

# GENERAL CONDITIONS OF SALE AND DELIVERY SENSOTERRA B.V.

## 1. Definitions

### 1.1. In these General Conditions:

- a. "Agreement" means an agreement for the supply of Products by Sensoterra to Customer and any further agreements resulting therefrom, including all codes and policies referred to,
- b. "Customer" means any commercial party that has entered into or wishes to enter into an Agreement or has other legal relations regarding a purchase or a potential purchase with Sensoterra, including Resellers,
- c. "Gateway" means a portal for multiple sensors to connect with that transmits the Soil related data to Sensoterra. This can be a SIM, satellite, ethernet or other type of gateway.
- d. "General Conditions" means these general terms and conditions of sale and delivery,
- e. "Product" means:
  - (i) the Sensor (with or without LoRa provisioning) or another device for receiving and sending Soil related data;
  - (ii) a Gateway;
  - (iii) Soil related data specific to the Customer sent by Sensoterra to the Customer;
  - (iv) Productivity solutions as suggested by Sensoterra to the Customer from time to timeor any combination of the above
- f. "Reseller" means any commercial party that trades Products or is involved in the trading of Products, including but not limited to dealers, aggregators, crop consultants, Data integrators and platform providers,
- g. "Sensor" means the soil moisture measurement sensor of Sensoterra that may be accompanied by a LoRa provisioning for receiving and sending Soil related data,
- h. "Sensoterra" means Sensoterra B.V., having its registered office in Amsterdam, the Netherlands,
- i. "Soil related data" means all data collected by the Sensor of the Customer and sent to Sensoterra directly by the Sensor or via a Gateway,

## 2. Applicability

- 2.1. The General Conditions shall apply to and be part of any current and future Agreements, offers, negotiations and other legal relations between Sensoterra and Customer also if they are not explicitly referred to.
- 2.2. Any general conditions of Customer shall not apply.
- 2.3. Sensoterra has the right to amend the General Conditions from time to time. In case of an amendment, Sensoterra shall inform the Customer of the amendment. If the Customer has not objected to the amendment concerned within 14 days of the notice, the Customer is deemed to have accepted the amendment.
- 2.4. An up-to-date version of the General Conditions are always available [here](#) or at <https://www.sensoterra.com/termsandconditions>

## 3. Offers and Agreements

- 3.1. Offers of Sensoterra shall never be binding and can be revoked at the sole discretion of Sensoterra at any time, also if the offer includes a term for acceptance. Sensoterra reserves the right to refuse any order made by the Customer, at its sole discretion.
- 3.2. An Agreement is concluded at the moment:
  - a) the Customer accepts an offer of Sensoterra in writing or by email, or
  - b) Sensoterra accepts an order of Customer in writing or by email.

Sensoterra shall confirm the Agreement by e-mail. In case the Customer disagrees with the wording of the confirmation, it shall inform Sensoterra within 24 hours of the dispatch of the email after which the wording is deemed to be accepted.

In case Sensoterra's offer includes a quote for costs for transport or other costs, such prices are non-binding indications. The actual prices for transport will become clear at the moment of actual transport and may deviate from the quote given. The same applies to other costs stated in the offer.

## 4. Prices

Prices shall be in EURO or USD as stated in the offer of Sensoterra and for delivery EXV.

Any additional costs such as for example transporting costs, bank charges to make payment transfers, costs for additional packaging, additional services, import duties, costs for installation, insurance premiums, value added tax (VAT), and all other levies, duties and costs are for the Customer's account.

Any costs for additional services of Sensoterra shall be invoiced at the rate customarily charged by Sensoterra.

Sensoterra will be entitled to unilaterally amend prices and/or any other condition by written notice or email. If the Customer does not accept the amended price and/or condition, it will be entitled to terminate the pending Agreements within 14 days after the date of such notice. After expiry of this 14-day period, Customer is deemed to have accepted the amendment.

## 5. Terms of Payment

All payments shall be in the currency as agreed and by advanced payment. In case Sensoterra allows for payment after delivery, payment shall be due within 30 days after the date of invoice, unless otherwise quoted and agreed.

Sensoterra is at its sole discretion entitled to amend the terms of payment, or to request security for payment upon specific terms to be determined by Sensoterra.

Payments to Sensoterra shall be made without deduction for taxes, imposts, customs, levies or other withholding ("Tax"). In the event that Customer must make deductions for Tax, the Customer shall ensure that Sensoterra receives the amount as stated in the invoice and as if such deduction would not have taken place.

All payments shall be without set-off, counterclaim, recourse or other arguments for deduction.

On any payment overdue, Sensoterra may charge interest without prior notice being required. The interest due shall be:

- (i) 1.5 % per month or part of a month during the first month of late payment,
- (ii) 5% per month or part of a month after the first month of late payment.

Interest will be compounded on a monthly basis. This shall not prejudice Sensoterra's right to seek full compensation for damages incurred as a result of or in connection with violation of payment obligations.

If Customer does not comply with its payment obligations in accordance with this article 5 or as otherwise explicitly agreed, Sensoterra may at its discretion terminate the Agreement and all other Agreements with Customer, notwithstanding all other rights of Sensoterra, including its right to full payment of all sums due.

Customer shall reimburse Sensoterra for all its costs to collect payment, including Sensoterra's internal costs, which costs shall be at least 15% of the total amount to be collected.

## 6. Delivery

The interpretation of a delivery condition used in the General Conditions or the Agreement shall be governed by the latest

- edition of INCOTERMS established by the International Chamber of Commerce.
- 6.2. Unless explicitly otherwise agreed in writing, delivery shall be made EXW and shall be completed on the date Sensoterra communicated it made the Products available for collection at a location designated by Sensoterra ("Delivery date").
- 6.3. All other delivery dates communicated by Sensoterra in writing or otherwise agreed upon are mere indications which are not binding. Sensoterra is not liable for any damage resulting from exceeding such indicated delivery date.
- 6.4. If Customer refuses to receive the Products on the Delivery date, Sensoterra will store the Products for the account and at the costs of Customer for a maximum of four weeks. After four weeks, Customer is deemed to have waived all rights to the Products, without prejudice to its payment obligations to Sensoterra of the fully agreed price, costs and interest.
- 6.5. If Sensoterra arranges for and pays any costs for the transport of the Products to Customer, or if Sensoterra provides any services to the Customer other than included in the Product, Sensoterra acts in the capacity of an independent agent for Customer and for the account and at the risk of Customer.
- 7. Retention of Title**
- 7.1. The title to all Products delivered by Sensoterra to Customer is reserved and ownership of the Products shall remain with Sensoterra until full and final settlement of all amounts payable under the Agreement or any other agreement between Sensoterra and Customer.
- 7.2. If Customer does not comply with its payment obligations, Sensoterra has the right to retrieve the Products and to enter Customer's premises for such purpose.
- 8. Proper use and limitations of the Product**
- 8.1. The functioning and lifetime of the Product depends on the proper use according to the technical data sheet and instructions.
- 8.2. In case the Sensor or Gateway exceeds a limit of normal use as described in the technical data sheet and instructions, Sensoterra has the right to turn off the supply of Soil related data to the Customer.
- 8.3. Costs for the use of the Sensor and the Gateway depend on the local network and data provider of the Customer. Gateway and Sensors may only be used in the country of intended use as agreed.
- 9. Inspection, Complaints and Warranty**
- 9.1. Immediately after receipt of the Products, Customer shall inspect the Products and inform Sensoterra of any defects within 24 hours after receipt.
- 9.2. Customer shall install and use the Products in accordance with the technical data sheet and instructions. Customer shall never open the Sensor.
- 9.3. A failure of a Product shall be considered a defect if Customer can demonstrate that it used the Product in accordance with the technical data sheet and instructions and the failure arises within one year from the purchase of the Product ("Defect"). In case of a Defect, Customer will notify Sensoterra within five days after the occurrence of the Defect in writing or by email. At the request of Sensoterra, Customer shall send Sensoterra the Defect Product accompanied by all evidence of the failure, including the data the Defect Product reported and a soil sample. If Sensoterra accepts the Defect, as the sole remedy, Sensoterra shall at its discretion either send the Customer a substitute Product or refund Customer the purchase price for the Product. Customer shall have no other remedy or compensation.
- 9.4. Failure to comply with any of Customer's obligations according to this paragraph 9, will result in a waiver and forfeiture of all claims based on or related to any failure of a Product.
- 9.5. Sensoterra provides a one-year manufacturer's warranty on the Sensor, provided the Sensor is used in accordance with the accompanying technical data sheet and instructions. Sensoterra does not make any further warranty of any kind, express or implied, including without limitation, any warranty of merchantability or fitness for particular purpose. The Customer must make its own determination of the suitability and completeness of the Products for the intended purpose.
- 10. Data**
- 10.1. Sensoterra shall solely collect, store, use and remove data as described in its Data Privacy Policy.
- 10.2. Sensoterra shall be the owner of all data it receives via the Sensor. Sensoterra has the right to collect and use data it receives via the sensor and the gateway for continued improvement of soil moisture calibrations. Aggregated and anonymised data may be used at Sensoterra's discretion commercially or otherwise provided that it cannot be reduced to a Customer as such.
- 10.3. During the Agreement, Sensoterra shall send the Customer the Soil related data originating from the Sensors the Customer used. The Customer may use this Soil related data for its own purposes.
- 11. General Limitation of Liability**
- 11.1. Sensoterra shall not be liable for any direct or indirect losses, costs, damages, penalties or other expenses whether caused by breach of the Agreement, tort or otherwise, and whether related to the Products or any of the services provided by Sensoterra, unless in case of wilful misconduct or gross negligence of its management. The amount of liability shall be limited to the invoice value of the Product or services concerned and shall never exceed the amount Sensoterra's insurance company pays out in the event concerned.
- 11.2. Neither party shall be liable to the other party for any consequential or indirect loss or damage, including (but not limited to) loss of production, loss of revenues or profit, loss of data, loss of interest, costs of recall, loss resulting from interruption in the operations, loss suffered by third parties, costs of delays or any loss or damage resulting thereof, damage caused to persons as a result of improper use of the Product, or damage caused by the Product to plants, soil or the ecosystem.
- 12. Force Majeure**
- 12.1. If any force majeure event substantially prevents, hinders, or delays performance under the Agreement for more than 6 consecutive months, each party may terminate the Agreement without incurring any liability. In the event that the Agreement stipulates that delivery shall be effectuated in parts, the right to terminate only regards the delivery concerned and will leave other deliveries unaffected.
- 12.2. Parties agree that a force majeure event includes the failure of any supplier of Sensoterra or any supplier required for the functioning of the Product, including without limitation data providers or network providers, which shall all operate at the risk of Customer.
- 13. Patents, Trademarks and Property Rights**
- 13.1. Sensoterra reserves all rights in relation to its patents, trademarks and other intellectual and/or industrial properties and/or entitlements.

**14. Termination**

- 14.1. Sensoterra may terminate this Agreement by written notice without taking into account a notice period in any of the following events if:
- a) Customer is in breach of the Agreement and such breach is not cured ultimately within five days after a notice of breach,
  - b) Customer is declared bankrupt or is otherwise insolvent or liquidated or if Sensoterra has reasonable grounds to believe that Customer shall not comply with its payment obligations.
- 14.2. Upon termination all outstanding invoices and payments become payable immediately.

**15. Applicable Law and Forum**

- 15.1. Dutch law is exclusively applicable to these General Conditions, all offers, Agreements, codes, policies, Products and legal relations between the Customer and Sensoterra and all other subjects and materials to which these General Conditions apply.
- 15.2. All disputes arising between Customer and Sensoterra, shall be finally settled in accordance with the Arbitration Rules of the Netherlands Arbitration Institute. The place of arbitration shall be Amsterdam, the Netherlands and the arbitral procedure shall be conducted in the English language. The arbitration panel shall consist of one arbitrator.

**16. Miscellaneous**

- 16.1. Any term or provision of these General Conditions or the Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions. In such case, the invalid or unenforceable provision shall be converted into a valid and enforceable provision that is closest to the intention and meaning of the invalid or unenforceable provision.
- 16.2. No amendment of any provision of these General Conditions or the Agreement shall be valid unless the amendment is in writing or email and explicitly approved by Sensoterra.
- 16.3. No waiver by any party of any provision of these General Conditions or the Agreement or any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, shall be valid unless the same shall be in writing and signed by the party making such waiver, nor shall such waiver be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.
- 16.4. The General Terms are in English. In case of inconsistencies of the texts of the General Terms and translations thereof in another language, the English version prevails regardless of which party was responsible for the translation.
- 16.5. All clauses related to payment, costs and interest shall survive any termination of an Agreement.

**17. Additional Reseller Paragraph**

- 17.1. If Customer is a Reseller, in addition to the foregoing this paragraph 17 is applicable as described in paragraph 2.
- 17.2. Reseller shall comply with the Reseller Agreement.
- 17.3. Reseller trades Products for its own account and at its own risk.
- 17.4. Reseller will handle all complaints with its customers about Products it sold.
- 17.5. Sensoterra is free at its discretion to refuse any order. No agreement to deliver Products on an ongoing basis will ever arise from one or more deliveries by Sensoterra.

17.6. Reseller is no agent of Sensoterra and will not imply that it represents or is affiliated with Sensoterra.