 para.2 BGB / German Civil Code at the time of transfer of risk. The deliveries comply with the subjective requirements if they meet the agreed quality. The agreed quality shall be determined exclusively by our product specification or the agreed performance description. Other or more extensive subjective or objective requirements within the meaning of Section 434 para. 3 BGB / German Civil Code, properties and characteristics other than the expressly agreed quality of the deliveries are not owed. A warranty for an intended use, functionality, compatibility, interoperability, duration of use or durability after the passing of risk that goes beyond the warranty for this agreement on quality shall only be assumed to the extent that this has been expressly agreed in writing; otherwise, the risk of suitability and use shall be borne exclusively by the Purchaser. With this provision, UNISENSOR shall be liable for a material defect as follows:
2. If the Delivery has a material defect at time of the transfer of risk, UNISENSOR shall be entitled and obliged to provide subsequent fulfilment. Subsequent fulfilment shall be provided at UNISENSOR's discretion by means of either repair or a replacement delivery. The place of performance for subsequent fulfilment shall be either the registered office of UNISENSOR or the place of installation of the goods at UNISENSOR's discretion. Expense that arises as a result of the goods being taken to a place other than the place of business of the Buyer shall not be payable by UNISENSOR unless the Buyer notified UNISENSOR in writing before conclusion of the contract that the goods were to be taken to a place other than its place of business and UNISENSOR explicitly agreed to this.
3. UNISENSOR shall be granted a reasonable time and opportunity for subsequent fulfilment. UNISENSOR shall be released from the warranty if and to the extent that it is not granted such time and opportunity.
4. In the case of replacement delivery, the Buyer shall return the defective goods to UNISENSOR properly packed. Subsequent fulfilment shall not include the removal of the defective item nor its refitting if UNISENSOR did not originally have a duty to fit it.
5. In the event that parts are part of subsequent fulfilment, the Buyer shall only be entitled to bring claims for material defects with regard to these parts up to the expiry of the original limitation period.
6. If subsequent fulfilment fails, is not carried out during a reasonable grace period granted by the Buyer, or is refused, the Buyer may either reduce the purchase price (reduction) or withdraw from the contract at the Buyer's discretion. A repair is deemed to have failed after the second unsuccessful attempt, unless in particular the nature of the thing or of the defect or the other circumstances leads to a different conclusion. This shall not affect compensation claims or claims for expenses on account of a defect unless if and to the extent that such claims are not limited or ruled out by Section X of these Terms and Conditions.
7. No warranty shall be accepted for defects in the delivered goods caused by incorrect or negligent handling, unsuitable storage, unsuitable or improper use or normal wear and tear. Any warranty shall cease to apply if operating and maintenance instructions are not followed, changes are made to the Deliveries and services, or parts are replaced, unless the customer proves that the defect is not a result of this.
8. In the case of only a minor breach of contract, including but not limited to minor defects, the Buyer shall not be entitled to withdraw from the contract.
9. The Buyer's rights regarding defects in the goods are conditional on the Buyer inspecting the goods without delay and within one week of receipt at the latest and notifying UNISENSOR of the defects in writing without delay; UNISENSOR must be notified in writing of any hidden defects without delay after their discovery.
10. UNISENSOR shall be entitled to refuse to remedy defects so long as the Buyer is failing to fulfil its obligations to a reasonable extent.
11. If claims are made against the Buyer under provisions relating to the sale of consumer goods, this shall not affect its rights of recourse against UNISENSOR.

X. Limitation of liability

1. In the event of a breach of obligation, defective delivery or tort, UNISENSOR shall, subject to other contractual or statutory liability conditions, only be liable to pay compensation and reimburse expenses for intent, gross negligence and slightly negligent infringement of a material contractual obligation (contractual obligation whose infringement endangers the attainment of the purpose of the contract). However, UNISENSOR's liability in the case of slightly negligent infringement of a material contractual obligation shall be limited to damages that are typically foreseeable at the time of conclusion of the contract.
2. The liability exclusions and liability limitations contained in X par. 1 of these Terms and Conditions shall not apply in the event of an assumption of a guarantee of the quality of the item within the meaning of section 444 German Civil Code [BGB] has been provided, in the case of fraudulent concealment of a defect, in the case of loss arising from death, physical injury or damage to health, or in the case of mandatory liability under the German Product Liability Act.
3. In the event of a breach of a pre-contractual obligation or an obstacle to performance that already exists when the contract is concluded (section 311 II, 311 a German Civil Code), the obligation of UNISENSOR to render compensation shall be limited to loss incurred through reliance on such circumstances not applying.
4. Insofar as the liability of UNISENSOR is excluded or limited, this shall also apply to the personal liability of the employees, workers, staff, representatives and vicarious agents of UNISENSOR.
5. The provisions of IX and X shall not involve a change in the burden of proof.
6. For technical advice on possible applications of our products and any and all related information provided by UNISENSOR or parties acting on behalf of UNISENSOR, UNISENSOR shall only be liable where an explicitly written assurance has been given, and that only providing the Buyer provided the complete and correct information required for due and proper advice to be given.

XI. Limitation period

Any rights of the Buyer to bring claims based on a breach of obligations shall, subject to section 445b German Civil Code, become statute-barred one year from delivery of the goods. This provision shall apply irrespective of whether the breach of obligation lies in a material defect or in an infringement of another contractual obligation. The statutory period of limitation shall apply for personal injuries, loss covered by the German Product Liability Act and data protection law, and loss resulting from intent or gross negligence.

XII. Industrial property rights

1. The sale of products by UNISENSOR shall not grant the Buyer any right or licence to patents belonging to or managed by UNISENSOR or to which we hold licences. However, this does not mean that the Buyer is not entitled to use and to sell the goods delivered under this contract that are covered by a patent.
2. UNISENSOR's products are controlled by software, which is protected by security mechanisms when delivered. Following conclusion of the contract, UNISENSOR employees shall remove the security mechanisms, which will enable the software to run and the product to be put into operation.
3. Removal of the security mechanisms shall give the Buyer a non-exclusive, non-transferable right of use for the software for an unspecified term in conjunction with the machine supplied by UNISENSOR for its contractual purpose, subject to a suspensive condition of full payment for the machine. No other use is permitted. UNISENSOR shall remain the holder of the copyright and all other industrial property rights. The Buyer is not permitted to remove the security mechanisms itself. The Buyer is also not permitted to make copies of the software or remove copyright notices. The Buyer shall not pass on the software to third parties, especially not without the corresponding machine. The software may not be changed, linked, modified or adapted. The software may not be reverse engineered, disassembled or decompiled. In the case of resale, the Buyer shall place these obligations on the ultimate buyer of the machine.
4. In the event of a culpable infringement of the provisions of XII par. 4, the Buyer shall pay a contractual penalty for each case of infringement; this contractual penalty shall be determined at the discretion of UNISENSOR and shall be verified by the competent local or regional court.
5. The Buyer shall have a non-exclusive right to use standard software with the agreed performance characteristics, unchanged, on the agreed devices. The Buyer may make two backup copies without an explicit agreement to this effect.
6. The provisions of this section XII shall apply correspondingly to software updates supplied by UNISENSOR.

XIII. Infringements of industrial property rights

1. The Buyer undertakes to notify UNISENSOR without delay of any industrial property rights claims by third parties relating to products supplied by UNISENSOR. We shall be entitled, but not obliged, to take on the legal defence at our own cost and on our own authority.
2. UNISENSOR shall be liable to the Buyer as follows for infringements of industrial property rights in connection with the sale of its products if contractual use of UNISENSOR products infringes industrial property rights that are effective in the Federal Republic of Germany and had been published at the time of delivery by UNISENSOR:
 - a) UNISENSOR, at its own discretion and its own cost, shall acquire a right of use for the product, change the product so that no property right is infringed, or replace the product. If UNISENSOR is unable to do this on reasonable terms, it shall take back the product and reimburse the purchase price.
 - b) UNISENSOR shall only have the above obligations if the Buyer notifies UNISENSOR in writing without delay of the claims made by the third party and does not acknowledge any infringement and UNISENSOR retains the right to undertake all defensive measures and settlement negotiations. In the event that the Buyer stops using the product in order to reduce loss or for other good reason, it shall be obliged to notify the third party that the cessation of use does not imply any acknowledgement of an infringement of property rights.
3. The Buyer shall not be entitled to bring any claims if it is responsible for the infringement of property rights.
4. The Buyer shall also have no entitlement to bring claims if the infringement of property rights is caused by special specifications set by the Buyer, a use not foreseeable by UNISENSOR, or the product being changed by the Buyer or used together with products not supplied by UNISENSOR. In such a case, the Buyer shall be liable for infringements of industrial property rights which have occurred and occur in future. The Buyer shall inform UNISENSOR immediately of possible or asserted infringements of industrial property rights of which the Buyer becomes aware, and shall indemnify UNISENSOR against third-party claims and any costs and expenses.
5. No further claims against UNISENSOR shall be accepted; however, this shall not affect section X (Limitation of liability) or the right of the Buyer to withdraw from the contract.

XIV. Confidentiality

1. The Buyer has a duty
 - a) to treat confidential information as strictly confidential and only to use such information in connection with the purpose of the underlying contract;
 - b) not to disclose confidential information to third parties;
 - c) to protect confidential information from unauthorised access by third parties by taking suitable protective measures
2. Confidential information includes, but is not limited to: trade secrets and inventions, products, manufacturing processes, technical information, constructions, sample parts, samples, source codes, software, systems, processes, data, analyses, plans, drawing, photographs, models, business relations, business strategies.
3. The duty of confidentiality shall not apply to information
 - a) of which the Buyer lawfully becomes aware without breaching its duty of confidentiality;
 - b) that is developed by the Buyer independently and without using the confidential information from UNISENSOR, or
 - c) that becomes available to the public as a result of a final decision of a court or public authority, provided that the Buyer notifies UNISENSOR in writing in advance and provides reasonable support to give UNISENSOR the opportunity to raise an objection.

XV. Deterioration of the Buyer's financial situation

1. In the event that UNISENSOR becomes aware, after conclusion of the contract, of circumstances indicating that the financial situation of the Buyer has deteriorated to such an extent as to put counter-performance at risk, for example because the Buyer does not pay invoices due, outstanding Deliveries by UNISENSOR shall
 - a) only be provided following payment in advance if they are of items whose dimensions, shapes, quantities, etc. render them suitable only for a specific buyer;
 - b) in all other cases, be provided in return for payment on delivery.
2. In the event that requested advance payments are not made or payment is not made on delivery, UNISENSOR shall be released from its performance obligation and shall be entitled, upon expiry without effect of a reasonable grace period, to withdraw from the contract or demand compensation in lieu of performance.

XVI. Maintenance/service contract

In the event that UNISENSOR and the Buyer conclude a corresponding maintenance contract, UNISENSOR shall maintain the machine and software in accordance with that contract and shall assist the Buyer in particular in solving any problems which may occur. The Buyer shall have no entitlement to conclude a maintenance contract. UNISENSOR's usual remuneration rates shall apply to maintenance, unless the work is covered by warranty.

XVII. Data protection, courts of jurisdiction, applicable law and language

1. The UNISENSOR privacy policy is available at <https://www.unisensor.de/en/data-privacy-policy.html>
2. If the Buyer is a merchant, the court at the place of our registered office shall have jurisdiction for all disputes arising directly or indirectly from the contract. UNISENSOR shall, however, also be entitled to bring cases in the courts at the place of the Buyer's registered office.
3. The contractual relations are governed by German law; the United Nations Convention on the International Sale of Goods (CISG) shall not apply.
4. The original text of these Terms and Conditions of Delivery was in German. In the event of any discrepancies between the German version and the English version, the German version alone shall have legal effect.