

General terms and conditions of sale, delivery and payment of Witt Sensoric GmbH (B2B)

§ 1 Scope of application

(1) All deliveries, services and offers of Witt Sensoric GmbH, Ernst-Lau-Straße 12, 12489 Berlin (hereafter referred to as the 'Seller'), are made exclusively on the basis of these general terms and conditions of sale, delivery and payment (hereafter also referred to as the 'General Terms and Conditions'). These General Terms and Conditions are an integral part of all contracts concluded by the Seller and its commercial contracting partners (hereafter also referred to as the 'Customers') regarding the delivery of goods or services offered by the Seller. They shall apply also to any future deliveries, services or offers addressed to the Customer, even in the absence of a specific agreement to that effect.

(2) Terms and conditions of the Customer or a third party do not apply, even if the Seller has not expressly objected to their application. Even a reference by the Seller to a letter containing the terms and conditions of the Customer or a third party or a reference to such terms and conditions shall not constitute consent to the application of such terms and conditions.

(3) The Seller does not conclude any contracts with consumers as defined in Sec. 13 of the German Civil Code (BGB). Consumer means any natural person who enters into a transaction for a purpose that is predominantly outside his trade, business or profession.

§ 2 Offers and conclusion of contract

(1) All offers by the Seller are subject to confirmation and are non-binding, unless they are expressly declared to be binding or specify a certain time limit for acceptance. The Seller may accept orders or assignments within a period of fourteen days after receipt.

(2) The legal relationship between the Seller and the Customer shall be governed solely by the written contract of sale - including these General Terms and Conditions - concluded between the Parties. This contract fully reflects all agreements between the Parties relating to the object of the contract. Oral commitments of the Seller prior to the conclusion of this contract are not legally binding and oral agreements will be replaced by the written contract unless such oral agreements expressly provide for their continued application.

(3) Supplements or amendments to the agreements, including these General Terms and Conditions, must be made in writing in order to be valid. With the exception of managing directors or holders of powers of procuratorship, the employees of the Seller are not entitled to conclude deviating oral agreements. The written form requirement is satisfied by a transmission through telecommunication means, in particular by fax or by email, provided a copy of the signed declaration is transmitted.

(4) Information provided by the Seller on the object of the delivery or service (e.g. weights, dimensions, colours, volume, usage, capacity, tolerances and technical data) and illustrations thereof provided by the Seller (e.g. drawings or figures) are merely approximate, unless the use for the contractually defined purpose requires exact conformity. This information does not amount to guaranteed characteristics, but is a description or identification of the goods or service to be delivered. Standard commercial deviations, deviations based on legal requirements or technical improvements and the replacement of

components by equivalent parts are permitted, provided that they do not impair the usefulness of the goods or services to be delivered for the contractually defined purpose.

(5) The Seller retains ownership of or copyright in all quotes and cost calculations submitted by it and in all drawings, illustrations, calculations, brochures, catalogues, models, tools and other records and equipment made available to the Customer. The Customer may not transmit these objects or disclose the content thereof to third parties, copy or use the object himself or have them used by third parties without the express consent of the Seller. At the request of the Seller, the Customer shall return these objects to the Seller in their entirety and shall destroy any copies thereof that may have been made if they are no longer required by the Customer in the ordinary course of business or if the negotiations do not result in the conclusion of a contract.

§ 3 Pricing and terms of payment

(1) The prices apply to the scope of goods and services specified in the order confirmations. Additional or special services shall be charged separately. Prices are quoted in EUR ex factory, excluding packaging, VAT and - in the case of export deliveries - customs duties, fees and other administrative charges.

(2) To the extent that the agreed prices are based on the Seller's list prices, and if delivery is not to be made until four or more months after conclusion of the contract, then the Seller's list prices at the time of delivery (in each case less a discount specified as an agreed percentage or as an agreed fixed amount) shall apply.

(3) Unless otherwise agreed in writing, invoiced amounts are payable within thirty days without deduction. The relevant date for determining the timeliness of payment is the date of receipt by the Seller. Cheques are deemed to be payment only after redemption. If the Customer fails to make payment upon maturity, the due amount shall be liable to interest from the date of maturity at the rate of 5% p.a., without prejudice to the Seller's right to claim higher interest and further damage in the event of default.

(4) A set-off against counterclaims of the Customer or the retention of payments based on such counterclaims is only permitted if the counterclaims are uncontested or have been confirmed with final and binding legal effect.

(5) If the Seller becomes aware - after conclusion of the contract - of circumstances that substantially impair the creditworthiness of the Customer and that jeopardise the payment of outstanding claims of the Seller against the Customer based on the contract in question (including other individual orders placed on the basis of the same framework agreement), the Seller is entitled to deliver any outstanding goods or services only against advance payment or provision of security.

§ 4 Delivery and delivery period

(1) Deliveries are made ex works.

(2) Any periods and dates for the delivery of goods or services proposed by the Seller are always approximate dates, unless a fixed period or date has been confirmed or agreed. If shipping has been

agreed, the delivery periods or dates refer to the time of handing over to the forwarding agent, freight forwarder or other third parties responsible for shipping.

(3) Irrespective of the Seller's rights resulting from the Customer's default, the Seller may ask the Customer for an extension of the delivery period or a postponement of the delivery date by the period in which the Customer fails to comply with his contractual obligations vis-à-vis the Seller.

(4) The Seller shall not be liable for impossibility of delivery or delivery delays to the extent that such impossibility or delay is caused by events not foreseeable at the time of conclusion of the contract (e.g. operational disruptions of any kind, difficulties in the procurement of materials or energy, shipping delays, strikes, legal lockouts, shortfalls in labour, energy or resources, difficulties in obtaining required administrative approvals or measures, or delivery failure or incorrect delivery from upstream suppliers) and does not fall within the sphere of responsibility of the Seller. The Seller is entitled to withdraw from the contract if such events substantially impede the delivery of the goods or services by the Seller or make it impossible, and if the obstacle is not of a merely temporary nature. In the event of obstacles of a temporary nature, the delivery dates or periods will be postponed for as long as the obstacle persists plus an adequate lead time. The Customer may withdraw from the contract by a written declaration issued without undue delay if the Customer cannot be reasonably be expected to accept delivery of the goods or services thus postponed.

(5) The Seller is only entitled to make partial deliveries if

1. the Customer is able to make use of the partial delivery as part of the contractually agreed purpose,
2. delivery of the remaining goods is ensured and
3. if the partial delivery does not require substantial additional input or costs on the part of the Customer (unless the Customer undertakes to bear these costs).

(6) If the Customer is in delay with a delivery of goods or services, or if a delivery of goods or services becomes impossible irrespective of the reason, the liability of the Seller is limited to the damage in terms of § 8 of these General Terms and Conditions.

§ 5 Place of performance, shipping, packaging, transfer of risk, acceptance

(1) Unless stipulated otherwise, the registered office of the Seller shall be the place of performance for all obligations resulting from the contractual relationship. If the obligations of the Seller also include installation, the place of performance shall be the place of installation.

(2) The Seller may determine the type of shipping and packaging at its discretion.

(3) The risk transfers at the latest when the object to be delivered is passed to the forwarding agent, freight forwarder or other third parties responsible for shipping (with the relevant time being the start of the loading process). The same applies if partial deliveries are being made or if the Seller has undertaken to provide other services (e.g. shipping or installation). If the shipping or handover of the goods to be delivered is delayed due to circumstances that fall within the sphere of responsibility of the Customer, the risk shall transfer to the Customer on the date on which the goods are ready for shipping and this readiness for shipping has been notified to the Customer.

(4) The Customer shall bear storage costs incurred after the transfer of the risk. If goods are stored by the Seller, storage costs shall be charged based on the size of the packaged goods and the duration of the storage.

(5) The shipment will be insured by the Seller against theft, breakage, transport, fire and water damage only at the express request and expense of the Customer. Unless otherwise agreed, the goods are shipped at the expense of the Customer.

(6) In cases where acceptance has been agreed, purchased goods that are ready for acceptance are deemed to have been accepted if

1. the goods have been delivered and the installation - in cases where the Seller has undertaken to install the goods - has been completed,
2. the Seller has cautioned the Customer with reference to the presumption of acceptance pursuant to this § 5(6) and has prompted the Customer to accept the delivery,
3. [twelve] working days have passed since delivery or installation or if the Customer has started to make use of the purchased goods (e.g. has commissioned the supplied system) and if in this case [six] working days have passed since delivery or installation and
4. the Customer has failed to accept the goods within this period for any other reason than a defect notified to the Seller, provided that the defect renders the use of the purchased goods impossible or substantially impairs such use.

§ 6 Warranty, material defects

(1) The warranty period is one year starting on the date of delivery or, in the case of required acceptance, on the date of acceptance.

(2) The goods delivered must be examined carefully without undue delay after delivery to the Customer or to a third person appointed by the Customer. The delivered goods are deemed to have been accepted by the Buyer as far as obvious defects or other defects that would have been detected through a prompt and careful examination are concerned, unless a written notice of defect is transmitted to the Seller within seven working days after delivery. As far as other defects are concerned, the delivered goods are deemed to have been approved by the Buyer, unless a written notice of defect is transmitted to the Seller within seven working days after the defect became apparent; if the defect could have been detected by the Customer at an earlier stage in the course of ordinary use, this earlier point in time is decisive for the start of the period for notifying the defect. At the request of the Seller, a delivered item must be returned to the Seller free of carriage charges. In the case of a justified notice of defect, the Seller will reimburse the Customer for the cheapest shipping route; this provision does not apply if the costs increase because the delivered goods are located at a different location than the place of intended use.

(3) In the case of material defects of the delivered goods, the Seller is first obliged and entitled to perform - at the Seller's election - repairs or provide a replacement; such choice must be exercised within a reasonable period. The Customer is entitled to withdraw from the contract or reasonably reduce the purchase price if the repair or replacement fails, in other words in the case of impossibility, unreasonableness, refusal or inappropriate delay of the repair or replacement.

(4) If a defect is caused by a fault of the Seller, the Customer may request damages under certain circumstances stipulated in § 8.

(5) In the case of defects in components of other manufacturers that

cannot be removed by the Seller for licence-related or de facto reasons, the Seller shall assert - at its choice - its warranty claims against the manufacturers and suppliers on behalf and for the account of the Customer or assign such claims to the Customer. In the case of such defects, the Customer shall have warranty claims against the Seller under other conditions and in accordance with these General Terms and Conditions only if the legal pursuit of the aforementioned claims against the manufacturer and suppliers has been unsuccessful or is futile, e.g. due to insolvency. The statute of limitations on the warranty claims of the Customer against the Seller is suspended during the course of the legal proceedings.

(6) The Customer is not entitled to assert warranty claims if the Customer modifies the delivered goods or has them modified by third parties without the consent of the Seller and if the removal of the defect is thus rendered impossible or unreasonable. In any event, the Customer is obliged to bear the additional expenses incurred for the removal of the defect.

(7) Any delivery of used goods agreed in an individual case with the Customer shall be subject to the exclusion of any liability for defects.

§ 7 Proprietary rights

(1) In the case that the delivered goods infringe an industrial property right or copyright of a third party, the Seller may modify or replace - at its choice and its expense - the delivered goods to such an extent that the infringement of the rights of third parties is remedied but that at the same time the delivered goods are still able to fulfil the agreed functions or procure a right of use for the Customer by concluding a licence agreement. If the Seller is not able to do so within a reasonable period, the Customer shall be entitled to withdraw from the contract or to reduce the purchase price accordingly.

(2) Any claims for damages of the Customer are subject to the limitations of § 8 of these General Terms and Conditions.

(3) In the case of legal infringements caused by products of third-party manufacturers supplied by the Seller, the Seller shall assert - at its choice - its warranty claims against the manufacturers and upstream suppliers on behalf and for the account of the Customer or assign such claims to the Customer. In the case of such defects, the Customer shall have warranty claims against the Seller in accordance with § 7 of these General Terms and Conditions only if the legal pursuit of the aforementioned claims against the manufacturer and

suppliers has been unsuccessful or is futile, e.g. due to insolvency.

§ 8 Liability for damages due to fault

(1) The liability of the Seller for damages, irrespective of their legal base, in particular for impossibility or default of performance, defective or faulty delivery, breach of contract, violation of duties during contract negotiations and tort is limited - to the extent that such liability is based on fault - by the terms of § 8 of these General Terms and Conditions.

(2) The Seller shall not be liable for simple negligence on the part of its corporate organs, legal representatives, employees or other vicarious agents, unless the liability is based on the breach of an essential contractual obligation. Essential contractual obligations are obligations comprising timely delivery and installation of the goods to be delivered, the absence of defects in such goods impairing their functionality or usefulness to a more than negligible extent, as well as

duties of consultation, protection and safekeeping that aim to ensure that the Customer can make use of the delivered goods as intended or the protection of life and limb of the Customer or the protection of the Customer's property against substantial damage.

(3) To the extent that the Seller is liable for damages in terms of § 8(2), this liability is limited to damage foreseen by the Seller at the time of conclusion of the contract as a possible consequence of a breach of contract, or that the Seller should have foreseen if it had applied ordinary care. Indirect or consequential damage resulting from defects in the delivered goods shall be compensated only if such damage can be typically expected as a result of normal use.

(4) In the case of liability for simple negligence, the duty of compensation of the Seller for material damage and resulting further economic damage is limited to the amount of EUR per damage event (in accordance with the current coverage of its product liability insurance or general liability insurance), even if the damage relates to the breach of an essential contractual obligation.

(5) The above exclusions and limitations of liability apply to the same extent for the benefit of the Seller's corporate organs, legal representatives, employees and other vicarious agents.

(6) If the Seller provides technical information or acts in an advisory capacity, and if this information or advisory service does not form part of the contractually agreed scope of services to be provided by the Seller, such services shall be free of charge and subject to exclusion of any liability.

(7) The limitations of this § 8 do not apply to the liability of the Seller for intentional, fraudulent or grossly negligent conduct, for guaranteed characteristics, for injury to life, limb or health or to liability under the German Product Liability Act.

§ 9 Comprehensive retention of title

(1) The following agreed retention of title serves to secure all existing present and future claims of the Seller against the Customer from the supply relationship between the Contracting Parties in accordance with these General Terms and Conditions (including claims for credit balances on a current account limited to this contractual supply relationship).

(2) The goods supplied by the Seller to the Customer remains the property of the Seller until full settlement of all secured claims. The goods as well as substitute goods replacing the goods in terms of the following provisions and covered by the retention of title are hereafter referred to as 'goods subject to retention of title'.

(3) The Customer shall keep the goods subject to retention of title on behalf of the Seller and free of charge.

(4) Until liquidation (para. 9), the Customer is entitled to process and sell the goods subject to retention of title in the ordinary course of business. Goods subject to retention of title may not be pledged or transferred as security.

(5) If the Customer processes the goods subject to retention of title, the Parties agree that such processing will be done in the name and on behalf of the Seller being the manufacturer, and that the Seller directly acquires ownership or co-ownership (fractional ownership) - if the processing is made with materials belonging to several owners or if the value of the processed goods is higher than the value of the goods subject to retention of title - in the newly created goods at

the ratio of the value of the goods subject to retention of title to the value of the newly created goods. In the case that the Seller does not acquire such ownership title, the Customer at this point transfers his future ownership or co-ownership - at the aforementioned ratio - in the newly created goods to the Seller by way of security. If the goods subject to retention of title are combined with other goods to form a uniform item or if they are inseparably mixed with other goods, and if one of the other items is deemed to be the main item, then the Seller transfers - to the extent that it is the owner of the main item - co-ownership in the uniform item to the Customer at the ratio specified in sentence 1.

(6) In the case of a resale of the goods subject to retention of title, the Customer at this point transfers by way of security to the Seller all claims arising on this basis against the acquiring party, and in the case of co-ownership of the Seller at the ratio in accordance with the relevant co-ownership fraction. The same applies to other claims that substitute goods subject to retention of title or arise otherwise in connection with the goods subject to retention of title, e.g. insurance or tort claims in the case of loss or destruction. The Seller revocably authorises the Customer to collect the claims assigned to the Seller in the Customer's own name. The Seller may revoke this authorisation only in the event of liquidation.

(7) If a third party lays claim to the goods subject to retention of title, in particular by seizure, then the Customer shall inform such third party without undue delay of the Seller's title and inform the Seller accordingly to enable the Seller to enforce its rights. If the third party is not in a position to reimburse the Seller for the judicial or extrajudicial costs incurred in this connection, the Customer shall be liable to the Seller for such costs.

(8) The Seller shall release the goods subject to retention of title as well as any other substitute goods or claims to the extent that their value exceeds the secured claims by more than 20%. The Seller shall have a right of choice as far as the release of the goods is concerned.

(9) If the Seller withdraws from the contract in the case of a breach of contract of the Customer, especially in the case of payment default (liquidation), then the Seller is entitled to demand the return of the goods subject to retention of title.

§ 10 Final provisions

(1) If the Customer is a merchant, a legal person under public law or a special fund under public law, or if the Customer does not have his general place of jurisdiction in Germany, then the place of jurisdiction for all disputes arising from the business relationship between

the Seller and the Customer shall be - at the election of the Seller - Berlin or the registered office of the Customer. However, in these cases, Berlin shall be the exclusive place of jurisdiction for claims against the Seller. Mandatory statutory provisions on exclusive jurisdiction remain unaffected by this provision.

(2) The relationship between the Seller and the Customer shall be governed exclusively by the law of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) does not apply.

(3) If the contract or these General Terms and Conditions contain unintentional gaps, the Parties are deemed to have agreed to fill these gaps through such legally effective provisions as they would have agreed having regard to the economic aims of the contract and the purpose of the General Terms and Conditions had they been aware of the gap.

Note:

The Customer takes note of the fact that the Seller saves data resulting from the contractual relationship in terms of Section 28 of the German Federal Data Protection Act (BDSG) for the purpose of data processing and reserves the right to make such data available to third parties to the extent required for the purposes of performance under this contract (e.g. to insurance bodies).

The English translation of our standard terms of use shown below is not binding. It is provided merely for information and clarification purposes. Only the German version of the standard terms of use is legally binding.