

General Terms and Conditions for Supply and Performance

First Sensor Mobility GmbH

As of January 2007

I. General Provisions

1. The General Terms and Conditions for Supply and Performance as set out hereinbelow shall apply only insofar as nothing to the contrary has been agreed upon in (an) individual contract/s.
2. The General Terms and Conditions for Supply and Performance of the supplier or performing party (hereinafter referred to as the "Supplier") shall apply exclusively. Terms and conditions of the Customer to the contrary or deviating from the Terms and Conditions as set out hereinbelow shall not be accepted, unless their application was expressly consented to. The Supplier's Terms and Conditions for Supply and Performance shall likewise apply if the latter, being aware that the Customer's terms and conditions are contrary to or deviate from the Terms and Conditions as set out hereinbelow, implements the delivery or performance to the Customer without reservation.
3. The Terms and Conditions for Supply and Performance as set out hereinbelow shall apply only vis-à-vis businessmen within the meaning of Section 310 paragraph 2 of the Bürgerliches Gesetzbuch (BGB, German Civil Code).

II. Scope of Supply and Performance

1. Only agreements set out in writing are authoritative for the scope of supply and performance.
2. The Supplier reserves the unlimited exploitation rights under property and copyright law as to cost estimates, data processing media and other documentation; access to said documentation may be granted to third parties only with the prior consent of the Supplier.
3. Collateral agreements, changes and amendments to the Terms and Conditions are effective only if confirmed in writing.

III. Prices and Conditions of Payment

1. Unless otherwise agreed upon in the contract or the confirmation of the order, prices shall be calculated ex works and exclusive of packaging, plus the statutory value added tax, payable immediately upon receipt of the invoice.
2. The Supplier reserves the right to adjust prices appropriately if, following the conclusion of the contract, increases in or reductions of costs occur in particular on account of changes in wage costs or costs of material or , respectively, wholesale prices. Proof of these increases or reductions shall be provided to the Customer by the Supplier upon the former's request. Should the increase amount to more than 5 % of the price agreed upon, each party shall have the rights to terminate the contract.
3. The Customer may only set off such claims that are undisputed or have been finally and conclusively (rechtskräftig) established. Moreover, Customer is entitled to exercise a right of retention only to the extent his counterclaim is based on the same contractual relationship.

IV. Deadlines for Deliveries or Performance / Acceptance

1. The commencement and adherence to deadlines are contingent upon the performance in due time of any and all obligations for cooperation on the part of the Customer, in particular the clarification of all technical issues, the receipt in due time of any and all documentation, permits and releases to be provided by the Customer, as well as the compliance with the agreed conditions of payment and other obligations of the Customer. Should these conditions not have been met in due time, the deadline is to be newly agreed upon. The Supplier reserves the right to defense of non-performance of contract. Should the Customer be in default of acceptance or should it violate other obligations to cooperate, the Supplier shall be entitled to claim compensation for the damage incurred to that extent, including any additional expenditure. The right to assert further-reaching claims shall be reserved.
2. If the contract or the written confirmation of the order by the Supplier states only the calendar week or month as a deadline, the agreed time of delivery and performance shall be deemed to be the last workday of the respective calendar week or month.
3. The deadline shall be deemed to have been adhered to if the consignment has been submitted for shipment or picked up within the agreed deadline for delivery and performance, this being the point in time the delivery item leaves the business premises or storage rooms.

4. Impediments to delivery and acceptance as a consequence of natural disasters, war, industrial action, lack of raw materials and resources or other cases of force majeure in the supplier's plants or operations as well as by official order or due to other circumstances the prevention of which is not within the power of the parties to the contract or, respectively, which may not be prevented or compensated for by means of expenditure in technical and economic terms that is adequate if the due and proper care according to the standards applied in that particular industry is taken into consideration, and which circumstances prevent the contractual partners in whole or in part from performing their obligations, shall release both contractual partners to that extent from the performance of the contract until the causes of force majeure have been removed. The contractual partner on whose side the event of force majeure has occurred is to inform the other partner of said event without undue delay. Should the delays resulting therefrom exceed a period of six weeks, both contractual partners are entitled to rescind the contract with regard to the scope of supply and services concerned. The impossibility of performance concerning the adequate supply with raw and auxiliary materials or other supplies and services required by the Supplier in order to perform its obligations vis-à-vis the Customer shall be deemed equivalent to a case of force majeure.

5. If the shipment or delivery is delayed at the behest of the Customer or due to another circumstance for which the Customer is liable, storage charges may be charged to the Customer in the amount of 0.5 % of the invoice amount for each started month, beginning one month after notification of the consignment being ready for shipment, the total storage charge is limited to 5 % of the invoice amount unless proof is provided of higher costs. This shall not apply if the Customer provides proof of storage costs having been less than the amount quoted by the Supplier.

6. Consignments delivered to the Customer are to be received by the Customer even if these demonstrate insubstantial defects that have been objected to.

7. Partial deliveries are permissible to the extent the Customer can be reasonably expected to accept these.

V. Passing of Risk

1. Unless otherwise agreed upon in the contract or the confirmation of order, the delivery shall be effected "ex works". Upon request and at the expense of the Customer, the consignment shall be insured by the Supplier against transport, breakage and fire damages.

2. The risk shall pass to the Customer also in the event that the shipment or delivery is delayed at the Customer or on grounds for which the Customer is liable, or if the Customer exercises a right of retention

VI. General Liability

1. Within the framework of statutory provisions, the Customer is entitled to rescind the contract provided that the breach of duty is not insubstantial. The right of rescission shall not apply if the Customer provides proof of the fact that it is not responsible for the ground for rescission.

2. Should the Customer opt for a rescission of the contract, it shall not be entitled to an additional claim for damages based on breach of duty. This shall apply mutatis mutandis for claims concerning compensation of expenses made in vain.

3. Any liability of the Supplier or, respectively, persons employed by the Supplier in the performance of its obligation (Erfüllungsgehilfen) and vicarious agents (Verrichtungsgehilfen), for damages arising from negligence – in particular for damages due to defects not having occurred on the item of delivery or performance itself – shall be excluded irrespective of the cause in law and legal nature of the asserted claim. This shall not apply in cases of essential contractual obligations having been violated, of bad faith, of having provided a guarantee, a liability under the Produktsicherheitsgesetz (Product Safety Act), a culpable injury to life, limb or health, or if, in the individual case, the exclusion of liability as set out hereinabove should prevent the contractual purpose from being fulfilled.

4. To the extent the technical, economic or legal conditions underlying individual provisions of the contract have changed considerably such that the implementation of the contract under the conditions hitherto agreed upon would constitute an undue hardship for one of the parties, and this was not foreseeable by the party affected despite having following the due and proper care according to the standards applied in that particular industry, the parties shall bring about an adjustment of the contract with a view to a reasonable and fair balancing of interests. To the extent this is not reasonable in economic terms, the party affected shall have the right to rescind or, respectively, to terminate the contract. Should the party affected wish to make use of said right of rescission or respectively, termination, it is to inform the other party of this without undue delay after having become aware of the scope and implications of the event.

5. If the parties have not agreed upon any individual limitations of liability, the Supplier shall be held liable, regardless of legal basis, only for the typical, reasonably foreseeable damage. This shall not apply in cases of liability due to intentional or grossly negligent action, liability under the Produkthaftungsgesetz (Product Liability Act) and in case of culpable injury to life, limb or health.

6. Contractual liability claims shall become time-barred after one year from the date of handover, unless the Supplier can be reproached with, or is liable for, bad faith. In all other regards, the statutory time limits shall apply.

7. The statutory provisions as to the burden of proof shall remain unaffected hereby.

VII. Liability for Defects in Particular

1. Claims for defects asserted by the Customer require that the latter has duly and properly met the obligations for which it is responsible under Section 377 of the Handelsgesetzbuch (HGB, Commercial Code) to inspect the item delivered and raise objections.

2. Any deliveries or performances made by the Supplier that become defective due to circumstances occurring prior to the passing of risk, in particular due to bad material or defective execution, or do not correspond to the specifications are to be either improved upon at no costs or to be newly delivered, this choice being at the discretion of the Supplier.

3. The defects that have occurred are to be described in detail by the customer. In case of customer complaints concerning electrostatically sensitive delivery items, it is imperative that a package corresponding to the original packaging is used for returning the delivered item.

4. A liability for obvious defects shall be excluded unless such a defect has been objected to without undue delay.

5. If the Supplier permits a suitable period of grace granted to it to expire without having remedied the defect or newly delivered the item, if this should become impossible fail, or refused by the Supplier, the Customer may demand that the contract to be revoked (rescission of contract) or the remuneration to be marked down (reduction). A reduction shall be excluded if the value of the defective components or services has been diminished only to an insubstantial extent.

6. Liability claims shall not be given in case of immaterial deviations from the condition that was agreed upon. No liability shall further exist in case of defective deliveries and services that result from defects in the contributions to be provided by the Customer. Any liability shall be excluded for defects of the end product which do not result from defects in the deliveries and services of the Supplier or if it can be assumed that such deliveries and services were not yet defective at the time of the passing of risk.

7. The provision of a guarantee for the condition of the delivery item or a service to be provided by the Supplier shall only be given if it was explicitly referred to as such.

VIII. Export Clause

1. The Supplier draws the Customer's attention to the fact that in case of doubt any and all products it supplies (software, information, documentation and the like) are subject to an export license. Prior to the export of the products supplied, the Customer is to procure any and all required export licenses or other documentation at its own costs. The refusal of an export license shall not entitle the Customer to rescind the contract or claim damages.

2. In acknowledgement of the German and foreign (especially US-American) export control provisions and restrictions, the Customer shall enter into obligation to, neither directly nor indirectly, sell, export, re-export, deliver or otherwise convey the supplied products, software, information or documentation, should German or foreign laws or regulations be violated thereby. The Customer furthermore undertakes to place all recipients of such products, software, information or documentation purchased from the Supplier under the same obligation as set out hereinabove and to inform them of the necessity of adhering to such laws and regulations.

IX. Retention of Title

1. Until the full payment of the purchase price and all other outstanding claims of the Supplier vis-à-vis the Customer arising from the current business connection (in case of payment by check or bill of exchange until their being cashed), the delivered goods shall remain in the ownership of the Supplier. Should the Customer act contrary to the provisions set out in the contract, particularly in case of default of payment, the Supplier shall be entitled to reclaim the delivered item. The reclaiming of the delivered item shall not constitute a rescission of the contract, unless the Supplier has expressly declared to rescind the contract, doing so in writing. The attachment of the delivered item shall always constitute a rescission of the contract. After the delivered item has been reclaimed, the Supplier shall be entitled to utilize the delivered item at its own discretion; the revenue less the costs of utilization shall be set off from the liability of the Customer.

2. If the delivered item is processed and worked into a new form by the Customer, the specification shall be deemed to have occurred on behalf of the Supplier, who is hence deemed to be the manufacturer within the meaning of Section 950 of the Bürgerliches Gesetzbuch (BGB, German Civil Code) and shall acquire ownership of the intermediate or end product.

In case of the delivered item being processed and combined with other goods not belonging to the Customer, the Supplier shall become joint owner of the new object proportional to the relation between the value of the item delivered by it and the value of the goods provided by a third party at the point in time of the specification.

3. The Customer shall be entitled to dispose of the delivered goods in the customary course of business. Claims vis-à-vis third parties arising from the resale of the delivered item shall be assigned, as of today, by the Customer to the Supplier in the amount of the value of the retained goods or, respectively, the share in joint ownership of the Supplier in order to provide security to the Supplier. In case of mutual accounts, this assignment shall include the acknowledged accounting balance as well as, in case of an insolvency of the Customer, the existing “causal” accounting balance. The Customer shall be authorized and obliged to collect outstanding payments until the authorization is revoked by the Supplier. The authority of the Supplier to collect outstanding payments itself shall remain unaffected hereby.

4. The Customer’s authorization to collect payments shall expire without the express declaration of the Supplier if the Customer discontinues its payments. The Supplier shall not use its authority to collect outstanding payments as long as the Customer complies with its payment obligations, is not in default of payment and, in particular, has not filed an application for enacting insolvency or reorganization proceedings. In the latter event, the Supplier may demand that the Customer disclose the assigned claims and their respective debtors, provide all information required for collecting said outstanding payments, hand over the appurtenant documentation and inform the debtors of the assignment.

5. Should the value of the securities provided by the Customer exceed the Supplier’s claims against the Customer by more than 10 %, the Supplier shall, upon request by the Customer, release securities to such an extent, doing so at its own discretion.

6. The Customer may neither pledge the delivered goods nor transfer said goods by way of security. In case of goods being seized, confiscated or otherwise disposed of by third parties, the Customer is to inform the Supplier of this fact without undue delay, and to make available to it all information and documents required to protect the Supplier’s interests. To the extent the Customer is unable to reimburse the Supplier for in and out of court fees of a legal action taken in accordance with Section 771 of the Zivilprozessordnung (ZPO, Code of Civil Procedure), the Customer shall be held liable for the loss suffered by the Supplier.

X. Place of Performance and Place of Jurisdiction

1. Unless otherwise provided for in the contract or confirmation of order, the place of performance for all obligations arising from the delivery transaction shall be the location of the Supplier’s head office.

2. All disputes arising from or in the context of the present contract or its validity shall be conclusively settled, with recourse to the ordinary courts of law being excluded, in accordance with the Arbitration Rules of the Deutsche Institution für Schiedsgerichtsbarkeit e.V. (DIS, German Institution for Arbitration). The arbitral tribunal may also bindingly rule upon the validity of the present arbitration agreement. The place of the arbitral proceedings shall be Dresden. The language of the arbitral proceedings shall be German.

3. The laws of the Federal Republic of Germany shall apply for the contractual relationship, with the United Nations Convention on Contracts for the International Sale of Goods (CISG) being excluded.

XI. Severability Clause

Should any provision of this contract be completely or partially ineffective or should it not be possible to implement said provision, the validity or operability of the remaining provisions of this contract shall not be affected thereby. An ineffective provision or one that has proved incapable of being implemented shall be replaced by an effective and implementable provision which – as far as is legally possible – comes closest in economic terms to the ineffective provision or provision incapable of being implemented. This shall apply mutatis mutandis in remedying omissions in the contract.