§ 1 General Information – Scope

(1) These General Terms and Conditions apply exclusively to contracts between OptaSensor GmbH and entrepreneurs within the meaning of § 14 of the German Civil Code (Bürgerliches Gesetzbuch, BGB), legal entities under public law, and special funds under public law (collectively, "Business Customers"), provided that the contract is concluded in the course of their commercial or self-employed professional activity. We do not enter into contracts with consumers within the meaning of § 13 BGB. Any terms and conditions the customer may have which conflict with or deviate from our General Terms and Conditions shall not apply, including if we fail to object to them expressly, unless we consent expressly in writing (text form shall suffice).

(2) Our General Terms and Conditions also shall apply to business dealings in the future even if they are not enclosed with such dealings provided our contracting partner previously entered into agreements with us based on these General Terms and Conditions.

§ 2 Proposal – Enter into Agreement

(1) Our proposals are subject to change and are non-binding. An order from the customer for goods, services, and/or other performance (hereinafter jointly the "Products") shall be deemed to be a binding proposal for a contract.

(2) Customer orders shall be conditional upon our written confirmation (text form shall suffice). The type and scope of Products ordered shall be specified in the order confirmation. For orders which are carried out immediately, the invoice and/or the delivery note shall be deemed to be confirmation of the order. If the customer wishes to object to the content of the order confirmation, the customer shall do so without undue delay; otherwise the contract shall come into being based on the order confirmation.

(3) We shall remain the sole owners of our quotations, drawings, plans, and other proposal documents. We shall have exclusive copyright exploitation rights.

§ 3 Products

(1) Unless expressly agreed upon otherwise, we reserve the right to make technical and software modifications to the Products to improve their performance and stability, comply with amended security or other regulatory regulations or, if applicable, prevent infringement of a patent.

(2) If the performance specifications are complied with or exceeded, modified Products shall be deemed to be in full compliance with the Products offered without notification or the customer's consent being required.

§ 4 Prices – Payment Terms

(1) The prices specified in our order confirmation shall apply. Unless expressly indicated, the prices shall be exclusive of statutory VAT, shipping costs, customs duties, import duties, and payment guarantees (e.g., letters of credit).

(2) Unless agreed upon otherwise, performance shall be billed as set out in §§ 14 and 15, and travel times shall be billed on a time basis at the hourly rates specified in the order confirmation. Travel costs and expenses shall be invoiced to the customer in a lump sum as set out in the proposal.

(3) Unless specified otherwise in the order confirmation, invoices shall be paid without deduction, ex paying agent of the seller, within 14 days of their issue. Our right to request partial payment shall remain unaffected.

(4) We shall be entitled to invoice partial deliveries separately.

(5) The customer shall be in default upon expiration of the payment period specified above.

(6) In the event of delayed payment, we shall be entitled to rescind the contract and/or request damages in lieu of performance and to charge reasonable dunning fees.

(7) The customer shall be entitled to offset only if the customer's counterclaims have been established in a legally binding manner or acknowledged by us expressly.

§ 5 Delivery – Delayed Performance

(1) Periods for delivery, performance deadlines, and timelines indicated by us shall be non-binding unless agreed-upon as binding at least in text form. Periods for delivery and other performance deadlines shall begin upon receipt of the order confirmation by the customer but in any case not before the customer has provided the documentation, authorizations, approvals and, if applicable, the agreed-upon down payment.

(2) If failure to comply with a deadline is due to force majeure, the deadline will be postponed for a reasonable period of time. Force majeure shall include unforeseeable circumstances beyond our control which make it unreasonable or impossible for us to carry out the delivery, for example, delayed delivery by scheduled suppliers, strike, government measures, material operating disruptions including as a result of the destruction of the entire operation or in central departments, and significant disruptions to transportation. If the circumstances persist longer than 3 months, we shall have the right to rescind the order. The customer's claims for damages shall be excluded.

(3) If failure to comply with a performance deadline was in our responsibility, the customer can rescind the contract only after granting us a reasonable performance deadline and the performance deadline has lapsed without the desired results. Claims for damages can be asserted only if they are based on our intent or gross negligence. In addition, § 10 below shall apply.

(4) Partial deliveries shall be permitted provided the customer can reasonably be expected to accept them.

§ 6 Transfer of Risk – Shipment

(1) Unless expressly agreed upon otherwise, deliveries shall be made and performance shall be provided ex works (Incoterms as amended, currently Incoterms 2010) to the location specified in our proposal or in our order confirmation.

(2) Unless expressly agreed upon otherwise, risk of accidental loss and deterioration of the goods shall be transferred to the customer upon release of the goods to the forwarder and in any case no later than at the time the goods leave the distribution center. This provision also shall apply when we deliver the goods. In the event of delayed shipment due to fault on the part of the customer, risk shall be transferred to the customer as of the time the customer is notified that the goods are ready for shipment.

(3) Universally acknowledged shipment and risk transfer provisions agreed upon in the contract shall be interpreted based on international regulations regarding the interpretation of customary contractual provisions (Incoterms as amended, currently Incoterms 2010).

(4) We shall take out transportation insurance only if agreed upon with and at the expense of the customer. If the customer fails to accept the contractually agreed-upon goods in a timely manner, we shall be entitled to set a reasonable deadline for acceptance and to dispose of the goods otherwise if the customer fails to meet the additional deadline or to deliver goods to the customer within a reasonable period of time, or to bill the customer immediately for the goods and store the goods at the expenses and risk of customer. Our right to rescind the contract and to claim damages shall remain unaffected.

(5) If the goods are damaged or lost during transportation, the customer shall initiate a report to be issued by the forwarder without undue delay and shall initiate the sending of a notification to the seller along with all the required documentation.

§ 7 Business Customers Only – No Consumer Contracts

(1) Our offers, including our online shop, are directed exclusively at Business Customers as defined in § 1 (1). By placing an order, the customer confirms that it is acting in the course of its commercial or self-employed professional activity and not as a consumer.

(2) We may request suitable proof of Business Customer status before accepting an order or performing the contract. We reserve the right to reject an order if Business Customer status cannot be established.

(3) Statutory provisions that apply exclusively to consumers, including statutory consumer withdrawal rights, do not apply to contracts governed by these General Terms and Conditions.

§ 8 Property Rights – Confidentiality

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(1) As part of the processing of an order, information, illustrations, drawings, calculations, and other documentation and internal business information (hereinafter, “Confidential Information”) may be exchanged between us and the customer. We and the customer undertake to treat Confidential Information as strictly confidential and to only use Confidential Information in the context of the purpose of the order. We and the customer also undertake to disclose Confidential Information only to persons who rely on the knowledge of Confidential Information to fulfill the order. The duty of confidentiality shall survive the fulfillment of the order and shall expire if and when the production-related knowledge contained in the Confidential Information that we have provided to the customer becomes general knowledge.

(2) Regardless of any rights we may have under Germany’s Act on the Protection of Business Secrets (Gesetz zum Schutz von Geschäftsgeheimnissen, GeschGehG) regarding Confidential Information we have provided to the customer, we also shall have any and all rights of ownership, usage, and/or exploitation of the Confidential Information and we reserve the exclusive right to apply for property rights. The customer shall not acquire any ownership or any other rights to use Confidential Information (including, but not limited to, know-how, patents applied for or granted for such know-how, copyrights or other industrial property rights) based on these General Terms and Conditions or otherwise based on implied behavior except for the purpose of fulfilling the order. The same shall apply to Confidential Information provided to us by the customer.

(3) We and the customer undertake to refrain from exploiting for business purposes, and from imitating, any Confidential Information provided to the other party in any way beyond the purpose connected with the order (including, but not limited to, by reverse engineering) or having any Confidential Information provided to the other party exploited or imitated by any third parties and/or applying for industrial property rights for Confidential Information provided to the other party including, but not limited to, brands, designs, patents, and utility models.

(4) If the customer or any other person for whom the customer is responsible pursuant to §§ 31, 278 and 831 of the Civil Code of Germany (Bürgerliches Gesetzbuch, BGB) violates any of the customer’s obligations under these General Terms and Conditions, we and the customer hereby agree that the customer shall pay to us a reasonable contract penalty the amount of which shall be defined at our discretion as set forth in § 315 of the BGB. We and the customer also hereby agree that in case of dispute, the reasonableness of the contract penalty may be reviewed by the court responsible. We reserve the right to assert additional damages. The contract penalty shall be offset against additional damages.

(5) The duty of confidentiality shall survive the termination of the contract and shall remain in full force and effect for five years after the termination of the contract. The duty of confidentiality also shall apply if no other contract is entered into.

(6) Any confidentiality agreement made or to be made shall remain unaffected.

§ 9 Warranty

(1) The customer shall inspect the goods we deliver without undue delay after delivery and shall notify us of any and all defects without undue delay in writing (text form shall suffice). The customer shall notify us in writing (text form shall suffice) of any and all hidden defects without undue delay after detecting them.

(2) Unless stated otherwise in the order confirmation, customer claims for defects shall lapse three (3) months after delivery or acceptance. This provision shall not apply to claims for defects in products which are subject to wear and tear, for example, pump diodes, or products subject to an expiration date. This provision shall not apply to claims for damages under § 10 below.

(3) If a defect in the goods is our fault, we shall have the right to deliver supplementary performance by remedying the defect or delivering defect free goods, as we deem fit. (4) If the supplementary performance fails, the customer can rescind the contract or request a reduction in price.

(5) We shall not warrant the goods against the consequences of natural wear and tear or of improper treatment, storage, or use.

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(6) The customer's warranty claim shall expire if and when the customer changes the product or carries out repair and/or maintenance work on the product unless the user's manual explicitly permits the customer to carry out the such maintenance work.

(7) Also, the customer's warranty claim shall expire if and when guarantee seals are damaged or the device is not used as intended.

§ 10 Provision of Spare Parts

(1) The seller shall ensure the availability of spare parts for a minimum of 1 year after the customer has accepted the device. The duty of retention shall expire after the end of the aforementioned period and after the seller has provided written notification (text form shall suffice).

§ 11 Limitation of Liability – Damages

(1) We shall be liable if there is intent or gross negligence on our part. We shall be liable for simple negligence only in cases where material contractual obligations deriving from the nature of the contract have been violated or where their violation compromises the achievement of the purpose of the contract. Even if this is the case, our liability for damages shall be limited to the damage foreseeable under a typical contract. Claims for damages asserted by the customer for minor negligence shall be excluded regardless of the legal reason.

(2) The aforementioned limitation of liability shall not apply to claims under Germany's Product Liability Act (Produkthaftungsgesetz) or for harm to life, body, or health.

(3) We shall not be liable for any resulting damage if the Products are used improperly.

(4) We shall not warrant or assume liability for technical support and information provided by us related to technical features, deployment or suitability of products produced with our devices.

(5) If the customer uses paints or epoxies other than the ones delivered by us, our obligation to assume liability and warranty shall expire.

(6) The time period for bringing claims for damages shall lapse after one (1) year.

§ 12 Retention of Title

(1) We shall retain ownership of any and all goods we deliver until all receivables under the contract have been paid in full.

(2) The customer can dispose of the goods subject to retention of title in the ordinary course of business unless the customer is in default of payment or has suspended payment. The customer may not pledge any goods subject to retention of title or assign them by way of security.

§ 13 Disposal of Legacy Devices

(1) Pursuant to Directive 2002/96/EC of the European Parliament and of the Council on Waste Electrical and Electronic Equipment (WEEE), upon the customer's request we shall accept the return of all electronic equipment, as specified in the aforementioned Directive, which we delivered for the first time in the EU after January 1, 2008 and which is marked accordingly with the crossed-out wheeled bin for disposal free of charge. This offer shall apply to complete devices only and not to devices which have been disassembled, as specified in the aforementioned Directive, and only to devices located in the EU. The devices being returned must not contain any dangerous or toxic substances and must not be contaminated with refuse.

(2) We shall assume all costs incurred for the proper disposal of such devices; the costs for their transportation to us shall be borne by the person returning the equipment.

(3) If the last owner of a device, as specified in the aforementioned Directive, waives returning the device to us for disposal, this last owner shall dispose of the device properly at its own expense. Disposing of the devices in regular household bins or at communal centers is not allowed.

§ 14 Duty to Report, Reselling

(1) The customer shall notify us without undue delay of any and all re-selling or other disposal of the Products along with the name of the buyer or recipient or shall take such other adequate measures to ensure we can obtain information regarding the whereabouts of the Products at any time.

(2) If the Products are resold, the customer shall take adequate measures to ensure any and all applicable statutory regulations including, but not limited to, applicable statutory export regulations, are complied with during and after the sale.

§ 15 Special Provisions for Services

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(1) Where the provision of maintenance and/or support services has been agreed upon, these services shall apply only to the devices specified in the order confirmation. Where the provision of support services has been agreed upon, we shall support the customer by granting access to our support offerings and by offering general tips regarding the use of the devices and troubleshooting.

(2) Unless agreed upon otherwise, the customer shall install any and all updates of firmware as part of the customer's maintenance work. In particular, the customer shall back up the customer's data before maintenance work is carried out.

(3) Unless agreed upon otherwise, briefings and training shall be conducted via online conference during regular business hours. The customer shall provide the technical equipment (e.g., laptop, projector) required to conduct briefings or training at the customer's premises free of charge.

(4) We can cancel any appointment for briefings or training for an important reason. We will communicate cancellations in a timely manner and offer an alternate date.

(5) We shall be entitled to use subcontractors.

(6) §§ 8, 9 and 11 shall not apply to the provision of services.

§ 16 Special Provisions for Repair Work and Studies

(1) The customer shall cooperate and in particular shall provide the device for repair or the documentation and other information required for the provision of service to us at the customer's expense on the agreed-upon date or, if no date has been agreed upon, in a timely manner.

(2) The customer's right to remedy defects as stipulated by § 637 of the BGB shall be excluded.

(3) The customer's unrestricted termination right as set forth in § 648 s. 1 of the BGB shall be excluded.

(4) § 14 para. 5 shall apply mutatis mutandis.

§ 17 Venue and Applicable Law / Miscellaneous

(1) The venue shall be Nurnberg, Germany.

(2) The laws of the Federal Republic of Germany shall apply under exclusion of the CISG.

(3) Should any of the provisions of these General Terms and Conditions be or become invalid, the validity of the remainder of the provisions of these General Terms and Conditions shall not be affected.

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