

Terms and Conditions of Sales

1. ACCEPTANCE This contract constitutes the full understanding of the parties, a complete allocation of risks between them and a complete and exclusive statement of the terms and conditions of their agreement. Except as provided in Section 2 hereof, no conditions, usage of trade, course of dealing or performance, understanding or agreement purposing to modify, vary, explain or supplement the terms or conditions of the contract shall be binding unless hereafter, made in writing and signed by the party to be bound, and no modification shall be effected by the acknowledgement or acceptance of purchase order or shipping instruction forms containing terms or conditions at variance herewith or in dealing shall be deemed to constitute a continuing waiver of any other breach or of any other right or remedy, unless such waiver be expressed in writing signed by the party to be bound.

2. GENERAL Prices quoted constitute an invitation for an offer by Buyer, open for a period of thirty (30) days from date of issue, but subject to change by SensoriC Gas Sensors a Division of MST Technology GmbH (hereafter SENSORIC) during such period. No order shall be binding until accepted and acknowledged by SensoriC. The Buyer shall be responsible for ensuring the accuracy of the terms of any order submitted by the Buyer, and for giving SENSORIC any necessary information relating to the goods within sufficient time to enable SENSORIC to perform the contract in accordance with its terms. All orders accepted by SENSORIC are subject to delivery when available at SENSORIC's price, point of delivery, service allowance or terms of payment for the goods hereunder, but if restricted to any extent against so doing by reason of any governmental request, law, regulation, order or request, law regulation, order or action. SENSORIC shall have the right to (a) terminate this contract with respect to any goods not then delivered by written notice to Buyer, (b) suspend deliveries for the duration of such restriction or alteration or (c) have apply to this contract (as of the effective date of such restriction or alteration) any price, point of delivery, service allowance or terms of payment governmentally acceptable. Any delivery suspended under this section may be canceled by SENSORIC without liability, but this contract shall otherwise remain unaffected.

3. PAYMENT Terms of payment are net 30 days from the date of invoice, unless otherwise specified by SENSORIC in writing. SENSORIC reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the goods to reflect increase in the costs to SENSORIC which is due to any factor beyond the control of SENSORIC (such as foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of the materials of other costs of manufacture) or any change in delivery dates. Except as otherwise stated under the terms of any quotation or in any price list of SENSORIC, and unless otherwise agreed in writing between Buyer and SENSORIC, all prices are given by SENSORIC on an ex works basis. The Buyer shall be liable to pay SENSORIC's charges for transportation, packaging and insurance. The price is exclusive of any applicable value added tax, which the Buyer shall additionally liable to pay to SENSORIC.

If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to SENSORIC, SENSORIC at its discretion shall be entitled to:

- cancel the contract or suspend any further deliveries to the Buyer; or
- charge the Buyer interest on the amount unpaid, at the rate of 8 per cent per annum above European Central Bank reference rate from then being valid, until payment in full is made. The Buyer shall be entitled to prove that delay of payment caused no or little damage only.

4. RETENTION OF TITLE Notwithstanding delivery and the passing of risk in the goods, or any other provision of these conditions, the property in the goods shall not pass to the Buyer until SENSORIC has received payment in full of the price of the goods and all other goods agreed to be sold by SENSORIC to the Buyer for which payment is than due. SENSORIC shall have absolute authority to retake, sell or otherwise deal with or dispose of all or any part of the goods in which title remains vested in SENSORIC. Until such time as the property in the goods passes to the Buyer, the Buyer shall hold the goods as SENSORIC's fiduciary agent, and shall keep the goods properly stored, protected and insured. Until that time the Buyer shall be entitled to resell or use the goods in the ordinary course of its business, but shall account to SENSORIC for the proceeds of sale or otherwise of the goods including insurance proceeds, and shall keep all such proceeds separate from any moneys or properties of the Buyer and third parties. If third parties take up steps dispose of the goods, the Buyer shall immediately notify SENSORIC in order to enable SENSORIC to seek a court injunction in accordance with § 771 of the German Code of Civil Procedure. If the Buyer fails to do so in due time he will be held liable for any damages caused. SENSORIC shall on demand of the Buyer release any part of the collateral if the value of the collateral held in favor of SENSORIC's exceeds the value of the claims being secured. It is SENSORIC's decision to release ANY parts of the collateral.

5. TAXES The amount of present or future sales, revenue, excise, or other taxes applicable to the products listed herein shall be added to the purchase price and shall be paid by the Buyer, unless Buyer provides acceptable proof of exemption.



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6. FORCE MAJEURE Deliveries may be suspended by either party in the event of war, riot, fire, explosion, accident, flood, sabotage, lack of adequate fuel, power, raw materials, labor, containers or transportation facilities, compliance with government requests, laws, regulation, orders or action; breakage or failure of machinery or apparatus; national defense requirements or any other event, whether or not the class or kind enumerated herein, beyond the reasonable control of such party; or in the event of labor trouble strike, lockout or injunction (provided that neither party shall be required to settle a labor dispute against its own best judgement); which event makes impracticable the manufacture, transportation, acceptance or use of a shipment of goods or of a material upon which the manufacture of the goods is independent. If SENSORIC determines that its ability to supply the total demand for the goods, or obtain any or a sufficient quantity of any material used directly or indirectly in the manufacture of the goods, is hindered, limited or made impracticable, SENSORIC may allocate its available supply of the goods or such material (without obligation to acquire other supplies of any such goods or material) among itself and its purchasers on such basis as SENSORIC determines to be equitable without liability for any failure or performance which may result therefrom. Deliveries suspended or not made by reason of this section shall be canceled without liability, but this contract shall otherwise remain unaffected.

7. TERMINATION SENSORIC reserves the right, among other remedies, either to terminate this contract or to suspend further deliveries under it in the event Buyer fails to pay for any one shipment when said shipment becomes due. Should Buyer's financial responsibility become unsatisfactory to SENSORIC, cash payment or security satisfactory to SENSORIC may be required by SENSORIC for future deliveries and for the goods therefore delivered.

8. CANCELLATION, DELAY Buyer shall have the right to cancel or delay shipment of the order or any part thereof upon written notice to SENSORIC at least forty-five (45) days prior to the applicable scheduled shipment date, subject to the following conditions: In the event of cancellation, Buyer shall accept delivery of and pay for goods already manufactured or in the process of manufacture at the time said notice is received by SENSORIC, and shall pay any standard cancellation charges required by SENSORIC. In the event of delay of shipment, Buyer shall pay to SENSORIC a delayed shipment fee of two percent (2%) per month (prorated to reflect shorter periods of time) on the total price for goods so delayed.

9. DELIVERY, RISK OF LOSS Unless otherwise agreed in writing all sales are made under INCOTERMS 2000 EXW, ex works. Risk of damage to or loss of the goods shall pass to the Buyer at that time when SENSORIC notifies the Buyer that the goods are available for collection.

10. QUANTITY The quantity shipped in any contract month may be limited by SENSORIC to either:
(a) the average of the monthly quantities purchased by Buyer for the preceding contract months or

(b) the maximum quantity covered by this contract divided by the number of months in the period of the contract. SENSORIC may limit shipments based upon the current maximum quantity for the applicable time period under this contract divided by the number of months in such time period. Any quantity not shipped as a result of any such limitation shall be deducted from the total quantity of this contract. SENSORIC shall not be bound to tender delivery of any quantities for which Buyer has not given shipping instructions. Shipment within seven (7) days either in advance of or subsequent to the applicable scheduled shipment date shall be considered timely. Because of the conditions involved in the manufacture of electronic materials or components (any specialty product to be used for manufacture of semiconductor parts, electronic or electrical equipment and referred to herein as goods), where an order calls for goods to be made especially for Buyer, a delivery of not less than 90% of the ordered quantity will be considered a complete fulfillment of the order, and, in cases of an over-run, SENSORIC may deliver and Buyer will accept any such excess up to 10% of the order.

11. WARRANTY The Buyer shall examine the goods as required by German Law (§§377, 378 of the German Commercial Code) and in doing so check every delivery in any respect. SENSORIC warrants that all items delivered under this agreement will be free from defects in material and workmanship, conform to applicable specifications, and, to the extent that detailed designs have not been furnished by the Buyer, will be free from design defects. SENSORIC shall not be liable for the goods being fit for a particular purpose.



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The above warranty is given by SENSORIC subject to the following conditions:

- SENSORIC shall not be liable in respect of any defect in the goods arising from any design or specification supplied by the Buyer;
- SENSORIC shall not be liable under the above warranty if the total price for the goods has not been paid by the time period specified in § 3;
- The above warranty does not extend to parts, materials or equipment manufactured by or on behalf of the Buyer unless such warranty is given by the manufacturer to SENSORIC;

This warranty does not cover defects in or damage to the products which are due to improper installation or maintenance, misuse, neglect or any cause other than ordinary commercial application. Any claim by the Buyer which is based on any defect in the quality or condition of the goods or their failure to correspond with specifications shall be notified to SENSORIC within twelve month from the date of delivery, unless otherwise specified by SENSORIC in writing. Where any valid claim in respect of any goods which is based on any defect in the quality or conditions of the goods or their failure to meet specifications is notified to SENSORIC in accordance with these Conditions, SENSORIC shall be entitled at SENSORIC's sole discretion to either replace the goods free of charge or repair the goods. If SENSORIC is neither ready nor able to either repair or replace the goods the Buyer shall be entitled at the Buyer's sole discretion to claim for a reduction of price or the cancellation of the contract.

12. LIMITATION OF LIABILITY SENSORIC'S total liability for any and all losses and damages arising out of any cause whatsoever shall in no event exceed the purchase price of the goods or services in respect to which such cause arises, and in no event shall SENSORIC be liable for incidental, consequential or punitive damages resulting from any cause whatsoever, except in case of intent or gross negligence. Any discharge from liability will be void if the defect results from gross negligent or intentional breach of contract on the part of SENSORIC. The same applies if SENSORIC may be held liable for the breach of any material contractual obligation. Buyer's total liability is also limited to intent and gross negligence.

13. PATENTS Subject to the foregoing and unless otherwise expressly provided herein, SENSORIC warrants that the goods sold pursuant to this contract, except for those made for Buyer according to Buyer's specification, do not infringe a valid European patent. This warranty is given upon condition that Buyer promptly notify SENSORIC of any claim or suit involving Buyer in which such infringement is alleged and that, if SENSORIC is affected, Buyer permits SENSORIC to control completely the defense or compromise of any such allegation of infringement. SENSORIC does not warrant that the use of the goods or any material made therefrom, whether the goods are used alone or in combination with any other material, will not infringe any patent. SENSORIC reserves the right to terminate SENSORIC's warranty under this Section at any time with respect to any undelivered goods, it being agreed that in the event of such termination Buyer may, without penalty, thereafter refuse acceptance of such undelivered goods.

If the goods are to be manufactured or any process it to applied to the goods by SENSORIC in accordance with a specification submitted by the Buyer, the Buyer shall indemnify SENSORIC against all loss, damages, costs and expenses awarded against incurred by SENSORIC in connection with or paid or agreed to be paid by SENSORIC in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual rights of any other person which results from SENSORIC's use of the Buyer's specification. SENSORIC reserves the right to make any changes in the specifications of the goods which are required to conform with any applicable statutory requirements or, where the goods are to be supplied to SENSORIC's specifications, which do not materially affect their quality or performance.

14. RETURNS The return of goods shipped by SENSORIC shall not be accepted unless authorized in advance by SENSORIC and SENSORIC's Returned Material Authorization number is prominently marked on each shipping container. The return of goods for any reason other than failure to conform to specifications or SENSORIC's shipment of goods shall be subject to a restocking charge of 20% of the value of the goods returned.

15. EXPORT Buyer represents that the goods supplied hereunder will not be diverted, transshipped, exported or re-exported, either directly or indirectly, to any country whatsoever, except in accordance with all applicable German laws and regulations.

16. ASSIGNMENT Buyer shall not (by operation of law or otherwise) assign its rights or delegate its performance hereunder without the prior written consent of SENSORIC, and any attempted assignment or delegation without such consent shall be void.



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17. MISCELLANEOUS CLAUSES SENSORIC reserves the right to improve or modify any of the products without prior notice, provided that such improvement or modification shall not affect the form and function of the products.

Each party shall be responsible for all its legal, accounting or other costs and expenses incurred in the performance of its obligation hereunder.

18. SEVERABILITY If any of provisions contained herein shall be held to be unenforceable for any reason, such unenforceability shall not affect any other provision herein, but these terms shall be construed as if such unenforceable provision had never been contained herein.

19. GOVERNING LAW The validity, interpretation and performance of this contract and any dispute connected herewith shall be governed and construed in accordance with the laws of the Federal Republic of Germany with the inclusion of the United Nations Convention of 11th April 1980 on Contracts for the International Sale of Goods. Any dispute arising from or in connection with this agreement shall be submitted to the exclusive jurisdiction of the Regional Court of Munich I, Department of Trade Matters.